STATUTORY INSTRUMENTS

1978 No. 763

LONDON GOVERNMENT

The London Borough of Havering (Transfer of Housing Accommodation etc.) Order 1978

Made - - - -	*25th May* 1978
Laid before Parliament	*6th June* 1978
Coming into Operation	*1st July* 1978

Whereas the Council of the London Borough of Havering and the District Council of Basildon have requested the Secretary of State for the Environment to provide by an order under section 23(3) of the London Government Act 1963(a) for the transfer of certain housing accommodation for the time being vested in the Council of the London Borough of Havering;

And whereas the said councils have agreed the terms of such transfer;

And whereas the Secretary of State is required by the said section 23(3) to give effect to those terms;

And whereas certain further matters appear to the Secretary of State necessary and proper for the purposes of or in consequence of that transfer;

Now therefore the Secretary of State for the Environment, in exercise of powers conferred by sections 23(3) and 84 of the London Government Act 1963 and now vested in him (b), and in exercise of all other powers enabling him in that behalf, hereby makes the following order:—

Title, commencement and interpretation

1. This order may be cited as the London Borough of Havering (Transfer of Housing Accommodation etc.) Order 1978 and shall come into operation on 1st July 1978.

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

(2) In this order—

"the operative date" means 1st July 1978;

"the Secretary of State" means the Secretary of State for the Environment;

"the transferee authority" means the District Council of Basildon, and

"the transferor authority" means the Council of the London Borough of Havering.

(a) 1963 c. 33.
(b) S.I. 1970/1681.
(c) 1889 c. 63.

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

(4) Any reference in this order to a numbered article shall be construed as a reference to the article bearing that number in this order.

Transfer of property

3. On the operative date all the property described in Schedule 1 to this order and all liabilities (other than those liabilities described in Part II of Schedule 2 to this order) attaching to the transferor authority in respect of that property shall by virtue of this order be transferred to and vest in or attach to the transferee authority, and—

(*a*) all contracts, deeds, bonds, agreements and other instruments subsisting in favour of, or against, and all notices in force which were given (or having effect as if they had been given) by, or to, the transferor authority in respect of such property and liabilities shall be of full force and effect in favour of, or against, the transferee authority; and

(*b*) any action or proceeding or any cause of action or proceeding, pending or existing on the operative date, by, or against the transferor authority in respect of such property and liabilities shall not be prejudicially affected by reason of this order, and may be continued, prosecuted and enforced by, or against, the transferee authority.

4. Any property or liability transferred by article 3 to the transferee authority shall be held or discharged by them for and in respect of the District of Basildon.

5. Any byelaws in force for the regulation of any property transferred by article 3 shall have effect as if they had been made by the transferee authority.

6. Any legal proceedings pending on the operative date may be amended and parties may be added or substituted in such manner as may be necessary or proper in consequence of this order.

7.—(1) Where under this order or in any adjustment made in consequence hereof any liability or part of a liability charged indifferently on all the revenues or funds of a public body or on any particular revenue or fund of such a body is transferred to another public body, that liability or part shall be charged indifferently on all the revenues of the public body to whom it is transferred and shall cease to be a charge on any revenue or fund of the public body from whom it is transferred.

(2) In this article "public body" has the same meaning as in section 270 of the Local Government Act 1972(**a**).

Covenants and easements affecting property

8. Section 62 of the Law of Property Act 1925(**b**) (which implies certain words in conveyances of land, subject to the terms of the conveyance and the provisions therein contained) shall have effect—

(**a**) 1972 c. 70.

(**b**) 1925 c. 20.

(*a*) in respect of any property transferred by article 3, and

(*b*) in respect of any property, being property vested in the transferor authority, which is affected by the said transfer,

as if the property described in (*a*) and (*b*) respectively had been the subject of a conveyance on sale on the operative date.

9.—(1) This article applies to any land within the extent of an area of housing accommodation transferred by article 3, being land in respect of which the transferor authority have powers under section 151 of the Housing Act 1957**(a)** to enforce covenants entered into on the sale or exchange of land.

(2) In respect of any land to which this article applies—

(*a*) the transferor authority shall consult with the transferee authority before exercising their powers under the said section 151;

(*b*) the transferee authority may require the transferor authority to exercise the said powers in any case where such exercise is requisite in the interests of the area of housing accommodation within the extent of which the land is situated.

(3) The transferor authority shall notify the transferee authority of any land to which this article applies and provide sufficient particulars of the covenants to which the said section 151 relates.

10. Any covenant (not being a covenant affected by article 9) which would have been enforceable by the transferor authority immediately before the operative date in respect of or for the benefit of land transferred by article 3 and held by that authority immediately before that date for the purposes of the Housing Act 1957 or of any Act re-enacted by that Act shall be of full force and effect in favour of and enforceable by the transferee authority.

Rent books

11. Until a new rent book is issued by the transferee authority in respect of any housing accommodation transferred by article 3, notification of that transfer to the tenant of the said accommodation shall be deemed to be a compliance by the said authority as landlord with the requirements of section 2(1)(*a*) of the Landlord and Tenant Act 1962**(b)**.

Arbitration

12. Subject to any provision of this order, any dispute arising under this order or in consequence thereof shall be determined by an arbitrator appointed by agreement between the parties in dispute, or in default of agreement, by the Secretary of State, and, subject as aforesaid, the provisions of the Arbitration Act 1950**(c)** shall apply to any arbitration under this article.

Terms of transfer

13.—(1) The transferee authority shall make payments to the transferor authority in accordance with the provisions of Part I of Schedule 2 to this order.

(2) The transferor authority shall discharge the liabilities described in Part II of the said Schedule 2.

(a) 1957 c. 56. **(b)** 1962 c. 50.
(c) 1950 c. 27.

Nomination rights

14.—(1) Until 1st July 1988 the transferor authority may in any year nominate tenants to not more than 4 vacancies in the dwellings transferred by article 3.

(2) In paragraph (1) above "year" means a period of 12 months ending on 30th June.

Article 3

SCHEDULE 1

Property transferred to the District Council of Basildon

That area of land approximately 20·2 acres in extent situated at Wickford in the District of Basildon and forming part of the Barn Hall Estate comprising—

(*a*) the housing accommodation numbered—

(i) 77–98 (inclusive), 100–116 (inclusive), 117a, 117b, 117c and 117d, 118–121 (inclusive), 123–127 (inclusive), 129, 131–134 (inclusive), 139 and 141 Alderney Gardens,

(ii) 5–13 (odds) Brock Hill,

(iii) 2–40 (evens), 41–44 (inclusive), 44a, 45–47 (inclusive), 49–53 (odds), 54–87 (inclusive), 89–109 (odds) and 115–133 (odds) Haslemere Road,

(iv) 1–25 (inclusive) and 27–33 (odds) Lapwing Road,

(v) 5 and 7 Moreland Road,

(vi) 5–23 (inclusive) and 25–37 (odds) Richmond Road, and

(vii) 1–5 (inclusive) and 7–19 (odds) Swallow Road;

(*b*) 155 garages, 72 parking plots, 1 playground and the sites of two electricity substations;

(*c*) the four shops numbered 122, 128, 130 and 136 Alderney Gardens;

(*d*) the community building at the junction of Swan Lane and Brock Hill and land appurtenant thereto; and

(*e*) all highways, pavements, walkways, garden areas, community areas, play areas and other land within the said part of the estate not comprised in items (*a*) to (*d*) above.

Article 13

SCHEDULE 2

Terms of Transfer

Part I—Payments to the Council of the London Borough of Havering

1. In consideration of the transfer of the property transferred by article 3 there shall be payable by the transferee authority to the transferor authority the sum of £923,400, of which £47,695 shall be paid on the operative date and the balance shall be paid by one instalment of £14,600 on 31st March 1979 and equal annual instalments of £14,595 each on 31st March in every subsequent year.

2.—(1) If the instalment payable under paragraph 1 above on 31st March 1979 is less than three quarters of the loan charges which the transferor authority are liable to pay for the period of 12 months ending on that date in respect of money borrowed by them for the relevant purposes in respect of items (*a*), (*b*), (*c*), (*d*) and (*e*) in Schedule 1 above, the transferee authority shall in addition pay to the transferor authority an amount equal to the difference.

(2) The making of a payment under this paragraph does not reduce the balance of the sum payable under paragraph 1 above.

3.—(1) If the instalment payable under paragraph 1 above on 31st March 1980 or any subsequent year is less than the loan charges which the transferor authority are liable to pay for the period of 12 months ending on 31st March in the year in question in respect of money borrowed by them for the relevant purposes in respect of items (*a*), (*b*), (*c*), (*d*) and (*e*) in Schedule 1 above, the transferee authority shall in addition pay to the transferor authority an amount equal to the difference.

(2) The making of a payment under this paragraph does not reduce the balance of the sum payable under paragraph 1 above.

4. In paragraphs 2 and 3 above and in paragraphs 12 and 13 below—

"loan charges" has the meaning assigned to it by section 104(3) of the Housing Finance Act 1972(a);

"money borrowed" includes money borrowed from any account or capital fund kept by the transferor authority; and

"the relevant purposes" means the purchase of land (including buildings), the erection of houses and other buildings and the carrying out of works.

5.—(1) Subject to sub-paragraph (2) below, if before 1st July 1985 any property included in item (*a*) in Schedule 1 above is sold by the transferee authority, they shall pay to the transferor authority an amount equal to the appropriate percentage for the relevant year of the difference between the price for which the property is sold and the cost of provision.

(2) Where on any such sale as is mentioned in sub-paragraph (1) above the transferee authority agree to the price being paid by instalments or to a payment of part thereof being secured by a mortgage of the premises—

(*a*) the amount mentioned in sub-paragraph (1) above shall be payable by annual instalments, payable on 30th June, each instalment being of an amount which bears the same proportion to the amount mentioned in sub-paragraph (1) above as the amount of principal payable by the purchaser in the preceding period of 12 months bears to the price for which the property was sold; and

(*b*) the transferee authority shall pay to the transferor authority interest, calculated annually on 30th June, at the same rate as that payable by the purchaser, on the outstanding balance at the beginning of the preceding period of 12 months of the amount mentioned in sub-paragraph (1) above.

(3) In sub-paragraph (1) above—

"relevant year" means the period of 12 months ending on 30th June in which the sale is completed or in which an agreement is entered into for the sale price to be paid by instalments;

"the appropriate percentage for the relevant year" means the percentage specified for that year in column 2 of the Table below; and

"cost of provision", in relation to any property, means the cost incurred by the transferor authority in providing the housing accommodation comprised in the property, including the cost of land acquisition and site development.

(a) 1972 c. 47.

TABLE

1 *Relevant year ending on 30th June*	2 *Appropriate percentage*
1979	87½
1980	75
1981	62½
1982	50
1983	37½
1984	25
1985	12½

6. If on the operative date—

(*a*) the total of any amounts recoverable by the transferee authority by virtue of paragraphs (*a*) and (*b*) of article 3 exceeds

(*b*) the total of any amounts payable by the transferor authority to the transferee authority under paragraph 10 below,

the transferee authority shall pay to the transferor authority an amount equal to the excess.

PART II—LIABILITIES OF THE COUNCIL OF THE LONDON BOROUGH OF HAVERING

7. The transferor authority shall remain liable for the repayment of money borrowed by them before the operative date in respect of any property transferred by article 3.

8. The transferor authority shall meet the full amount of any claim as to a negligent act or omission or breach of statutory duty made against them by a third party in respect of any property transferred by article 3 provided that such claim relates to an act, omission or breach which took place before the operative date.

9. The transferor authority shall meet all costs of repairs and improvements carried out before the operative date.

10. The transferor authority shall pay to the transferee authority any amounts received by them before the operative date (whether in respect of rents or otherwise) in respect of the property transferred by article 3 which were not due to be paid to them until that date or a later date.

11.—(1) Where a tenant nominated by the transferor authority under article 14 enters into occupation of any dwelling transferred by article 3, the transferor authority shall pay to the transferee authority—

(*a*) the initial amount specified in sub-paragraph (2) below, and

(*b*) for the year in which the nomination was made and for each of the 11 subsequent years, an annual amount calculated in accordance with sub-paragraph (3) below.

(2) The initial amount mentioned in sub-paragraph (1) above is an amount equal to—

(*a*) six months' interest, at the rate for the time being payable on loans from the transferee authority's loans pool, on the average cost per dwelling to the transferee authority of providing new housing accommodation completed during the year in which the nomination was made, less

(*b*) the appropriate percentage of the amount calculated in accordance with (*a*) above.

(3) For any year the annual amount mentioned in sub-paragraph (1) above is—

(*a*) the total of the rate fund contributions made by the transferee authority to their Housing Revenue Account for the year, divided by

(*b*) half the sum of—

(i) the number of the transferee authority's Housing Revenue Account dwellings (within the meaning of section 104(2) of the Housing Finance Act 1972) on the first day of the year, and

(ii) the number of such dwellings on the last day of the year.

(4) In this paragraph

"year" means a period of 12 months ending on 31st March; and

"the appropriate percentage" means the percentage which is for the time being the appropriate percentage for the purposes of paragraph 2 of Schedule 1 to the Housing Rents and Subsidies Act 1975(a) (new capital costs element of housing subsidy).

12. If the instalment payable under paragraph 1 above on 31st March 1979 is greater than three quarters of the loan charges which the transferor authority are liable to pay for the period of 12 months ending on that date in respect of money borrowed by them for the relevant purposes in respect of items (*a*), (*b*), (*c*), (*d*) and (*e*) in Schedule 1 above, the transferor authority shall pay to the transferee authority an amount equal to the difference.

13. If the instalment payable under paragraph 1 above on 31st March 1980 or any subsequent year is greater than the loan charges which the transferor authority are liable to pay for the period of 12 months ending on 31st March in the year in question in respect of money borrowed by them for the relevant purposes in respect of items (*a*), (*b*), (*c*), (*d*) and (*e*) in Schedule 1 above, the transferor authority shall pay to the transferee authority an amount equal to the difference.

Peter Shore,

25th May 1978. Secretary of State for the Environment.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order gives effect to the terms agreed between the Council of the London Borough of Havering and the District Council of Basildon for the transfer of housing accommodation (part of the Barn Hall Estate) to the latter council, and makes certain consequential provision.

(a) 1975 c. 6.