STATUTORY INSTRUMENTS

1975 No. 574 (S. 76)

LOCAL GOVERNMENT, SCOTLAND

The Local Authorities (Staff Transfer Schemes) (Scotland) Order 1975

Made - - - -	3*rd April* 1975
Laid before Parliament	15*th April* 1975
Coming into Operation	18*th April* 1975

In exercise of the powers conferred upon 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 Schemes) (Scotland) Order 1975 and shall come into operation on 18th April 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;

"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 or regional water board and in respect of any period from and including 16th May 1975 any regional, islands or district council and the expressions "existing local authority" and "new local authority" shall be interpreted accordingly;

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

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

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

Schemes for the transfer of officers

3.—(1) A scheme for the transfer of all or any of their officers shall be made by the existing local authority if they consider that the transfer of such officers in accordance with the principles set out in the Schedule to this order would

(a) 1973 c. 65. (b) 1889 c. 63. (c) 1947 c. 43.

result in a substantially unbalanced allocation of such officers between new local authorities in relation to functions for which they are respectively responsible, or where any such authority notify the existing local authority that they so consider.

(2) A scheme for the transfer of officers employed for the purposes of any function shall be made by any existing local authority where the function is on and after 16th May 1975 the responsibility of two or more new local authorities and the existing local authority consider that there will be difficulty in determining the authorities to which officers would be transferred on the application of the principles referred to in paragraph (1) above, or where any such new local authority notify the existing local authority that they so consider.

(3) Subject to article 4(1) a scheme for the transfer of all or any of their officers may be made by any existing local authority with the agreement of any new local authority concerned in any other circumstances in which they consider it appropriate to make a scheme.

(4) Where any arrangements made under section 56 of the Act are to have effect as from 16th May 1975 but have not been taken into account under article 4(2), any scheme made under paragraphs (1) to (3) above, so far as it provides for the transfer of officers on the basis that the functions to which the arrangements relate will be discharged within the relevant area by the new local authority whose functions they are, shall cease to have effect, and the existing local authority who made the scheme shall make a further scheme for the transfer of such officers.

(5) The references in paragraphs (1) and (3) above to all the officers of an existing local authority do not include—

(*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;

(*b*) any officer whose employment is to be terminated before or on 15th May 1975, otherwise than by virtue of the 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.

Provision as to schemes

4.—(1) Any scheme made under article 3 shall make provision for the allocation of the officers covered by it on the basis of the likely needs of the services to be provided on and after 16th May 1975.

(2) In any scheme made under paragraphs (1) to (3) of article 3 any arrangements made under section 56 of the Act shall be taken into account, and the references to new local authorities in paragraphs (1) to (3) of article 3 shall include the authority who will be discharging any relevant functions by virtue of such arrangements.

(3) In preparing any scheme an existing local authority shall—

(*a*) consult the local authorities and bodies representative of officers appearing to them to be concerned; and

(*b*) give all the officers likely to be transferred an opportunity to indicate any preference as to the new local authority to whom they would wish

to be transferred and take into consideration the preferences so indicated.

(4) Upon making a scheme an existing local authority shall transmit copies thereof to the local authorities and bodies representative of staff appearing to them to be concerned and notify every officer to be transferred of the provisions of the scheme in relation to him.

(5) Any scheme made under this order may be amended by the existing local authority by whom it was made and with the agreement of any relevant local authority. Upon making any amendment such authority shall transmit copies of the scheme as amended or of the amendments to the local authorities and bodies representative of staff appearing to them to be concerned and notify every officer affected of the provision of the scheme as amended in relation to him.

(6) The council of any existing local authority shall ensure that any officer affected by any scheme made under this order is informed as to—

(*a*) the provisions of this order which are applicable;

(*b*) the new local authority to whom the officer is to be transferred under any such scheme; and

(*c*) the provisions of the Appeals Memorandum.

Disputes between local authorities

5.—(1) If notice is given by any local authority that they are dissatisfied with the provisions of any scheme made under paragraphs (1) to (3) of article 3 the matter shall be determined by agreement between the existing and new local authorities concerned or failing such agreement by the Secretary of State or an arbiter appointed by him.

(2) Upon any determination which will result in the transfer of an officer otherwise than in accordance with the scheme the local authority by whom the scheme was made shall notify such officer of the effect of the determination in relation to him.

Appeals

6. An appeal may be made by any officer affected by a scheme and shall be determined in accordance with the arrangements set out in the Appeals Memorandum.

Savings

7. Any transfer effected or proposed by any scheme shall be subject to any provisions—

(*a*) for the protection of the interests of officers;

(*b*) as to appeals by officers; and

(*c*) as to the secondary transfers of officers,

which may be contained or referred to in this order or in any other order made under sections 215 and 216 of the Act.

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

St. Andrew's House,
Edinburgh.
3rd April 1975.

SCHEDULE

Article 3(1)

Principles Governing Transfer of Staff

In general, *officers will transfer by function*, i.e. officers employed on a specific function irrespective of the discipline involved, will be transferred to the new local authority which will be responsible for the function from 16th May 1975; but special arrangements may apply to those employed on more than one function or on a function which is to be discharged by more than one new authority. The basic principles governing transfer are as follows—

1. *Regional or Islands or District function*

(*a*) *Regional/Islands function.* Officers employed upon a function which within the area of their existing local authority will on and after 16th May 1975 be the statutory responsibility only of a regional or an islands council (e.g. education), and who are employed wholly or mainly upon that function, will be transferred to the employment of the regional or islands council whose area will include that of their existing local authority.

(*b*) *District function.* Similarly, officers employed upon a function which within the area of their existing local authority will on and after 16th May 1975 be the statutory responsibility only of a district council (e.g. housing), and who are employed wholly or mainly upon that function, will be transferred to the employment of the district council whose area will include that of their existing local authority.

(*c*) *Regional and/or Islands or District function.* Where such officers are employed by a county council or old district council whose area will be divided into more than one region or between a region and an islands area or into more than one district respectively, the regional or islands or district council, to whose employment they will be transferred should be determined where possible according to the geographical area with which their duties are concerned. If this is impractical because the duties of an officer are not related specifically or mainly to any one regional or islands or district area, he will be transferred to the employment of such regional or islands or district council as may be determined by the county council or old district council by whom he is employed in consultation with the regional and/or islands or district councils. In such circumstances the views of the individual officers concerned will be particularly relevant and should be sought at the earliest opportunity.

2. *Concurrent function*

(*a*) Officers employed upon a function which within the area of their existing local authority will on and after 16th May 1975 be the statutory responsibility of the regional and district councils concurrently (e.g. parks), and who are employed wholly or mainly upon that function, will, where their existing local authority falls wholly within the area of one district council, be transferred to the employment of that district council.

(*b*) Where such officers are employed by a county council whose area will be wholly comprised in one region but not solely within one district, they will be transferred to the employment of the regional council whose area will include that of the county council.

(*c*) Where such officers are employed by a county council or an old district council whose area will be divided between more than one region or district respectively, the regional or district council to whose employment they will be transferred should be determined where possible according to the regional or district area with which their duties are concerned. If this is impractical because the duties of an officer are not related specifically or mainly to the area of one region or district, he will be transferred to the employment of such regional or district council as may be determined by the county council or old district

council in consultation with the regional or district councils. In such circumstances the views of the individual officers concerned will be particularly relevant and should be sought at the earliest opportunity.

3. *Central service officers*

Headquarters and other officers of existing local authorities who do not fall within the categories referred to at 1 and 2 above, will be transferred as follows—

(*a*) Officers employed by a county council, joint committee, joint board or regional water board will be transferred to the employment of the regional or islands council whose area will include that of their existing local authority.

(*b*) Where the area of a county council, joint committee, joint board, regional water board or old district council will be divided between more than one region or between a region and an islands area or more than one district respectively, the regional or islands or district council to whose employment such officers will be transferred should be determined where possible according to the geographical area with which their duties are concerned. If this is impractical because the duties of an officer are not related specifically or mainly to any one regional or islands or district area, he will be transferred to the employment of such regional or islands or district council as may be determined by the existing authority in consultation with the regional and islands or district councils. In such circumstances the views of individual officers concerned will be particularly relevant and should be sought at the earliest opportunity.

(*c*) Officers of all other authorities (e.g. burghs and old districts) will be transferred to the employment of the district or islands council whose area will include that of their existing authority.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The main transfer of staff from the local authorities ceasing to exist under the Local Government (Scotland) Act 1973 to the new authorities set up under that Act will be effected by order in accordance with general principles which have already been published.

Local circumstances vary so much, however, that general rules cannot in all instances result in a satisfactory distribution of staff and this order requires the making of local arrangements or "schemes" in the particular circumstances set out in paragraphs (1) and (2) of article 3. Additionally power is given in paragraph (3) of that article for any existing local authority to make a scheme in respect of all or any of its staff if it is felt to be appropriate to do so.

Article 4 contains provision as to consultation with relevant authorities and staff representatives, requires existing local authorities making schemes to take into consideration preferences expressed by individual officers and allows such schemes to be subsequently amended.

Provision is made in article 5 for disputes about schemes to be determined by the Secretary of State in default of agreement between the local authorities concerned. Article 6 deals with appeals and article 7 provides for the application to local schemes of the general arrangements for the protection of the interests of officers.

SI 1975/574
ISBN 0-11-050574-3

