
STATUTORY INSTRUMENTS

1971 No. 341

**The Education of Handicapped Children
(Transfer of Staff and Property) Order 1971**

Citation, commencement and interpretation

1.—(1) This order may be cited as the Education of Handicapped Children (Transfer of Staff and Property) Order 1971 and shall come into operation on 12th March 1971.

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

“The appointed day”

2. In this order “the appointed day” means 1st April 1971, being the day appointed for the purposes of section 1 of the Education (Handicapped Children) Act 1970; and for the purposes of article 6 of this order the compensation regulations mentioned in that article shall have effect as if references to the material date were references to the appointed day.

Transfer of local government officers

3. Subject to article 5 below, there shall on the appointed day be transferred to the employment of the Inner London Education Authority every person who is employed for the whole, or substantially the whole, of his time by an inner London borough at or for the purposes of a junior training centre or special care unit provided in pursuance of arrangements under section 12 of the Health Services and Public Health Act 1968 for training children classified under section 57 of the Education Act 1944 as unsuitable for education at school.

Transfer of officers of regional hospital boards

4.—(1) Subject to article 5 below, there shall on the appointed day be transferred to the employment of the appropriate local education authority every person who is employed for the whole, or substantially the whole, of his time by a regional hospital board—

- (a) in training children classified under section 57 of the Education Act 1944 as unsuitable for education at school; or
- (b) in assisting any such person in such training.

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

Determination of questions under articles 3 and 4

5.—(1) If any question arises whether a person is so employed as is described in either of the two preceding articles (“the transfer articles”) it shall be referred not later than 30th April 1971 to a tribunal established under section 12 of the Industrial Training Act 1964 and the decision of that tribunal shall be final.

(2) Where any such question is pending as regards any person on the appointed day, the relevant transfer article shall not apply to that person unless and until the tribunal determine that he was employed as is in that article provided and, if the tribunal so determine, that article shall have effect with the substitution for the reference to the appointed day of a reference to the fourteenth day following the day upon which the decision of the tribunal is notified.

Compensation

6.—(1) The Local Government (Compensation) Regulations 1963 to 1970⁽¹⁾ shall, with the necessary adaptations, apply to—

(i) persons employed before the appointed day for the purpose of functions of local health authorities; and

(ii) persons transferred by virtue of article 4 above—

who suffer loss of employment or loss or diminution of emoluments which is attributable to section 1 of the Education (Handicapped Children) Act 1970 as they apply to persons who suffer such loss or diminution which is attributable to the enactments mentioned in regulation 4 of the Local Government (Compensation) Regulations 1963⁽²⁾ as amended⁽³⁾.

(2) The National Health Service (Compensation) Regulations 1971 shall, with the necessary adaptations, apply to other persons employed before the appointed day for the purpose of functions of regional hospital boards who suffer loss of employment or loss or diminution of emoluments which is attributable to section 1 of the Education (Handicapped Children) Act 1970 as they apply to persons who suffer such loss or diminution which is attributable to any such provision, event or order as is mentioned in regulation 4 of those regulations.

(3) For the purposes of paragraph (1) of this article the compensating authority shall be—

(a) in the case of a person who on the appointed day is employed for the purpose of functions of a local education authority, that authority;

(b) in the case of any other person, the local health authority for the purpose of whose functions he was employed immediately before the appointed day.

Terms and conditions of service

7.—(1) Any person employed before the appointed day for the purpose of functions of a local health authority or a regional hospital board who on the appointed day is in consequence of section 1 of the Education (Handicapped Children) Act 1970 employed for the purpose of functions of a local education authority shall, so long as he continues in that authority'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 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) If any question arises whether the duties in which a person is engaged on or after the appointed day are reasonably comparable to those in which he was engaged before that date it shall be referred to a tribunal established under section 12 of the Industrial Training Act 1964 and the decision of that tribunal shall be final.

(1) S.I. 1963/999, 1965/571, 1968/913, 1970/1889 (1963 II, p. 1634; 1965 I, p. 1786; 1968 II, p. 2407; 1970 III, p. 6239).

(2) (1963 II, p. 1634).

(3) The relevant amending instruments are S.I. 1965/571, 1970/1889.

Superannuation of local government officers

8. The schedule shall have effect as from the appointed day for the protection of the superannuation rights of persons employed before the appointed day for the purpose of functions of local health authorities.

Superannuation of officers of regional hospital boards

9.—(1) This article shall have effect as from the appointed day for the protection of the superannuation rights of any person transferred to the employment of a local education authority by virtue of article 4(1) of this order who was before the appointed day an officer to whom Part II of the National Health Service (Superannuation) Regulations 1961 as amended⁽⁴⁾ applied by virtue of regulation 4(1) of those regulations.

(2) Any such person as is mentioned in paragraph (1) of this article shall not, so long as he continues to be engaged in that authority's employment in duties reasonably comparable to those in which he was engaged immediately before the appointed day, be treated as falling within section 3(2) of the Local Government Superannuation Act 1937 unless—

- (a) he is employed otherwise than as a teacher; and
- (b) within three months after the appointed day, or such longer period as the Secretary of State for Social Services may in his case approve, he otherwise elects by notice in writing to the Secretary of State for Social Services and the authority to whose employment he is transferred.

(3) In its application to a person transferred by virtue of article 4(1) of this order to the employment of the council of the county borough of Manchester paragraph (2) above shall have effect with the substitution for the reference to section 3(2) of the Local Government Superannuation Act 1937 of a reference to the scheme administered under the Manchester Corporation (Pensions) Acts 1920 to 1970.

(4) Any agreement or trust deed made for the purposes of any scheme of superannuation by policies of insurance by the Secretary of State for Social Services in respect of any such person as is mentioned in article 4(1) of this order and having effect immediately prior to his transfer shall, so far as relates to that person, have effect thereafter as if it had been made with the local education authority to whose employment he is transferred by virtue of that article; and any policies of insurance which are held for the purposes mentioned in this paragraph for the benefit of any such person by the Secretary of State for Social Services shall be held for the like purposes by that authority.

(5) As regards any person transferred by virtue of article 4(1) to whom the National Health Service (Superannuation) Regulations 1961 as amended apply by virtue of a direction given by the Secretary of State for Social Services under section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967, the obligation to pay contributions which is imposed by regulation 7(1)(b) of those regulations shall be discharged by the local education authority to whose employment he is transferred; and the references in that regulation to the employing authority shall be construed accordingly.

Transfer of property

10.—(1) There shall on the appointed day be transferred to the Greater London Council all property, real and personal, vested in any inner London borough which immediately before that day is used by them wholly for the purposes of any such centre or unit as is mentioned in article 3 above, together with any rights and liabilities to which any such borough is then entitled or subject in or in relation to any such property.

(4) S.I. 1966/1523, 1967/949.

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(2) In the case of any property vested in an inner London borough which immediately before the appointed day is used partly for such purposes and partly for other purposes, paragraph (1) above shall apply as if the reference to all property were a reference to such property, and the reference to the appointed day were a reference to such a day, as may be agreed between the Council and the borough concerned or, in default of such agreement, determined by the Secretary of State.

(3) Section 151 of the Local Government Act 1933 (which relates to financial adjustments between public bodies) shall with the necessary modifications apply for the purposes of this article as if the reference to an Order under Part VI of that Act included a reference to paragraphs (1) and (2) of this article.

Given under the Official Seal of the Secretary of State for Education and Science on 2nd March 1971.

L.S.

Margaret Thatcher
Secretary of State for Education and Science

Given under my hand on 3rd March 1971.

Peter Thomas
Secretary of State for Wales