

1973. No. 227

[C]

## LOCAL GOVERNMENT

## Transfer of Assets, Liabilities, etc.

ORDER, DATED 29TH JUNE 1973, MADE BY THE MINISTRY OF DEVELOPMENT UNDER SECTION 134 OF THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972.

The Ministry of Development on behalf of the Secretary of State and in exercise of the powers conferred on it by section 134 of the Local Government Act (Northern Ireland) 1972(a) and of every other power enabling it in that behalf hereby makes the following Order—

*Citation*

1. This Order may be cited as the Local Government (Transfer of Assets, Liabilities, etc.) Order (Northern Ireland) 1973.

*Interpretation*

2.—(1) In this Order—

“the Act” means the Local Government Act (Northern Ireland) 1972;

“capital payments and receipts” means all payments and receipts in respect of any project for which a loan had been or was proposed to be raised for or towards financing the project, and in relation to such receipts includes any capital moneys such as are mentioned in section 3 of the Local Government (Finance) (Miscellaneous Provisions) Act (Northern Ireland) 1950(b);

“county council” does not include a county borough council;

“development functions” has the meaning assigned to it by section 7(1)(a) of the New Towns Act (Northern Ireland) 1965(c);

“existing local authority” has the meaning assigned to it by section 131(4) of the Act, but excludes a new town commission insofar as the exercise of development functions is concerned;

“liabilities” includes liabilities which fall to accrue due on or after 1st October 1973;

“relevant transfer of functions provision” means—

(a) section 133(2) of the Act; or

(b) any provision of the Local Government (Transfer of Functions) Order (Northern Ireland) 1973(d); or

(c) any other transferred provision passed or made before 1st October 1973 which contains no specific provision for the transfer of assets and liabilities and which either

(i) provides for the transfer of any function from an existing local authority or any officer of such an authority to any government department, council or public body or to any officer of any such department, council or body, or

(a) 1972. c. 9 (N.I.).

(b) 1950. c. 19.

(c) 1965. c. 13 (N.I.).

(d) S.R. & O. (N.I.) 1973, No. 140.

- (ii) confers on any government department, council or public body or on any officer of any such department, council or body functions corresponding to functions which apart from that provision would have been exercisable by an existing local authority or an officer of such an authority if that authority had not been dissolved by the Act;

“revenue payments and receipts” means payments and receipts which are not capital payments and receipts.

(2) In this Order any reference to a liability attaching to an authority in connection with a function or an asset includes a liability to make payments to a loans pool or a consolidated loans fund which has been used for the purposes of financing that function or asset.

*Transfer of assets and liabilities held solely for particular functions*

3. Subject to Articles 4, 5, 6 and 8, and without prejudice to any other Order made under section 134 of the Act providing for the transfer of specific assets and liabilities of existing local authorities, every asset either held by an existing local authority or to which an existing local authority was entitled immediately before 1st October 1973 for the purposes of any function which is transferred from the authority or any of its officers, or which is conferred on any government department, council or public body or any officer of such department, council or body, by virtue of a relevant transfer of functions provision, and every liability attaching to such an authority in connection with any such function shall—

- (a) if the asset was so held or if the authority was entitled to it solely for purposes of, or if the liability was so attached solely in connection with, a function which becomes exercisable by, or by an officer of, a government department, a council or a public body with respect to the whole of the area of the authority, be transferred on 1st October 1973 to that department, council or body;
- (b) if the asset was so held or if the authority was entitled to it solely for purposes of, or if the liability was so attached solely in connection with, a function which becomes exercisable by, or by an officer of, a council with respect to part only of the area of the authority, be transferred on 1st October 1973 to that council and any other council or councils by, or by an officer of, which a corresponding function becomes exercisable with respect to any other part or parts of that area, or to either or any of them, in such manner and on such terms and conditions (which may include conditions for the payment of money by one such council to another such council) as—
- (i) are specified in an agreement made by the councils concerned, or
- (ii) in default of such agreement being made within such period as the Ministry may direct, are determined by the Ministry.

*Transfer of certain assets and related liabilities*

4.—(1) Subject to paragraph (2) and to the application of—

- (a) the provisions of Article 3 in relation to administrative property used solely in respect of a single function transferred or conferred by a relevant transfer of functions provision, or
- (b) any transferred provision passed or made before 1st October 1973 which contains specific provision for the transfer of assets and liabilities,

all administrative property either held by a county council or to which a county council was entitled immediately before 1st October 1973 and every right or liability attaching to such county council in connection with such property, shall be transferred on 1st October 1973 to the Ministry of Finance, and all administrative property either held by any other existing local authority or to which any other existing local authority was entitled immediately before 1st October 1973, and every right or liability attaching to such other existing local authority in connection with such property, shall be transferred on 1st October 1973 to the council for the district in which such property is situated.

(2) The property held by Fermanagh County Council, or to which such council was entitled, immediately before 1st October 1973 and known as—

- (a) County Buildings, East Bridge Street, Enniskillen;
- (b) Castle Barracks, Enniskillen; and
- (c) Silverhill Depot, Enniskillen;

and every right or liability attaching to that council in connection with such property, shall be transferred on 1st October 1973 in the case of (a) and (b) above to the Ministry of Finance and in the case of (c) above to the Ministry of Development, and on the same date, subject to the application of the provisions of Article 3 in relation to administrative property used solely in respect of a single function transferred or conferred by a relevant transfer of functions provision and to the application of any transferred provision passed or made before 1st October 1973 which contains specific provision for the transfer of assets and liabilities, all other administrative property held by Fermanagh County Council or to which such council was entitled immediately before 1st October 1973, and every right or liability attaching to that council in connection with such property, shall be transferred to the Fermanagh District Council.

(3) All assets (other than any assets referred to in paragraphs (1) and (2)) either held by an existing local authority or to which an existing local authority was entitled immediately before 1st October 1973 for the purposes of two or more functions which are transferred from the authority or any of its officers, or which are conferred on any government department, council or public body or any officer of such department, council or body, by virtue of a relevant transfer of functions provision, and every liability attaching to such an authority in connection with such functions, shall—

- (a) where the functions are transferred to or conferred on two or more government departments, councils or public bodies, be transferred on 1st October 1973 to such department, council or body, and subject to such terms and conditions (which may include conditions for the payment of money by one such department, council or body to another such department, council or body) as
  - (i) are specified in an agreement made by the departments, councils or bodies concerned, or
  - (ii) in default of such agreement being made within such period as the Ministry may direct, are determined by the Ministry;

- (b) where the functions are transferred to or conferred on the same government department, council or public body, be transferred on 1st October 1973 to such department, council or body.

(4) All assets (other than any assets referred to in paragraphs (1) or (2)) either held by an existing local authority or to which an existing local authority was entitled immediately before 1st October 1973 for the purposes of two or more functions

- (a) one or more than one of which is transferred or conferred by virtue of a relevant transfer of functions provision, and
- (b) one or more than one of which is transferred or conferred by virtue of a transferred provision passed or made before 1st October 1973 which contains specific provision for the transfer of assets and liabilities,

and every liability attaching to such an authority in connection with any such function shall be transferred, subject to any specific provision relating to the transfer of such assets and liabilities, to such department, council or body as the Ministry may determine.

(5) Any asset either held by an existing local authority or to which an existing local authority was entitled immediately before 1st October 1973 and any liability attaching to an existing local authority immediately before that date shall, where no specific provision has been made either in this Order or in any other transferred provision for the transfer of such asset or liability and where in the opinion of the Ministry the asset or liability should be transferred to a council, or two or more councils, be transferred at that date to such council or councils as the Ministry may determine.

(6) In this Article the words "administrative property" mean town halls, offices, stores, yards and other property used mainly for the purpose of administering the functions of the existing local authority.

*Transfer of certain liabilities relating to housing*

5.—(1) Subject to paragraph (2), on 1st October 1973 any liability incurred by an existing local authority—

- (a) in exercising the borrowing powers conferred on it by section 3(3) of the Housing Act (Northern Ireland) 1948(e) (power to borrow for the purpose of defraying a deficit in the Housing Revenue Account); or
- (b) in exercising, for the purpose of defraying housing expenses, the borrowing powers conferred on it by any other transferred provision,

shall be transferred to the Northern Ireland Housing Executive, and after that date the Ministry shall pay to the Executive at such times and in such manner as the Ministry considers proper such sums as in the opinion of the Ministry correspond in amount to any sums which are payable by the Executive in respect of such liabilities.

(2) Paragraph (1) shall not apply to any liability which accrued due before 1st October 1973 and in this Article "housing expenses" has the same meaning as in section 3(1) of the Housing Act (Northern Ireland) 1948.

*Liabilities in respect of certain borrowed money*

6.—(1) Where an existing local authority maintains a loans pool or a consolidated loans fund any liability of the authority in respect of money borrowed for purposes of the pool or fund shall be transferred on 1st October 1973 to the Ministry of Finance under paragraph (2) or to a council or that Ministry under paragraph (3); and the pool or fund shall be operated by that Ministry or, as the case may be, by the council in accordance with paragraph (4).

(2) Where the pool is operated by a county council, the liability shall be transferred to the Ministry of Finance.

(3) Where the pool or fund is operated by any other existing local authority, the liability shall be transferred either to such council or to the Ministry of Finance as the Ministry may direct after consultation with the authority, the council concerned and the Ministry of Finance.

(4) On and after 1st October 1973 the pool or fund shall be operated by either the Ministry of Finance or a council as the case may be and that Ministry or council shall recover as a debt due from any government department, council or public body such as is mentioned in paragraph (5) (in this paragraph referred to as "the other body"), either half-yearly or at such shorter intervals as may be agreed upon between that Ministry or council as the case may be and the other body, such sums as are properly payable to the pool or fund by the other body for the purposes of repaying money borrowed, and defraying interest and other costs incurred, for such purposes of the pool or fund as are so mentioned.

(5) The government departments, councils or public bodies referred to in paragraph (4) are any department, council or body either to which there have been transferred, or on which there have been conferred, under any transferred provision functions for the purposes of which money has been advanced from the pool or fund or to which any liability in connection with which money has been advanced from the pool or fund is transferred by virtue of this Order, and those purposes or the transfer of such a liability shall be taken to be the purposes of the pool or fund referred to in that paragraph.

(6) Paragraph (1) shall apply to money borrowed by the Belfast City and District Water Commissioners which is outstanding immediately before 1st October 1973 as if that money had been borrowed for the purposes of a loans pool or a consolidated loans fund operated by a county council.

#### *Security for loans*

7. Where under this Order or by reason of any adjustment made in consequence of any provisions of this Order any liability or part of a liability charged on any or all of the funds, rates and revenues of an existing local authority is transferred so as to attach to a government department, council or public body, the liability or the part of the liability shall be charged on the funds, rates and revenues as the case may require of such department, council or body as nearly as possible to the same extent and subject to the same incidents as it was a charge on the funds, rates and revenues of the existing local authority.

#### *Transfer of balances on accounts of transferors*

8.—(1) In this Article "transferor" means an existing local authority, other than an existing local authority in its capacity as a health, welfare, local education or library authority, from which any asset or liability is transferred by virtue of this Order.

(2) Subject to paragraphs (3) and (8) on 30th September 1973 all accounts in the books of a transferor in respect of revenue payments and receipts by and to that transferor shall be closed and sums equivalent to the balances on such accounts at that date shall be paid by that transferor to or recovered by it from the Ministry of Finance as soon after that date as possible.

(3) If in the opinion of the Ministry of Finance any payments which have been made by a transferor on or before 30th September 1973 are excessive having regard either to other payments by the transferor of a similar nature or to any other matter which that Ministry considers it is proper to take

into consideration, those payments shall be excluded in determining the amount of the sums which are to be paid to or recovered from that Ministry under paragraph (2), and sums equivalent to any increase or decrease attributable to those payments which is made in any balance such as is mentioned in that paragraph shall instead be recovered from—

- (a) the council for the district which includes the whole of the area of the transferor, or
- (b) each of the councils for the districts which include any parts of the area of the transferor in such proportions as the Ministry may determine.

(4) After 30th September 1973 no settlement shall be made in respect of—

- (a) any claim for a grant relating to revenue payments and receipts; or
- (b) any other claim relating to revenue payments and receipts,

which is outstanding at that date between a transferor and a government department, except that the Ministry of Finance may determine that any claim for a grant outstanding at that date in respect of any payment which has been taken into account in arriving at any balance to which paragraph (3) applies shall be settled with the council, or with one or more than one of the councils, to which the balance or any part of it has been transferred.

(5) All claims outstanding at 30th September 1973 between a transferor and a government department in respect of grants relating to capital payments and receipts by and to a transferor shall be settled as soon after that date as possible, except that in those cases where the capital payments and receipts relate to a function which by virtue of a relevant transfer of functions provision is after that date transferred to or conferred on a government department no settlement shall be made.

(6) For the purpose of settling claims under paragraph (5) the Ministry concerned, if it considers it to be necessary either by reason of the inclusion of exceptional items in the claim or for any other reason which the Ministry concerned may consider proper to take into consideration for the purpose of settling the claim, may include or exclude any item which in its opinion it is proper to so include or exclude.

(7) After any claims have been settled in accordance with paragraph (5) and subject to paragraph (8) sums equivalent to the balances on the accounts in the books of a transferor in respect of capital payments and receipts by and to that transferor shall be paid to or recovered from the government department, council or public body to or on which the function in respect of which the account was maintained by the transferor has been transferred or conferred by virtue of any relevant transfer of functions provision.

(8) On 30th September 1973 all capital funds and all renewal and repairs funds established by transferors in accordance with the provisions of sections 3A, 3B and 3C of the Local Government (Finance) (Miscellaneous Provisions) Act (Northern Ireland) 1950 and section 24 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1955(f) or of any local act containing provisions corresponding to such provisions shall be closed and sums equivalent to the balances on such funds at that date shall be paid by that transferor to or recovered by it from such government department, council or public body as the Ministry may determine.

(9) For the purpose of making the settlements, apportionments, payments or recoveries mentioned in this Article—

- (a) a transferor shall be deemed to continue in existence notwithstanding that, by virtue of any transferred provision, it will be dissolved on 1st October 1973;
- (b) every member or officer of a transferor, who is required for that purpose shall be deemed to continue in office for that purpose; and
- (c) the treasurer of any existing local authority shall—
  - (i) pay sums equivalent to the balances on any accounts to any government department, council or public body, and
  - (ii) take such other actionas may be directed by the Ministry.

### *Transitional provisions*

9.—(1) This Article shall apply in relation to functions transferred or conferred under any relevant transfer of functions provision or to any assets or liabilities transferred by virtue of this Order or of section 134(4) of the Act, and in this Article—

- (a) “transferor” means an existing local authority either from which any asset or liability is transferred by virtue of this Order or of section 134(4) of the Act or by which a function would have been exercisable were it not for the relevant transfer of functions provision concerned, and
- (b) “transferee” means a government department, council or public body either to which any asset or liability is transferred by virtue of this Order or of section 134(4) of the Act or by which a function is exercisable by virtue of the relevant transfer of functions provision concerned.

(2) In the construction and for the purposes of any judgment, decree, order, award, deed, contract, bond, agreement, regulation, rule, certificate or other document made before 1st October 1973 any reference which is or is to be construed as a reference to a transferor shall, so far only as may be necessary for the purpose or in consequence of the transfer or the conferment be construed as a reference to the transferee.

(3) The transfer shall not affect any order, regulation, rule, direction, instruction, approval, requirement or authorisation made or given or other thing done by a transferor before 1st October 1973 but any such matter shall if in force immediately before that date continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the transferee.

(4) Anything commenced before 1st October 1973 by or under the authority of a transferor may so far as it relates to any function transferred or conferred or any asset or liability transferred to or vested in or imposed on a transferee be carried on or completed by or under the authority of the transferee.

(5) Any investigation, legal proceeding or remedy under any transferred provision or otherwise in respect of any function transferred or conferred or any asset or liability transferred to, vested in or imposed on a transferee may be instituted, continued or enforced by or against the transferee under the powers and provisions applicable thereto immediately before 1st October 1973.

*Audit of accounts of existing local authorities*

10.—(1) The accounts of all receipts and payments of an existing local authority and of committees thereof and of the respective officers of the existing local authority and such committees up to 30th September 1973 shall, as soon as may be after that date be audited, and disallowances, surcharges, charges and penalties in relation to such accounts, receipts and payments shall be made, recovered and enforced in like manner as nearly as may be as if the Act had not been passed and, accordingly, as if where the existing local authority is dissolved on 1st October 1973 the authority had not been dissolved.

(2) Every officer of an existing local authority or of any committee thereof whose duty it is to make up any accounts of, or to account for any portion of the receipts or payments of, the existing local authority or such committee and also every member of the existing local authority or of any such committee shall, until the audit of the accounts of such receipts and payments up to 30th September 1973 is complete, be deemed for the purposes of such audit to continue in office and be bound to perform the same duties and render the same account and be subject to the same liabilities as if the Act had not been passed and, accordingly, as if where the existing local authority is dissolved on 1st October 1973 the authority had not been dissolved.

(3) In a case where any sum is certified by a local government auditor at any audit of the accounts of an existing local authority or any committee thereof under paragraph (1) to be due from any person and not quashed or remitted on appeal such sum if it relates to revenue payments and receipts shall be paid to the Ministry of Finance or if it relates to capital payments and receipts shall be paid to the government department, council or public body to which has been transferred or on which has been conferred under any transferred provision the function in respect of which the sum has been certified to be due.

*Continuance of certain legislation relating to audit and pecuniary interest*

11.—(1) For the purposes of Article 10 all transferred provisions relating to the accounts and the audit of accounts of existing local authorities and of committees thereof shall continue to have effect, notwithstanding their repeal by the Act.

(2) For the purpose of dealing with proceedings or matters arising from the pecuniary interests of members and officers of existing local authorities and of committees thereof as a result of matters which took place or occurred prior to 1st October 1973 but were not revealed or discovered until on or after that date the Local Government (Members and Officers) Act (Northern Ireland) 1964(g) shall continue to have effect notwithstanding its repeal by the Act.

*Supplementary provisions as to transfers*

12.—(1) Any transfer of assets or liabilities for which provision is made in this Order shall have effect by virtue of this Order, and any such assets or liabilities shall vest in or attach to a government department, council or public body without the necessity of any conveyance, deed of transfer, assignment, notice or other instrument.



(2) Any property transferred by virtue of this Order which, immediately before the date of transfer, was either standing in the books of any corporation or company or was entered in any register kept in pursuance of any transferred provision in the name of an existing local authority, shall, upon the request of a government department, council or public body made at any time after the date of transfer, be transferred in such books by such corporation or company or, as the case may be, by the person having charge of such register, into the name of such department, council or body.

*Determination of questions arising under the Order*

13. Any question arising under this Order, and any matter which is required by any provision of this Order to be agreed between any bodies, shall, in default of agreement being arrived at within such period as the Ministry may direct—

- (a) if the Ministry is not a party to the question or matter, be referred to and determined by the Ministry;
- (b) if the Ministry is a party to the question or matter, be referred to and determined by the Ministry of Finance.

Sealed with the Official Seal of the Ministry of Development for Northern Ireland this 29th day of June 1973.

(L.S.)

*J. Marsh,*  
Assistant Secretary.

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EXPLANATORY NOTE

*(This note is not part of the Order, but is intended to indicate its general purport.)*

This Order makes provision for the transfer of certain assets and liabilities of and for the audit and the closure of the accounts of existing local authorities (with certain exceptions) and for other transitional matters.