

EXPLANATORY MEMORANDUM TO
THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)
(TRANSFER OF STAFF TO THE CIVIL AVIATION AUTHORITY)
REGULATIONS 2021

2021 No. 595

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument transfers the employment of staff working on a range of activities connected with spaceflight regulation, from the UK Space Agency (“UKSA”) to the Civil Aviation Authority (“CAA”). It provides employment protection for the transferring staff which is similar to that afforded by certain provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”), as the TUPE Regulations do not apply in this case. The transfer date as defined in the instrument is drafted so as to coincide with the coming into force of a separate instrument that would appoint the CAA as regulator of spaceflight activities in the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and 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 the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Outer Space Act 1986 (the 1986 Act) was the primary legislation which previously governed all spaceflight activity conducted by UK entities. The 1986 Act confers powers on the Secretary of State to enable the Secretary of State to perform

licensing and regulatory functions, which are carried out by the UKSA in practice. It sets out the licensing regime for such activities where these are carried out by UK nationals, Scottish Firms or bodies incorporated under UK law.

- 6.2 Once the Space Industry Act 2018 (the 2018 Act) is fully brought into force, it will form the legal basis for issuing licences for activities connected with spaceflight taking place in the UK. The 2018 Act amends the 1986 Act so that space activities carried out in the UK will cease to be regulated by that Act. The 1986 Act will continue to govern such activities and the issuing of licences carried out by UK entities overseas.
- 6.3 The Secretary of State has decided that the CAA should become the regulator for these activities. Both the 1986 Act and the 2018 Act do not provide a mechanism to allow employees carrying out roles related to these functions to transfer to another public body.
- 6.4 The intention is that Regulations made under the 2018 Act would allow the CAA to carry out licensing and regulatory functions under that Act. It is also intended that relevant spaceflight functions under the 1986 Act will be delegated to the CAA via a separate instrument.
- 6.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 ('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.
- 6.6 These Regulations are therefore being made under the powers established in section 38(1) of the Employee Relations Act 1999 (the 1999 Act) to enable the transfer of staff from the UKSA to the CAA, taking account of the Cabinet Office Statement of Practice (COSoP) on staff transfers to protect employees' terms and conditions. The effect of these Regulations is that the transfer will be conducted in the same manner as if certain provisions of the TUPE Regulations had applied, and employees transferring will not be subject to less favourable terms and conditions as a result of the transfer.
- 6.7 As with a transfer under TUPE, the regulations do not transfer contractual occupational pension entitlements (where those entitlements relate to benefits for old age, invalidity or survivors). The UKSA and CAA have ensured that appropriate pension options are available for staff through a separate Admission Agreement.

7. Policy background

- 7.1 The UKSA has a key role in promoting growth in the UK space sector. Successive governments have followed a policy of separating safety regulation from sector promotion to ensure regulation is impartial. To ensure that spaceflight and associated activities are carried out safely and responsibly, the Secretary of State has agreed to appoint the CAA as the regulator for those activities.
- 7.2 The CAA and the UKSA have undertaken an exercise to identify the relevant roles to be transferred from the UKSA to the CAA and the individuals in scope to be transferred to the CAA have been notified accordingly. The UKSA have shared with the relevant recognised Trade Union the matters relating to these Regulations.

7.3 The transfer date provided for in these Regulations is drafted so as to coincide with the coming into force date of Regulations intended to be made under the 2018 Act to appoint the CAA as regulator for spaceflight activities. Transferring staff would be informed of the transfer date at the earliest opportunity after those Regulations are made (as at that point in time, the exact transfer date could be determined).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 This instrument does not give rise to any need for consolidation measures.

10. Consultation outcome

10.1 A 12 week public consultation on draft Regulations being made under the 2018 Act ran from 29 July to 21 October 2020, which included setting out the Government's intention that the CAA will undertake all regulatory functions in relation to the 2018 Act, in addition to regulating orbital activities under the 1986 Act. The intention to transfer regulatory functions to the CAA has also been communicated at industry plenary events.

10.2 Although no specific question was asked on the on the appointment of the CAA as the regulator, some respondents still commented on this issue. The majority of respondents who raised this issue agreed that the CAA would be an appropriate regulator for spaceflight activities. There was overall agreement that its expertise, derived from regulating the aviation industry, rendered it well-placed for such a role.

10.3 A full Government response to the consultation has been prepared by the Department for Transport and the UKSA and can be found here:
<https://www.gov.uk/government/consultations/spaceport-and-spaceflight-activities-regulations-and-guidance>

11. Guidance

11.1 Guidance is not required.

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. However, the impact of the transition costs associated with moving regulatory functions from the UKSA to the CAA (which was found not to be significant) was considered in an Impact Assessment prepared to accompany the Regulations due to be made under the 2018 Act to appoint the CAA as regulator. The intention is for that Impact Assessment to be published alongside the Regulations made under the 2018 Act on the legislation.gov.uk website.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to monitor or review the effect of this instrument.

15. Contact

15.1 Emily James at the UK Space Agency Telephone: 020 7215 3155 or email: Emily.james2@ukspaceagency.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Boyall, Director for Regulation at the UK Space Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Amanda Solloway, Minister for Science, Research and Innovation at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.