

1988 No. 1590

LOCAL GOVERNMENT, ENGLAND AND WALES

**The Tyne and Wear Residuary Body
(Winding Up) Order 1988**

Made - - - - - *13th September 1988*

Laid before Parliament *19th September 1988*

Coming into force *10th October 1988*

Whereas the Tyne and Wear Residuary Body, acting pursuant to section 67(1)(b) of the Local Government Act 1985(a), has submitted a scheme to the Secretary of State for its winding up, and the disposal of its remaining functions, property, rights and liabilities:

And whereas the Secretary of State has decided to give effect to those proposals:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 67(3) of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:-

PART I

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Tyne and Wear Residuary Body (Winding Up) Order 1988 and shall come into force on 10th October 1988.

(2) In this Order -

“the 1980 Act” means the Local Government, Planning and Land Act 1980(b);

“the 1985 Act” means the Local Government Act 1985;

“the abolished council” means the former Tyne and Wear County Council;

“the Residuary Body” means the Tyne and Wear Residuary Body;

“the local council” means the council of a district in the county and in relation to property means the council of the district in which the property is situated;

“the county” means the county of Tyne and Wear;

“property”, except in article 10(2), does not include cash or the balance of any fund or account;

“South Tyneside” means the council of the district of South Tyneside; and

“the transfer date” means 11th October 1988.

(3) For the purpose of any provision of this Order, other than article 5, which requires the payment or recovery of sums in the appropriate proportions –

- (a) the appropriate proportion in relation to any council is the proportion equal to the proportion which the population of the area of that council bears to the population of the county; and
- (b) the population of an area shall be taken to be the number estimated by the Registrar General and certified by him to the Secretary of State by reference to the 30th June which falls 21 months before the beginning of the financial year in which the payment falls to be made or the sum recovered, as the case may be.

PART II

TRANSFER OF PROPERTY, FUNCTIONS, RIGHTS AND LIABILITIES

Transfer of property, etc.

2.—(1) On the transfer date –

- (a) any immovable property of the Residuary Body which is the subject of an agreement for its disposal or option for its purchase, and any interest of the Residuary Body in any mortgage, shall vest in South Tyneside; and
- (b) all other property of the Residuary Body (whether movable or immovable) shall vest in the local council.

(2) All rights and liabilities of the Residuary Body acquired or incurred, and all records relating exclusively to property transferred by paragraph (1) shall vest in the council to which it is so transferred.

(3) In each financial year commencing with the financial year beginning 1st April 1988 South Tyneside shall pay to each of the other local councils the appropriate proportion of an amount equal to South Tyneside's net revenue receipts from any property or interest vested by paragraph (1)(a), and net capital receipts from the repayment of principal in respect of any interest so vested or the disposal of any such interest or of any property so vested.

(4) In the preceding paragraph, "net revenue receipts" means revenue receipts in the year in question after deducting the aggregate amount of expenditure incurred by South Tyneside in that year in connection with property vested by paragraph (1)(a); and "net capital receipts" means capital receipts in the year in question after deducting any amount by which net revenue receipts are a negative amount.

(5) The balance of the net capital and revenue receipts shall be retained by South Tyneside.

Transfer of monies

3.—(1) Immediately before the transfer date, the Residuary Body shall set aside from their revenue balances the sum of £1 million ("the special fund").

(2) On the transfer date the Residuary Body shall transfer to South Tyneside from the special fund the sum of £800,000 which South Tyneside shall credit to a fund established by them under paragraph 16 of Schedule 13 to the Local Government Act 1972(a) which shall be applied only for making (otherwise than by virtue of article 2(1) of the Local Government Reorganisation (Designated Councils) (Pensions) Order 1986(b)) payments in respect of contractual rights saved by section 53 of the 1985 Act or payments under –

- (a) Part VI of the Employment Protection (Consolidation) Act 1978(c),
- (b) section 1 of, or an order under section 2 of, the Pensions (Increase) Act 1971(d),
- (c) an order under section 59 of the Social Security Pensions Act 1975(e),
- (d) the Local Government Reorganisation (Compensation) Regulations 1986(f),
- (e) the Local Government Reorganisation (Reduction of Redundancy Payment Cases) Scheme 1986(g).

(3) On the transfer date all monies held by the Residuary Body and all sums standing to the credit of that Body on any account (other than the special fund) shall vest in South Tyneside.

(4) On or before 31st March 1989 South Tyneside shall pay to each of the other local councils the appropriate capital and appropriate revenue sums as defined in paragraph (5).

(5) In paragraph (4) –

“appropriate capital sum” means a sum equal to the appropriate proportion of the aggregate amount of capital money held by the Residuary Body or standing to its credit on any account immediately before the transfer date;

“appropriate revenue sum” means a sum equal to the appropriate proportion of the aggregate of all other sums which immediately before the transfer date are held by, or stand to the credit of, the Residuary Body on any account other than the special fund.

(6) The amounts reflecting the difference between the amounts vested by paragraph (3) and the amounts which fall to be paid to other local councils by paragraph (4) shall be retained by South Tyneside as their share of the vested amounts.

(7) In this article “capital money” means monies described in article 2(2)(a) of the Local Government Reorganisation (Capital Money) (Metropolitan Counties) Order 1986(h).

Compensation and superannuation matters

4.—(1) All the functions of the Residuary Body mentioned in paragraph (2) so far as they relate to any contract of employment with the abolished council or a contract of employment with the Residuary Body terminating on or before the transfer date and all rights and liabilities of that Body which arise from any such contract shall on the transfer date become functions of, or vest in, South Tyneside.

(2) The functions referred to in paragraph (1) are –

- (a) functions in relation to the payment of compensation for loss of employment or loss or diminution of emoluments; and
- (b) functions conferred by regulation 3(1) of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1986(i).

(a) 1972 c.70. (b) S.I. 1986/96. (c) 1978 c.44. (d) 1971 c.56. (e) 1975 c.60.
(f) S.I. 1986/151. (g) Made under section 59(3) of the Local Government Act 1985.
(h) S.I. 1986/2063. (i) S.I. 1986/380.

(3) All the functions of the Residuary Body under the Pensions (Increase) Act 1971 or paragraph 3(2) of Schedule 13 to the 1985 Act shall on the transfer date become functions of South Tyneside.

(4) Regulation 3(3) of the Regulations mentioned in paragraph (2)(b) above shall apply to the exercise by South Tyneside of any discretionary function transferred by paragraph (1) as if references to the appropriate residuary body were references to that council.

(5) Regulation 12 (apportionment of certain costs) of the Local Government Reorganisation (Compensation) Regulations 1986 shall not apply to any costs which are defrayed by virtue of any provision of this Order.

Block Grant

5.—(1) Any payment which by virtue of any provision of Part VI of the 1980 Act would but for this Order have fallen, by virtue of section 81 of the 1985 Act, to be made by or to the Residuary Body, shall be made by or to the local councils in the appropriate proportions.

(2) For the purposes of paragraph (1) –

- (a) “the appropriate proportions” shall be construed in accordance with article 1(3)(a); and
- (b) the population of an area shall be taken to be the number estimated by the Registrar General and certified by him to the Secretary of State by reference –
 - (i) in the case of any payment attributable to the financial year ended 31st March 1985, 30th June 1982; and
 - (ii) in the case of any payment attributable to the financial year ended 31st March 1986, 30th June 1983.

(3) Any information, notice or request under section 65, 66 or 67 of the 1980 Act^(a) which but for this article would have fallen to be given or made by or to the Residuary Body shall be given or made by or to South Tyneside.

Transfer of rights and liabilities

6.—(1) On the transfer date all rights and liabilities of the Residuary Body which are not transferred by the preceding provisions of this Order shall vest in South Tyneside; but shall be held for the benefit of, or discharged on behalf of, all the local councils.

(2) Liabilities in respect of money borrowed by the Residuary Body (both as respects principal and interest) transferred by paragraph (1) shall be charged on the revenues of South Tyneside.

Consequential financial provisions

7.—(1) Any net capital receipts paid to a local council pursuant to article 2(3) and the balance of net capital receipts retained by South Tyneside pursuant to article 2(5) shall be treated for the purposes of Part VIII (capital expenditure) of the 1980 Act as a capital receipt of the council.

(2) Any sum paid to a local council as an appropriate capital sum under article 3(4) or retained by South Tyneside pursuant to article 3(6) and reflecting capital monies shall be treated for the purposes of the said Part VIII as a capital receipt of the council.

(3) Regulations under sections 72(3)(d) and 75 of the 1980 Act shall apply to amounts to be treated by virtue of this article as capital receipts of a local council for the purposes of Part VIII as they apply to other receipts of the council.

(4) Sums received by South Tyneside in respect of the disposal of assets vested in that council by article 2(1)(a) of this Order or in respect of the repayment of grants or advances of a capital nature the right to the repayment of which is vested in that council by this Order shall not be capital receipts for the purposes of Part VIII of the 1980 Act.

(a) Section 65 was substituted by paragraph 4 of Schedule 4 to the Local Government Finance Act 1987 (c.6).

8. Any net capital receipts or appropriate capital sum paid to a local council pursuant to article 2(3) or 3(4), and the balance of net capital receipts and the appropriate capital sum retained by South Tyneside pursuant to articles 2(5) and 3(6), shall be applied for any purpose for which capital money received by a local council on the disposal of land under Part VII of the Local Government Act 1972 may properly be applied.

Consequential administrative arrangements

9.—(1) On or before 31st December 1988 and 31st October in any later year, South Tyneside shall notify every other local council of its estimate of the amount to be paid to that council in the current financial year by way of net capital receipts under article 2(3) or an appropriate capital sum under article 3(4) and of the classes of disposals and repayments to which that amount relates.

(2) On making any payment of net capital receipts in pursuance of article 2(3) or of an appropriate capital sum in pursuance of article 3(4) South Tyneside shall notify the council of the classes of disposals and repayments to which the payment relates.

(3) For the purposes of paragraphs (1) and (2), disposals and repayments shall be classified in accordance with Schedule 1 to the Local Government (Prescribed Expenditure) (Consolidation and Amendment) Regulations 1987(a).

(4) When South Tyneside send a notification under paragraph (1) or (2) to another council they shall send a copy to the Secretary of State and in the case of a notification under paragraph (2) advise the Secretary of State of the amount paid to that council.

(5) South Tyneside shall –

(a) before the relevant date mentioned in paragraph (1) provide the Secretary of State with an estimate of the amount they anticipate they will retain in the current financial year by way of capital monies and of the classes of disposals and repayments to which that amount relates; and

(b) notify the Secretary of State when they retain any amount following a distribution of capital monies under paragraph (2) of the amount retained and the classes of disposals and repayments to which that amount relates.

(6) The Local Government Reorganisation (Capital Money) (Metropolitan Counties) Order 1986 shall cease to have effect in relation to the county on the transfer date.

PART III WINDING UP

Winding up

10.—(1) In relation to the year beginning 1st April 1988, paragraph 10(1) of Schedule 13 to the 1985 Act shall have effect as if it referred to a report for a period between that date and 31st October 1988.

(2) On 31st October 1988 the Residuary Body shall be wound up and any remaining functions, property, rights and liabilities shall vest in South Tyneside and be held by that council for the benefit of all the local councils or discharged by that council on their behalf, as the case may be.

(a) S.I. 1987/2186.

Accounts

11. Any function under –

- (a) section 78 or 79 of the 1985 Act;
- (b) Part III of the Local Government Finance Act 1982(a); or
- (c) the Accounts and Audit Regulations 1983(b)

which would, but for this Order, have fallen to be discharged on or after 1988 by the Residuary Body shall be discharged by South Tyneside.

PART IV

MISCELLANEOUS AND GENERAL

Apportionment

12.—(1) All money transferred to or sums realised by South Tyneside by or in pursuance of the transfer by this Order (other than articles 2(3) and 3(2) and (3)) of any property or rights shall, after deduction of any relevant expenditure, be apportioned among the local councils; and South Tyneside shall pay the appropriate proportion to each of the other local councils and shall retain the balance.

(2) If in any financial year the aggregate in that year of the money and sums referred to in paragraph (1) is insufficient to meet any relevant expenditure for that year, that expenditure shall, to the extent that it is not met from that aggregate, be apportioned among the local councils; and the appropriate proportion shall be recoverable by South Tyneside from each of the other local councils.

(3) In this article, "relevant expenditure" means expenditure attributable to this Order which is not defrayed by virtue of any other provision of this Order.

Continuity of the exercise of functions

13.—(1) Anything done by or in relation to (or having effect as if done by or in relation to) the Residuary Body in the exercise of or in connection with a function which by virtue of this Order becomes the function of South Tyneside shall so far as is required for continuing its effect after the transfer date have effect as if done by or in relation to that council.

(2) Without prejudice to the generality of paragraph (1), that paragraph applies to the making of any application, decision or determination; to the giving of any notice; to the entering into of any agreement or other instrument; and to the bringing of any action or proceeding; but nothing in this Order shall be construed as transferring any contract of employment.

(3) Any pending action or proceeding may be amended in such a manner as may be appropriate in consequence of this Order.

Continuity of employment in certain cases

14. Where the employment by the Residuary Body of any person is terminated, and that termination is attributable to any provision of this Order, regulation 5 (continuity of employment) of the Local Government Superannuation (Local Government Reorganisation) Regulations 1985(c) shall apply as if, for the purposes of paragraph (1)(b)(ii), the termination were not attributable to an order under section 67(3) of the 1985 Act.

(a) 1982 c.32. (b) S.I. 1983/1761. (c) S.I. 1985/1515. Regulation 5 now modifies the operation of the Local Government Superannuation Regulations 1986 (S.I. 1986/24), and the definition of "transferred employee" referred to in that regulation is in regulation H1. of the 1986 Regulations.

Complaints of maladministration by Residuary Body

15.—(1) The Parliamentary Commissioner may investigate, or, as the case may be may continue to investigate, a complaint of maladministration by the Residuary Body notwithstanding its winding up.

(2) In relation to any such investigation begun or continued after the transfer date, the Parliamentary Commissioner Act 1967(a) shall apply as if for any reference to the principal officer of the Residuary Body there were substituted a reference to the proper officer of South Tyneside, and as if any specified action had been taken by South Tyneside.

13th September 1988

Nicholas Ridley
Secretary of State for the Environment

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the winding up of the Tyne and Wear Residuary Body in pursuance of a scheme submitted by that Body to the Secretary of State under section 67 of the Local Government Act 1985.

Articles 2 to 9 have effect on 11th October 1988 ("the transfer date"). Article 2 provides for mortgages and for property that the Residuary Body has agreed to sell, or which is the subject of an option to purchase, to transfer to the council of the district of South Tyneside; and for other property to vest in the council of the district in which it is situated. Article 2(3) provides for the distribution of money attributable to mortgages and the disposal of property transferred to South Tyneside.

Article 3 provides for the distribution of monies belonging to the Residuary Body and the transfer of £800,000 to South Tyneside for staff compensation and pensions purposes. Article 4 provides for the transfer of remaining functions (in relation to compensation for loss of office, etc. and pensions) to South Tyneside, except in relation to those employees who remain in employment with the Residuary Body on and after the transfer date.

Article 5 provides for payment or recovery of the former Tyne and Wear County Council's entitlement to block grant to be made to or from the district councils. Article 6 transfers the remaining rights and liabilities of the Residuary Body to South Tyneside. Articles 7 and 8 make consequential provision for the treatment of capital receipts.

Article 9 requires South Tyneside to notify the other councils and the Secretary of State of the amounts which are likely to be available for distribution and which are, in fact, distributed.

(a) 1967 c.13; applied to residuary bodies by paragraph 11 of Schedule 13 to the Local Government Act 1985.

Article 10 provides for the submission of the Residuary Body's final report to the Secretary of State, and winds it up on 31st October 1988, transferring its remaining functions, property, rights and liabilities to South Tyneside for the benefit of all the councils in the county. Article 11 confers on that council the Residuary Body's remaining functions in relation to its accounts.

Article 12 makes general provision for apportioning among the councils in the county the sums received and paid by South Tyneside. Article 13 provides for continuity in the exercise of functions, and article 14 for the treatment of the employment of the Residuary Body's staff who take up other local government service as continuous for superannuation purposes. Article 15 provides for the handling of complaints of maladministration by the Residuary Body.

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