STATUTORY INSTRUMENTS

1975 No. 2035

CHILDREN AND YOUNG PERSONS

The Cessation of Approved Institutions (St. John's Home, Birmingham) Order 1975

Made - - - - *8th December* 1975

Coming into Operation *1st January* 1976

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

Citation and commencement

1. This order may be cited as the Cessation of Approved Institutions (St. John's Home, Birmingham) Order 1975, and shall come into operation on 1st January 1976.

Interpretation

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

"the specified date" means 1st January 1976;

"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 St. John's Home, Birmingham;

"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 paragraph 16 of Part III of Schedule 1 to the Trade Union and Labour Relations Act 1974**(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 Birmingham Metropolitan District Council;

"approved institution" has the meaning assigned to it under section 46 of the Children and Young Persons Act 1969;

"Planning Area No. 4" is the area so designated in the Schedule to the Children and Young Persons (Planning Areas) Order 1974**(e)**

(2) Any reference in this order to the Local Government Superannuation Acts 1937 to 1953**(f)**, 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**(g)**.

(a) 1969 c. 54.
(b) 1933 c. 12.
(c) 1964 c. 16.
(d) 1974 c. 52.
(e) S.I. 1974/163 (1974 I, p. 545).
(f) 1937 c. 68; 1939 c. 18; 1953 c. 25.
(g) 1972 c. 11.

(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 specified 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 rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(a)** shall apply for the purposes of the interpretation of this order as they apply for the purposes of 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. 4, the school as such is no longer required she 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 February 1976 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*) shall be made in accordance with the Industrial Tribunals (Labour Relations) Regulations 1974**(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 December 1975 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*) 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 January 1976 that he must make reference to the tribunal not later than 15th February 1976 and with respect to a reference under paragraph (3)(*a*) 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) The admission agreement made by or on behalf of the managers and the Birmingham County Borough Council on 1st March 1962 and approved by the Minister of Housing and Local Government on 26th March 1962 and by virtue of regulation 10(2) of the Local Government Superannuation (Miscellaneous Provisions) (No. 2) Regulations 1973**(c)** having effect as if made by or on behalf of the managers and the West Midlands Metropolitan County Council shall cease to have effect on the specified date but without prejudice to accrued rights or any liabilities thereunder.

(2) 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.

(a) 1972 c. 53.
(b) S.I. 1974/1386 (1974 II, p. 5330).
(c) S.I. 1973/1996 (1973 III, p. 6872).

(3) 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 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.

(4) 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.

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 she 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.

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

A. F. Taggart,
Assistant Secretary,
Department of Health and Social Security.

8th December 1975.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for the cessation as an approved institution of St. John's Home, Birmingham, and for the transfer of the staff of the school to the Birmingham Metropolitan District Council which is to assume responsibility after the school becomes a community home. 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 the Birmingham Metropolitan District Council of grants which had been made to the managers of the school.

SI 1975/2035
ISBN 0-11-052035-1

