

SCHEDULES

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Article 3(3).

TRANSITIONAL PROVISIONS RELATING TO TRANSFER OF RESPONSIBILITY FOR EDUCATION OF MENTALLY HANDICAPPED CHILDREN

Interpretation

1. In this Schedule—'

“child” means a person who has not attained the age of 19 years;

“terms and conditions of employment” includes terms and conditions relating to superannuation benefit;

“transferred functions” means functions of the Department of Health and Social Services in relation to the supervision and training of children under sections 8(3) and 10 of the Mental Health Act (Northern Ireland) 1961;

“transferred officer” means an officer transferred under a scheme made under paragraph 3(1).

Duty to secure special educational provision for mentally handicapped children

2.—(1) The following provisions of this paragraph apply in relation to—

(a) any child in respect of whom, immediately before 1st April 1987, a decision has been recorded under paragraph 2 of Schedule 12 to the principal Order which has not been cancelled under that paragraph; and

(b) any other child in relation to whom, immediately before that date, transferred functions are exercisable.

(2) The child shall be taken to have special educational needs and the board shall be taken to have made an assessment of his educational needs under Article 29 of the principal Order and to have formed the opinion that his special educational needs call for the board to determine the special educational provision that should be made for him.

(3) During the period of 2 years beginning with 1st April 1987 the board shall not be under the duty imposed by Article 31 of the principal Order to make and maintain a statement of the child's special educational needs.

(4) A statement made in respect of the child under Article 31 of the principal Order but before an assessment of his educational needs is made under Article 29 of that Order, need not give details of the board's assessment of those needs until such time as an assessment has been made under Article 29.

(5) Until such time as the board makes a statement in respect of the child under Article 31 of the principal Order it shall be under a duty to secure, either in a grant-aided school or otherwise, the provision for the child of such special educational provision as appears to the board to be appropriate.

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Transfer of staff

3.—(1) The Department may make a scheme providing for the transfer on 1st April 1987 to the employment of such board as may be specified in the scheme of officers who immediately before that date are employed by a health and social services board wholly or mainly for the purposes of transferred functions.

(2) A transferred officer shall, so long as he continues in the employment of the board to which he is transferred in accordance with a scheme under sub-paragraph (1) and until he is served with a statement in writing by that board setting out his new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before 1st April 1987.

(3) The new terms and conditions referred to in sub-paragraph (2) shall be such that—

(a) as long as a transferred officer is engaged in duties reasonably comparable to those in which he was engaged immediately before 1st April 1987, the scale of his salary or remuneration; and

(b) the other terms and conditions of his employment;

are taken as a whole not less favourable than those he enjoyed immediately before 1st April 1987.

(4) A written statement given in accordance with section 4 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 shall not be regarded as a statement of new terms and conditions of employment for the purposes of sub-paragraph (2) unless the statement so indicates.

(5) A transferred officer shall not be taken to have been dismissed from his employment by a health and social services board by reason of redundancy and for the purposes of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 and the Industrial Relations (Northern Ireland) Orders 1976 to 1982, his period of employment by a health and social services board shall count as a period of employment by the board to whose employment he is transferred and the transfer shall not break the continuity of the period of employment.

(6) Any question arising in relation to a transferred officer as to—

(a) whether he is or was employed wholly or mainly for the purposes mentioned in sub-paragraph (1);

(b) whether he is engaged in duties reasonably comparable to those in which he was engaged immediately before 1st April 1987; or

(c) whether his terms and conditions of employment taken as a whole are less favourable than those he enjoyed immediately before that date, shall, if not otherwise determined, be referred for determination by an industrial tribunal whose decision shall be final.

(7) The Department may make regulations providing for the payment by a board, on such terms and subject to such conditions as may be specified in the regulations, of compensation to, or in respect of, any transferred officer who suffers subsequent to his transfer loss of employment or loss or diminution of emoluments (including superannuation rights) which is attributable to the provisions of Article 3 and this Schedule or who on grounds which the Department considers reasonable is unable or unwilling to accept employment with the board to which he has been transferred.

(8) Regulations under sub-paragraph (7) may include provision—

(a) as to the manner in which, the time within which and the person to whom any claim for compensation is to be made;

(b) for the determination by an industrial tribunal of questions arising under the regulations.

(9) Regulations under sub-paragraph (7)—

(a) shall be subject to negative resolution; and

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- (b) may have effect from a date earlier than that on which the regulations are made but not so as to place any person in a worse position than he would have been in if the regulations had effect only from the date of the making thereof.

Transfer of property

4.—(1) The Department of Health and Social Services, with the approval of the Department, may enter into an agreement with a board for the transfer to the board of—

- (a) any real or personal property situated in the area of the board which immediately before 1st April 1987 was held by the Department of Health and Social Services wholly or partly for the purposes of transferred functions; and
- (b) any rights and liabilities to which the Department of Health and Social Services was entitled or subject immediately before that date in relation to, or in connection with, any such property.

(2) A health and social services board may enter into an agreement with a board for the transfer to the board of—

- (a) any personal property situated in the area of the board which immediately before 1st April 1987 was held by the health and social services board wholly or partly for the purposes of transferred functions; and
- (b) any rights and liabilities to which the health and social services board was entitled or subject immediately before that date in relation to, or in connection with, any such property.

(3) An agreement under sub-paragraph (1) or (2) may include provision for the transfer to a board of property held on trust by the Department of Health and Social Services or a health and social services board.

(4) Where any property held on trust is transferred to a board by an agreement under sub-paragraph (1) or (2), it shall be held by the board on trust for such purposes relating to services provided by the board as the board thinks fit; but in exercising its discretion under this sub-paragraph the board shall secure, as far as is reasonably practicable, that the objects of the trust are not prejudiced.'

(5) Stamp duty shall not be chargeable on any instrument or other document executed for the purposes of transferring property to a board under this paragraph.

Relaxation of Article 14 of principal Order in relation to proposals made as a consequence of Article 3 and this Schedule

5.—(1) Where as a consequence of the provision made by Article 3 and the preceding provisions of this Schedule a board proposes to establish a new controlled school, Article 14 of the principal Order (proposals as to primary and secondary education) shall have effect in relation to that proposal as if the following provisions were omitted, namely—

- (a) paragraphs (5) and (6); and
- (b) in paragraph (7) the words from “after considering” to “paragraph (6)(b)”.

(2) Any dispute as to whether, for the purposes of this paragraph, a proposal is made as a consequence of the provision made by Article 3 and the preceding provisions of this Schedule, shall be determined by the Department.

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Power to make other transitional provision

6. The Department may by order subject to negative resolution make such other transitional provision as appears to the Department to be necessary or expedient in connection with the coming into operation of Article 3 and this Schedule.