

## SCHEDULES

### SCHEDULE 2

Section 6

#### ABOLITION OF MAGISTRATES' COURTS COMMITTEES: TRANSFERS

##### PART 1

##### PROPERTY TRANSFER SCHEMES

###### *Property transfer schemes: general*

- 1 (1) The Lord Chancellor may make a scheme or schemes for the transfer to him or another Minister of the Crown of any property, rights or liabilities—
- (a) to which magistrates' courts committees are entitled or subject immediately before the appointed day, or
  - (b) to which any of the persons specified in sub-paragraph (2) is entitled or subject immediately before the appointed day and which then subsist for the purposes of, or in connection with, or are otherwise attributable to, magistrates' courts.
- (2) The persons are—
- (a) an authority which is a responsible authority for the purposes of the Justices of the Peace Act 1997;
  - (b) the Receiver for the Metropolitan Police District;
  - (c) the council of an outer London borough;
  - (d) the Common Council of the City of London;
  - (e) a police authority established under section 3 of the Police Act 1996;
  - (f) a local probation board;
  - (g) any other body which acts under any enactment or instrument for public purposes and not for its own profit.
- (3) Without prejudice to the generality of paragraph (b) of sub-paragraph (1), any property, rights or liabilities are to be treated as falling within that paragraph if the Lord Chancellor issues a certificate to that effect.
- (4) In this Schedule “property transfer scheme” means a scheme under sub-paragraph (1).
- (5) In this Part of this Schedule “the appointed day” means—
- (a) in the case of the transfer of property, rights or liabilities to which magistrates' courts committees are entitled or subject, the day immediately before the abolition day;
  - (b) in any other case, the day specified in the scheme.

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- (6) On the day which is the appointed day in relation to property, rights or liabilities to which provisions of a property transfer scheme apply, the property, rights and liabilities are transferred and vest in accordance with those provisions.
- (7) In this Schedule “the abolition day” means the day appointed under section 110(1) for the coming into force of section 6(1) (abolition of magistrates' courts committees).

*Property transfer schemes and terminated contracts of employment*

- 2 A property transfer scheme may not transfer rights or liabilities under a contract of employment, except where the rights or liabilities—
  - (a) are those to which a magistrates' courts committee is entitled or subject, and
  - (b) relate to a person whose contract of employment was terminated before the appointed day.

*Property transfer schemes: supplementary*

- 3 (1) A property transfer scheme may provide for the creation of rights, or the imposition of liabilities, in relation to property transferred by the scheme.
- (2) A property transfer scheme may provide for the apportionment or division of any property, rights or liabilities.
- (3) A property transfer scheme may—
  - (a) specify property, rights or liabilities to be transferred under or in accordance with the scheme, or
  - (b) provide for property, rights or liabilities to be transferred to be determined in accordance with the scheme.
- 4 (1) A property transfer scheme has effect in relation to the property, rights and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of any of the property, rights and liabilities.
- (2) A right of pre-emption, right of reverter or other similar right is not to operate or become exercisable as a result of a transfer under a property transfer scheme.
- (3) In the case of such a transfer, any such right has effect as if the transferee were the same person in law as the transferor and as if the transfer had not taken place.
- 5 (1) Such compensation as is just is to be paid to a third party in respect of any right which would, apart from paragraph 4, have operated in favour of, or become exercisable by, him but which, in consequence of the operation of that paragraph, cannot subsequently operate in his favour or become exercisable by him.
- (2) Any compensation payable by virtue of sub-paragraph (1) is to be paid by the transferor, by the transferee or by both.
- (3) A property transfer scheme may provide for the determination of any disputes as to—
  - (a) whether, and (if so) how much, compensation is payable by virtue of sub-paragraph (1), and
  - (b) the person to whom or by whom it is to be paid.
- (4) “Third party” means a person other than the transferor or the transferee.

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- 6 Paragraphs 4 and 5 apply in relation to the creation of rights in relation to property as they apply in relation to a transfer of property; and references to the transferor and the transferee are to be read accordingly.
- 7 A certificate issued by the Lord Chancellor that any property, rights or liabilities have, or have not, been transferred under or in accordance with a property transfer scheme is conclusive evidence of the transfer, or of the fact that there has not been a transfer.

#### *Stamp duty*

- 8 (1) Stamp duty is not chargeable in respect of a transfer or grant effected under or in accordance with a property transfer scheme.
- (2) No instrument made or executed for the purposes of such a transfer or grant is to be treated as duly stamped unless—
- (a) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped, or
  - (b) it is stamped with the duty to which it would be liable, apart from this paragraph.

#### *Supplementary provisions in property transfer scheme*

- 9 A property transfer scheme may make such supplemental, consequential or transitional provision for the purposes of, or in connection with, a transfer made by the scheme as the Lord Chancellor considers appropriate.

## **PART 2**

### **STAFF TRANSFERS**

#### *Interpretation*

- 10 In this Part of this Schedule—
- (a) “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 ([S.I. 1981/1794](#)),
  - (b) “the appointed day” means the day immediately before the abolition day,
  - (c) references to a responsible authority are to an authority which is a responsible authority under the Justices of the Peace Act 1997,
  - (d) references to a responsible authority’s relevant functions are to its functions under that Act, and
  - (e) references to a transferred employee are to an employee transferred to the Lord Chancellor’s employment by virtue of paragraph 11 or 12.

#### *Application of TUPE*

- 11 For the purposes of TUPE—
- (a) the functions of each magistrates' courts committee are to be treated as transferred on the appointed day from the committee to the Lord Chancellor, and

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- (b) each such transfer is to be treated as the transfer of an undertaking.
- 12 (1) For the purposes of TUPE—
- (a) the relevant functions of each responsible authority are to be treated as transferred on the appointed day from the authority to the Lord Chancellor,
  - (b) each such transfer is to be treated as the transfer of an undertaking, and
  - (c) each person falling within sub-paragraph (2) (but no other person) is to be treated as employed in the undertaking immediately before the appointed day.
- (2) A person falls within this sub-paragraph if—
- (a) immediately before the appointed day he is employed by the responsible authority under a contract of employment,
  - (b) he spends a substantial part of his time on duties connected with the relevant functions of the authority, and
  - (c) the Lord Chancellor certifies that in his opinion it is expedient that the person be transferred to the Lord Chancellor's employment.
- (3) Where TUPE applies by virtue of this paragraph, it applies as if regulation 5(4B) were omitted.
- 13 A reference in any enactment to a person appointed under section 2(1) includes a transferred employee.

*Restrictions on employment of aliens not to apply to transferred employees*

- 14 Nothing in—
- (a) section 3 of the Act of Settlement,
  - (b) section 6 of the Aliens Restriction (Amendment) Act 1919, or
  - (c) any rules prescribing requirements as to nationality which must be satisfied in the case of persons employed in a civil capacity under the Crown,
- applies to the employment of a transferred employee by the Lord Chancellor following his transfer by virtue of paragraph 11 or 12.

*Compensation for responsible authorities*

- 15 The Lord Chancellor may, to the extent he thinks fit, compensate a responsible authority in respect of costs incurred by the authority as a result of this Act in respect of a person who—
- (a) immediately before the appointed day is employed by the authority under a contract of employment, and
  - (b) spends part of his time on duties connected with the relevant functions of the authority,
- but who is not transferred to the Lord Chancellor's employment by virtue of paragraph 12.

### PART 3

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Continuing provision of court-houses, accommodation etc.*

- 16 (1) The Lord Chancellor may by regulations provide that any petty sessional court-house or other accommodation specified in the regulations which immediately before the abolition day was being provided by—
- (a) the council of an outer London borough, or
  - (b) the Common Council of the City of London,
- pursuant to regulations made under paragraph 35 of Schedule 14 to the Access to Justice Act 1999 shall on and after that day be provided by that council to the Lord Chancellor for the performance of his functions under section 3.
- (2) Regulations under sub-paragraph (1) may—
- (a) prescribe terms and conditions, including conditions as to payment, on which any court-house or other accommodation is to be provided, and
  - (b) prohibit a council providing a court-house or other accommodation under sub-paragraph (1) from altering or extending it without the consent of the Lord Chancellor.

##### *Assistance*

- 17 It is the duty of each magistrates' courts committee, and each person falling within paragraph 1(2) to provide the Lord Chancellor with such information or assistance as he may reasonably require for the purposes of, or in connection with—
- (a) the exercise of any powers exercisable by him in relation to a property transfer scheme, or
  - (b) Part 2 of this Schedule.