STATUTORY INSTRUMENTS

1974 No. 378

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Staff Transfer Appeals and Schemes Order Amendment) Order 1974

Made - - -	*7th March* 1974
Laid before Parliament	*8th March* 1974
Coming into Operation	*9th March* 1974

The Secretary of State for Social Services, as respects England, and the Secretary of State for Wales, as respects Wales, after consulting such bodies as they have recognised as representing persons who in their opinion are likely to be transferred or affected by transfers in pursuance of the order and such bodies as appeared to them to represent public health authorities and to be concerned with so much of the order as relates to persons employed by public health authorities, in exercise of the powers conferred upon them by sections 18(1) and (2), 19(2) and (4) and 56(3) of the National Health Service Reorganisation Act 1973(**a**) and of all other powers enabling them in that behalf, hereby make the following order:—

PART I

GENERAL

Citation and commencement

1.—(1) This order may be cited as the National Health Service (Staff Transfer Appeals and Schemes Order Amendment) Order 1974 and shall come into operation on 9th March 1974.

Interpretation

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

"the Act" means the National Health Service Reorganisation Act 1973;

"the Commission" means in relation to any person whichever of the two Commissions, namely the National Health Service Staff Commission and the Welsh National Health Service Staff Commission, is appropriate in his case.

(2) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**b**) 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.

(3) References in this order to any enactment, order or regulations include references to such enactment, order or regulations as amended by any subsequent enactment, order or regulations.

(**a**) 1973 c. 32. (**b**) 1889 c. 63.

PART II

DETERMINATION OF QUESTIONS

Questions which may be determined

3. Any question arising in connection with any order or scheme made by virtue of section 18(1) and (2) (Transfer of Staff) of the Act—

(*a*) as to whether a person is or was employed in a particular capacity or wholly or mainly for particular purposes; or

(*b*) with respect to the effect in relation to any particular person of provision made by virtue of section 19(2)(*a*), (*b*) and (*c*) (Protection of rights of transferred officers) of the Act,

may be determined in accordance with the following provisions of this Part of this order.

Method of obtaining determination

4. Any person who wishes to seek the determination of any question referred to in article 3 of this order shall give notice in writing to the Commission at such address as they may notify before the expiration of two months beginning with the date of the notification to him of the decision which gives rise to the question, or such longer period as the Commission may at any time allow, and such notice shall indicate the question of which the determination is sought and shall contain a concise statement of the facts and contentions upon which the person giving the notice intends to rely.

Determination by Commission

5. The Commission which has received notice of a question for determination under article 4 of this order shall in accordance with such arrangements as the Secretary of State may approve determine that question and communicate that determination to the parties concerned.

PART III

CONSIDERATION OF REPRESENTATIONS

Right to make representations

6. Any person who objects to his transfer in pursuance of an order or scheme having effect under section 18(1) or (2) of the Act on the grounds that—

(*a*) he will suffer hardship by such transfer; or

(*b*) he ought not to be transferred to the body to the employment of which he is being transferred in pursuance of an order or scheme having effect under section 18(1) or (2) of the Act but should be transferred to some other body to the employment of which he could have been transferred in pursuance of such order or scheme,

may make representations to the Commission in accordance with the following provisions of this Part of this order.

Method of making representations

7. Any person who wishes to make representations under article 6 of this order shall give notice in writing to the Commission at such address as they may notify before the expiration of two months beginning with the date of the notification to him of the decision to which objection is made, or such longer period as the Commission may at any time allow, and such notice shall indicate

the grounds of objection on which the representations are made and shall contain a concise statement of the facts and contentions upon which the person giving the notice intends to rely.

Consideration of representations by Commission

8. After such representations have been considered in accordance with arrangements made by the Commission under section 20(2)(*d*) of the Act advice in accordance with such arrangements shall be given to the person who made the relevant order or scheme, or, if that person has ceased to exist, the Secretary of State, and shall include advice on whether it would be appropriate in consequence of the representations made to the Commission to amend the order or scheme before the day when the transfer takes effect in pursuance of it or to transfer a person on or after that day from the employment to which he is transferred in pursuance of that order or that scheme.

Action on advice given by the Commission

9. After considering advice given to him by the Commission in consequence of representations made under this order, the Secretary of State may direct the transfer of a person from the employment of a new health authority to the employment of a different new health authority, or, except where the person in question was transferred in pursuance of the order or scheme from the employment of a Regional Hospital Board, Board of Governors, Executive Council or Pricing Committee mentioned in section 14(1) of the Act, to the employment of a body established by or under the Local Government Act 1972(**a**), the Greater London Council, a London borough council or the Common Council of the City of London.

In this article "new health authority" means any Regional or Area Health Authority and any special health authority.

PART IV

VARIATION OF NATIONAL HEALTH SERVICE (STAFF TRANSFER SCHEMES) ORDER 1974

Variation of order

10.—(1) The National Health Service (Staff Transfer Schemes) Order 1974(**b**) shall be varied as follows:—

(*a*) at the end of article 1 there shall be added the following:—

"(5) References in this Order to any enactment, order or regulations include references to such enactment, order or regulations as amended by any subsequent enactment, order or regulations";

(*b*) in article 6(3) (which provides that for the purposes of various enactments transferred officers shall be treated as having been in one continuous employment) for—

"(*c*) Part I of the Industrial Relations Act 1971(**c**);

(*d*) Part I of the Contracts of Employment Act 1972(**d**);",

there shall be substituted the following—

"(*c*) Part II of the Industrial Relations Act 1971(**c**);

(*d*) the Contracts of Employment Act 1972(**d**);".

(**a**) 1972 c. 70.
(**b**) S.I. 1974/35 (1974 I, p. 109).
(**c**) 1971 c. 72.
(**d**) 1972 c. 53.

(*c*) In article 7(1) (Exceptions) there shall be inserted at the beginning the following words—

"Except as provided in paragraph (2) of this article".

(*d*) In article 7(2) (Protection of certain officers) after the words "article 6" there shall be inserted "(1), (2), (3) (as amended) and (6)", and at the end there shall be added the words "as if he had been transferred under this Order".

(2) In the Schedule to the order mentioned in paragraph (1) of this article after the words "All persons employed by the body" in relation to entries 1 and 2 (Regional Hospital Boards, Boards of Governors and the Welsh Hospital Board) there shall be inserted the words "other than persons to whom section 18(4)(*a*) of the Act applies" and any scheme made under the above-mentioned order which includes such persons shall be varied accordingly under article 3(3) of that order.

Barbara Castle,
Secretary of State for Social Services.

7th March 1974.

John Morris,
Secretary of State for Wales.

7th March 1974.

EXPLANATORY NOTE

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

This Order makes provision for the National Health Staff Commissions for England and Wales to determine certain questions in connection with the transfer of officers under section 18(1) or (2) of the National Health Service Reorganisation Act 1973 and to consider and give advice on representations made by such officers.

It also makes minor and drafting amendments to the National Health Service (Staff Transfer Schemes) Order 1974.

SI 1974/378
ISBN 0-11-040378-9

