

1973 No. 1847

LOCAL GOVERNMENT, ENGLAND AND WALES
The Local Government (Staff Transfer Schemes) Order 1973

Made - - - 5th November 1973

Laid before Parliament 14th November 1973

Coming into Operation 5th December 1973

The Secretary of State for the Environment, in relation to England, and the Secretary of State for Wales, in relation to Wales, in exercise of the powers conferred upon them by sections 254(1) and 255(1) of the Local Government Act 1972^(a) and of all other powers enabling them in that behalf, hereby make the following order:—

Title and commencement

1. This order may be cited as the Local Government (Staff Transfer Schemes) Order 1973 and shall come into operation on 5th December 1973.

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 Act 1972;

“the Memorandum” means the memorandum entitled “Local Government Reorganisation in England and Wales; Transfer and protection of staff—Memorandum” issued with Circular 101/73 (Department of the Environment) 185/73 (Welsh Office) dated 28th August 1973;

“officer”, in relation to any council, includes the holder of any office or employment under that council; and

“Wales” means the area consisting of the counties established by section 20 of the Act (new local government areas in Wales), and “England” does not include any area included in any of those counties.

Schemes for the transfer of officers

3.—(1) Schemes for the transfer of officers to new authorities established under the Act or the Water Act 1973^(c) shall be made by the councils of administrative counties, county boroughs and county districts in accordance with the provisions of this article and article 4.

(a) 1972 c. 70.
(c) 1973 c. 37.

(b) 1889 c. 63.

(2) A scheme for the transfer of all or any class of their officers shall be made by any such council if they consider that the transfer of such officers in accordance with the principles set out in paragraph 25 of the Memorandum (which is set out in the Schedule to this order) would result in a substantially unbalanced allocation of such officers between authorities in relation to functions for which they are respectively responsible, or where any such authority notify the council that they so consider.

(3) A scheme for the transfer of all their officers shall be made by any such council whose area is comprised in the areas of two or more relevant authorities unless the relevant authorities other than one notify the council that no officers need be transferred to them.

(4) A scheme for the transfer of officers employed for the purposes of any function shall be made by any such council as is described in paragraph (1) where the function is on and after 1st April 1974 exercisable (otherwise than by virtue of section 187(2) or (3) of the Act) by two or more authorities and the council consider that there will be difficulty in determining the authorities to which officers would be transferred on the application of the principles described in paragraph (2) above, or where any such authority notify the council that they so consider.

(5) A scheme for the transfer of all or any of their officers may be made by any such council in any other circumstances in which they consider it appropriate to make a scheme.

(6) Where, with effect from 1st April 1974, functions are conferred upon the council of a district in Wales by order under section 198(3), 200(1), (2) or (3), 201(3) or 207(2) or (3) of the Act, any scheme made under paragraphs (2) to (5) above, so far as it provides for the transfer of officers on the basis that such functions will be discharged within the relevant district by a new county council, shall cease to have effect, and subject to the provisions of any such order the council who made the scheme shall make a further scheme for the transfer of such officers.

(7) Where any arrangements made under section 101 or 110, or any direction given under section 110, of the Act, are to have effect as from 1st April 1974 but have not been taken into account under article 4(2), any scheme made under paragraphs (2) to (5) above, so far as it provides for the transfer of officers on the basis that the functions to which the arrangements or direction relate will be discharged within the relevant area by the authority whose functions they are, shall cease to have effect, and the council who made the scheme shall make a further scheme for the transfer of such officers.

(8) The references in paragraphs (2), (3) and (5) above to all the officers of a council do not include—

- (a) any person who will by virtue of any agreement entered into between him and any authority (other than an authority abolished by the Act) before 1st April 1974 enter into the employment of that authority before or on that date;
- (b) any person as regards any employment which, otherwise than by virtue of the abolition of authorities effected by the Act, is to be terminated before or on 31st March 1974;
- (c) any person for whose transfer provision has been made (whether before or after this order) under section 254 of the Act; or

(d) any person for whose transfer provision is made in section 18 of the National Health Service Reorganisation Act 1973(a).

(9) In paragraph (3) above, "the relevant authorities" means, in relation to any authority described in column (1) of the following table, the authorities specified in respect thereof in column (2) together with any authority included in the expression by virtue of article 4(2).

TABLE

(1)	(2)
The council of any administrative county	The councils of the counties in which the area of the administrative county is comprised
The council of any county borough or county district	The councils of the districts in which the area of the county borough or county district is comprised

Provision as to schemes

4.—(1) Any scheme made under article 3 shall allocate the officers covered by it on the basis of the likely needs of the services to be provided on and after 1st April 1974.

(2) In any scheme made under paragraph (2) to (4) of article 3 any arrangements made under section 101 or 110, or any direction given under section 110, of the Act shall be taken into account, and the references to authorities in paragraphs (2) and (4) shall extend to, and "the relevant authorities" in paragraph (3) shall include, the authority who will be discharging any relevant functions by virtue of such arrangements or who are included in a direction under section 110 as the authority to discharge any relevant functions.

(3) In preparing any scheme a council shall—

(a) consult the authorities and bodies representative of officers appearing to them to be concerned; and

(b) give all the officers likely to be transferred an opportunity to indicate any preference as to the authority to whom they would wish to be transferred and take into consideration the preferences so indicated.

(4) Upon making a scheme a council shall transmit copies thereof to the authorities and bodies representative of staff appearing to them to be concerned and notify every officer to be transferred of the provision of the scheme in relation to him.

Disputes between councils and transferee authorities

5.—(1) If notice is given by any authority that they are dissatisfied with the provisions of any scheme made under article 3 the question shall be determined by agreement between the authorities concerned or in default of such agreement by the Secretary of State or an arbitrator appointed by him.

(2) Upon any determination which will result in the transfer of an officer otherwise than in accordance with the scheme the authority by whom the scheme was made shall notify such officer of the effect of the determination in relation to him.

Savings

6. Any transfer effected or proposed by any scheme shall be subject to any provisions—

- for the protection of the interests of officers;
- as to appeals by officers; and
- as to the secondary transfers of officers,

which may be contained in any further order made under sections 254 and 255 of the Act.

SCHEDULE

Article 3(2)

PARAGRAPH 25 OF TRANSFER AND PROTECTION OF STAFF MEMORANDUM

25. The general principles under which staff will be transferred are as follows:—

(a) any officer employed upon a function¹ which, within the area of his existing authority, will on and after the appointed day be the statutory responsibility only of a county council (e.g. education or social services in a non-metropolitan county) *and* who is

- (i) employed wholly or mainly² in premises which are to be used after that date for the purposes of the discharge of its functions by a county council (e.g. a school or area social services office in the examples referred to) *or*
- (ii) operating wholly or mainly from such premises (e.g. a highways depot) *or*
- (iii) being otherwise employed wholly, or substantially so³, upon that function

will be transferred to the employment of the new county council whose area will include that of his existing authority.

(b) similarly, any officer employed upon a function which, within the area of his existing authority will on and after the appointed day be the statutory responsibility only of a district council (e.g. housing) will, according to similar criteria, be transferred to the employment of the new district council whose area will include that of his existing authority.

Explanatory Notes

1. "Employed upon functions" covers not only operational and administrative staff employed in a functional service or department—for example education—but also staff in central common service departments employed in connection with particular functions—for example architects, maintenance staff, accountants, committee clerks and assistant solicitors employed in connection with education functions. The definition of "function" in the memorandum accompanying Department of the Environment Circular 78/73 (Welsh Office Circular 160/73), dealing with the transfer of property, will apply equally to this memorandum.

2. The phrase "wholly or mainly" is intended, in this connection, to include all staff more than half of whose work is in or from such premises.

3. "Wholly or substantially so" relates to staff whose work is not necessarily based on particular operational premises and applies where the staff concerned are working not merely for more than half of their time, but for the whole or very nearly the whole of their time upon the function concerned.

This distinction, which has been drawn in earlier reorganisations, e.g. in London and in the West Midlands, is based upon the thought that if an officer is employed in or from a "functional" building, there is a presumption that that is the function to which his employment is directly linked. Where that presumption is absent, for example where an officer works at headquarters the proposition is that he must work full time, or very nearly full time upon a particular function if that is to be the factor determining his future employing authority.

Where such an officer is employed by an existing county council the district council to which he will transfer should be determined, where possible, according to the area of the county with which his work is concerned.

If this is impracticable because his work is not related specifically to the area of any of the new districts, he will be transferred to such new district council as may be determined by the existing county council in consultation with the new district councils. In such circumstances the views of the officer concerned will be particularly relevant and should be sought at the earliest opportunity.

- (c) Headquarters or other staff of existing authorities who do not fall within the categories of staff referred to at (a) or (b) above will be transferred as follows:

County council staff—to the new county council for that area

All other authorities—to the new district council within whose area the existing authority's area will be included.

Geoffrey Rippon,

Secretary of State for the Environment.

2nd November 1973.

Peter Thomas,

Secretary of State for Wales.

5th November 1973.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The main transfer of staff from the local authorities abolished by the Local Government Act 1972 to the new authorities set up under that Act or under the Water Act 1973 will be effected by Order in accordance with general principles which have already been published.

Local circumstances vary so much, however, that general rules cannot in all instances result in a satisfactory distribution of staff and this Order requires the making of local arrangements or "schemes" in the particular circumstances set out in paragraphs (1) to (4) of Article 3. Additionally power is given in paragraph (5) of that Article for any existing council to make a scheme in respect of all or any of its staff if it is felt to be appropriate to do so.

Article 4 contains provision as to consultation with relevant authorities and staff representatives and also requires councils making schemes to take into consideration preferences expressed by individual officers.

Provision is made in Article 5 for disputes about schemes to be determined by the Secretary of State in default of agreement between the authorities concerned and in Article 6 for the application to local schemes of the general arrangements for appeals by individual officers which are to be established shortly.

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