STATUTORY INSTRUMENTS

1975 No. 748 (S. 124)

EDUCATION, SCOTLAND

The Education of Mentally Handicapped Children (Staff Transfer and Protection) (Scotland) Order 1975

Made - - - -	*1st May* 1975
Laid before Parliament	*9th May* 1975
Coming into Operation	*16th May* 1975

In exercise of the powers conferred on me by section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974(**a**) and of all other powers enabling me in that behalf, I hereby make the following order:—

Title and Commencement

1. This order may be cited as the Education of Mentally Handicapped Children (Staff Transfer and Protection) (Scotland) Order 1975 and shall come into operation on 16th May 1975.

Interpretation

2.—(1) The Interpretation Act 1889(**b**) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

(2) In this order—

"the Act" means the Education (Mentally Handicapped Children) (Scotland) Act 1974;

"the Appeals Memorandum" means the Memorandum on Staff Appeals appended to the Scottish Local Government Staff Commission Circular 7/75 dated 13th February 1975;

"the appointed day" means 16th May 1975, being the day appointed for the purposes of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974;

"Health Board" means a board constituted under section 13 of the National Health Service (Scotland) Act 1972(**c**);

"regional or islands council" means a regional or islands council in terms of section 2 of the Local Government (Scotland) Act 1973(**d**);

"a Staff Appeals Tribunal" means a Staff Appeals Tribunal set up in accordance with the arrangements described in the Appeals Memorandum.

(a) 1974 c. 27. (b) 1889 c. 63. (c) 1972 c. 58. (d) 1973 c. 65.

(3) In this order, unless the context otherwise requires, references to any enactment or instrument shall be construed as references to that enactment or instrument as amended, extended or applied by or under any other enactment or instrument.

Transfer of Staff

3.—(1) There shall on the appointed day be transferred to the employment of the appropriate regional or islands council any person who is employed wholly or mainly by a Health Board—

(*a*) in training children classified under section 63 of the Education (Scotland) Act 1962(**a**), as read with section 10 of the Education (Scotland) Act 1969(**b**), as unsuitable for education or training, either by ordinary methods or by special education; or

(*b*) in assisting any such person in such training.

(2) For the purposes of this article the appropriate regional or islands council is, as regards any person, the regional or islands council in whose area is situate the hospital at or for the purposes of which he is employed.

Supplementary provision as to transfers

4.—(1) The Health Board shall ensure that any person to be transferred by or under article 3 is informed as to—

(*a*) the regional or islands council to whom he is to be transferred by or under article 3; and

(*b*) the provisions of the Appeals Memorandum which are applicable.

(2) Where any person is on 15th May 1975 absent from his normal duties for the purpose of undergoing training article 3 shall apply—

(*a*) if it was part of the arrangements under which he is so absent that at the completion of such training he should be transferred to employment different to that in which he was engaged immediately prior to the commencement of the training, as if he was, on 15th May 1975, so employed; or

(*b*) in the absence of such arrangements, as if he was on 15th May 1975 in the employment in which he was engaged immediately prior to the commencement of such training.

Appeals

5. Any person may appeal in respect of his transfer under article 3 and such appeal shall be determined in accordance with the arrangements set out in the Appeals Memorandum.

Protection of officers transferred

6.—(1) Any person employed before the appointed day for the purpose of functions of a Health Board who on the appointed day is in consequence of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974 employed by a regional or islands council for the purpose of educational functions shall, so long as he continues in that council's employment for the purpose of those functions, enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before that date, except as regards the scale of his salary or remuneration if on that date or afterwards he ceases to be engaged in duties reasonably comparable to those in which he was

(**a**) 1962 c. 47. (**b**) 1969 c. 49.

engaged immediately before that date; and in the event of his ceasing to be so engaged, the scale of his salary or remuneration shall also be not less favourable so long as he has not been served with a statement in writing of new terms and conditions of employment.

(2) A statement of new terms and conditions of employment shall not be served—

(*a*) in the case of any person who has appealed on grounds of hardship to a Staff Appeals Tribunal under article 5—

(i) if his appeal is allowed, until—

an alternative transfer or employment has been arranged; or if no alternative transfer or employment is arranged, the expiration of 3 months from the decision of the Tribunal or 15 November 1975, whichever is the later;

(ii) in any other case, until the determination of the appeal has been notified;

(*b*) in the case of a person to whom article 4(2)(*a*) applies, unless such person otherwise agrees, until he has been in the employment therein referred to for one month.

(3) A statement of new terms and conditions of employment shall be served on every person transferred by or under article 3 before 16th May 1976.

(4) If after service of a statement of new terms and conditions of employment upon him a person appeals on grounds of hardship as aforesaid, to a Staff Appeals Tribunal the statement shall cease to have effect, paragraph (1) shall have effect as if the statement had not been served, and a new statement shall be served only in accordance with paragraph (2)(*a*).

(5) The new terms and conditions of employment shall be such that—

(*a*) so long as the person is engaged in duties reasonably comparable to those in which he was engaged immediately before 16th May 1975, the scale of his salary or remuneration is not less favourable than that which he enjoyed immediately before that date; and

(*b*) the other terms and conditions of his employment are not less favourable than those which he enjoyed immediately before 16th May 1975.

(6) Where between 16th May 1975 and the service of the statement of new terms and conditions of employment upon any person the scale of the salary or remuneration which such person enjoyed immediately before 16th May 1975 is improved, paragraph 5(*a*) shall have effect as if the scale as improved had been so enjoyed.

(7) Where the new terms and conditions of employment involve any diminution of the scale of the salary or remuneration of a person they shall not come into effect until the date, not earlier than the expiration of 3 months from the service of the statement thereof, specified in that statement.

(8) Any question by a person whether duties are reasonably comparable within the meaning of paragraph (5) shall be determined in accordance with the arrangements set out in the Appeals Memorandum.

(9) A person may appeal in respect of new terms and conditions of employment in accordance with the arrangements set out in the Appeals Memorandum.

(10) Any statement of new terms and conditions of employment shall contain a statement of the provisions of paragraphs (8) and (9) and copies of the Appeals Memorandum shall be made available for reference by the regional or islands council by whom the statement is served.

(11) In this article, "terms and conditions of employment" includes any restriction arising under any Act or any instrument made under any Act on the termination of the employment of any person.

(12) A written statement given in accordance with section 4(1) of the Contracts of Employment Act 1972(a) shall not be regarded as a statement of new terms and conditions of employment for the purposes of this article unless the statement so indicates.

Saving for training arrangements

7. Where any person transferred by or under article 3 is undergoing training under arrangements which have not been discharged before 16th May 1975 those arrangements shall continue to apply with the substitution, for the Health Board in whose employment the person was prior to the commencement of the training, of the regional or islands council to whose employment he has been transferred as aforesaid.

Commencing points on scales

8. Where, in relation to any person—

(*a*) on the scale of salary or remuneration applicable to him immediately before 16th May 1975 he would have become entitled to an increment on that date; and

(*b*) by reason of any appointment effective as from 16th May 1975 made by the regional or islands council to whom he is transferred, any other scale of salary or remuneration becomes applicable to him as from that date,

any term of his employment as to his commencing point on such other scale shall be applicable as if his employment before, and on and after, the said date were continuous employment.

Notices to terminate contracts of employment

9.—(1) This article applies to contracts of employment resulting from the operation of article 3 or a determination given on an appeal against a particular transfer.

(2) A notice to terminate any contract of employment to which this article applies given by reason of the fact that the officer to whom it is given has become redundant in consequence of the coming into operation of the Act on 16th May 1975 shall, unless the officer to whom it is given otherwise agrees, not come into operation earlier than the expiration of 3 months from the service thereof.

William Ross,
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
1st May 1975.

(a) 1972 c. 53.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for the transfer of staff as at 16th May 1975 to the regional and islands councils established by or under the Local Government (Scotland) Act 1973 consequential upon the discontinuance of the classification of handicapped children as unsuitable for education or training. It includes provisions protecting the interests of staff affected by the Order.

Copies of the "Appeals Memorandum" may be obtained from the Scottish Local Government Staff Commission, Croythorn House, 23 Ravelston Terrace, Edinburgh EH4 3TW.

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