

## 1974 No.499

## LOCAL GOVERNMENT, ENGLAND AND WALES

**The Magistrates' Courts (Transfer of Staff) Order 1974**

<i>Made</i> - - -	18th March 1974
<i>Laid before Parliament</i>	26th March 1974
<i>Coming into Operation</i>	
<i>Articles 4 and 5(3)</i>	28th March 1974
<i>Remainder—</i> -	1st April 1974

In exercise of the powers conferred on me by sections 254 and 255 of the Local Government Act 1972(a), I hereby make the following Order:—

1.—(1) This Order may be cited as the Magistrates' Courts (Transfer of Staff) Order 1974 and (with the exception of Articles 4 and 5(3) which shall come into operation on 28th March 1974) shall come into operation on 1st April 1974.

(2) This Order does not extend to Greater London.

2.—(1) In this Order, the expression—

“the Act” means the Local Government Act 1972;

“appropriate Joint Negotiating Committee” means, in relation to a justices' clerk, the Joint Negotiating Committee for Justices' Clerks and, in relation to any other officer, the Joint Negotiating Committee for Justices' Clerks' Assistants;

“existing” in relation to a magistrates' courts committee or a petty sessions area means existing on the date of making of this Order;

“new magistrates' courts committee” means a magistrates' courts committee established in consequence of the Act;

“new petty sessions area” means a petty sessions area formed in consequence of the Act;

“officer” in relation to a magistrates' courts committee includes the holder of any office or employment under that committee.

(2) For the purposes of this Order a person holding an office of justices' clerk shall be treated as being employed by the magistrates' courts committee having power to make appointments to that office.

(3) The Interpretation Act 1889(b) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(4) In this Order any reference to a numbered Article shall be construed as a reference to the Article bearing that number in this Order.

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(a) 1972 c. 70.

(b) 1889 c. 63.

(5) In this Order any reference to an enactment is a reference to that enactment as amended by any subsequent enactment.

3.—(1) Any officer employed on 31st March 1974 by an existing magistrates' courts committee as a justices' clerk or to assist a justices' clerk for one or more existing petty sessions areas wholly comprised in the area of authority of a new magistrates' courts committee shall be transferred on 1st April 1974 to the employment of the new magistrates' courts committee.

(2) Any officer employed (otherwise than as a justices' clerk or in assisting a justices' clerk) on 31st March 1974 by an existing magistrates' courts committee whose area of authority is wholly comprised in the area of authority of a new magistrates' courts committee shall be transferred on 1st April 1974 to the employment of the new magistrates' courts committee.

(3) Any officer employed on 31st March 1974 by an existing magistrates' courts committee (not being an officer transferred under paragraph (1) or (2) above) shall be transferred on 1st April 1974 to the employment of such new magistrates' courts committee as may be determined in accordance with Article 4.

4.—(1) For the purposes of Article 3(3), the new magistrates' courts committee to whose employment an officer is to be transferred shall be determined in accordance with the following provisions of this Article.

(2) In the case of an officer appointed to be a justices' clerk or to assist a justices' clerk for an existing petty sessions area, the matter shall be determined by agreement between the new magistrates' courts committees having authority in the existing petty sessions area or areas or any part thereof.

(3) In the case of any other officer employed by an existing magistrates' courts committee, the matter shall be determined by agreement between the new magistrates' courts committees having authority in any part of the area of authority of the existing magistrates' courts committee.

(4) If in any particular case—

(a) the magistrates' courts committees concerned are unable to reach agreement for the purposes of paragraph (2) or (3) above; or

(b) the person to be transferred does not accept the determination made by the magistrates' courts committees concerned for those purposes,

the matter shall be determined by the Secretary of State after consultation with the appropriate Joint Negotiating Committee.

(5) In making any determination under this Article, the magistrates' courts committees concerned or the Secretary of State shall take into account any representations made by the officer concerned.

5.—(1) In relation to an officer employed by an existing magistrates' courts committee on a part-time basis, the transfer of employment effected by this Order is limited to the extent of the employment with that committee.

(2) Nothing in Article 3 applies to any officer as regards any employment which, otherwise than in consequence of the Local Government Act 1972, is to be terminated on 31st March 1974.

(3) Every existing magistrates' courts committee shall ensure that any officer employed by them is informed as to the provisions of this Order which apply to him.

6.—(1) Every officer transferred by or under Article 3 to the employment of a new magistrates' courts committee shall, so long as he continues in that employment by virtue of the transfer and until he is served with a statement in writing referring to this Order and specifying new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those which he enjoyed immediately before 1st April 1974.

(2) 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 salary or remuneration, and

(b) the other terms and conditions of his employment,

are not less favourable than those which he enjoyed immediately before 1st April 1974.

(3) Any question whether duties are reasonably comparable as aforesaid shall be determined by the Secretary of State after consultation with the appropriate Joint Negotiating Committee.

(4) A written statement given in accordance with section 4(1) of the Contracts of Employment Act 1972(a) 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.

(5) A notice to terminate any contract relating to employment in respect of which a person is transferred by or under Article 3 shall, unless he otherwise agrees, not come into operation earlier than the expiration of 3 months from the service upon him of the notice.

7. Any arrangements under which any officer transferred by or under Article 3 underwent training which have not been discharged before 1st April 1974 shall continue to apply with the substitution, for the existing magistrates' courts committee in whose employment he was prior to the commencement of the training, of the new magistrates' courts committee to whose employment he is transferred as aforesaid.

8. Any officer transferred by or under Article 3 to the employment of a new magistrates' courts committee may, before 1st January 1975 or the expiration of 2 months from the service upon him of the statement of new terms and conditions of employment under Article 6, whichever is the later, be transferred by the said committee, with the agreement of any other new magistrates' courts committee, and of the officer, to the employment of that committee, and Article 6 shall thereupon apply to him as it applies to officers transferred by or under Article 3.

9. Any additional travelling expenses, and any removal and incidental expenses, reasonably incurred by any officer transferred by or under Article 3 shall be reimbursed by the new magistrates' courts committee to whose employment he is transferred.

*Roy Jenkins,*  
One of Her Majesty's Principal  
Secretaries of State.

Home Office,  
Whitehall.  
18th March 1974.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order makes general provision consequential on the Local Government Act 1972 for the transfer, and protection of interests, of staff employed in connection with magistrates' courts outside Greater London.

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