

## 1971 No. 341

## EDUCATION, ENGLAND AND WALES

**The Education of Handicapped Children (Transfer of Staff and Property) Order 1971**

<i>Made</i> - - - -	3rd March 1971
<i>Laid before Parliament</i>	11th March 1971
<i>Coming into Operation</i>	12th March 1971

The Secretary of State for Education and Science in relation to England and the Secretary of State for Wales in relation to Wales, in exercise of their powers under section 1(2) of the Education (Handicapped Children) Act 1970(a), hereby order as follows:—

*Citation, commencement and interpretation*

1.—(1) This order may be cited as the Education of Handicapped Children (Transfer of Staff and Property) Order 1971 and shall come into operation on 12th March 1971.

(2) The Interpretation Act 1889(b) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

*“The appointed day”*

2. In this order “the appointed day” means 1st April 1971, being the day appointed for the purposes of section 1 of the Education (Handicapped Children) Act 1970; and for the purposes of article 6 of this order the compensation regulations mentioned in that article shall have effect as if references to the material date were references to the appointed day.

*Transfer of local government officers*

3. Subject to article 5 below, there shall on the appointed day be transferred to the employment of the Inner London Education Authority every person who is employed for the whole, or substantially the whole, of his time by an inner London borough at or for the purposes of a junior training centre or special care unit provided in pursuance of arrangements under section 12 of the Health Services and Public Health Act 1968(c) for training children classified under section 57 of the Education Act 1944(d) as unsuitable for education at school.

*Transfer of officers of regional hospital boards*

4.—(1) Subject to article 5 below, there shall on the appointed day be transferred to the employment of the appropriate local education authority every

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(a) 1970 c. 52.  
(c) 1968 c. 46.

(b) 1889 c. 63.  
(d) 1944 c. 31.

person who is employed for the whole, or substantially the whole, of his time by a regional hospital board—

- (a) in training children classified under section 57 of the Education Act 1944 as unsuitable for education at school; or
- (b) in assisting any such person in such training.

(2) For the purposes of this article the appropriate local education authority is, as regards any person, the authority in whose area is situate the hospital at or for the purposes of which he is employed.

*Determination of questions under articles 3 and 4*

5.—(1) If any question arises whether a person is so employed as is described in either of the two preceding articles (“the transfer articles”) it shall be referred not later than 30th April 1971 to a tribunal established under section 12 of the Industrial Training Act 1964(a) and the decision of that tribunal shall be final.

(2) Where any such question is pending as regards any person on the appointed day, the relevant transfer article shall not apply to that person unless and until the tribunal determine that he was employed as is in that article provided and, if the tribunal so determine, that article shall have effect with the substitution for the reference to the appointed day of a reference to the fourteenth day following the day upon which the decision of the tribunal is notified.

*Compensation*

6.—(1) The Local Government (Compensation) Regulations 1963 to 1970(b) shall, with the necessary adaptations, apply to—

- (i) persons employed before the appointed day for the purpose of functions of local health authorities; and
- (ii) persons transferred by virtue of article 4 above—

who suffer loss of employment or loss or diminution of emoluments which is attributable to section 1 of the Education (Handicapped Children) Act 1970 as they apply to persons who suffer such loss or diminution which is attributable to the enactments mentioned in regulation 4 of the Local Government (Compensation) Regulations 1963(c) as amended(d).

(2) The National Health Service (Compensation) Regulations 1971(e) shall, with the necessary adaptations, apply to other persons employed before the appointed day for the purpose of functions of regional hospital boards who suffer loss of employment or loss or diminution of emoluments which is attributable to section 1 of the Education (Handicapped Children) Act 1970 as they apply to persons who suffer such loss or diminution which is attributable to any such provision, event or order as is mentioned in regulation 4 of those regulations.

(3) For the purposes of paragraph (1) of this article the compensating authority shall be—

- (a) in the case of a person who on the appointed day is employed for the purpose of functions of a local education authority, that authority;
- (b) in the case of any other person, the local health authority for the purpose of whose functions he was employed immediately before the appointed day.

(a) 1964 c. 16.

(b) S.I. 1963/999, 1965/571, 1968/913, 1970/1889 (1963 II, p. 1634; 1965 I, p. 1786; 1968 II, p. 2407; 1970 III, p. 6239).

(c) S.I. 1963/999 (1963 II, p. 1634).

(d) The relevant amending instruments are S.I. 1965/571, 1970/1889 (1965 I, p. 1786; 1970 III, p. 6239).

(e) S.I. 1971/52 (1971 I, p. 38).

*Terms and conditions of service*

7.—(1) Any person employed before the appointed day for the purpose of functions of a local health authority or a regional hospital board who on the appointed day is in consequence of section 1 of the Education (Handicapped Children) Act 1970 employed for the purpose of functions of a local education authority shall, so long as he continues in that authority's employment for the purpose of those functions, enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before that date, except as regards the scale of his salary or remuneration if on that date or afterwards he ceases to be engaged in duties reasonably comparable to those in which he was engaged immediately before that date; and in the event of his ceasing to be so engaged, the scale of his salary or remuneration shall also be not less favourable so long as he has not been served with a statement in writing of new terms and conditions of employment.

(2) If any question arises whether the duties in which a person is engaged on or after the appointed day are reasonably comparable to those in which he was engaged before that date it shall be referred to a tribunal established under section 12 of the Industrial Training Act 1964 and the decision of that tribunal shall be final.

*Superannuation of local government officers*

8. The schedule shall have effect as from the appointed day for the protection of the superannuation rights of persons employed before the appointed day for the purpose of functions of local health authorities.

*Superannuation of officers of regional hospital boards*

9.—(1) This article shall have effect as from the appointed day for the protection of the superannuation rights of any person transferred to the employment of a local education authority by virtue of article 4(1) of this order who was before the appointed day an officer to whom Part II of the National Health Service (Superannuation) Regulations 1961(a) as amended(b) applied by virtue of regulation 4(1) of those regulations.

(2) Any such person as is mentioned in paragraph (1) of this article shall not, so long as he continues to be engaged in that authority's employment in duties reasonably comparable to those in which he was engaged immediately before the appointed day, be treated as falling within section 3(2) of the Local Government Superannuation Act 1937(c) unless—

- (a) he is employed otherwise than as a teacher; and
- (b) within three months after the appointed day, or such longer period as the Secretary of State for Social Services may in his case approve, he otherwise elects by notice in writing to the Secretary of State for Social Services and the authority to whose employment he is transferred.

(3) In its application to a person transferred by virtue of article 4(1) of this order to the employment of the council of the county borough of Manchester paragraph (2) above shall have effect with the substitution for the reference to section 3(2) of the Local Government Superannuation Act 1937 of a reference to the scheme administered under the Manchester Corporation (Pensions) Acts 1920 to 1970.

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(a) S.I. 1961/1441 (1961 II, p.2824).

(b) S.I. 1966/1523, 1967/949 (1966 III, p. 4309; 1967 II, p. 2906).

(c) 1937 c. 68.

(4) Any agreement or trust deed made for the purposes of any scheme of superannuation by policies of insurance by the Secretary of State for Social Services in respect of any such person as is mentioned in article 4(1) of this order and having effect immediately prior to his transfer shall, so far as relates to that person, have effect thereafter as if it had been made with the local education authority to whose employment he is transferred by virtue of that article; and any policies of insurance which are held for the purposes mentioned in this paragraph for the benefit of any such person by the Secretary of State for Social Services shall be held for the like purposes by that authority.

(5) As regards any person transferred by virtue of article 4(1) to whom the National Health Service (Superannuation) Regulations 1961 as amended apply by virtue of a direction given by the Secretary of State for Social Services under section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967(a), the obligation to pay contributions which is imposed by regulation 7(1)(b) of those regulations shall be discharged by the local education authority to whose employment he is transferred; and the references in that regulation to the employing authority shall be construed accordingly.

### *Transfer of property*

10.—(1) There shall on the appointed day be transferred to the Greater London Council all property, real and personal, vested in any inner London borough which immediately before that day is used by them wholly for the purposes of any such centre or unit as is mentioned in article 3 above, together with any rights and liabilities to which any such borough is then entitled or subject in or in relation to any such property.

(2) In the case of any property vested in an inner London borough which immediately before the appointed day is used partly for such purposes and partly for other purposes, paragraph (1) above shall apply as if the reference to all property were a reference to such property, and the reference to the appointed day were a reference to such a day, as may be agreed between the Council and the borough concerned or, in default of such agreement, determined by the Secretary of State.

(3) Section 151 of the Local Government Act 1933(b) (which relates to financial adjustments between public bodies) shall with the necessary modifications apply for the purposes of this article as if the reference to an Order under Part VI of that Act included a reference to paragraphs (1) and (2) of this article.

## Article 8

## SCHEDULE

### SUPERANNUATION OF LOCAL GOVERNMENT OFFICERS

#### 1. In this schedule—

“existing employment” means employment for the purpose of functions of a local health authority;

“new employment” means employment for the purpose of functions of a local education authority;

“the Act” means the Local Government Superannuation Act 1937(c);

“transferred employee” means a person employed before the appointed day for the purpose of functions of a local health authority who on the appointed day (within the meaning of article 3 of this order as modified by article 5) is in consequence

(a) 1967 c. 28.

(b) 1933 c. 51.

(c) 1937 c. 68.

of the Education (Handicapped Children) Act 1970 employed for the purpose of functions of a local education authority; and, except in paragraphs 2, 3, 4, 7 and 12 (which apply only to persons transferred by virtue of article 3 of this order), includes any person so employed whether or not he has been transferred from the employment of one local authority to that of another.

2. Subject to the provisions of this schedule, any enactment, instrument or other document contained in or made or issued under the Local Government Superannuation Acts 1937 to 1953(a), the Superannuation (Miscellaneous Provisions) Act 1948(b), Part III of the National Insurance Act 1965(c) or article 21(6) of the London Authorities (Superannuation) Order 1965(d) as amended(e) shall have effect in relation to any transferred employee to whom it applies as if his new employment and his existing employment were one continuous employment.

3. Paragraph 2 of this schedule shall not have effect for the purposes of section 29 of the Act and shall not affect the operation of the Local Government Superannuation (Administration) Regulations 1954(f) as amended(g) in relation to any transferred employee.

4. Where immediately before the appointed day a transferred employee is a contributory employee by virtue of a statutory resolution under section 3(2)(b) of the Act, he shall continue to be a contributory employee in his new employment, and for that purpose the Inner London Education Authority shall be deemed to have passed or made such statutory resolution as would have the effect of making him a contributory employee in his new employment.

5. Any transferred employee who, if this order had not been made, would have become a contributory employee by completing any period of qualifying service necessary to comply with such a resolution as is mentioned in paragraph 4 of this schedule and who does not otherwise become a contributory employee at an earlier date shall, if the other conditions (if any) of the resolution are complied with, become a contributory employee on the expiration of the qualifying period.

6. Any transferred employee who is paying superannuation contributions immediately before the appointed day at a rate appropriate to a servant shall continue to contribute at the like rate so long as he is employed without a break of 12 months or more by the new employing authority in duties reasonably comparable to those in which he is engaged immediately before that day and has not, during any break, become an employee of some other local authority.

7. Where immediately before a transferred employee is transferred it is the prevailing practice of the authority employing him to exercise beneficially (that is to say, to secure the payment of gratuities, allowances or pensions, or of increased pensions or lump sum benefits) any discretionary power exercisable by them by virtue of any statutory provision relating to pensions, it shall be the duty of the Inner London Education Authority in relation to that transferred employee, if he has continued in their employment without a break of 12 months or more and has not, during any break, become an employee of some other local authority, to exercise that power (or any corresponding power under the statutory provisions relating to pensions for the time being in force) in a way which is not less beneficial than that practice; and section 35 of the Act shall apply to any question arising under this paragraph.

8.—(1) This paragraph shall, subject to sub-paragraph (4) thereof, apply to a transferred employee to whom there applied immediately before the appointed day section 16 (modifications applicable to female nursing, etc. staff) of the Act as originally enacted by virtue of an option to retain existing benefits under regulation 17 of the

(a) 1937 c. 68; 1939 c. 18; 1953 c. 25.

(b) 1948 c. 33.

(c) 1965 c. 51.

(d) S.I. 1965/621 (1965 I, p. 1970).

(e) The relevant amending instruments are S.I. 1967/1330, 1969/413 (1967 III, p. 3975; 1969 I, p. 1163).

(f) S.I. 1954/1192 (1954 II, p. 1570).

(g) The relevant amending instruments are S.I. 1965/621, 1969/793 (1965 I, p. 1970; 1969 II, p. 2227).

Local Government Superannuation (Benefits) Regulations 1954(a), or regulation 21 or 22 or regulation 23 of the said Regulations of 1954, save as provided in the next following sub-paragraph, so long as he continues in his new employment without any break in that employment.

(2) Where a person's duties are changed and his new duties are such that he is not such a person as is mentioned in the said section 16 or in paragraph (1) of the said regulation 21, or, where the said regulation 23 applied to him immediately before the appointed day, such a person as is mentioned in that regulation, then—

(a) if the change is made at his request, this paragraph shall cease to apply to him on the change taking effect;

(b) if the change is made otherwise than at his request and within six months thereof he gives notice in writing to the local authority that he does not desire this paragraph to apply in his case, this paragraph shall cease to apply to him on his giving the said notice.

(3) Without prejudice to the application of the provisions mentioned in sub-paragraph (1) of this paragraph to a person otherwise than by virtue of this paragraph, so long as this paragraph applies to a transferred employee any of the said provisions which applied to him immediately before the appointed day shall continue to apply in his case, notwithstanding that on or after the appointed day he ceases to be such a person as is mentioned in the said provision.

(4) In relation to a person to whom the Manchester Superannuation (Benefits) Scheme 1955(b) applies, this paragraph shall have effect as if for any references to the said section 16, the said regulation 17 and the said regulation 23 there were substituted respectively references to section 47 of the Manchester Corporation Act 1946(c), and articles 25 and 23 of the said scheme.

9. Section 6(5) of the Act (which relates to the payment of superannuation contributions on the reduction or discontinuance of remuneration) shall apply to any transferred employee or other employee of a local authority who suffers reduction of remuneration which is attributable to anything done by or under this order as if in place of the reference in the said section to an employee suffering a reduction of remuneration owing to incapacity there were a reference to any employee suffering a reduction of remuneration in consequence of the provision of this order.

Provided that the said section 6(5) shall so apply only so long as the employee continues without a break of 12 months or more in the employment in which he suffered the reduction of remuneration, whether in the same post or in some other post and has not, during any break, become an employee of some other local authority.

10. Where under section 6(5) of the Act as applied by paragraph 9 above an employee pays contributions as if his remuneration had not been reduced, he shall be deemed for the purposes of regulation 3(1) of the Local Government Superannuation (Benefits) Regulations 1954 or proviso (b) to section 8(5) of the Act to have received the remuneration which he would have received but for the reduction.

11. In calculating for the purposes of paragraph 9 or 10 whether, or the amount by which, an employee's remuneration has been reduced, no account shall be taken of any increase in his remuneration which is attributable to any temporary allowance granted in consequence of this order and otherwise than in the ordinary course of his employment.

12. Any agreement or trust deed made for the purposes of any scheme of superannuation by policies of insurance by an authority employing a transferred employee and having effect immediately prior to his transfer shall, so far as relates to that employee, have effect thereafter as if it had been made with the new employing authority; and any policies of insurance which are held for the purposes mentioned in this paragraph for the benefit of any transferred employee by the first-mentioned authority shall be held for the like purposes by the new employing authority.

(a) S.I. 1954/1048 (1954 II, p. 1595).  
(c) 1946 c. xxxviii.

(b) S.I. 1955/1347.

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Given under the Official Seal of the Secretary of State for Education and Science on 2nd March 1971.

(L.S.)

*Margaret Thatcher,*  
Secretary of State for Education  
and Science.

Given under my hand on 3rd March 1971.

*Peter Thomas,*  
Secretary of State for Wales.

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**EXPLANATORY NOTE**

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

This order makes provision for the transfer of staff and property to local education authorities consequential upon the discontinuance of the classification of handicapped children as unsuitable for education at school. The order includes, in articles 6 to 9 and the schedule, provisions protecting the interests of staff affected by the order.