
STATUTORY INSTRUMENTS

1995 No. 1340 (S.100)

LOCAL GOVERNMENT, SCOTLAND

The Local Authorities (Staff Transfer) (Scotland) Order 1995

<i>Made</i>	- - - -	<i>22nd May 1995</i>
<i>Laid before Parliament</i>		<i>23rd May 1995</i>
<i>Coming</i>	- - - -	<i>15th June 1995</i>

The Secretary of State, in exercise of the powers conferred by him by section 8(1), (2) and (5) of the Local Government etc. (Scotland) Act 1994⁽¹⁾ and those provisions as read with section 97(1) and as applied by section 137(1) of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Authorities (Staff Transfer) (Scotland) Order 1995 and shall come into force on 15th June 1995.

(2) In this Order, unless the context otherwise requires—

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994;

“employee” means any person who is employed under a contract of employment and, for the avoidance of doubt, includes such an employee notwithstanding that the employee is on leave, secondment to another employer or otherwise temporarily absent from his place of employment;

“existing authority” means a regional, islands or district council or the Central Scotland Water Development Board;

“fire personnel” has the meaning assigned in section 8(7) of the 1994 Act;

“new authority” means a new local authority, a joint board or a water and sewerage authority;

“new local authority” means an authority constituted under section 2 of the 1994 Act (other than the Orkney Islands Council, the Shetland Islands Council and the Western Isles Council) or a new valuation authority for any part of the area of Strathclyde Regional Council;

“new valuation authority” means the valuation authority for an area in terms of section 27(1) and (12) of the 1994 Act;

“police personnel” has the meaning assigned in section 8(7) of the 1994 Act;

“relevant employee” means an employee who is transferred to a new authority by virtue of a scheme;

“relevant new authority” means the new authority to whom an employee is transferred by virtue of a scheme;

“scheme” means a scheme prepared by an existing authority in accordance with the provisions of this Order, for the purposes of section 8(3) or 97(2) of the 1994 Act;

“staff commission” means the Local Government Staff Commission (Scotland) established under the 1994 Act⁽²⁾;

“water and sewerage authority” means an authority established under section 62 of the 1994 Act.

Effect of schemes

2.—(1) Subject to paragraph (2) below and without prejudice to the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981⁽³⁾, a scheme when made, insofar as not varied or revoked by any later scheme, shall have effect in accordance with its terms to transfer employees to whom the scheme applies to new authorities with effect from 1st April 1996.

- (2) A scheme made under paragraph (1) above shall not have effect to transfer any person—
- (a) whose contract of employment provides for the termination of that contract on 31st March 1996;
 - (b) who is dismissed with effect from 31st March 1996 (unless that person is later reinstated with effect from that date); or
 - (c) who terminates his contract of employment as at 31st March 1996.

Content of schemes

3.—(1) Subject to article 2(2) above and to the duty imposed by article 6 below and except in respect of employees of an existing authority specified in paragraph (2) below, a scheme may make provision for the transfer to a new authority of all or any of the persons who immediately before 1st April 1996 are or will be employees of an existing authority.

- (2) The employees specified in this paragraph are—
- (a) those employees transferred to a new valuation authority in accordance with article 11 below;
 - (b) those employees transferred to the Scottish Children’s Reporters Administration in accordance with article 12 below;
 - (c) those fire and police personnel transferred in accordance with article 13 below;
 - (d) those employees transferred to a lead authority for the purposes of superannuation functions in accordance with article 14 below;
 - (e) members of the fire brigades maintained in Scotland for the purposes of the Fire Services Acts 1947 to 1959 by fire authorities or, where administration schemes have been made, joint committees for combined areas; and
 - (f) those employees transferred to the Strathclyde Passenger Transport Authority by virtue of section 40(2) of the 1994 Act.

(2) See S.I. 1994/2958.

(3) S.I. 1981/1794, amended by S.I. 1987/442 and by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 33.

4. A scheme shall designate as the relevant new authorities for the purposes of the scheme the new authorities (or any one or more of them) which will, on and after 1st April 1996, exercise functions in relation to the area of the existing authority preparing the scheme.

5. A scheme shall contain such information as is sufficient to identify (whether by name or by reference to membership of a group or class of employee) the employees of an existing authority to whom the scheme applies and the new authority to whom each is transferred.

Principles to be followed in preparing and consenting to a scheme

6. It shall be the duty of each existing authority and each relevant new authority in taking any steps in relation to the preparation or approval of a scheme, to take into account—

- (a) the likely staffing needs (so far as identified and communicated to the existing authority) of those new authorities in relation to the services to be provided by them on and after 1st April 1996;
- (b) the interests of the employees of that existing authority and the need to act fairly as amongst them; and
- (c) the need for the scheme, when considered with any other scheme, to be fair as between the employees of that existing authority and employees of any other existing authority whose employees may be transferred to the same relevant new authority under that other scheme.

Preparation of schemes

7.—(1) Any scheme prepared by an existing authority shall, subject to paragraph (2) below, provide for the transfer of employees of that authority in accordance with the following criteria:—

- (a) any person included in the scheme who is employed wholly or mainly for the purposes of the functions referred to in section 91(1)(b) of the 1994 Act shall be transferred to the water and sewerage authority responsible after 31st March 1996 for the function for the purposes of which the person is wholly or mainly employed;
- (b) any other person included in the scheme shall be transferred to the new local authority responsible after 31st March 1996 for the function for the purposes of which the person is wholly or mainly employed.

(2) Where it appears to an existing authority that—

- (a) neither of the criteria specified in paragraph (1) above is adequate to determine the new authority to which such an employee should transfer; or
- (b) taking into consideration the matters referred to in article 6 above, it is not appropriate to transfer such an employee by reference to the criteria specified in sub-paragraph (b) of that paragraph,

that existing authority may, in preparing a scheme, apply other criteria in respect of such an employee.

(3) Other criteria applied in accordance with paragraph (2) above shall be specified in any scheme to which they apply.

8.—(1) In the course of preparing a scheme, an existing authority shall consult bodies representative of employees of that authority on the proposals being made or under consideration by that authority and shall take account of any representations made to them pursuant thereto.

(2) Before granting consent to a scheme, a new authority shall consult bodies representative of employees of the existing authority which prepared the scheme on the proposals contained in that scheme and shall take account of any representations made to them pursuant thereto.

Procedure in relation to consent

9.—(1) Where the consent of any relevant new authority has not been granted to a scheme by 15th November 1995 and without prejudice to the power of that authority thereafter to grant such consent, the existing authority proposing that scheme shall within 7 days send a copy to the Secretary of State, accompanied by a statement of the areas of disagreement and may request the Secretary of State to consent to that scheme in terms of section 8(4) of the 1994 Act.

(2) Where a scheme is sent to the Secretary of State under paragraph (1) above, the existing authority shall give written notice to the relevant new authorities and to bodies representative of officers of that existing authority that they have done so (providing them with a copy of the statement sent to the Secretary of State under that paragraph) and those new authorities and bodies may, within 14 days of receipt of such notice, make representations in writing to the Secretary of State and shall send a copy of such representations to that existing authority and those other new authorities and bodies.

Notice in relation to schemes

10.—(1) Where an existing authority have made a scheme, they shall—

- (a) forward a copy of the scheme to the staff commission;
- (b) give to the bodies referred to in article 8 above written notice that the scheme has been made and make available to them for inspection a copy of the scheme;
- (c) in accordance with paragraph (2) below give to every employee of that authority to whom the scheme applies written notice of the effect of the scheme on him; and
- (d) allow every such employee to inspect, on request, a copy of the scheme free of charge.

(2) Every notice under paragraph (1)(c) above shall be given no later than whichever is the earlier of the following:—

- (a) the day 28 days after the scheme is made;
- (b) 31st March 1996.

Particular cases

11. Every person employed immediately before 1st April 1996—

- (a) by a joint committee established under the Valuation (Combination of Councils) (Scotland) (No.2) Order 1974(4); or
- (b) by a regional council (other than Strathclyde Regional Council)—
 - (i) as assessor or depute assessor; or
 - (ii) wholly or mainly for the purposes of functions of the council or assessor under the Valuation Acts,

shall by virtue of this Order transfer as at that date to the employment of the new valuation authority for the area of the joint committee or regional council, as the case may be.

12. Each employee of a regional or islands council employed immediately before 1st April 1996 wholly or mainly for the purposes of section 36(1) and (6) of the Social Work (Scotland) Act 1968(5) shall by virtue of this Order transfer as at that date to the employment of the Scottish Children's Reporter Administration.

(4) S.I. 1974/1565.

(5) 1968 c. 49. Section 36(1) was repealed in part by the Local Government (Scotland) Act 1973 (c. 65), Schedule 27, paragraph 185(a) and Schedule 29.

13.—(1) All fire and police personnel employed immediately before 1st April 1996 by an existing local authority for the purposes of a fire brigade or a police force shall by virtue of this Order transfer as at that date to the employment of the new authority having responsibility as respects that brigade or force.

(2) In paragraph (1) above, “existing local authority” has the meaning assigned in section 8(7) of the 1994 Act.

14. Each employee of a regional council employed immediately before 1st April 1996 wholly or mainly for the purposes of the administration of the superannuation fund maintained by that council shall by virtue of this Order transfer as at that date to the employment of the new authority responsible after 31st March 1996 for the administration of that fund in terms of regulations made under section 7 of the Superannuation Act 1972(6).

15. Articles 11 to 14 above shall not have effect to transfer any person—

- (a) whose contract of employment provides for the termination of that contract on 31st March 1996;
- (b) who is dismissed with effect from 31st March 1996 (unless that person is later reinstated with effect from that date); or
- (c) who terminates his contract of employment as at 31st March 1996.

Secondary transfers

16.—(1) This article applies to an employee of an existing authority if—

- (a) he is transferred to the employment of an authority (“the first authority”) by or under this Order (other than under this article);
- (b) he subsequently transfers before 1st April 1997 to the employment of another authority (“the second authority”) and that transfer is with the agreement of that authority, the first authority and the employee; and
- (c) the second authority is an authority specified in paragraph (5) below.

(2) The contract of employment between an employee to whom this article applies and the first authority shall not be terminated by the transfer referred to in paragraph (1)(b) above but shall have effect from the date of that transfer (“the transfer date”) as if originally made between the employee and the second authority.

(3) Without prejudice to paragraph (2) above—

- (a) all the first authority’s rights, powers, duties and liabilities under or in connection with a contract to which that paragraph applies shall by virtue of this article be transferred on the transfer date to the second authority; and
- (b) anything done before the transfer date by or in relation to the first authority in respect of that contract or the employee (including anything deemed to have been so done by section 9(3)(b) of the 1994 Act) shall be deemed after that date to have been done by or in relation to the second authority.

(4) Paragraphs (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his terms and conditions of employment, but no such right shall arise by reason only of the change of employer under the transfer referred to in paragraph (1)(b) above.

(5) The authorities specified in this paragraph are—

- (a) any authority constituted under section 2 of the 1994 Act;

(6) 1972 c. 11.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) any joint board;
- (c) any water and sewerage authority; and
- (d) the Scottish Children's Reporter Administration.

St Andrew's House,
Edinburgh
22nd May 1995

George Kynoch
Parliamentary Under Secretary of State, Scottish
Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the transfer of staff to new unitary local authorities and other new authorities, in consequence of the provisions of the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”).

Article 2 provides that without prejudice to the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981, any scheme made shall have effect to transfer those employees to whom the scheme applies.

Except for employees in respect of whom specific provision is made either in the 1994 Act or in terms of the Order, article 3 provides that a transfer scheme may make provision for the transfer of all or any persons employed by an existing authority.

Articles 4 and 5 make ancillary provision for the designation of the relevant new authorities and in respect of information necessary to identify the persons to whom a scheme applies and the authority to which a person is to be transferred.

Article 6 sets out principles to be followed by authorities in relation to the preparation of and giving consent to a scheme.

Article 7 makes provision as to the criteria to be used by authorities in preparing a scheme.

Article 8 provides for consultation with bodies representative of employees.

Article 9 provides for the procedure to be followed in applying to the Secretary of State for his consent to a scheme in accordance with section 8(4) of the 1994 Act.

Article 10 provides for giving notice of the making of a scheme to the staff commission and to employees and their representatives.

Articles 11 to 15 make specific provision for the transfer of valuation staff, children’s reporters staff, civilian fire and police personnel and staff employed in relation to a regional council’s superannuation functions.

Article 16 makes provision in relation to persons who, having been transferred to the employment of a new authority, are then transferred before 1st April 1997 to another new authority.