STATUTORY INSTRUMENTS

1973 No. 527

CHILDREN AND YOUNG PERSONS

The Cessation of Approved Institutions (Eagle House School) Order 1973

Made - - - -	*23rd 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 (Eagle House 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 Eagle House 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 Somerset County Council;

"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. 11 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. 11, 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*).

Financial provisions

5. 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

6. 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

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

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 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 Secretary.

23rd March 1973.

(**a**) 1948 c. 43

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order makes provision for the cessation as an approved institution of Eagle House 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 Somerset County 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 of the school and for the repayment to the Secretary of State by Somerset County Council of grants which had been made to the managers of the school.

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