STATUTORY INSTRUMENTS

# 1978 No. 315 (S. 32)

# HOUSING, SCOTLAND

## The Housing (Homeless Persons) (Property and Staff) (Scotland) Order 1978

*Made* - - - *27th February* 1978
*Laid before Parliament* *10th March* 1978
*Coming into Operation* *1st April* 1978

In exercise of the powers conferred on me by section 14 of the Housing (Homeless Persons) Act 1977(**a**), and of all other powers enabling me in that behalf, I hereby make the following order:—

*Title and commencement*

**1.** This order may be cited as the Housing (Homeless Persons) (Property and Staff) (Scotland) Order 1978 and shall come into operation on 1st April 1978.

*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 Housing (Homeless Persons) Act 1977;

"officer" in relation to any authority, includes the holder of any office or employment under that authority;

"relevant matters" means functions exercisable under section 12(1) and (2)(*b*) of the Social Work (Scotland) Act 1968(**c**), in so far as it relates to persons who have been rendered homeless and are in need of temporary accommodation; and

"Social worker" means a person who is employed as such by a local authority as a member of the staff of the Director of Social Work under section 3(7) of the Social Work (Scotland) Act 1968.

(3) In this order—

(*a*) references to any enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment; and

(*b*) references to any instrument shall be construed as references to that instrument as amended, extended or applied by any other instrument.

(4) Any reference in this order to a numbered article shall 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 be construed as a reference to a paragraph of that article.

(**a**) 1977 c. 48. (**b**) 1889 c. 63. (**c**) 1968 c. 49.

*Property, liabilities, contracts, etc., notices and proceedings*

**3.**—(1) Nothing in this article shall apply to property held for the purposes of, and liabilities incurred, contracts, deeds, bonds, agreements and other instruments subsisting, notices given, actions and proceedings pending, and causes of action or proceeding existing in relation to, any charitable trust.

(2) Save as otherwise expressly provided or as agreed between the local authorities concerned, on 1st April 1978—

(*a*) all property vested in a regional council for the sole purposes of its functions in relation to the relevant matters in relation to any district in the Region shall be transferred to and vest in the district council;

(*b*) all rights, liabilities and obligations which immediately before 1st April 1978 were rights, liabilities and obligations of the regional council within the relevant matters in relation to any such district shall on that date be transferred to and vest in the district council;

(*c*) subject to the provisions of these regulations anything done prior to 1st April 1978 in relation to any region in relation to the exercise of its functions in the relevant matters in any district in the region shall have effect on and after the said day in relation to the district;

(*d*) without prejudice to its generality, the preceding paragraph applies to—

(i) any regulation, rule, order, scheme or other enactment;

(ii) any written agreement or arrangement, contract, deed, document or other instrument;

(iii) any determination, decision, declaration, direction, notice or resolution;

(iv) any application, proposal, representation, objection or appeal;

(v) any licence, permission, consent, approval, exemption, dispensation or relaxation;

(vi) any condition, requirement, obligation or debt imposed or treated as imposed on or in relation to the regional council;

(vii) any legal proceedings, inquiry, hearing, arbitration or other like proceeding;

(*e*) for the purposes of this article, "property" means any property heritable or moveable and all interests, rights or liabilities in or relating to property but excludes any security or balance in a fund and for the avoidance of doubt includes any excise licence, operators' licence, public service vehicle licence, road service licence, plating certificate, or other document issued in respect of any vehicle transferred by this order.

(3) Any byelaws in force for the regulation of any property transferred by paragraph (2) shall have effect as if they had been made by the authority to whom such property is transferred.

(4) Any provision of any local Act or of any order made under or confirmed by any Act which applies to any property transferred by this order to any authority shall have the effect with the substitution of references to that authority for any references to (or having effect as references to) the authority for whom the property is transferred.

(5) Where in accordance with this article property would have transferred from one authority to another, the authorities concerned may agree that the property shall not be transferred or that it shall be transferred to and vest in any other authority.

(6) The provision made by this article is without prejudice to any agreement which may be made for payment in respect of any property transferred by paragraph (2).

*Security for loans*

**4.** Where under this order any liability or part of a liability charged indifferently on all the revenues of a public body or on any particular revenues of such body is transferred to another public body, the liability or part of the liability as the case may be shall be charged indifferently to all the revenues of the public body to whom it is transferred and shall cease to be a charge on any revenues or fund of the public body from whom it is transferred.

*Liabilities to certain funds*

**5.**—(1) Where prior to 1st April 1978 any payments have been made by an authority in relation to the relevant matters for any purpose for which paragraph 25 of Schedule 3 to the Local Government (Scotland) Act 1975(**a**) provides from any fund to which that paragraph applies, the provisions of sub-paragraph (2) of paragraph 25 shall apply to an authority to which the matters have been transferred on 1st April 1978 in relation to the repayments to such fund of the first mentioned authority.

(2) Where by virtue of this order any matter for the purposes of which in pursuance of regulation B.6 of the Local Government Superannuation (Scotland) Regulations 1974(**b**), as amended by regulation 6 of the Local Government Superannuation (Scotland) Amendment Regulations 1975(**c**), moneys forming part of a superannuation fund have been used is transferred to an authority other than the authority by whom the fund is maintained on or after 1st April 1978, the said regulation shall apply as if the moneys had been lent to the first-mentioned authority.

(3) Where prior to 1st April 1978 any advance has been made to the Regional Council in relation to readily identifiable relevant matters from a fund established under paragraph 22 of Schedule 3 to the Local Government (Scotland) Act 1975 or under any other enactment, any outstanding balance in respect thereof shall on 1st April 1978 be transferred to the authority to which the matters are transferred and this authority may treat such balance as forming part of a fund established by them under the said paragraph 22 and make such repayments to that fund as they consider appropriate, but otherwise any liability to make repayments in respect thereof shall cease.

(4) Where prior to 1st April 1978 advances from a loans fund have been used by the transferor authority for any purpose in relation to any readily identifiable relevant matters the liability to pay the sums which become due in respect thereof shall on 1st April 1978 be transferred to the transferee authority who shall make payments in respect thereof to the transferor authority.

(5) All sums due wholly and solely to or by a regional council in respect of transferred functions and not received or paid by that authority on or before 31st March 1978, shall be payable to or by the appropriate district council for debit or credit as the case may be to that authority's account relating to the

(a) 1975 c. 30. (b) S.I. 1974/812. (c) S.I. 1975/638.

function and any sums due to or by a regional council which cannot be related specifically to transferred functions shall be payable to or by the regional council for debit or credit as appropriate.

*Transfer of officers*

**6.**—(1)(*a*) Any officer of a regional council other than a social worker employed immediately before 1st April 1978 wholly or mainly in the discharge by that council of its functions in relation to the relevant matters in connection with any district in the region shall, on that day, be transferred to the district council.

(*b*) Where any officer who would otherwise be transferred by (*a*) above is absent from his normal duties at the date of transfer for the purpose of undergoing training he shall be transferred to the appropriate district council as if it was part of the arrangements under which he is so absent that at completion of such training he should be transferred to the employment of that district council.

(2) Any transfer effected by paragraph (1) in its application to any authority, applies in the case of a person not in the whole time employment of the authority to the extent of that person's employment with the authority.

(3) Any officer who will be transferred by paragraph (1) shall be notified by the Regional Council of such transfer not later than 30th June 1978, and (unless such copy has already been supplied), shall be supplied with a copy of articles 6 to 15.

(4)(*a*) Except where otherwise provided the following questions by an officer employed by any authority immediately before the commencement of the Act, namely—

(i) any question of hardship; and

(ii) any question whether he is or is not employed in any manner specified in paragraph (1)(*a*);

shall be determined in accordance with the arrangements applicable to the determination of disputes as to employment and terms and conditions thereof between the officer and the authority.

(*b*) Any question described in sub-paragraph (*a*) shall be raised as soon as may be and in any case not later than the expiration of 2 months (or such longer period as may be agreed by the authority) from the notification under paragraph (3).

(*c*) Where any question described in sub-paragraph (*a*) has been determined before 1st April 1978, in such manner that no transfer of the officer is appropriate the officer shall not be transferred by this article.

(*d*) Where any such question is so determined in such manner that a transfer of the officer otherwise than in accordance with the provisions of paragraph (1) is appropriate the officer shall be transferred on 1st April 1978, in accordance with the determination.

(*e*) Where any such question is determined on or after 1st April 1978, in such manner that a transfer or further transfer of the officer is appropriate the officer shall be transferred in accordance with the determination at the expiration of 28 days from the date thereof or such other date as may be agreed by the authorities concerned and the officer.

(*f*) Where it is determined that an officer will sustain or has sustained hardship in consequence of his transfer (and sub-paragraph (*c*) (*d*) or (*e*) is not applicable)

the authority to whom he will be or has been transferred shall in consultation with the officer and representatives of their employees seek a remedy and, not later than the expiration of 2 months (or such longer period as may be agreed by the officer) following the notification of the determination, notify the officer of any remedy which they are able to offer him or that they are unable to offer him any remedy but that an allowance would be paid to him in respect of the hardship.

(*g*) In either event, the officer shall be informed that he may, subject to sub-paragraph (*j*), request that his employment be terminated and of his entitlements if it is so terminated.

(*h*) Any remedy offered under sub-paragraph (*f*) may be accepted by the officer within the 2 months following the notification thereof, or within such longer period as may be agreed by the authority.

(*i*) An Allowance in respect of hardship shall be by periodic payments of such amount as may be determined by agreement between the officer and the authority or failing such agreement in accordance with the arrangements applicable to the determination of disputes as to employment and terms and conditions thereof between them. In the event of any change of circumstances the payment of the allowance or the amount thereof may be reviewed by such agreement or failing agreement in accordance with such arrangements.

(*j*) No such request as is described in sub-paragraph (*g*) shall be made after the expiration of 2 months from the determination of the amount of the periodic payments of the allowance.

(*k*) Article 13 shall not apply to any officer to whom an allowance is payable under this paragraph.

(*l*) If the remedy offered is, with the agreement of the authority from whose employment the officer was transferred, transferred back to the employment of that authority, and that remedy is accepted by the officer and he is so transferred, paragraph (12) of article 7 and articles 8 to 14, shall cease to apply to him. Otherwise, such provisions shall apply to any officer transferred under sub-paragraph (*f*) as they apply to officers transferred by this article.

*Protection of officers transferred*

**7.**—(1) Every officer transferred by or under article (6) to the employment of any authority (other than an officer transferred under paragraph (4)(*f*) of that article back to the employment of the authority from whose employment he was transferred) shall, so long as he continues in that employment by virtue of the transfer and until he is served with a statement in writing referring to this order and specifying new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those which he enjoyed immediately before his transfer.

(2) A statement of new terms and conditions of employment shall not be served on any officer in relation to whom a question has been referred under article 6(4) until the determination of the question has been notified. A statement of new terms and conditions of employment shall not be served on any officer to whom sub-paragraphs (*f*) to (*l*) of article 6(4) apply until the remedy offered under the said sub-paragraph (*f*) or the allowance there referred to has been accepted by the officer.

(3) Subject to paragraph (2), a statement of new terms and conditions of employment may be served before 1st April 1978.

(4) Subject to paragraph (2), a statement of new terms and conditions of employment shall be served on every officer before the expiry of 3 months after 1st April 1978.

(5) If after service of a statement of new terms and conditions of employment upon any officer (whether before 1st April 1978 or otherwise) a question is referred under article 6(4), the statement shall cease to have effect and paragraphs (1) and (2) shall have effect as if the statement had not been served.

(6) The new terms and conditions of employment shall be such that—

(*a*) so long as the officer is engaged in duties reasonably comparable to those in which he was engaged immediately before his transfer the scale of his salary and remuneration is not less favourable than that which he enjoyed immediately before his transfer; and

(*b*) the other terms and conditions of his employment are not less favourable than those which he enjoyed before his transfer.

(7) Where between 1st April 1978, and the service of the statement of new terms and conditions of employment upon any officer the scale of the salary or remuneration which such officer enjoyed immediately before 1st April 1978 is improved, paragraph (6)(*a*) shall have effect as if the scale as improved had been so enjoyed.

(8) Where the new terms and conditions of employment involve any diminution of the scale of the salary or remuneration of an officer they shall not come into effect until the date, not earlier than the expiration of 3 months from the service of the statement thereof, specified in that statement.

(9) Any question by an officer of any authority—

whether duties are reasonably comparable within the meaning of paragraph (6);

whether the scale of his salary or remuneration is such as is required by paragraphs (6) and (7); or

whether the other terms and conditions of his employment are not less favourable than those which he enjoyed immediately before his transfer,

shall be determined in accordance with the arrangements applicable to the determination of disputes as to employment and terms and conditions thereof between the officer and the authority.

(10) In this article, "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.

(11) 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.

(12) A notice to terminate the contract of employment of any officer transferred by Article 6, given by reason of the fact that the officer to whom it is given has become redundant in consequence of the Act, shall, unless such officer otherwise agrees, not come into operation earlier than the expiration of 3 months from the service thereof.

(**a**) 1972 c. 53.

*Secondary and further transfers*

**8.** Any officer transferred by article 6 to the employment of any authority, and any other officer of any relevant authority employed wholly or partly in the discharge by that authority (whether or not by arrangement with any other relevant authority) of functions under the Act, may, within the 2 years following 1st April 1978, be transferred by the said authority, with the agreement of any other relevant authority, and of the officer, to the employment of that other authority, and article 7 shall thereupon apply to such officer as it applies to officers transferred by article 6.

*Apprenticeships*

**9.** Any contract of apprenticeship entered into between any person and a regional council shall have effect as a contract entered into between such officer and the authority to whose employment he is transferred as mentioned in article 6 or under article 8 or would have been so transferred if he had been in the employment of such regional council.

*Saving for training arrangements*

**10.** Where any officer transferred as mentioned in article 6 or under article 8 is undergoing training under arrangements which have not been discharged before 1st April 1978, those arrangements shall continue to apply with the substitution, for the authority in whose employment the officer was prior to the commencement of the training, of the authority to whose employment he has been transferred as aforesaid.

*Saving for dispensations*

**11.** Any dispensation from the requirements of any Act or of any instrument made under any Act granted to the authority from whom any officer is transferred as mentioned in article 6 or under article 8 shall have effect, in relation to such officer, as if it had been granted to the authority to whose employment he has been transferred as aforesaid.

*Saving for extensions of service*

**12.** Any extension of service under regulation 14 of the Local Government Superannuation (Scotland) Regulations 1974(**a**) effective on 1st April 1978, in relation to an officer transferred as mentioned in article 6 or under article 8 shall continue to have effect as if it had been made by the authority to whose employment he has been transferred as aforesaid.

*Travelling and removal expenses*

**13.** Any additional travelling expenses, and any removal or incidental expenses, reasonably incurred by any officer in consequence of the Act shall be reimbursed by the authority to whose employment he is transferred as mentioned in article 6 or under article 8.

*Commencing points on scales*

**14.** Where in relation to any officer—

(*a*) on the scale of salary or remuneration applicable to him immediately before 1st April 1978, he would have become entitled to an increment on that day; and

(**a**) S.I. 1974/812.

(*b*) by reason of any appointment effective as from 1st April 1978, made by the authority to whose employment he is transferred as mentioned by article 6 or under article 8 any other scale of salary or remuneration becomes applicable to him as from that day;

any term of his employment as to his commencing point on such other scale shall be applicable as if his employment before, and on or after, the said day were one continuous employment under one authority.

*General provision as to disputes*

**15.** Any question as to the interpretation of this order or arising from the provisions of this order may be determined by the decision of a person agreed on by the authorities concerned or in default of agreement appointed by the Secretary of State.

*Bruce Millan*
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
27th February 1978.

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## EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order makes provision for the transfer on 1st April 1978 of property used by regional councils in connection with the housing of homeless persons to district councils consequent on the transfer of responsibility for housing homeless persons from regional councils to district councils on the coming into force of the Housing (Homeless Persons) Act 1977. It also makes transfer arrangements for staff and for the protection of their interests; and provides for the settlement of disputes.

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