

1973. No. 303

[C]

LOCAL GOVERNMENT**Transfer of Officers**

ORDER, DATED 3RD SEPTEMBER 1973, MADE BY THE MINISTRY OF DEVELOPMENT UNDER SECTIONS 134, 135 AND 136 OF THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972.

The Ministry of Development on behalf of the Secretary of State and in exercise of its powers under sections 134, 135 and 136 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 and commencement

1. This Order may be cited as the Local Government (Transfer of Officers) Order (Northern Ireland) 1973 and shall come into operation on the 1st October 1973.

Interpretation

2. In this Order—

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

“existing local authority” has the same meaning as in section 131(4) of the Act;

“district council” means the council of a local government district within the meaning of section 1 of the Act;

“area board” means an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1972(b) or a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(c);

“the Ministry concerned” has the same meaning as in section 148(1) of the Act.

Application

3.—(1) Any provision in this Order for the transfer of officers of any existing local authority shall apply to any officer who on 30th September 1973 is in the employment of such authority, but in the case of a person not in the whole-time employment of the authority the transfer effected by such provision in its application to the authority is limited to employment with the authority.

(2) Notwithstanding the provisions of Article 4, an officer who has elected to be subject to the provisions of Article 3 of the Superannuation (Northern Ireland) Order 1973(d) shall not be transferred under this Order.

(3) Except as provided in Article 6, this Order shall not apply to any officer for whom provision for his transfer is made under any other transferred provision.

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

(b) S.I. 1972, No. 1263 (N.I. 12).

(c) S.I. 1972, No. 1265 (N.I. 14).

(d) S.I. 1973, No. 962 (N.I. 13).

(4) This Order shall not apply to any person as regards employment which, otherwise than by virtue of the abolition of authorities effected by the Act, is to be terminated on 30th September 1973.

Transfer of officers

4.—(1) Any officer of an existing local authority employed wholly or mainly in the discharge of functions transferred to or conferred on a Government Department by a transfer of functions order made under section 133(1) of the Act or by any other transferred provision shall be transferred to the Government Department concerned on 1st October 1973.

(2) Subject to paragraphs (3) and (4) any officer of an existing local authority employed wholly or mainly in the discharge of functions transferred to or conferred on a district council by a transfer of functions order made under section 133(1) of the Act or by section 133(2) of the Act, or by any other transferred provision, shall be transferred on 1st October 1973 to the council for the district in which he is wholly or mainly employed.

(3) Any professional or technical officer of an existing local authority employed wholly or mainly for the purposes of public health control shall be transferred on 1st October 1973—

- (a) in the case of officers employed by Belfast Corporation to the Belfast District Council; and
- (b) in every other case to the employer council referred to in Article 4 of the Local Government (Employment of Public Health Inspectors) Order (Northern Ireland) 1973(e) in relation to the district in which he is wholly or mainly employed.

(4) Any professional or technical officer of an existing local authority employed wholly or mainly for the purposes of building control shall be transferred on 1st October 1973—

- (a) in the case of officers employed by Belfast Corporation to the Belfast District Council; and
- (b) in every other case to the employer council referred to in Article 4 of the Local Government (Employment of Building Control Staff) Order (Northern Ireland) 1973(f) in relation to the district in which he is wholly or mainly employed.

(5) Subject to paragraph (6) any other officer of an existing local authority named in column (1) of the Schedule who is employed for the purposes of various functions, but is not employed wholly or mainly in the discharge of functions transferred to or conferred on a particular Government Department, district council, area board or public body, shall be transferred on 1st October 1973 to the new employer specified in column (2) of the Schedule.

(6) Where any officer of an existing local authority has entered into an agreement with a Government Department, district council, area board or public body to enter into the employment of such Department, council, board or body, either prior to or on 1st October 1973, and if by such agreement such officer would not be transferred in accordance with paragraphs (1) to (5) then, notwithstanding the provisions of paragraphs (1) to (5), the Ministry of Development may make a Scheme covering his transfer to such Department, council, board or body as may be specified in the Scheme.

(e) S.R. & O. (N.I.) 1973, No. 168.

(f) S.R. & O. (N.I.) 1973, No. 167.

(7) Every existing local authority shall ensure that each officer is informed as to—

- (a) the treatment of the officer under paragraphs (1) to (5);
- (b) the authority to whom the officer would be transferred on such treatment; and
- (c) the department to which any unresolved question should be reported in accordance with Article 7.

Protection of officers transferred

5.—(1) Every officer transferred by or under Article 4 to the employment of any Government Department, district council, area board or public body shall, so long as he continues in that employment by virtue of the transfer and until he is served with a statement in writing of his new terms and conditions of employment, enjoy terms and conditions of employment (including conditions as to superannuation benefits) not less favourable than those he enjoyed immediately before 17th November 1971.

(2) Subject to the following provisions of this Article the said new terms and conditions shall be such that—

- (a) so long as he is engaged in duties reasonably comparable to those in which he was engaged immediately before the date of transfer the scale of his remuneration, and
 - (b) the other terms and conditions of his employment,
- are taken as a whole not less favourable than those he enjoyed immediately before 17th November 1971.

(3) Where the terms and conditions of a person transferred by or under Article 4 (including conditions as to superannuation benefits) were, before 17th November 1971 but not earlier than 1st October 1971, varied in any respect and the Ministry concerned considers that, in all the circumstances, the variation was not justified, that Ministry may direct that the variation shall be wholly or partly omitted from the terms and conditions on which he becomes employed by the Government Department, district council, area board or public body, and paragraph (2) shall have effect in relation to him as if so much of the variation as is specified in the direction had not been included in the terms and conditions of his employment immediately before 17th November 1971.

(4) Where the terms and conditions of a person transferred by or under Article 4 (including conditions as to superannuation benefits) have been on or after 17th November 1971 and before the date of his transfer varied in any respect, the Ministry concerned may direct that the variation may be wholly or partly included among the terms and conditions on which he becomes employed by the Government Department, district council, area board or public body, and paragraph (2) shall have effect in relation to him as if so much of the variation as is specified in the direction had been included in the terms and conditions of his employment immediately before 17th November 1971.

(5) A written statement given in accordance with section 4 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(g) shall not be regarded as a statement of new terms and conditions of employment for the purposes of this Article unless the statement so indicates.

(6) In paragraphs (1) to (4) "terms and conditions of employment" includes any restriction under a statutory provision on the termination of the employment of any person.

(7) Where an officer transferred by or under Article 4 entered the employment of an existing local authority on or after 17th November 1971, but before 1st October 1973, paragraphs (1) and (2) shall have effect in relation to him as if for any reference to terms and conditions of employment enjoyed by him immediately before 17th November 1971 there were substituted a reference to terms and conditions of employment enjoyed by him immediately after he entered that employment.

(8) The statement of new terms and conditions of employment shall contain information as to how any unresolved question shall be determined and the department to which any unresolved question should be reported in accordance with Article 7.

Secondary transfers

6.—(1) Any officer transferred by or under Article 4 of this Order or a Scheme made under Article 72 of the Education and Libraries (Northern Ireland) Order 1972 or Article 77 of the Health and Personal Social Services (Northern Ireland) Order 1972 (in this Order referred to as "the Schemes") may before 31st December 1973 (or if no statement in writing of new terms and conditions of employment under Article 5 or under any similar provision in the Schemes is then in force, before the service of such a statement) be transferred by his new employer, with the agreement of any other Government Department, district council, area board, or public body, and of the officer, to the employment of that other Department, council, board or body.

(2) Any transfer of an officer under paragraph (1) to the employment of an Education and Library Board shall be subject to the approval of the Ministry of Education.

(3) Where any officer is transferred under paragraph (1), such transfer shall be deemed to be a transfer under Article 4 or any corresponding provision of the Schemes.

Determination of questions

7.—(1) Any question in relation to an officer which cannot be resolved between him and the employing authority concerned as to—

- (a) whether he is or was employed wholly or mainly in the discharge of a function; or
- (b) whether he is or was employed wholly or mainly in relation to a district; or
- (c) whether under Article 5(2) he is engaged on duties which are reasonably comparable; or
- (d) whether under Article 5(2) his other terms and conditions of service taken as a whole are less favourable;

may be reported by the officer to the Ministry of Health and Social Services and if it is not otherwise disposed of, that Ministry may refer it for determination by a Tribunal appointed for the purpose.

(2) Where any question is reported—

- (a) under paragraphs (1)(a) and (1)(b) such report shall be made within 28 days following the date on which the officer is informed of his treatment under Article 4; and

- (b) under paragraphs (1)(c) and (1)(d) such report shall be made within 28 days of the date on which the officer is served with his new terms and conditions of service.

Superannuation

8.—(1) Any officer transferred by or under Articles 4 or 6 from an existing local authority who under regulations or a scheme made under the Local Government (Superannuation) Act (Northern Ireland) 1950(h) had opted to retain rights corresponding to those enjoyed prior to 1st April 1950 in lieu of the rights which he would otherwise have enjoyed under such regulations or schemes shall—

- (a) continue to retain the former rights after transfer; or
 (b) if he transfers to a new employer, whose employees are not subject to regulations made under the Local Government (Superannuation) Act (Northern Ireland) 1950, and if he so decides before 31st December 1973, enter the superannuation scheme of the new employer.

(2) For the purposes of the Local Government (Superannuation) Regulations (Northern Ireland) 1962(i) a person transferred by or under Articles 4 or 6 shall not be regarded as having ceased to be employed by an employing authority.

Sealed with the Official Seal of the Ministry of Development for Northern Ireland this 3rd day of September 1973.

(L.S.)

J. A. D. Higgins,
 Assistant Secretary.

SCHEDULE

Article 4(5)

(1) Existing local authority	(2) New Employer
The council of a county borough, borough, urban or rural district The council of the County of Fermanagh The Londonderry Development Commission	The council of the District in which he is wholly or mainly employed
The council of a county, other than Fermanagh The Antrim and Ballymena Develop- ment Commission The Craigavon Development Commission	The Ministry of Development

(h) 1950. c. 10.

(i) S.R. & O. (N.I.) 1962, No. 210.

EXPLANATORY NOTE

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

This Order makes general provision consequential on the Local Government Act (Northern Ireland) 1972 for the transfer and protection of interests of persons holding places, situations and employments under existing local authorities and development commissions.

1973. No. 304

This Order has been exempted from printing by the Statutory Rules Act (Northern Ireland) 1958. A summary is given in the list of Statutory Rules and Orders of a Local Character under the heading TRUNK ROADS.