STATUTORY INSTRUMENTS

1978 No. 419 (S. 43)

LOCAL GOVERNMENT, SCOTLAND

The Local Authorities Agency Arrangements (Staff Transfer and Protection) (Scotland) Order 1978

Made - - - -	*9th March* 1978
Laid before Parliament	*22nd March* 1978
Coming into Operation	*13th April* 1978

In exercise of the powers conferred on me by section 215 of the Local Government (Scotland) Act 1973(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 Local Authorities Agency Arrangements (Staff Transfer and Protection) (Scotland) Order 1978 and shall come into operation on 13th April 1978.

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 Local Government (Scotland) Act 1973;

"the agent" means the local authority secondly mentioned in article 3;

"the appointed day", in relation to the making, extension, restriction or ending of any arrangements described in article 3, means the day on which such making, extension, restriction or ending is to come into operation;

"local authority" means any regional, islands or district council;

"officer", in relation to any principal or agent, includes the holder of any office or employment under the principal or agent, as the case may be; and

"the principal" means the local authority first mentioned in article 3.

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

(4) Any reference in this order to a numbered article, unless the reference is to an article of a specified instrument, shall be construed as a reference to the article bearing that number in this order.

(5) Any reference in any article of this order to a numbered paragraph shall, unless the reference is to a paragraph of a specified article, be construed as a reference to the paragraph bearing that number in the first-mentioned article.

(a) 1973 c. 65. (b) 1889 c. 63.

Application

3. This order shall apply where arrangements for the discharge of the functions of one local authority (in this order referred to as "the principal") by another local authority (in this order referred to as "the agent") are being made, extended, restricted or ended under section 56 of the Act and such changes involve the transfer of officers from the employment of the principal to the employment of the agent or from the employment of the agent to the employment of the principal.

Schemes for the allocation of officers

4. Where any arrangements described in article 3 are to be made or extended a scheme for the allocation of officers of the principal for transfer to the employment of the agent shall be made by the principal with the agreement of the agent. Such allocation shall include any officer of the principal employed wholly or mainly in the discharge of the functions to be covered by the arrangements who has requested that he shall be so included. Any question by an officer whether he is employed as aforesaid shall be determined in accordance with the arrangements applicable to the determination of disputes as to employment and terms and conditions thereof between the officer and the principal.

5. Where any arrangements described in article 3 are to be restricted or ended a scheme for the allocation of officers of the agent engaged in the discharge of the functions covered by the arrangements for transfer to the employment of the principal shall be made by the agent with the agreement of the principal. Such allocation shall include any officer of the agent employed wholly or mainly in the discharge of the functions covered by the arrangements, or as the case may be in the functions which are to cease to be covered by them, who has requested that he shall be so included. Any question by an officer whether he is employed as aforesaid shall be determined in accordance with the arrangements applicable to the determination of disputes as to employment and terms and conditions thereof between the officer and the agent.

6. The principal or the agent, as the case may be, shall, as soon as they commence the preparation of a scheme under article 4 or 5—

(*a*) notify every officer employed in the discharge of the functions described in such article of such commencement and transmit to him a print of this order; and

(*b*) notify the bodies representative of officers appearing to them to be concerned of such commencement.

In the preparation of the scheme the principal or the agent, as the case may be, shall consult such bodies.

7. No officer who has not requested his inclusion shall be included in the allocation for transfer in any scheme made under article 4 or 5 except with his prior agreement.

8. Subject to article 7, any scheme made under article 4 shall allocate officers of the principal, and any scheme made under article 5 shall allocate officers of the agent engaged in the discharge of the functions covered by the arrangements, on the basis of the likely needs of the services to be provided on and after the appointed day by the principal and the agent.

9. Upon making any scheme under article 4 or 5 the principal or the agent, as the case may be, shall transmit copies thereof to the bodies representative of officers appearing to them to be concerned and notify every officer to be transferred of the appointed day.

Transfers

10.—(1) On the appointed day—

any officer allocated by a scheme made under article 4 for transfer to the employment of the agent shall be so transferred; and

any officer allocated by a scheme made under article 5 for transfer to the employment of the principal shall be so transferred.

(2) Where on a question referred under article 4 or 5 still outstanding at the making of the scheme the decision is that an officer is employed as described in such article, the officer shall be transferred to the employment of the principal or the agent, as the case may be, on the appointed day or on the expiration of two months from the notification of the decision, whichever is the later.

Protection of officers

11. Every officer transferred by article 10 to the employment of any local authority shall, so long as he continues in that employment by virtue of the transfer and until he is served with a statement in writing referring to this order and specifying new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those which he enjoyed immediately before the appointed day.

12. A statement of new terms and conditions of employment shall not be served on an officer in relation to whom a question that he has sustained hardship in consequence of his transfer has been referred under article 17—

(*a*) if it is determined that he has sustained such hardship, until the remedy offered under article 18(1) or the allowance there referred to has been accepted by the officer;

(*b*) in any other case, until the determination has been notified.

13. Subject to article 12, a statement of new terms and conditions of employment shall be served on any officer transferred by article 10 not later than the expiration of 3 months from the date on which he is transferred.

14. The new terms and conditions of employment shall be such that—

(*a*) so long as the officer is engaged in duties reasonably comparable to those in which he was engaged immediately before the appointed day, the scale of his salary or remuneration; and

(*b*) the other terms and conditions of his employment, are not less favourable taken together than those which he enjoyed before the appointed day.

15. Where between the appointed day and the service of new terms and conditions of employment the scale of the salary or remuneration which such officer enjoyed immediately before the appointed day is improved, article 14(*a*) shall have effect as if the scale as improved had been so enjoyed.

16. Where the new terms and conditions of employment involve any diminution of the scale of the salary or remuneration of an officer 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.

17. Any question by an officer of any local authority whether any duties are reasonably comparable within the meaning of article 14, whether the scale of his salary or remuneration is such as is required by articles 14 and 15, whether the other terms and conditions of his employment are not less favourable than those which he enjoyed immediately before the appointed day, or that he has sustained hardship in consequence of his transfer, shall be determined in accordance with the arrangements applicable to the determination of disputes as to employment and terms and conditions thereof between the officer and the local authority.

18.—(1) Where it is determined that an officer has sustained hardship in consequence of his transfer the local authority to whom he has been transferred shall in consultation with the officer and representatives of their employees seek a remedy and, not later than the expiration of two months (or such longer period as may be agreed by the officer) following the notification of the determination, notify the officer of any remedy which they are able to offer him or that they are unable to offer him any remedy but that an allowance would be paid to him in respect of the hardship.

(2) In either event, the officer shall be informed that he may, subject to paragraph (5), request that his employment be terminated, and shall be informed of his entitlements if it is so terminated.

(3) Any remedy offered under paragraph (1) may be accepted by the officer within the 2 months following the notification thereof, or within such longer period as may be agreed by the local authority to whom he has been transferred.

(4) An allowance in respect of hardship shall be by periodic payments of such amount as may be determined by agreement between the officer and the local authority to whom he has been transferred or failing such agreement in accordance with the arrangements applicable for the determination of disputes as to employment and terms and conditions thereof between them.

In the event of any change of circumstances the payment of the allowance or the amount thereof may be reviewed by such agreement or failing agreement in accordance with such arrangements.

(5) No such request as is described in paragraph (2) shall be made after the expiration of 2 months from the determination of the amount of the periodic payments of the allowance.

(6) Article 28 shall not apply to any officer to whom an allowance is payable under this article.

(7) If the remedy offered is, with the agreement of the local authority from whose employment the officer was transferred by article 10, transfer back to the employment of that authority, and that remedy is accepted by the officer and he is so transferred, articles 11 to 17 and 19 to 29 shall cease to apply to him.

19. In articles 11 to 18, "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 officer.

20. 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 within the meaning of articles 11 to 18 unless the statement so indicates.

21. A notice to terminate the contract of employment of any officer, given by reason of the fact that the officer to whom it is given has become redundant in consequence of the making, extension, restriction or ending of the arrangements described in article 3, shall, unless such officer otherwise agrees, not come into operation earlier than the expiration of 3 months from the service thereof.

Secondary and further transfers

22. Any officer transferred by article 10 to the employment of the principal or the agent may, before the expiry of 2 years from the date on which he is transferred, be transferred by the principal or the agent, as the case may be, with the agreement of the other such authority, and of the officer, to the employment of the other such authority, and articles 11 to 21 shall thereupon apply to such officer as they apply to officers transferred by article 10.

23. Any other officer of the principal or the agent employed in the discharge of the functions covered or to be covered by the arrangements may, before the expiry of 2 years from the appointed day, be transferred by the principal or the agent, as the case may be, with the agreement of the other such authority, and of the officer, to the employment of the other such authority, and articles 11 to 21 shall thereupon apply to such officer as they apply to officers transferred by article 10.

Apprenticeships

24. Any contract of apprenticeship entered into between any person and the principal or the agent shall have effect as a contract entered into between such person and the authority to whose employment he is transferred by article 10 or under article 18, 22 or 23 or would have been so transferred if he had been in the employment of the principal or the agent.

Saving for training arrangements

25. Where any officer transferred by article 10 or under article 18, 22 or 23 is undergoing training under arrangements which have not been discharged before the date on which such officer is transferred, those arrangements shall continue to apply with the substitution, for the local authority in whose employment the officer was prior to the commencement of the training, of the local authority to whose employment he has been transferred as aforesaid.

Saving for dispensations

26. Any dispensation from the requirements of any Act or any instrument made under any Act granted to any local authority from whom any officer is transferred by article 10 or under article 18, 22 or 23 shall have effect, in relation to such officer, as if it had been granted to the local authority to whose employment he has been transferred as aforesaid.

(**a**) 1972 c. 53.

Saving for extensions of service

27. Any extension of service under regulation L14 of the Local Government Superannuation (Scotland) Regulations 1974(**a**) effective on the date on which any officer is transferred by article 10 or under articles 18, 22 or 23 shall continue to have effect as if it had been made by the local authority to whose employment he has been transferred as aforesaid.

Travelling and removal expenses

28. Any additional travelling expenses, and any removal or incidental expenses, reasonably incurred by any officer in consequence of the transfer shall be reimbursed by the local authority to whose employment he is transferred by article 10 or under articles 18, 22 or 23.

Commencing points on scales

29. Where in relation to any officer—

(*a*) on the scale of salary or remuneration applicable to him immediately before his transfer by article 10 or under articles 18, 22 or 23 he would have become entitled to an increment on the date of such transfer; and

(*b*) by reason of any appointment effective as from such date made by the authority to whose employment he is transferred, any other scale of salary or remuneration becomes applicable to him as from such 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, such date were one continuous employment under one authority.

Continuity of employment

30. Where, apart from this article, a person's continuity of employment would be broken by any transfer referred to in (*a*) or in (*b*) below then nevertheless, for the purposes of the Redundancy Payments Act 1965(**b**), section 28 of the Industrial Relations Act 1971(**c**) as re-enacted in paragraph 10 of Schedule 1 to the Trade Union and Labour Relations Act 1974(**d**) (qualifying period for protection from unfair dismissal), sections 1 and 2 of the Contracts of Employment Act 1972 (minimum periods of notice) and section 61 of the Employment Protection Act 1975(**e**) (time off to look for work or make arrangements for training)—

(*a*) the period of his employment in the employment from which he is transferred by article 10 and the period of his employment in the employment to which he is transferred by that article shall in the case of an officer further transferred under articles 18 or 22 count as a period of employment in the employment to which he is so further transferred;

(*b*) the period of his employment in the employment from which he is transferred by article 10 or under article 23 shall in the case of any other officer so transferred count as a period of employment in the employment to which he is so transferred; and

(*c*) no change of employment covered by (*a*) or (*b*) shall break the continuity of the period of employment.

(**a**) S.I. 1974/812. (**b**) 1965 c. 62. (**c**) 1971 c. 72.
(**d**) 1974 c. 52. (**e**) 1975 c. 71.

Provision of agreements

31.—(1) Where such arrangements as are described in article 3 are being made, extended, restricted or ended after the coming into operation of this order any provision (whether corresponding or different) with respect to any matter provided for in articles 3 to 30 made in an agreement entered into under section 56 of the Act shall, subject to paragraph (2) be of no effect.

(2) Where an agreement entered into as described in paragraph (1) before the coming into operation of this order contains provision for matters provided for in articles 11 to 30 any officer transferred by article 10 to the employment of any authority may notify the authority in writing that he desires that such provision should apply to him. As from such notification the said provision shall apply, and articles 11 to 30 shall not apply, to the officer.

Bruce Millan,
One of Her Majesty's Principal Secretaries of State.

New St Andrew's House,
Edinburgh.
9th March 1978.

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under section 56 of the Local Government (Scotland) Act 1973 arrangements may be made by one authority for the discharge of their functions by another authority. Under that provision the arrangements may be extended, restricted or ended. This Order makes provision for the transfer of persons employed in the discharge of the functions covered by the arrangements and for the protection of the interests of those persons.

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