



THE SCOTTISH OFFICE  
Environment Department

AGENDA ITEM No. 9

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To the attached addresses

23 May 1995

Dear Sir/Madam

**THE LOCAL AUTHORITIES (STAFF TRANSFER) (SCOTLAND) ORDER 1995**

You will wish to be aware that, following consideration of the comments received in response to the recent consultation exercise, Mr George Kynoch today laid the Local Authorities (Staff Transfer) (Scotland) Order 1995 before the House of Commons. It will come into force on 15 June 1995. I enclose a copy of the Minister's statement, the Order itself and an accompanying commentary note. I understand that further copies of the Order will be available from HMSO shortly.

Yours faithfully

*GP* G M THOMSON

SMG00207.055



## STAFF TRANSFER ORDER - DISTRIBUTION LIST

The Chief Executives of Regional, Islands and District Councils  
The Interim Clerk/Chief Executives of "shadow" local authorities  
COSLA  
TGWU  
GMWU  
STUC  
UNISON  
Union of Construction, Allied Trades and Technicians  
Central Scotland Water Development Board  
The Local Government Staff Commission (Scotland)  
Staff Commission for Wales  
Local Government Staff Commission (England)  
CIPFA  
Scottish Local Government Information Unit  
Managerial and Professional Officers  
SOLACE  
Scottish Children's Reporter Administration  
ALACE  
Lothian and Borders Police Board  
Northern Joint Police Committee  
Highlands and Islands Fire Board  
Lothian and Borders Fire Board  
East of Scotland Water Authority  
West of Scotland Water Authority  
North of Scotland Water Authority  
Scottish Assessors' Association  
Other Government Departments

TUESDAY 23 MAY 1995

WRITTEN

HOUSE OF COMMONS

**Allan Stewart** (Eastwood): To ask the Secretary of State for Scotland, if he will make a statement on the framework which will be adopted for transferring staff on 1 April 1996 from existing regional and district councils to their successor bodies. (26100)

**Mr George Kynoch:**

Following discussions with the Local Government Staff Commission (Scotland) and consultations with Scottish local authorities, the Convention of Scottish Local Authorities and staff representative bodies, I have today laid before Parliament the Local Authorities (Staff Transfer)(Scotland) Order 1995 which requires outgoing local authorities and their successor bodies to draw up and agree detailed schemes for the transfer of staff to the new bodies on 1 April 1996.

This is an important step in the reorganisation process. The Order is designed to ensure a fair and ordered transfer of staff to the new councils, the water and sewerage authorities and the Scottish Children's Reporter Administration. Successful transition to the new authorities is dependent on the efforts of both councillors and staff.

THE SCOTTISH OFFICE

ANS00052.055

# THE LOCAL AUTHORITIES (STAFF TRANSFER) (SCOTLAND) ORDER 1995

## COMMENTARY NOTE

This note provides a commentary on the Local Authorities (Staff Transfer) (Scotland) Order 1995. It should be stressed however that it does not attempt to provide a definitive interpretation of the Order. The note is for guidance only.

### **Article 1 - Citation, Commencement and Interpretation**

1. This article lists the definitions used in the Order. In particular, it is made clear that employees include staff on leave, secondment to another employer and those who are absent from their place of work for any other reason. In addition, a new authority is defined, for the purpose of the Order as a new mainland council, a joint board, a water and sewerage authority or a new valuation board for part of the Strathclyde area. Accordingly, the Order permits the making of schemes transferring staff to any of these bodies. A joint board may include a fire, police or valuation joint board.

### **Article 2 - Effect of Schemes**

2. This article gives effect to any schemes drawn up under this Order to transfer employees to new authorities from 1 April 1996. For the avoidance of any doubt, it states that this is without prejudice to the Transfer of Undertakings (Protection of Employment) Regulations 1981. It also makes clear that employees whose contracts of employment terminate on 31 March 1996 cannot be transferred. (Where an employee's contract terminates before 31 March 1996, they will be excluded from the Order in any case). For the avoidance of any doubt a substantive local authority employee who has been employed under an additional temporary fixed term contract which finishes on 31 March 1996, resulting in the employee reverting back to his/her substantive contract, will be available to transfer on the terms and conditions applying to the substantive contract.

3. An employee will be excluded under article 2 if there is express provision for termination on 31 March in the individual contract (for example, a fixed term contract); the employee is dismissed or the employee chooses to terminate his/her employment. Should an employee be serving out a period of redundancy notice at the time of transfer, that person may be included in a transfer scheme, albeit they will remain employed by the new authority only until the end of the period of notice.

4. This article recognises that schemes may be altered or revoked by further schemes after they have been agreed. This may be necessary, for example, where a late reallocation of staff is agreed.

### **Articles 3-5 - Content of Schemes**

5. Article 3 enables schemes to cover all staff who are employed by existing regional and district councils immediately before 1 April 1996, with the exception of those listed in

article 3(2). Islands councils are covered also in article 3 as they are required to prepare schemes for the transfer of staff to the new water and sewerage authorities. It should be noted that this article does not define those employees who should be included in any scheme. This is a matter for existing and new authorities. Article 4 makes it clear that schemes can be made only for the transfer of staff to those authorities sharing all or part of an existing authority's area. For the avoidance of doubt, an existing authority can, under this Order, prepare more than one scheme, as long as they are consistent with each other.

6. While article 5 is not prescriptive about the content of the schemes, it will be necessary for any schemes to contain enough information in order to identify employees and the authorities to which they are to transfer. Identification of employees need not be by name. It could be by reference to posts, to a grade of employee or a place of work, for example, all teachers based in a specified school. The Staff Commission has in mind to offer advice to local authorities on the detailed content of schemes.

### **Article 6 - Principles to be Followed in Preparing and Consenting to a Scheme**

7. This article sets out the general principles which existing and new authorities should, as far as possible, adhere to in the preparation of and giving consent to schemes. This obligation is without prejudice to the general requirements of employment law and practice and the need for authorities to have regard to such things as good equal opportunities procedures. Authorities should be guided by:

7.1 staffing needs in relation to the services to be provided on and after 1 April 1996 and the need to ensure that all new authorities in the area of an existing authority are treated fairly in that regard;

7.2 the interests of staff and, in particular, equity and fairness in the treatment of staff:

7.2.1 within each existing authority, and

7.2.2 across all those existing authorities preparing schemes in relation to an individual new authority.

8. In drawing up and agreeing schemes the Order requires authorities to take each of these factors into account. In considering any requests to consent to a scheme under section 8(4) of the Local Government etc (Scotland) Act 1994, (the 1994 Act), the Secretary of State will similarly take each factor into account.

9. The general principle described in article 6(a) emphasises the importance of ensuring that the content of schemes takes account of the needs of the services to be provided on and after 1 April 1996. It is acknowledged, however, that existing authorities may not have that information available to them in the early stages of preparing schemes. Accordingly, the Staff Commission advised in circular 1/95 that authorities should begin the preparation of schemes before that information is available. By acknowledging that the requirement to take account of likely staffing needs can only be met to the extent that they are known, the Order

is consistent with the Staff Commission advice. Nothing on the Order would stop an authority from accepting all the staff offered to it, if it so wished.

10. The principle of fairness between new authorities is designed to ensure that existing authorities devise means of allocating staff amongst constituents new authorities on a fair and equitable basis. This does not, of course, mean that all authorities receive an equal number of staff. It is designed, together with the procedures set out in article 7, to ensure that methods used for the allocation of employees amongst new authorities are open and fair.

11. The principle at article 6(b) relates to the need for authorities to consider, in the preparation of schemes, the interests of their staff and the need to offer them fair and equitable treatment.

12. The principle set out in article 6(c) covers the need for authorities to ensure that in considering schemes, they consider all of the staff equitably and fairly, without reference to the authority from which they are coming. This process is likely to be assisted if existing authorities in an area liaise with one another when drawing up their schemes. The requirement for fairness between all existing authorities in an area will be particularly relevant to new councils and water and sewerage authorities which should not, for example, agree or reject schemes simply on the basis of whether the authority from which the staff are coming is a region or a district. In considering for the purposes of consenting to a scheme which staff it requires, new authorities should take account of the whole pool of staff being offered for transfer to them. Should they consider that they do not wish to accept all of those staff, it is important that any selection is made on a fair and equitable basis, with all staff, irrespective of their former employing authority, being entitled to equal consideration.

### **Articles 7-8 - Preparation of Schemes**

13. Article 7 sets out the procedure which existing councils will be required to use in allocating staff amongst their successor councils and new water and sewerage authority. This procedure is subject to the general principles set out in article 6 and the provision that existing councils and their successor councils may agree on a different method of staff allocation should the procedure set out in article 7 fail to result in an allocation of staff in keeping with article 6. In this case, criteria should be drawn up by the existing council and agreed with its successor or successors as part of the scheme for the allocation of staff. An example of where this latter provision might be used is where 2 or more new authorities agree that a particular service should be provided jointly, necessitating the transfer of staff to a new authority, other than the one which would be identified using article 7(1)(b).

14. The procedures set out in article 7 reflect those contained in the Staff Commission Circular 1/94 and 1/95. They are:

14.1 where a person is wholly or mainly employed for the purposes of water and sewerage functions (as referred to in section 91(1)(b) of the 1994 Act), the employee should be transferred to the new water and sewerage authority with responsibility for that area;

14.2 where the content of an employee's job relates wholly or mainly to the area of one new authority the employee should be transferred under the scheme to that new authority;

14.3 where the content of an employee's job is such that the procedures described in 14.1 and 14.2 are insufficient to decide the new authority to which they should be allocated, the existing authority should draw up criteria to be agreed with the appropriate new council or water and sewerage authority as part of the scheme for the allocation of its staff.

15. Where authorities draw up criteria to be included in a scheme, these must be in accordance with article 6 and should take account of advice provided on this matter by the Staff Commission.

16. Article 8 requires both existing and new authorities to consult bodies representative of the staff when preparing and consenting to schemes. It will be particularly important to do this as soon as possible if it appears that any staff are likely to be made compulsorily redundant.

#### **Article 9 - Procedure in Relation to Consent**

17. Article 9 deals with the situation where there has been a failure to agree a scheme by 15 November 1995. In this situation the existing authority is required to send a copy of the scheme, together with details of the areas of disagreement, to the Secretary of State for his consent. This should be done as soon as it becomes evident that agreement is not going to be reached but, in any case, by 22 November 1995 at the latest. The existing authority is also required to notify those successor authorities concerned with the scheme in question and the relevant staff representative bodies who will be entitled, within 14 days of being notified, to make representations in writing to the Secretary of State. Any such representations should be copied to the existing authority, other successor authorities involved and staff representative bodies.

18. Thereafter, the Secretary of State will consider the matter, as quickly as possible, seeking advice, as necessary, from the Staff Commission. In the interim period, however, article 9 makes it clear that it will remain open to the new and existing authorities to reach agreement on the disputed scheme. It will remain possible for existing and new authorities meantime to agree to a scheme, or, once the Secretary of State has given his consent to the scheme, to alter it in the same way as schemes which have been agreed between councils in the first instance can be altered.

#### **Article 10 - Notice in Relation to Schemes**

19. Article 10 places a requirement on existing authorities to provide the Staff Commission with a copy of the scheme once it has been agreed. At the same time a copy of the scheme should be made available to staff representatives and employees. In addition, an existing authority is required to notify staff within 28 days of a scheme being agreed of how they will be affected by it. Clearly there is an onus on all concerned to notify staff as soon as possible but if difficulties in gaining agreement to a scheme result in the 28 day period for

notification extending past 31 March 1996, then notification should be by 31 March 1996 at the latest.

20. The article does not deal with the procedures for passing draft schemes to successor authorities since this will be dependent on a number of factors which could vary from area to area. Some schemes may be redrafted several times making a single statutory deadline inappropriate. It is, however, important that successor authorities are notified of an existing authority's proposed scheme as quickly as possible. Equally, successor authorities should give these proposals careful consideration and, if necessary, initiate discussions with the existing council at the earliest opportunity. It is vital for both staff and the provision of services that agreement is reached as quickly as possible and that staff are aware of what is being proposed for them. The Staff Commission will be advising authorities on appropriate procedures and timescales.

21. While the Order does not make specific provision for notifying staff who are not included in any of the agreed schemes and are therefore going to be made redundant, there is clearly an onus on both existing and new authorities to identify at the earliest possible opportunity if any staff are going to be in this situation. If, as a result of discussions between existing and new councils and other successor bodies, such as the new water and sewerage authorities, it is evident that there will not be a job for a particular employee in the new structure, it is important that the person concerned is notified of this and alerted to the likely timescale as soon as possible. Authorities will also have to ensure that their procedures for dealing with such a situation fulfil the normal requirements of employment law, including the need to consult the relevant staff representative bodies.

22. The Order makes no provision for a system of employee appeals against the effect of a transfer scheme. However an appeals procedure based on the present arrangements will be set up by local authorities, and the Staff Commission is currently consulting employers' and staff representatives with a view to offering advice to councils on the matter.

#### **Articles 11-15 - Particular Cases**

23. Article 11 transfers, on 1 April 1996, all employees of existing valuation joint committees and those employed by regional councils excluding Strathclyde Region, as an assessor or depute assessor or wholly or mainly for the purpose of functions under the Valuation Acts, to the new valuation authority for the relevant area. The valuation authority will either be a new council or it will be a joint board established under section 27 of the 1994 Act. In addition, it will be open to authorities to agree the transfer of other staff to these bodies by a scheme if that seems appropriate.

24. Because Strathclyde Region will be split into a number of valuation areas, the Order makes no direct provision for the transfer of staff to the new valuation authorities in that area. Instead, it empowers the Region and the new valuation authorities to agree a scheme or schemes for the transfer of staff to those new bodies.

25. Article 12 requires that all staff of regional and islands councils who are employed wholly or mainly for the purposes of sections 36(1) and (6) of the Social Work (Scotland) Act 1968 should transfer on 1 April 1996 to the Scottish Children's Reporter Administration.

26. Article 13 makes provision for all police personnel (anyone employed by virtue of section 9 of the Police (Scotland) Act 1967) and fire personnel (anyone employed for the sole purpose of assisting a fire brigade) to transfer to the new authority with responsibility for their force or brigade. In some instances this will be a new council, for example, Fife, in others it will be a joint board. This reflects the provision in section 8(5) of the 1994 Act. In addition, it will be open to authorities to agree the transfer of other staff to these bodies by a scheme if that seems appropriate. It should be noted that control of numbers of police civilian staff under section 9 of the Police (Scotland) Act 1967 remains in place until 1 April 1996 and the consent of the Secretary of State is required for any increases. After 1 April 1996 new police authorities will require the agreement of the chief constable for the employment of staff to enable the authority to discharge its function.

27. Article 14 requires that employees of existing regional councils who are employed wholly or mainly for the purpose of administering each council superannuation fund should transfer on 1 April 1996 to the lead authority which will be specified by the Secretary of State in regulations to be made under section 7 of the Superannuation Act 1972.

#### **Article 16 - Secondary Transfers**

28. This article permits the re-transfer of an employee of a new local authority, joint board, water and sewerage authority and the Scottish Children's Reporter Administration within one year of vesting day, 1 April 1996, provided both of the new bodies and the individual concerned are agreed. Should this occur, the employee concerned would be entitled to transfer on his/her existing terms and conditions. This power may be helpful were it to become evident, for example, that an employee who was transferred from a regional council to one its successors would have been better employed by another of its successor authorities.

The Scottish Office  
May 1995

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STATUTORY INSTRUMENTS

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1995 No. 1340 (S.100)

LOCAL GOVERNMENT, SCOTLAND

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

|                               |                |
|-------------------------------|----------------|
| <i>Made</i>                   | 22 May 1995    |
| <i>Laid before Parliament</i> | 23 May 1995    |
| <i>Coming into force</i>      | 15th June 1995 |

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(a) 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—

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(a) 1994 c.39.

“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(a);

“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(b), 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.

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

(b) 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.

## 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.

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(a); or
- (b) by a regional council (other than Strathclyde Regional Council)—
  - (i) as assessor or depute assessor; or

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(a)S.I. 1974/1565.

- (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(a) shall by virtue of this Order transfer as at that date to the employment of the Scottish Children's Reporter Administration.

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(b).

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

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(a) 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.

(b) 1972 c.11.

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

Parliamentary Under Secretary of State,  
Scottish Office

St Andrew's House,  
Edinburgh  
May 1995

## 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.