STATUTORY INSTRUMENTS

1974 No. 35

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Staff Transfer Schemes) Order 1974

Made - - -	*9th January* 1974
Laid before Parliament	*11th January* 1974
Coming into Operation	*1st February* 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) and 19(2) and (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:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the National Health Service (Staff Transfer Schemes) Order 1974, and shall come into operation on 1st February 1974.

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

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

"appeal" includes representation.

(3) In determining whether a person was at a particular time employed by an authority wholly or mainly for the purposes of functions of a particular kind mentioned in section 18(1) or (3) of the Act, any functions of that authority which are of a different kind so mentioned and for the purposes of which the person was at that time also employed by that authority shall be treated as functions of the particular kind in question.

(4) The rules for the construction of Acts of Parliament 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.

Duty to make schemes for the transfer of officers

2. Subject to the following provisions of this Order the bodies specified in Column 1 of the Schedule to this Order shall as soon as practicable, and in

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

any case within the period of one month beginning with the date of the commencement of this Order, make schemes for the transfer on 1st April 1974 of persons who are employed by them and are specified in Column 2 of that Schedule to the employment of such Regional Health Authority or Area Health Authority or Special Health Authority as may be designated by or under that scheme and, subject to article 8 of this Order, any person designated by or under the scheme shall on 1st April 1974 be transferred to the body so designated.

Consultation and notification

3.—(1) Before making any such scheme the body making that scheme shall consult any Regional Health Authority or Area Health Authority or Special Health Authority to the employment of which it is proposed that any person employed by that body shall be transferred and any body representing officers appearing to the body making the scheme to be concerned.

(2) A body shall on making any such scheme send a copy of that scheme to any body consulted under paragraph (1) of this article and shall notify any officer to be transferred by that scheme of the provisions of the scheme which relate to him.

(3) A scheme made under article 2 of this Order may be varied or revoked at any time before 1st April 1974 by a subsequent scheme so made.

Power of the Secretary of State to require the submission and amendment of schemes

4. The Secretary of State may require any body by whom a scheme is required to be made in pursuance of this Order—

(*a*) to submit to him the scheme or such provisions of it as he may specify; and

(*b*) to make before 1st April 1974 such changes in the scheme as the Secretary of State may direct.

Preservation of training arrangements

5. Where arrangements have been made by a body specified in Column 1 of the Schedule under which any person transferred by or under this Order is undergoing, or is to undergo, a course of training, or has entered, or is going to enter, into an apprenticeship and those arrangements have not been discharged before 1st April 1974, those arrangements shall continue to apply with the substitution for the body in whose employment the officer was immediately before 1st April 1974 of the body to whose employment he is transferred by or under this Order.

Protection of officers

6.—(1) While any person transferred to the employment of any body under section 18 of the Act is in the employment of that body and has not been served with a notice in writing stating that it is served for the purposes of section 19(2)(*a*) of the Act and specifying such new terms and conditions of employment as are mentioned in the following paragraph, the scale of his remuneration and, taken as a whole, the other terms and conditions of his

employment by that body shall be not less favourable to him than were immediately before the transfer those of the employment from which the transfer was made.

(2) Any such new terms and conditions shall be such that—

(*a*) so long as he is engaged in duties reasonably comparable to the duties in which immediately before the transfer he was engaged in the employment from which the transfer was made, the scale of his remuneration and, taken as a whole, the other terms and conditions of his employment by that body shall be not less favourable to him than were, immediately before the transfer, those of the employment from which the transfer was made, and

(*b*) so long as he is engaged in duties not so comparable, the terms and conditions of his employment by that body (excluding terms as to remuneration) shall be, taken as a whole, not less favourable than as mentioned in the preceding sub-paragraph.

(3) For the purposes of—

(*a*) The National Insurance Act 1965(**a**);

(*b*) Part I of the Redundancy Payments Act 1965(**b**);

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

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

the employments from which and to which he was transferred by virtue of section 18 of the Act shall be treated as one continuous employment.

(4) If an officer has duly given notice of appeal against his transfer he shall not be served with a notice such as is referred to in paragraph (1) of this article until the result of his appeal has been notified to him.

(5) If an appeal made by an officer has been successful, such a notice shall not be served upon him until full effect has been given to the decision on appeal.

(6) If within such period as may be prescribed for such appeals an officer appeals on the ground that his duties, scale of remuneration or terms and conditions of service taken as a whole are not reasonably comparable with those which he enjoyed immediately before his transfer, that statement shall not have effect until the appeal has been determined and the result notified to the officer.

Exceptions

7.—(1) This Order shall not apply to any person as regards any employment which, otherwise than by virtue of the abolition of bodies effected by the Act, is to be terminated before or on 31st March 1974.

(2) Only article 6 of this Order shall apply to any person, who would otherwise be transferred under this Order but who by virtue of any agreement entered into between him and any Regional Health Authority, Area Health Authority or Special Area Health Authority before 1st April 1974 will enter into the employment of that authority before or on that date.

(a) 1965 c. 51.
(b) 1965 c. 62.
(c) 1971 c. 72.
(d) 1972 c. 53.

Savings

8. 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 second transfer of officers,

which may be contained in any further Order made under sections 18 and 19 of the Act or regulations made under paragraph 10(2) of Schedule 1 to the Act.

Keith Joseph,
Secretary of State for Social Services.

8th January 1974.

Peter Thomas,
Secretary of State for Wales.

9th January 1974.

SCHEDULE

Column 1	Column 2
1. Each Regional Hospital Board in England, Board of Governors (other than a preserved Board of Governors) or Executive Council.	All persons employed by the body.
2. The Welsh Hospital Board.	All persons employed by the body except those persons who on 1st April 1974 are taken into employment in the Civil Service of the State.
3. The Joint Pricing Committee for England.	All persons employed by the body.
4. The Welsh Joint Pricing Committee.	All persons employed by the body.
5. Each local health authority or the Greater London Council.	All persons employed by the body wholly or mainly for the purposes of functions mentioned in paragraphs (*a*) and (*b*) of the definition of health functions in section 16(6) of the Act.

Column 1	Column 2
6. Each local education authority.	(*a*) All persons employed by the body wholly or mainly for the purposes of functions under the enactments mentioned in section 16(3) of the Act (Medical and Dental Inspection and Treatment). (*b*) All persons employed by the body as relevant staff or speech therapists wholly or mainly for the purposes of providing special educational treatment in pursuance of section 34 of the Education Act 1944 and ascertaining whether children require such treatment.
7. Each local authority (as defined in section 41 of the Act).	All persons employed by the authority wholly or mainly for the purposes of functions under the enactments mentioned in section 41(1) of the Act (Nursing and Mental Nursing Homes).
8. Each public health authority.	All persons employed by the authority to whom the provisions of section 18(3) of the Act apply.

Any reference in the above Schedule to "persons employed" is a reference to persons employed immediately before 1st April 1974.

EXPLANATORY NOTE

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

This Order requires the bodies listed in Column 1 of the Schedule to make schemes for the transfer of some or all of their employees to the employment of health authorities established under the National Health Service Reorganisation Act 1973. Provision is also made for the protection of officers so transferred and for the application of the general arrangements for appeals of individual officers which are to be established shortly.

SI 1974/35 N
ISBN 0-11-040035-6

