STATUTORY INSTRUMENTS

1975 No. 364

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Transferred Staff) Order 1975

Made - - - -	12*th March* 1975
Laid before Parliament	20*th March* 1975
Coming into Operation	14*th April* 1975

The Secretary of State for Social Services, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred upon them by Sections 54(2) 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:—

Citation and commencement

1. This Order may be cited as the National Health Service (Transferred Staff) Order 1975 and shall come into operation on 14th April 1975.

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;

"new health authority" means any Regional or Area Health Authority and any special health authority;

"the Staff Transfer Schemes Order" means the National Health Service (Staff Transfer Schemes) Order 1974**(b)**, as amended **(c)**.

(2) 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.

(3) The rules for the construction of Acts of Parliament in the Interpretation Act 1889**(d)** 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.

(a) 1973 c. 32. **(b)** S.I. 1974/35 (1974 I, p. 109).
(c) The amending Order is not relevant to the subject matter of this Order.
(d) 1889 c. 63.

Second transfer of officers

3.—(1) Subject to the following provisions of this article and of article 6 below an officer transferred under section 18(1), (2) or (4)(*b*) of the Act (Transfer of Officers to new Health Authorities) may before 31st March 1976 or the expiration of two months from the service upon him of the statement of new terms and conditions of employment under article 6(1) of the Staff Transfer Schemes Order, whichever is the later, be transferred by the authority to whom he was so transferred, with the agreement of any new health authority and of the officer, to the employment of that new health authority.

(2) Any agreement under paragraph (1) above of any new health authority and of an officer shall be in writing and shall state that it is made for the purposes of this article.

(3) This article shall apply and a transfer may be made under it only if both authorities are satisfied that such transfer would further the effective reorganisation of the health service required under the Act.

(4) Where arrangements have been made by a body from which an officer was transferred under the Act or is transferred under this article and under those arrangements the officer so transferred 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 the officer is transferred under this article, those arrangements shall continue to apply with the substitution for the body by whom the officer was employed immediately before the commencement of this Order of the body to whose employment he is transferred by this article.

(5) While any person transferred to the employment of any body under this article is in the employment of that body and has not been served with a notice in writing 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 1st April 1974 those of the employment in which he was then employed.

(6) 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 1st April 1974 he was engaged in the employment in which he was then employed, 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 1st April 1974, those of the employment in which he was then employed, 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 those mentioned in the preceding sub-paragraph.

(7) For the purposes of—

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

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

(*c*) the Contracts of Employment Act 1972**(c)**; and

(*d*) Part II of Schedule 1 to the Trade Union and Labour Relations Act 1974**(d)**

the employments from which and to which an officer is transferred by virtue of this article shall be treated as one continuous employment.

(8) Where a person transferred under this article was before such transfer served with a notice stating that it had been served for the purposes of section 19(2) of the Act (new terms and conditions of employment) the terms and conditions of service after such transfer shall be no less favourable than those specified in the said notice.

Amendment of provisions relating to hospital social workers transferred to local social service authorities

4. Article 3(4) of the National Health Service (Transfer of Social Services Staff) Order 1974**(e)** (under which an officer transferred to a local authority under that article may be transferred to another local authority) shall have effect as if the local authority first mentioned therein may serve a notice under the paragraph at any time during the period beginning with the commencement of this Order and ending 31st July 1975.

Officers who were required to be transferred under Section 18 *of the Act but were not so transferred*

5.—(1) This article applies to any person who—

(*a*) was required to be transferred under the Staff Transfer Schemes Order to a new health authority on 1st April 1974 but was not so transferred;

(*b*) at the commencement of this Order was employed, and had been continuously employed during the period beginning with 1st April 1974 by a new health authority to whose employment he could have been so transferred.

(2) Where any person to whom this article applies is in the employment of a new health authority and has not been served with a notice in writing stating that it is served for the purposes of this paragraph and specifying such new terms and conditions of employment as are mentioned in the next following paragraph, the scale of his remuneration and, taken as a whole, the other terms and conditions of his employment by that authority shall be not less favourable to him than were those of the employment in which he was engaged immediately before 1st April 1974.

(3) 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 1st April 1974 he was engaged in the

(a) 1965 c. 51. **(b)** 1965 c. 62. **(c)** 1972 c. 53.
(d) 1974 c. 72. **(e)** S.I. 1974/318 (1974 I, p. 1078).

employment in which he was then employed, the scale of his remuneration and, taken as a whole, the other terms and conditions of his employment by that authority shall be not less favourable to him than were, immediately before 1st April 1974 those of the employment in which he was then employed, and

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

(4) If any question arises after the commencement of this Order under—

(*a*) the National Insurance Act 1965;

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

(*c*) the Contracts of Employment Act 1972; or

(*d*) paragraph 10 of Schedule 1 to the Trade Union and Labour Relations Act 1974;

whether any person to whom this article applies was or was not continuously employed for a particular period, the employment in which he was employed on 31st March 1974 and the employment into which he entered on 1st April 1974 shall be treated as one continuous employment.

Determination of questions

6.—(1) Any question arising in connection with article 3, or 5 above may be determined in accordance with the following provisions of this article.

(2) Any person who wishes to seek the determination of any question referred to in paragraph (1) above 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 in writing 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.

(3) The Commission which has received notice of a question for determination under paragraph (2) above shall in accordance with such arrangements as the Secretary of State may approve determine that question and communicate that determination to the parties concerned.

Barbara Castle,
Secretary of State for Social Services.

11th March 1975.

John Morris,
Secretary of State for Wales.

12th March 1975.

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under section 18 of the National Health Service Reorganisation Act 1973 orders were made for the transfer to employment by new authorities on 1st April 1974 of officers most of whom were employed by bodies which ceased to exist on that date. Most of these transfers were effected by "transfer schemes" under section 18(1)(*b*) of the Act. Under section 19(2) of the Act the Secretary of State was required to confer various forms of protection on persons transferred under section 18 and this duty was carried out in various statutory instruments.

Article 3 of this Order provides that there may be a "second transfer" (e.g. of an officer who is not in the most suitable employment to a more suitable employment in the Health Service) with the consent of all three parties concerned and that on such "second transfer" the officer so transferred shall have such of the protection required by section 19(2) of the Act as is appropriate.

Under article 3(4) of the National Health Service (Transfer of Social Services Staff) Order 1974 a notice leading to the "second transfer" of a social worker from the employment of one local authority to another must be served not later than 1st October 1974. Under article 4 of this Order such a notice may be served at any time between the commencement of this Order and 31st July 1975.

Article 5 of this Order provides that if an officer entered on 1st April 1974 into the employment of a new health authority to whose employment he could have been, but was not, compulsorily transferred and has been continuously in that employment since 1st April 1974, he shall have such of the protection required by section 19(2) of the Act as is appropriate.

Article 6 of the Order provides that any dispute in connection with article 3 or 5 shall be determined by the appropriate National Health Service Staff Commission.

SI 1975/364
ISBN 0-11-050364-3

