STATUTORY INSTRUMENTS

1974 No. 435

LOCAL GOVERNMENT, ENGLAND AND WALES

The Water Authorities (Staff Protection and Transfer Schemes) Order 1974

Made - - - -	12*th March* 1974
Laid before Parliament	15*th March* 1974
Coming into Operation	18*th March* 1974

The Secretary of State for the Environment and the Secretary of State for Wales, in exercise of the powers conferred upon them by sections 254(1) and 255(1) of the Local Government Act 1972(a) as extended by section 34(1) of the Water Act 1973(b) and of all other powers enabling them in that behalf, hereby make the following order:—

Title and commencement

1. This order may be cited as the Water Authorities (Staff Protection and Transfer Schemes) Order 1974 and shall come into operation on 18th March 1974.

Territorial extent of exercise of powers

2.—(1) This order is made by the Secretary of State for the Environment—

(*a*) as regards article 4, in relation to any water authority whose area is wholly in England, the Severn-Trent Water Authority and the National Water Council; and

(*b*) as regards articles 5 to 9, in relation to any existing authority whose area is wholly in England, the Severn River Authority and the Clywedog Reservoir Joint Authority.

(2) This order is made by the Secretary of State for Wales—

(*a*) as regards article 4, in relation to the Welsh National Water Development Authority; and

(*b*) as regards articles 5 to 9, in relation to any existing authority whose area is wholly in Wales, the Dee and Clwyd and Wye river authorities and the Gwent Water Board.

Interpretation

3.—(1) The Interpretation Act 1889(c) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

(a) 1972 c. 70. (b) 1973 c. 37. (c) 1889 c. 63.

(2) In this order—

"the Act" means the Local Government Act 1972;

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

"Wales" means the area consisting of the counties established by section 20 of the Act (new local government areas in Wales), and "England" does not include any area included in any of those counties.

(3) In this order, unless the context otherwise requires, references to any enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment.

Appointment of officers before 1st April 1974

4. Where a water authority or the National Water Council before 1st April 1974 appoint to hold any office or employment before or as from that date any person (hereinafter referred to as "the officer") who, but for that appointment, would be transferred on 1st April 1974 under section 255 of the Act to the employment of any such body, the appointment shall be on such terms and conditions that—

(*a*) so long as the officer is engaged in duties reasonably comparable to those in which he was engaged immediately before the appointment, the scale of his salary or remuneration; and

(*b*) the other terms and conditions of his employment,

are not less favourable than those he enjoyed immediately before the appointment.

Schemes for the transfer of officers

5.—(1) Schemes for the transfer of officers to new authorities established by the Water Act 1973 shall be made in accordance with the provisions of this article and article 6.

(2) A scheme for the transfer of any officers employed for the purposes of functions which will on and after 1st April 1974 be exercised by water authorities shall be made by any new town development corporation.

(3) Schemes for the transfer of any such officers shall be made by—

the Greater London Council;

the council of any London borough or the Common Council of the City of London; or

any body abolished by section 33 of the Water Act 1973,

in the following circumstances, namely—

(*a*) if they consider that the transfer of such officers in accordance with the principles set out in paragraph 11 of the letter "Water Reorganisation Transfer and Protection of Staff" issued by the Department of the Environment on 17th October 1973 and in paragraph 11 of the similar letter issued by the Welsh Office on 19th October 1973 (which paragraphs are in the terms set out in the Schedule to this order) would result in a substantially unbalanced allocation of such officers between authorities in relation to functions for which they are respectively responsible, or where a water authority notify such authority that they so consider;

(*b*) if, in the case of a body abolished as aforesaid, the functions of that body will, on and after 1st April 1974, be exercised by two water authorities, unless one such authority notifies the body that no officers need be transferred to them; or

(*c*) if, in the case of the council of a London borough or the Common Council of the City of London they will not, under section 15 of the Water Act 1973, be discharging sewerage functions as defined in that section on behalf of a water authority.

(4) A scheme for the transfer of any such officers may be made—

(*a*) by any body specified in paragraph (3) where there is no obligation on that body under that paragraph to make a scheme; or

(*b*) by the Port of London Authority.

Provision as to schemes

6.—(1) Any scheme made under article 5 shall allocate the officers covered by it on the basis of the likely needs of the services to be provided on and after 1st April 1974.

(2) In preparing any scheme a body shall—

(*a*) consult the 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 authority in whose employment they would wish to be and take into consideration the preferences so indicated.

(3) Upon making a scheme an authority shall transmit copies thereof to the authorities and bodies representative of officers appearing to them to be concerned and notify every officer to be transferred of the provision of the scheme in relation to him.

Disputes between authorities making schemes and transferee authorities

7.—(1) If notice is given by any authority that they are dissatisfied with the provisions of any scheme made under article 5 the question shall be determined by agreement between the authorities concerned or in default of such agreement by the Secretary of State or a person appointed by him.

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

Appeals

8. Appeals may be made by officers and shall be determined in accordance with the arrangements set out in the Memorandum on Machinery for Staff Appeals enclosed with Circular WSSC 13/74 (Water Services Staff Commission for England and Wales) dated 31st January 1974.

Any body making a scheme shall ensure that any officer is informed as to the provisions of the Memorandum which are applicable.

Amendment of schemes

9. Any scheme made under article 5 may be amended by the authority by whom it was made.

Upon making any amendment an authority shall transmit copies of the scheme as amended or of the amendments to the 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.

Savings

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

for the protection of the interests of officers;
as to appeals by officers; and
as to the secondary transfers of officers,

which may be contained in any further order made under sections 254 and 255 of the Act.

Article 5(3)

SCHEDULE

PARAGRAPH 11 OF TRANSFER AND PROTECTION OF STAFF LETTERS

11. The general principles under which staff will be transferred to Water Authorities are as follows:—

(*a*) Any officer employed upon a function [1] which will on and after 1st April 1974 be the statutory responsibility of a Water Authority *and* who is:

(i) employed wholly or mainly [2] in premises which are to be used after that date for the purposes of the discharge of its function by a Water Authority, *or*

(ii) operating wholly or mainly from such premises (eg a maintenance depot) *or*

(iii) being otherwise employed wholly or substantially so [3] upon that function,

will be transferred to the employment of the appropriate water authority.

1. "employed upon functions" covers not only operational and administrative staff employed in a functional service or department, but also staff in central common service departments employed in connection with particular functions, for example, engineers, committee clerks and staff in the treasurer's department.

2. The phrase "wholly or mainly" is intended, in this connection, to include all staff more than half of whose work is in or from such premises.

3. "wholly or substantially so" relates to staff whose work is not necessarily based on particular operational premises (which will be transferred with the function), and it applies where the staff concerned are working not merely for more than half their time but for the whole or very nearly the whole of their time upon the function concerned.

This distinction, which has been drawn in earlier reorganisations, eg in London and in the West Midlands, is based upon the thought that if an officer is employed in or from a "functional" building, there is a presumption that that is the function to which his employment is directly linked. Where the presumption is absent, for example, where an officer works in the Town Hall the proposition is that he must work full time, or very nearly full time, upon a particular function if that is to be the factor determining his future employing authority.

12th March 1974. *Anthony Crosland,*
Secretary of State for the Environment.

12th March 1974. *John Morris,*
Secretary of State for Wales.

EXPLANATORY NOTE

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

This Order makes provision—

(*a*) in Article 4 for the protection of officers appointed by water authorities and the National Water Council before or as from 1st April 1974;

(*b*) in Articles 5 to 9 for certain schemes. The following paragraphs are directed to this matter.

The main transfer of staff from the authorities abolished by the Water 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 (2) and (3) of Article 5. Additionally power is given in paragraph (4) of that Article for any authority mentioned therein to make a scheme in respect of any of its staff if it is felt to be appropriate to do so.

Article 6 contains provision as to consultation with relevant authorities and staff representatives.

Provision is made in Article 7 for disputes about schemes to be determined by the Secretary of State in default of agreement between the authorities concerned, in Article 8 for appeals and in Article 9 for the amendment of schemes.

Provision is made in Article 10 for the application to local schemes of the general arrangements for the protection of the interests of officers which are to be established shortly.

Copies of the Memorandum referred to in Article 8 may be obtained from the Water Services Staff Commission, 20 Grosvenor Hill, London W.1.

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