STATUTORY INSTRUMENTS

1973 No. 634

CHILDREN AND YOUNG PERSONS

The Cessation of Approved Institutions (Axwell Park School) Order 1973

Made - - - -	*29th March* 1973
Coming into Operation	*1st April* 1973

The Secretary of State in exercise of his power under section 46 of the Children and Young Persons Act 1969(a) and of all other powers enabling him in that behalf, hereby makes the following order:—

Citation and commencement

1. This order may be cited as the Cessation of Approved Institutions (Axwell Park School) Order 1973, and shall come into operation on 1st April 1973.

Interpretation

2.—(1) In this order unless the context otherwise requires—

"the specified date" means 1st April 1973;

"the school" means the school approved by the Secretary of State in pursuance of section 79(1) of the Children and Young Persons Act 1933(b) and known as Axwell Park School;

"the managers" means the managers of the school for the purpose of section 79(1) of the Children and Young Persons Act 1933;

"the tribunal" means a tribunal established under section 12 of the Industrial Training Act 1964(c) and referred to in section 100 of the Industrial Relations Act 1971(d);

"terms and conditions of employment" includes any restriction arising under any Act or any instrument made under any Act on the termination of the employment of any officer;

"the Council" means the Council of the County Borough of Newcastle-upon-Tyne;

"approved institution" has the meaning assigned to it under section 46 of the Children and Young Persons Act 1969; and any reference in this order to the Local Government Superannuation Acts 1937 to 1953(e), to any provisions thereof or to the provisions of any instrument made under those Acts shall be construed as references to the said provisions as they have effect as regulations made under section 7 of the Superannuation Act 1972(f).

(2) Planning Area No. 1 is the area so designated in the Schedule to the Children and Young Persons (Planning Areas) Order 1970(g).

(a) 1969 c. 54.
(b) 1933 c. 12.
(c) 1964 c. 16.
(d) 1971 c. 72.
(e) 1937 c. 68; 1939 c. 18; 1953 c. 25.
(f) 1972 c. 11.
(g) S.I. 1970/335 (1970 I, p. 1220).

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

(4) Any reference in this order to a numbered article shall, unless the reference is to an article of a specific order, be construed as a reference to the article bearing that number in this order.

(5) Any reference in any article of this order to a numbered paragraph shall, unless the reference is to a paragraph of a specified article, be construed as a reference to the paragraph bearing that number in the first-mentioned article.

(6) The Interpretation Act 1889(a) shall apply to the interpretation of this order as it applies to the interpretation of an Act of Parliament.

Cessation as an approved institution

3. It having appeared to the Secretary of State that in consequence of the establishment of community homes in Planning Area No. 1, the school is no longer required he hereby orders that it shall cease to be an approved institution as from the specified date.

Transfer of staff and the safeguarding of their interests

4.—(1) Any person who immediately before the specified date is employed by the managers of the school wholly or substantially in respect of the school shall be transferred to the employment of the Council on the specified date.

(2) Any question whether a person is employed as described in paragraph (1) shall where necessary be determined by the tribunal and references to the tribunal may be made as soon as may be and in any case not later than 15th May 1973 and if any question that a person is not, or is, so employed is undecided on the specified date the person shall not be transferred as mentioned in paragraph (1) until the expiration of the second week following that in which the decision of the tribunal is notified.

(3) (*a*) Every person transferred by paragraph (1) to the employment of the Council shall, so long as he continues in that employment by virtue of the transfer, and until he is served with a statement in writing of new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before the specified date and the said new terms and conditions shall be such that—

(i) so long as the person is engaged in duties reasonably comparable to those in which he was engaged immediately before the specified date, the scale of his salary or remuneration, and

(ii) the other terms and conditions of his employment, are not less favourable than those he enjoyed immediately before the specified date, and any question whether duties are reasonably comparable or whether terms and conditions of employment are less favourable shall where necessary be determined by the tribunal.

(*b*) A statement of new terms and conditions of employment shall not be served in respect of any person in relation to whom a question has been referred under paragraph (2) until the decision of the tribunal has been notified.

(a) 1889 c. 63.

(*c*) Subject to sub-paragraph (*b*), a statement of new terms and conditions of employment may be served before the specified date.

(*d*) If after service upon a person of a statement of new terms and conditions of employment a question is referred to the tribunal in respect of such person under paragraph (2), the statement shall cease to have effect, sub-paragraph (*a*) of this paragraph shall have effect as if the statement had not been served, and no new statement shall be served until the decision on the question has been notified.

(4) A written statement given in accordance with section 4(1) of the Contracts of Employment Act 1972**(a)** shall not be regarded as a statement of new terms and conditions of employment for the purposes of paragraph (3) unless the statement so indicates.

(5) Any extension of service under section 7(1) of the Local Government Superannuation Act 1937 effective on the specified date in relation to a person transferred by paragraph (1) shall continue to have effect as if it had been made by the Council to whose employment he is transferred as aforesaid.

(6) (*a*) Any determination made by the tribunal as provided under paragraph (2) or (3)(*a*)(ii) shall be made in accordance with the Industrial Tribunals (Industrial Relations, etc.) Regulations 1972**(b)**, and this order, and in respect of any hearing of the tribunal for purposes of any such determination a person or persons may be appointed to sit with the tribunal as assessor or assessors.

(*b*) Any determination of the tribunal as mentioned in sub-paragraph (*a*) above shall, subject to any modification that may be required in consequence of any appeal from that determination on a point of law, be given effect to by the Council or the managers as the case may be.

(*c*) The Council shall inform everyone who is employed by the managers on 31st March 1973 of his right to make reference to the tribunal under paragraph (2) and shall inform every employee transferred by this order of his right to make reference to the tribunal under paragraph (3)(*a*)(ii) and shall at the same time give them the address to which the reference may be made, and with respect to a reference under paragraph (2) the Council shall inform the employee not later than 15th April 1973 that he must make reference to the tribunal not later than 15th May 1973, and with respect to a reference under paragraph (3)(*a*)(ii) the Council may inform the employee of his said right by means of an insertion in the statement in writing to be served under paragraph (3)(*a*).

Superannuation

5.—(1) For the purposes of this article unless the context otherwise requires—

"the Act" means the Local Government Superannuation Act 1937**(c)**;

"transferred employee" means a person transferred by article 4;

"existing employment" means employment by the managers of the school;

"new employment" means employment by the Council;

"servant" shall have the meaning assigned to it under section 40 of the Act.

(2) The admission agreement made by or on behalf of the managers and the County Council of Durham on 28th March 1957 and approved by the Minister of Housing and Local Government on 13th May 1957 shall cease to have effect

(a) 1972 c. 53.
(b) S.I. 1972/38 (1972 I, p. 91).
(c) 1937 c. 68.

on the specified date but without prejudice to accrued rights or any liabilities thereunder.

(3) Any liabilities of the managers arising out of the agreement referred to in the last preceding paragraph shall become the liability of the Council with effect from the specified date.

(4) Any transferred employee who immediately before he is transferred is a contributory employee by virtue of the admission agreement mentioned in paragraph (2) shall continue to be a contributory employee in his new employment and for that purpose the Council shall be deemed to have passed any necessary statutory resolution.

(5) Subject to the provisions of this article, any enactment, instrument or other document contained in or made or issued under the Local Government Superannuation Acts 1937 to 1953, the Superannuation (Miscellaneous Provisions) Act 1948**(a)** or Part III of the National Insurance Act 1965**(b)** shall have effect in relation to any transferred employee to whom it applies as if his new employment and his existing employment were one continuous employment.

(6) Paragraph (5) shall not have effect for the purposes of section 29 of the Act and shall not affect the operation of the Local Government Superannuation (Administration) Regulations 1954**(c)** (as amended) **(d)** in relation to any transferred employee.

(7) Any transferred employee who is paying superannuation contributions immediately before the specified date at a rate appropriate to a servant shall continue to contribute at the like rate so long as he is employed without a break of 12 months or more by the Council on duties reasonably comparable to those on which he is engaged immediately before that day.

(8) Where immediately before a transferred employee is transferred it is the prevailing practice of the managers to exercise beneficially (that is to say, to secure the payment of gratuities, allowances or pensions, or of increased pensions or lump sum benefits) any discretionary power exercisable by them by virtue of any statutory provision relating to pensions it shall be the duty of the Council in relation to that transferred employee, if he has continued in their employment without a break of 12 months or more, to exercise that power (or any corresponding power under the statutory provisions relating to pensions for the time being in force) in a way which is not less beneficial than under the aforesaid practice prevailing; and section 35 of the Act shall apply to any question arising under this paragraph as if any statutory provision mentioned above were a provision under Part I of the Act.

(9) Where at any time before the specified date a gratuity or allowance by way of periodical payments or an annuity—

(*a*) has been granted to any person by the managers on or after his ceasing to be employed by them at or in connection with the school, or

(*b*) has been granted to the widow or other dependant of a person who died while in the employment of the managers at or in connection with the school or during the currency of a gratuity or allowance granted to him as mentioned in sub-paragraph (*a*) above,

and, if payment in respect of the gratuity or allowance or annuity had continued

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(a) 1948 c. 33. **(b)** 1965 c. 51.
(c) S.I. 1954/1192 (1954 II, p. 1570).
(d) The amending regulations are not relevant to the subject matter of this order.

in accordance with the terms of the grant and of any subsequent increase, one or more payments would have been made on or after the specified date (whether under legal obligation or otherwise), such payments shall be made by the Council in place of the managers.

(10) Without prejudice to the last preceding paragraph, where, if this order had not been made, the managers would for the purpose of any statutory provision relating to pensions have been the employing authority or former employing authority in relation to a person who died before the specified date while in the employment of the managers at or in connection with the school or otherwise ceased to be employed by them at or in connection with the school or the widow or other dependant of such a person, the Council shall be treated as being at that time the employing authority or former employing authority for those purposes in relation to that person, his widow or other dependant.

(11) If any gratuity or allowance or annuity as is mentioned in paragraph (9) is paid as a supplement to a pension payable under the Home Office Superannuation Scheme the Council shall increase the said gratuity or allowance or annuity by such amounts as may from time to time be calculated in accordance with and by reference to increases under the Pensions (Increase) Act 1971**(a)** or any enactment repealed by it.

Financial provisions

6. The Council shall repay to the Secretary of State before the expiry of 3 months from the specified date such sum as he may determine in accordance with paragraph 9(4) of Schedule 3 to the Children and Young Persons Act 1969, such sum being notified to the Council before the expiry of one month from the specified date.

Transfer of rights, liabilities and obligations

7. Except as specified in paragraphs (*b*) and (*c*) of the proviso to this article all liabilities attaching to the managers in relation to the carrying on of the school, including responsibility for the repayment of principal and payment of interest charges on loans, which subsist at the specified date shall as from such date become the liability of the Council; and all contracts, deeds, bonds, agreements and other instruments subsisting in favour of, or against, and all notices in force which were given by, or to, the managers in relation to the carrying on of the school subsisting at the specified date shall be in full force and effect in favour of, or against the Council as from the specified date, provided that:

(*a*) nothing in this article shall affect any trust under the terms of which the premises or any part of the premises of the school, or any property connected with the school is held,

(*b*) the obligation of the managers to prepare annual final accounts for the school and to deal with any questions arising on such accounts shall remain with the managers,

(*c*) (i) where an instrument of management ceases to have effect by virtue of an order under section 43(5) or 47(2) or (4)(*a*) of the Children and Young Persons Act 1969 and relates to a controlled community home which is conducted on premises formerly used as the school, but which was designated as a community home in a regional plan approved by the Secretary of State, the voluntary organisation by which the home was provided, or as the case may be, the trustees of the home shall pay to the Council a sum equal to that part of the value of the

(a) 1971 c. 56.

premises used for the purposes of the home and belonging to the voluntary organisation, or as the case may be, trustees which is attributable to the expenditure of that sum of money which on the specified date was an outstanding debt incurred in respect of the erection, extension or improvement of the premises and transferred to the council by this article,

(ii) the amount of any sum payable under the foregoing sub-paragraph of this proviso shall be determined in accordance with arrangements as may be agreed between the voluntary organisation or, as the case may be, trustees and the Council, and in default of agreement as may be determined by the Secretary of State,

(iii) in this proviso "voluntary organisation" has the same meaning as in the Children Act 1948(**a**).

Signed by authority of the Secretary of State for Social Services.

M. G. Russell,
Assistant Secretary,
Department of Health and Social Security.

29th March 1973.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for the cessation as an approved institution of Axwell Park School and for the transfer of the staff of the school and of most of the rights, liabilities and obligations of the managers of the school to Newcastle-upon-Tyne County Borough Council which is to assume responsibility after the school becomes a controlled community home (as provided in section 36 of the Children and Young Persons Act 1969). The Order also makes provision for the protection of the interests of the staff and pensioners of the school and for the repayment to the Secretary of State by Newcastle-upon-Tyne County Borough Council of grants which had been made to the managers of the school.

(a) 1948 c. 43.

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