
STATUTORY INSTRUMENTS

1994 No. 3262

The Police and Magistrates' Courts Act 1994 (Commencement No. 5 and Transitional Provisions) Order 1994

Citation and commencement.

1.—(1) This Order may be cited as the Police and Magistrates' Courts Act 1994 (Commencement No.5 and Transitional Provisions) Order 1994.

(2) This article and articles 2 and 3 of this Order shall come into force on 31st December 1994 and the remainder of this Order shall come into force on 15th January 1995.

Interpretation

2. In this Order—

“the 1964 Act” means the Police Act 1964(1);

“the 1994 Act” means the Police and Magistrates' Courts Act 1994;

“joint police authority” means —

(a) a metropolitan county police authority constituted in accordance with the provisions of Part IV of the Local Government Act 1985(2), or

(b) the Northumbria Police Authority;

“new police authority” means the police authority to be established under section 3 of the 1964 Act (as substituted by section 2 of the 1994 Act) for a police area and “old police authority” means the police authority for that area which it is to supersede;

“nominated person” means a person nominated and appointed under article 6(4) or, as the case may be, article 8(5) below; and

“property” includes money and all other property, real or personal.

Commencement of provisions on 31st December 1994

3.—(1) Subject to paragraph (2) below, the following provisions of the 1994 Act, namely —

(a) paragraphs 1 and 8 of Schedule 5 (amendment of provisions relating to report of chief constables);

(b) section 44 so far as it relates to those paragraphs;

(c) the entries in Part I of Schedule 9 (repeals, police) in respect of section 12 of the 1964 Act; and

(d) section 93 so far as it relates to those entries,

shall come into force on 31st December 1994.

(2) As respects the first report which is required to be made under section 12(1) of the 1964 Act or submitted to the Secretary of State under section 30(2) of that Act after the amendments made

(1) 1964 c. 48.

(2) 1985 c. 51.

by paragraphs 1(2)(a) and 8(3) of Schedule 5 to the 1994 Act have come into force, those sections shall have effect as if, for any reference to the financial year, there was substituted a reference to the period of fifteen months ending with 31st March 1995.

Commencement of provisions on 1st April 1995

4.—(1) Subject to paragraphs (2) to (8) and article 5 below, the provisions of the 1994 Act which are listed in the Schedule to this Order shall come into force for all purposes (or, as the case may be, all remaining purposes) on 1st April 1995.

(2) Section 4C of the 1964 Act, as inserted by section 4 of the 1994 Act, shall not apply in respect of the financial year ending on 31st March 1994.

(3) Any person who on 1st April 1995 would hold the rank of deputy chief constable in a police force maintained under section 2 of the 1964 Act (as substituted by section 2 of the 1994 Act) but for the commencement by this Order of the provisions of the 1994 Act abolishing that rank shall hold the rank of assistant chief constable in that force.

(4) For the purposes of any financial year ending before 1st April 1995, section 8 of the 1964 Act shall continue to have effect in the form in which it has effect immediately before the commencement by this article of section 8 of the 1994 Act.

(5) The provision inserted by section 21 of the 1994 Act shall not apply to a report received by the Secretary of State under section 38(2) of the 1964 Act before 1st April 1995.

(6) For the purposes of the issue of a basic credit approval under section 53 of the Local Government and Housing Act 1989⁽³⁾ to a new police authority in respect of the financial year beginning on 1st April 1995, section 30 of the 1994 Act (which amends the definition of “local authority” for purposes including that of the said section 53) shall come into force on 15th March 1995.

(7) Without prejudice to the generality of articles 7 and 8 below, any duty on an old police authority in relation to any person exercising functions of a public nature (such as the Audit Commission under Part I of the Local Government Act 1992⁽⁴⁾) which has not been discharged on 31st March 1995 shall, so far as is practicable, be discharged by the new police authority.

(8) For the purposes of a direction under section 1 of the Local Government Act 1992, paragraph 25 of Schedule 4 to the 1994 Act (which amends section 12 of the Local Government Finance Act 1982⁽⁵⁾ and thereby brings the new police authorities within section 1(7)(a) of the Local Government Act 1992) shall come into force on 15th January 1995 and (notwithstanding section 2(4) of the Local Government Act 1992) any such direction may be given to a new police authority in respect of the financial year beginning on 1st April 1995 not later than 31st January 1995.

Transitional provision about budget requirement

5.—(1) For the purposes of section 54(1) of the Local Government Finance Act 1992⁽⁶⁾ and the financial year beginning on 1st April 1995 only —

- (a) a new police authority shall be regarded as the same authority as the police authority which it supersedes (the relevant old police authority), and
- (b) the budget requirement of the relevant old police authority shall be regarded as being the budget requirement of the new police authority.

(2) In paragraph (1) above, “budget requirement of the relevant old police authority” means —

(3) 1989 c. 42.
(4) 1992 c. 19.
(5) 1982 c. 32.
(6) 1992 c. 14.

- (a) where the relevant old police authority is a joint police authority, the budget requirement of that authority;
- (b) where the relevant old police authority is a committee of the council of a county constituted in accordance with section 2 of the 1964 Act, the portion of the budget requirement of that county attributable to the functions of that committee;
- (c) where the relevant old police authority is for a combined area constituted in accordance with section 3 of the 1964 Act, the sum of the portions of the budget requirements of the constituent councils of that authority attributable to the functions of that authority.

Transfer of civilian employees

6.—(1) Every person who —

- (a) immediately before 1st April 1995 is employed by an old police authority (whether or not that old police authority is a body corporate separate from a county council), and
- (b) but for the provisions of this Order, would continue to be so employed,

shall, on that date, transfer to, and become an employee of, the new police authority.

(2) Every person who —

- (a) during the period of two months ending with 31st March 1995 is employed by the council of a county in an undertaking that is provided wholly for police purposes, and
- (b) but for the provisions of this Order, would continue to be so employed,

shall, on the relevant date, transfer to, and become an employee of, the new police authority whose police area as listed in Schedule 1A to the 1964 Act⁽⁷⁾ consists of or includes the county of the council by which the person is so employed.

(3) Every person who—

- (a) immediately before 1st April 1995 is employed for police purposes by the council of a county, and
- (b) but for the provisions of this Order, would continue to be so employed,

shall, on that date, transfer to, and become an employee of, the new police authority whose police area as listed in Schedule 1A to the 1964 Act consists of or includes the county of the council by which the person is so employed where, prior to that date, the council of the county and the new police authority agree to the transfer.

(4) Where there is a dispute between the council of a county and the relevant new police authority as to whether a person falls within paragraph

(2) above —

- (a) the council and the authority may nominate and appoint a person to determine the dispute in accordance with article 10(3) below, or
- (b) if the council and the authority are unable to agree that the dispute should be so determined or on the person to be nominated, either of them may require the Secretary of State to nominate and appoint such a person.

(5) The contract of employment between a person who is transferred by virtue of this article or a determination under article 10(3) below shall be deemed to have effect from the relevant date as if originally made between him and the new police authority.

(6) In this article “the relevant date” means —

- (a) 1st April 1995, or

(7) Schedule 1A was inserted by Schedule 1 to the 1994 Act.

- (b) where there is a dispute between the council of a county and the relevant new police authority as to whether any person falls within paragraph (2) above and the nominated person determines under article 10(3) below that the person does so fall, the date of his determination.

Transfer of property etc. from joint police authorities and most combined police authorities

7.—(1) This article applies to an old police authority which is —

- (a) a joint police authority, or
- (b) the police authority for a combined area constituted in accordance with section 3 of the 1964 Act other than section 3(4).

(2) This article shall have effect to transfer on 1st April 1995 from an old police authority to which this article applies to the new police authority and to vest in the latter all the property, rights and liabilities (including rights and liabilities relating to property and in connection with any pending legal proceedings) of the former. Agreements to transfer property etc.

from certain local authorities

8.—(1) As soon as practicable after 15th January 1995, every relevant authority and every appropriate new police authority shall use their best endeavours —

- (a) to determine which transfers (if any) of property, rights and liabilities from a relevant authority to the appropriate new police authority it is fair and reasonable to make, and
- (b) to make an agreement in writing specifying which of those transfers are to take effect under article 9 below on 1st April 1995 and which of those transfers are to take effect on such later date as may be so specified.

(2) An agreement under this article may —

- (a) indicate that there are matters specified therein about which agreement is still to be reached, or
- (b) provide for a variation in the transfer of property, rights or liabilities in circumstances specified in the agreement (where, for example, there is a change of circumstances as a result of the auditing of a relevant authority's accounts).

(3) Subject to paragraph (4) below as soon as practicable after 1st April 1995 every relevant authority and every appropriate new police authority shall use their best endeavours —

- (a) to determine whether it is fair and reasonable to make any transfer of property, rights and liabilities (other than a loan attributable to the relevant authority's functions as a police authority) from a relevant authority to the appropriate new police authority in addition to any transfer in an agreement under paragraph (1) above, and
- (b) to make an agreement in writing specifying any such transfers and the date or dates on which they are to take effect under article 9 below.

(4) A relevant authority and an appropriate new police authority may agree to delay an agreement under paragraph (3) above pending the outcome of some future event; but paragraph (3) above shall have effect after that event has taken place as if, for the reference therein to 1st April 1995, there were substituted a reference to the event.

(5) Subject to paragraph (6) below, where it has become apparent that a relevant authority and an appropriate new police authority are unable to agree about whether a transfer of property, rights and liabilities should be made —

- (a) those authorities may nominate and appoint a person to determine the dispute in accordance with article 10(1) below, or

- (b) if those authorities are unable to agree either that the dispute should be so determined or on the person to be nominated, either authority may require the Secretary of State to nominate and appoint such a person.
- (6) Paragraph (5) above shall not apply where —
 - (a) the relevant authority falls within sub-paragraph (a) of the definition “relevant authority” in paragraph (8) below, and
 - (b) the transfer about which that authority and the appropriate new police authority are unable to agree concerns any loan attributable to the relevant authority’s police authority functions.
- (7) In this article and article 10 below, references to the transfer of property, rights and liabilities mean —
 - (a) the transfer from a relevant authority to an appropriate new police authority or apportionment between them of any property and rights and liabilities relating to it;
 - (b) such transfer or apportionment of any other rights and liabilities (including rights and liabilities in connection with any pending legal proceedings); and
 - (c) the creation of any rights and liabilities between them.
- (8) In this article and articles 9 and 10 below “appropriate new police authority” means the new police authority whose police area as listed in Schedule 1A to the 1964 Act⁽⁸⁾ includes the county of which the relevant authority is the council; and
“relevant authority” means —
 - (a) the council of a county where the old police authority is a committee of that council constituted in accordance with section 2 or 3(4) of the 1964 Act;
 - (b) the council of any constituent county where the old police authority is a combined police authority constituted in accordance with section 3 of the 1964 Act (other than section 3(4)). Transfer of property etc.

from certain local authorities

- 9.—**(1) This article shall have effect to —
- (a) transfer from a relevant authority to the appropriate new police authority and to vest in the latter —
 - (i) such property;
 - (ii) such rights and liabilities relating thereto, and
 - (iii) such other rights and liabilities (including rights and liabilities in connection with any pending legal proceedings),as may be specified in a written agreement between them under article 8 above or in an instrument giving effect to the decision of a nominated person under article 10(2) below;
 - (b) apportion between them
 - (i) such property;
 - (ii) such rights and liabilities relating thereto, and
 - (iii) such other rights and liabilities (including rights and liabilities in connection with pending legal proceedings),as may be so specified;
 - (c) create between them such rights and liabilities as may be so specified;

⁽⁸⁾ Schedule 1A was inserted by Schedule 1 to the 1994 Act.

on 1st April 1995 or such other later date, or dates, as may be so specified.

(2) In this article “appropriate new police authority” and “relevant authority” have the same meanings as in article 8 above.

Determinations by nominated person

10.—(1) Where a nominated person has been appointed under article 8(5) above, he shall (as soon as practicable after his appointment) proceed to determine in accordance with paragraphs (4) to (9) below a dispute as to which (if any) transfers of property, rights and liabilities from a relevant authority to an appropriate new police authority it is fair and reasonable to make.

(2) Where a nominated person appointed under article 8(5) above determines that a transfer shall be made, he shall draw up an instrument to give effect to his determination; and any such instrument shall specify the date or dates on which it is to take effect.

(3) Where a nominated person has been appointed under article 6(4) above to determine a dispute as to whether a person falls within article 6(2), he shall (as soon as practicable after his appointment) proceed to determine in accordance with paragraphs (4) to (9) below whether the person who is the subject of the dispute falls within article 6(2) and set out his determination in writing.

(4) A nominated person shall not determine a dispute unless both parties to it have been afforded an opportunity to make written or, if either so requests, oral representations and any such representations have been considered.

(5) Any oral representations shall be made at a hearing on a date appointed by the nominated person after consultation with the parties to a dispute.

(6) The parties shall have the right to appear by counsel, a solicitor or by the clerk or other officer of either of the parties.

(7) The nominated person shall be paid such remuneration and reimbursed for such expenses as —

- (a) the parties to the dispute may determine before he is appointed; or
- (b) in the absence of such agreement, may be determined by the Secretary of State.

(8) The nominated person shall make such order as to which of the parties to the dispute shall pay the costs incurred under this article, including the costs incurred under paragraphs (6) and (7) above, as may appear to him to be fair and reasonable.

(9) Any order under paragraph (8) above may apportion the costs between the parties.

(10) In this article “appropriate new police authority”, “relevant authority” and “transfer of property, rights and liabilities” have the same meaning as in article 8 above.

Liability of certain new police authorities in respect of loan debts

11.—(1) In this article —

- (a) “the 1989 Act” means the Local Government and Housing Act 1989⁽⁹⁾;
- (b) any expression used in this article which is defined for the purposes of Part IV of the 1989 Act (revenue accounts and capital finance of local authorities) shall have the same meaning as it has for those purposes;
- (c) “relevant council” means the council of a county where the old police authority is a committee of that council constituted in accordance with section 2 or 3(4) of the 1964 Act; and
- (d) “relevant new police authority” means such an authority replacing a relevant council as police authority.

(9) 1989 c. 42.

(2) Where a relevant council and a relevant new police authority are unable to agree before 1st April 1995 under article 8 above to the transfer of all loans attributable to the council's police authority functions, a relevant new police authority shall be deemed to have borrowed from the relevant council an amount (in this article referred to as "the principal") equal to the police amount for that council for 31st March 1995 less the amount of any loan that the relevant council and the relevant new police authority have agreed before 1st April 1995 under article 8 above to transfer.

(3) For the purposes of this article —

(a) the police amount for a relevant council for 31st March in any of the years 1991 to 1995 shall be determined —

(i) by adding to the police amount for that council for 31st March in the immediately preceding year the amount of the police increase for that council for the financial year following it; and

(ii) by subtracting from the resulting amount the amount of the police decrease for that council for that financial year; and

(b) the police amount for a relevant council for 31st March 1990 shall be an amount equal to the portion of that council's initial credit ceiling attributable to the police authority functions of that council.

(4) For the purposes of paragraph (3) above, the amount of the police increase for any relevant council for any financial year is the total of the amounts of all the supplementary credit approvals issued —

(a) to the council in respect of its police authority functions by the Secretary of State for the Home Department under Part IV of the 1989 Act;

(b) in the case of —

(i) a financial year ending on 31st March in the years 1991 to 1994, for a period beginning in that financial year;

(ii) the financial year ending on 31st March 1995, on or before 31st December 1994 and for a period beginning in that financial year,

less an amount equal to the total of the amounts by which the credit ceiling of the council was increased in that year as respects credit arrangements entered into in that year by the council in respect of such functions.

(5) For the purposes of paragraph (3) above, the amount of the police decrease for any relevant council for any financial year is the total of the following amounts —

(a) four per cent. of the police amount for the council for 31st March in the financial year immediately preceding the financial year in question;

(b) the total of any amounts set aside by the council as provision to meet credit liabilities from the reserved part of any capital receipts in respect of a disposal or repayment attributable to police authority functions or, in relation to consideration to which section 61(4) of the 1989 Act applies, from the amount which would be the reserved part of a notional capital receipt in respect of such a disposal or repayment;

(c) the total of any amounts set aside by the council from its revenue account or from the usable part of its capital receipts as provision to meet credit liabilities in respect of its police excluded credit arrangements; and

(d) the total of any amounts shown in the accounts of the council as being set aside from its revenue account as provision for credit liabilities in respect of its police authority functions in excess of the amounts referred to in sub-paragraph (a) above, and the amount of any usable part of the council's capital receipts shown in its accounts as being applied as such provision in respect of its police authority functions.

(6) In paragraph (5) above “police excluded credit arrangements” means any credit arrangements excluded by regulations made under paragraph 11(2) of Schedule 3 to the 1989 Act entered into in respect of land, goods or services held or used for police authority functions.

(7) Subject to paragraph (9) below, a relevant new police authority which by virtue of this article is deemed to have borrowed from a relevant council shall discharge its liability to that council by —

- (a) making annual repayment of the principal to that council in 25 equal instalments over a period of 25 years, with the first such repayment falling due on 1st October 1995, and
- (b) in each financial year in which any part of the principal remains outstanding, paying that council interest calculated in accordance with paragraph (8) below.

(8) The interest to be paid by a relevant new police authority on its deemed borrowing shall be paid on 31st March in each year beginning with 1996 and shall be calculated in respect of each financial year by applying the formula of X divided by Y and multiplied by Z where

X is determined by dividing by 12 the total of the sums which equal the amount of principal which remains unpaid on the first day of each month of the financial year in question;

Y is determined by dividing by 12 the total of the sums which equal the amount of the outstanding borrowing of the relevant council on the first day of each month of the financial year in question;

Z is the amount of interest payable by the relevant council for the financial year in question in respect of its outstanding borrowing in that year.

(9) A relevant new police authority may repay the whole or any part of the principal outstanding in respect of its deemed borrowing at any time before it is repaid in full after giving to the relevant council not less than thirty days' notice of its intention to do so.

Home Office

14th December 1994

David Maclean
Minister of State