STATUTORY INSTRUMENTS

1975 No. 703 (S. 118)

LOCAL GOVERNMENT, SCOTLAND

The Local Authorities (Staff Transfer and Protection) (Scotland) Order 1975

Made - - - -	21*st April* 1975
Laid before Parliament	29*th April* 1975
Coming into Operation	1*st May* 1975

In exercise of the powers conferred on me by sections 215 and 216 of the Local Government (Scotland) Act 1973(**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 Local Authorities (Staff Transfer and Protection) (Scotland) Order 1975 and shall come into operation on 1st May 1975.

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 (Scotland) Act 1973;

"the Appeals Memorandum" means the Memorandum on Staff Appeals appended to the Scottish Local Government Staff Commission Circular 7/75 dated 13th February 1975.

"dischargeable", in relation to functions, means dischargeable otherwise than by virtue of section 56 of the Act;

"local authority" means in respect of the period up to and including 15th May 1975 any county, burgh or old district council, any joint committee or joint board, river purification board or regional water board or an association of local authorities the constituent members of which include any such local authority and in respect of any period from and including 16th May 1975 any regional, islands or district council or any river purification board; and the expressions "existing local authority" and "new local authority" shall be interpreted accordingly;

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

(a) 1973 c. 65. (b) 1889 c. 63.

"old district council" means a district council established under section 39 of the Local Government (Scotland) Act 1947(a);

"the Schemes Order" means the Local Authorities (Staff Transfer Schemes) (Scotland) Order 1975(b);

"a Staff Appeals Tribunal" means a Staff Appeals Tribunal set up in accordance with the arrangements described in the Appeals Memorandum.

Other express provisions

3. This order shall have effect subject to the express provision of any order made (whether before or after this order) under sections 215 and 216 of the Act.

Application of transfer provisions

4.—(1) Any provision in this order for the transfer of officers of any existing local authority applies to any officer who on 15th May 1975 is in the employment of such authority, but in the case of a person not in the whole-time employment of the authority the transfer effected by such provision in its application to the authority is limited to the extent of his employment with the authority.

(2) No provision of this order for the transfer of officers, in its application to any local authority, applies to—

(*a*) any officer who will by virtue of any agreement entered into between him and any new local authority before 16th May 1975, enter into the employment of that authority before or on that date, provided the employment obtained was the result of public or internal advertisement;

(*b*) any officer whose employment is to be terminated before or on 15th May 1975, otherwise than by virtue of the local authority employing him ceasing to exist under the Act;

(*c*) any officer for whose transfer provision has been made (whether before or after the coming into operation of this order) by any order under sections 215 and 216 of the Act.

Transfer of officers of existing local authorities (except members of fire brigades)

5.—(1) Nothing in this article applies to—

(*a*) any officer transferred or to be transferred by a scheme made under the Schemes Order;

(*b*) any officer of a regional water board, river purification board or of a local authority specified in article 8; or

(*c*) any member of any fire brigade.

(a) 1947 c. 43.

(b) S.I. 1975/574 (1975 I, p.2106).

(2) Any officer employed by an existing local authority wholly or mainly in the discharge of a function which will after 15th May 1975 be discharged only by a regional or islands council shall, on 16th May 1975 be transferred to the regional or islands council within whose area the area of the existing local authority is wholly comprised.

(3) Any officer employed by an existing local authority wholly or mainly in the discharge of a function which will after 15th May 1975 be discharged only by a district council shall, on 16th May 1975 be transferred to the district council within whose area the existing local authority is wholly comprised.

(4) Any officer of a county council or old district council the area of which will be divided between more than one regional council or between a regional and islands council or between more than one district council and who is employed wholly or mainly in the discharge of a function which will after 15th May 1975 be discharged respectively only by a regional or islands council or only by a district council shall, on 16th May 1975 be transferred to the council whose area comprises the area to which his duties are wholly or mainly referable.

Provided that where it is not practicable for duties to be so attributed, the officer shall, on 16th May 1975 be transferred to the regional or islands council or to the district council as determined by the existing local authority in consultation with the regional or islands or district councils concerned.

(5) Any officer employed by an existing local authority wholly or mainly in the discharge of a function which will after 15th May 1975 be discharged concurrently by a regional and district council shall, on 16th May 1975 be transferred—

(*a*) where the area of the existing local authority is wholly comprised within the area of one district council, to that district council;

(*b*) in the case of an officer of a county council whose area is wholly comprised within the area of one regional council, but not solely within the area of one district council, to that regional council;

(*c*) in the case of an officer of a county council or of an old district council whose areas respectively will be divided between more than one regional council or more than one district council, to the regional or district council respectively whose area comprises the area to which his duties are wholly or mainly referable. Where it is not practicable for duties to be so attributed the officer shall be transferred to the regional or district council as determined by the county council or old district council in consultation with the regional or district councils concerned.

(6) Any officer of a county council, joint committee or joint board not transferred by paragraphs (2) to (5) shall, on 16th May 1975 be transferred to the regional or islands council within whose area the area of such council, committee or board is wholly comprised.

(7) Any officer of a burgh or old district council not transferred by paragraphs (2) to (5) shall, on 16th May 1975 be transferred to the district or islands council within whose area the area of the burgh or old district council is wholly comprised.

(8) Any officer of a county council, joint committee, joint board, or old district council the area of which is divided between more than one regional council, between one regional and an islands council, or between more than one district council respectively and who is not transferred by paragraphs (2) to (5) shall

on 16th May 1975 be transferred to the regional or islands or district council whose area comprises the area to which his duties are wholly or mainly referable.

Provided that where it is not practicable for the duties to be so attributed the officer shall on 16th May 1975 be transferred to such regional or islands or district council as may be determined by the existing local authority in consultation with the new local authorities concerned.

6. Any officer of a regional water board established under the Water (Scotland) Act 1967(**a**) who on 15th May 1975 is wholly or mainly employed in the discharge of functions which will after that date be discharged by a water authority under section 148 of the Act, shall on 16th May 1975 be transferred to the employment of the regional or islands council within whose limits of supply he is so employed.

7. Any officer of a river purification board established under Part II of the Rivers (Prevention of Pollution) (Scotland) Act 1951(**b**) who on 15th May 1975 is wholly or mainly employed in the discharge of functions which will after that date be discharged by a river purification board established under section 135(5) of the Act, shall on 16th May 1975 be transferred to the employment of the river purification board by whom such functions will be discharged.

8. Any officer of a county or burgh council wholly or mainly employed on 15th May 1975 in the levying of excise duties on vehicles, the licensing and registration of vehicles, and the licensing of drivers, shall on 16th May 1975 be transferred to the local authority specified in the Local Authorities, etc. (Miscellaneous Provision) (Scotland) Order 1975(**c**).

Transfers: Members of Fire Brigades

9.—(1) Every member of a fire brigade maintained in pursuance of the Fire Services Act 1947(**d**) who is below the rank of assistant firemaster and who is serving as such a member immediately before 16th May 1975 shall, if on 16th May 1975 he is not a member of a fire brigade for a region or combined fire area otherwise than by virtue of this article, on that date be transferred to and become a member of the fire brigade—

(*a*) if immediately before 16th May 1975 he is serving as an instructor at the central training institution or the Scottish Fire Service Training School or is undergoing training, for the region or combined fire area in which the premises in or from which he wholly or mainly performed his duties as a member of a fire brigade immediately before he began to serve as such an instructor or immediately before he began his training, as the case may be, are situate;

(*b*) in any other case, for the region or combined fire area in which the premises in or from which he wholly or mainly performs his duties as a member of a fire brigade immediately before 16th May 1975 are situate, except that in the case of the premises which are the Headquarters of the Central Area Fire Brigade, the members of that fire brigade shall be transferred to and become members of the Central Region fire brigade.

(**a**) 1967 c. 78.
(**b**) 1951 c. 66.
(**c**) S.I. 1975/629. (1975 I, p. 2242).
(**d**) 1947 c. 41

(2) Every member transferred by paragraph (1) shall have the same rank and the same service for purposes of pay as he would have had but for the provisions of this article.

(3) Every member of such a fire brigade of or above the rank of assistant firemaster who is serving as such a member immediately before 16th May 1975 shall, if on 16th May 1975 he is not a member of a fire brigade for a region or combined fire area otherwise than by virtue of this article, on that date be transferred to and become a member of the fire brigade for the region or combined area in which the premises in or from which he wholly or mainly performs his duties as such member are situate.

(4) Every member transferred by paragraph (3) shall hold the rank of assistant firemaster but shall be treated for the purposes of his pay, pension and other conditions of employment as if he had continued to hold the rank he held immediately before 16th May 1975 in the fire brigade in which he was then serving.

(5) Any member transferred by paragraph (3) shall on 15th August 1975 or, in the case of any such member who has appealed on grounds of hardship to a Staff Appeals Tribunal—

(*a*) if his appeal is allowed, on the expiration of 3 months from the decision of the Tribunal or 15th November 1975, whichever is the later;

(*b*) in any other case, on the date of the decision of the Tribunal,

cease to be a member of the fire brigade to which he was transferred unless before then he has accepted and taken up an appointment as a member of that brigade or has resigned.

(6) Where a report, complaint or other allegation is received before 16th May 1975 from which it appears that a person transferred by paragraph (1) or (3) may have committed an offence against discipline within the meaning of the Fire Services (Discipline) (Scotland) Regulations 1953(**a**), any disciplinary proceedings, including any appeal, arising therefrom under those regulations may be continued as if the alleged offence had been committed while he was a member of the fire brigade to which he was transferred, and, accordingly, those regulations shall have effect subject to any necessary modifications.

Supplementary provision as to transfers

10.—(1) The existing local authority shall ensure that any officer to be transferred by article 5, 6, 7 or 8 is informed as to—

(*a*) the provisions of article 5, 6, 7 or 8 which are applicable to such authority;

(*b*) the local authority to whom the officer is to be transferred by article 5, 6, 7 or 8; and

(*c*) the provisions of the Appeals Memorandum which are applicable.

(a) S.I. 1953/1086 (1953 I, p. 766).

(2) Where any officer is on 15th May 1975 absent from his normal duties for the purpose of undergoing training, article 5, 6, 7 or 8 shall apply—

(*a*) if it was part of the arrangements under which he is so absent that at the completion of such training he should be transferred to employment different to that in which he was engaged prior to the commencement of the training, as if he was, on 15th May 1975, so employed; or

(*b*) in the absence of such arrangements, as if he was on 15th May 1975 in the employment in which he was engaged immediately prior to the commencement of such training.

Appeals

11. Appeals may be made by officers and shall be determined in accordance with the arrangements set out in the Appeals Memorandum.

Protection of officers transferred

12.—(1) (*a*) Every officer transferred by articles 5 to 9 inclusive or by a determination given on an appeal made in accordance with article 11; and

(*b*) Every officer transferred by a scheme made under the Schemes Order, a determination given under article 5 thereof, or a determination given on an appeal made in accordance with article 6 thereof,

to the employment of any new local authority 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 the relevant 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 16th May 1975.

In this paragraph, "the relevant order" means—

(*i*) in the case of an officer transferred by articles 5 to 9 inclusive, or by a determination given on an appeal made in accordance with article 11, this order;

(*ii*) in the case of an officer transferred as described in (*b*), the Schemes Order;

(2) A statement of new terms and conditions of employment shall not be served—

(*a*) in the case of any officer who has appealed on grounds of hardship to a Staff Appeals Tribunal under article 11—

(*i*) if his appeal is allowed, until an alternative transfer or employment has been arranged; or if no alternative transfer or employment is arranged, the expiration of 3 months from the determination of the Tribunal or 15th November 1975, whichever is the later;

(*ii*) in any other case, until the determination of the appeal has been notified;

(*b*) in the case of an officer to whom article 10(2)(*a*) applies, unless such officer otherwise agrees, until he has been in the employment therein referred to for one month.

(3) Subject to paragraph (2), a statement of new terms and conditions of employment may be served before 16th May 1975.

(4) A statement of new terms and conditions of employment shall be served on every officer before 16th May 1976.

(5) If after service of a statement of new terms and conditions of employment upon him (whether before 16th May 1975 or otherwise) an officer appeals on grounds of hardship as aforesaid, to a Staff Appeals Tribunal the statement shall cease to have effect, paragraph (1) shall have effect as if the statement had not been served, and a new statement shall be served only in accordance with paragraph (2)(*a*).

(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 16th May 1975, the scale of his salary or remuneration is not less favourable than that which he enjoyed immediately before that date; and

(*b*) the other terms and conditions of his employment are not less favourable than those which he enjoyed immediately before 16th May 1975.

(7) Where between 16th May 1975 and the service of the statement of new terms and conditions of employment upon any officer or the scale of the salary or remuneration which such officer enjoyed immediately before 16th May 1975 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 whether duties are reasonably comparable within the meaning of paragraph (6) shall be determined in accordance with the arrangements set out in the Appeals Memorandum.

(10) An officer may appeal in respect of new terms and conditions of employment in accordance with the arrangements set out in the Appeals Memorandum.

(11) Any statement of new terms and conditions of employment shall contain a statement of the provisions of paragraphs (9) and (10) and copies of the Appeals Memorandum shall be made available for reference by the local authority by whom the statement is served.

(12) 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.

(13) 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 this article unless the statement so indicates.

Secondary transfers

13. Any officer (other than a member of a fire brigade) transferred as mentioned in article 12(1) to the employment of any new local authority may, before 16th May 1976 or the expiration of two months from the service upon him of the

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

statement of new terms and conditions of employment under article 12, whichever is the later, be transferred by the said authority, with the agreement of any other local authority, and of the officer to the employment of that authority, and article 12 shall thereupon apply to such officer as it applies to officers transferred by the article, scheme or determination as may be appropriate, mentioned in that article.

Apprenticeships

14. Any contract of apprenticeship entered into between any officer (other than a member of a fire brigade) and an existing local authority shall have effect as a contract entered into between such officer and the new local authority to whose employment he is transferred or would have been transferred if he had been in the employment of such authority.

Saving for training arrangements

15. Where any officer transferred as mentioned in article 12(1) or under article 13 is undergoing training under arrangements which have not been discharged before 16th May 1975 those arrangements shall continue to apply with the substitution, for the existing local 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

16. Any dispensation from the requirements of any regulations granted to the existing local authority from whom any officer is transferred as mentioned in article 12(1) or under article 13 shall have effect, in relation to such officer, as if it had been granted to the new local authority to whose employment he has been transferred as aforesaid.

Saving for extensions of service

17. Any extension of service under regulation 13 of the Local Government Superannuation (Scotland) Regulations 1974(**a**) effective on 16th May 1975 in relation to an officer transferred as mentioned in article 12(1) or under article 13 shall continue to have effect as if it had been made by the new local authority to whose employment he is transferred as aforesaid.

Travelling and removal expenses

18. Any additional travelling expenses, and any removal or incidental expenses, reasonably incurred by any officer in consequence of the authority by whom he was employed ceasing to exist under the Act shall be reimbursed by the new local authority to whose employment he is transferred as mentioned in article 12(1) or under article 13.

Commencing points on scales

19. Where, in relation to any officer--

(*a*) on the scale of salary or remuneration applicable to him immediately before 16th May 1975 he would have become entitled to an increment on that date; and

(**a**) S.I. 1974/812 (1974 II, p. 3093).

(*b*) by reason of any appointment effective as from 16th May 1975 made by the new local authority to whom he is transferred, any other scale of salary or remuneration becomes applicable to him as from that date,

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

Notices to terminate contracts of employment

20.—(1) This article applies to contracts of employment resulting from the operation of articles 5, 6, 7 or 8, any scheme made under the Schemes Order, a determination under article 5(1) of the Schemes Order or a determination given on an appeal against a particular transfer.

(2) Notice to terminate any contract of employment to which this article applies may, with his consent, be given to any officer before 16th May 1975 by the authority to whose employment he would be transferred on that date.

(3) A notice to terminate any contract of employment to which this article applies given by reason of the fact that the officer to whom it is given has become redundant in consequence of the reorganisation effected by the Act on 16th May 1975, shall, unless the officer to whom it is given otherwise agrees, not come into operation earlier than the expiration of 3 months from the service thereof.

William Ross,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.

21st April 1975.

EXPLANATORY NOTE

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

This Order makes general provision for the transfer to the authorities established by or under the Local Government (Scotland) Act 1973 of persons employed by local authorities which cease to exist by virtue of that Act, and for the protection of the interests of those persons.

Copies of the "Appeals Memorandum" may be obtained from the Scottish Local Government Staff Commission, Croythorn House, 23 Ravelston Terrace, Edinburgh EH4 3TW.

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