



# Prosecution of Offences Act 1985

## 1985 CHAPTER 23

### PART I **E+W**

#### THE CROWN PROSECUTION SERVICE

##### *Constitution and functions of Service*

### 1 **The Crown Prosecution Service.** **E+W**

- (1) There shall be a prosecuting service for England and Wales (to be known as the “Crown Prosecution Service”) consisting of—
  - (a) the Director of Public Prosecutions, who shall be head of the Service;
  - (b) the Chief Crown Prosecutors, designated under subsection (4) below, each of whom shall be the member of the Service responsible to the Director for supervising the operation of the Service in his area; and
  - (c) the other staff appointed by the Director under this section.
- (2) The Director shall appoint such staff for the Service as, with the approval of the Treasury as to numbers, remuneration and other terms and conditions of service, he considers necessary for the discharge of his functions.
- (3) The Director may designate any member of the Service [<sup>F1</sup>who has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990)] for the purposes of this subsection, and any person so designated shall be known as a Crown Prosecutor.
- (4) The Director shall divide England and Wales into areas and, for each of those areas, designate a Crown Prosecutor for the purposes of this subsection and any person so designated shall be known as a Chief Crown Prosecutor.
- (5) The Director may, from time to time, vary the division of England and Wales made for the purposes of subsection (4) above.
- (6) Without prejudice to any functions which may have been assigned to him in his capacity as a member of the Service, every Crown Prosecutor shall have all the powers

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of the Director as to the institution and conduct of proceedings but shall exercise those powers under the direction of the Director.

- (7) Where any enactment (whenever passed)—
- (a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another; or
  - (b) requires any step to be taken by or in relation to the Director;
- any consent given by or, as the case may be, taken by or in relation to, a Crown Prosecutor shall be treated, for the purposes of that enactment, as given by or, as the case may be, taken by or in relation to the Director.

#### Textual Amendments

**F1** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), Sch. 10 para. 61(1)

#### Modifications etc. (not altering text)

**C1** S. 1(7) excluded (4.4.2005) by Criminal Justice Act 2003 (c. 44), ss. 92(1), 336; S.I. 2005/950, art. 2(1), Sch. 1 para. 5 (subject to art. 2(2), Sch. 2) (as amended by 2005/2122, art. 2 and 2007/391, art. 2)

## 2 The Director of Public Prosecutions **E+W**

- (1) The Director of Public Prosecutions shall be appointed by the Attorney General.
- (2) The Director must be a [<sup>F2</sup>person who has a ten year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990].
- (3) There shall be paid to the Director such remuneration as the Attorney General may, with the approval of the Treasury, determine.

#### Textual Amendments

**F2** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), Sch. 10 para. 60

## 3 Functions of the Director. **E+W**

- (1) The Director shall discharge his functions under this or any other enactment under the superintendence of the Attorney General.
- (2) It shall be the duty of the Director [<sup>F3</sup>, subject to any provisions contained in the Criminal Justice Act 1987] —
  - (a) to take over the conduct of all criminal proceedings, other than specified proceedings, instituted on behalf of a police force (whether by a member of that force or by any other person);
  - (b) to institute and have the conduct of criminal proceedings in any case where it appears to him that—
    - (i) the importance or difficulty of the case makes it appropriate that proceedings should be instituted by him; or
    - (ii) it is otherwise appropriate for proceedings to be instituted by him;
  - (c) to take over the conduct of all binding over proceedings instituted on behalf of a police force (whether by a member of that force or by any other person);

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- (d) to take over the conduct of all proceedings begun by summons issued under section 3 of the <sup>M1</sup>Obscene Publications Act 1959 (forfeiture of obscene articles);
  - (e) to give, to such extent as he considers appropriate, advice to police forces on all matters relating to criminal offences;
  - (f) to appear for the prosecution, when directed by the court to do so, on any appeal under—
    - (i) section 1 of the <sup>M2</sup>Administration of Justice Act 1960 (appeal from the High Court in criminal cases);
    - (ii) Part I or Part II of the <sup>M3</sup>Criminal Appeal Act 1968 (appeals from the Crown Court to the criminal division of the Court of Appeal and thence to the House of Lords); or
    - (iii) section 108 of the <sup>M4</sup>Magistrates’ Courts Act 1980 (right of appeal to Crown Court) as it applies, by virtue of subsection (5) of section 12 of the <sup>M5</sup>Contempt of Court Act 1981, to orders made under section 12 (contempt of magistrates’ courts); and
  - (g) to discharge such other functions as may from time to time be assigned to him by the Attorney General in pursuance of this paragraph.
- (3) In this section—
- “the court ” means—
- (a) in the case of an appeal to or from the criminal division of the Court of Appeal, that division;
  - (b) in the case of an appeal from a Divisional Court of the Queen’s Bench Division, the Divisional Court; and
  - (c) in the case of an appeal against an order of a magistrates’ court, the Crown Court;
- “police force ” means any police force maintained by a police authority under the <sup>M6</sup>Police Act 1964 and any other body of constables for the time being specified by order made by the Secretary of State for the purposes of this section; and
- “specified proceedings ” means proceedings which fall within any category for the time being specified by order made by the Attorney General for the purposes of this section.
- (4) The power to make orders under subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F3** Words inserted by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\), s. 15, Sch. 2 para. 13](#)

#### Modifications etc. (not altering text)

**C2** [S. 3\(2\)](#) excluded by [Criminal Justice Act 1987 \(c. 38, SIF 39:1\), s. 5\(1\)](#)

**C3** [S. 3\(2\)\(a\)–\(d\)](#) restricted by [S.I. 1986/1029, art. 5](#)

#### Marginal Citations

**M1** [1959 c. 66.](#)

**M2** [1960 c. 65.](#)

**M3** [1968 c. 19.](#)

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- M4** 1980 c. 43.
- M5** 1981 c. 49.
- M6** 1964 c. 48.

**4 Crown Prosecutors. E+W**

- [<sup>F4</sup>(1) Crown Prosecutors shall continue to have the same rights of audience, in any court, as they had immediately before the coming into force of the Courts and Legal Services Act 1990.
- (2) Subsection (1) is not to be taken as preventing those rights being varied or added to in accordance with the provisions of that Act.
- (3) The Lord Chancellor may at any time direct, as respects one or more specified places where the Crown Court sits, that Crown Prosecutors, or such category of Crown Prosecutors as may be specified in the direction, may have rights of audience in the Crown Court.
- (3A) Any such direction may be limited to apply only in relation to proceedings of a description specified in the direction.
- (3B) In considering whether to exercise his powers under this section the Lord Chancellor shall have regard, in particular, to the need to secure the availability of persons with rights of audience in the court or proceedings in question.
- (3C) Any direction under this section may be revoked by direction of the Lord Chancellor.
- (3D) Any direction under this section may be subject to such conditions and restrictions as appear to the Lord Chancellor to be necessary or expedient.
- (3E) Any exercise by the Lord Chancellor of his powers to give a direction under this section shall be with the concurrence of the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor.]
- (4) In section 88 of the <sup>M7</sup>Solicitors Act 1974 (which, amongst other things, provides that solicitors in public departments are not required to hold practising certificates) the following subsection shall be inserted after subsection (1)—
- “(1A) The exemption from the requirement to hold a practising certificate conferred by subsection (1) above shall not apply to solicitors who are Crown Prosecutors.”
- (5) ..... <sup>F5</sup>
- (6) In Schedule 2 to the Act of 1974 (the compensation fund), in paragraph 2, for the words “sub-paragraph (2)” there shall be substituted the words “sub-paragraphs (2) and (2A)” and after sub-paragraph (2) there shall be inserted the following sub-paragraph—
- “(2A) Sub-paragraph (1) above shall not apply to any solicitor who is a Crown Prosecutor.”

**Textual Amendments**

**F4** S. 4(1)–(3E) substituted for s. 4(1)–(3) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 51**

**F5** S. 4(5) repealed by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(7), **Sch. 20**

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#### Marginal Citations

M7 1974 c. 47.

### 5 Conduct of prosecutions on behalf of the Service. **E+W**

- (1) The Director may at any time appoint a person who is not a Crown Prosecutor but [<sup>F6</sup>who has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990)] to institute or take over the conduct of such criminal proceedings as the Director may assign to him.
- (2) Any person conducting proceedings assigned to him under this section shall have all the powers of a Crown Prosecutor but shall exercise those powers subject to any instructions given to him by a Crown Prosecutor.

#### Textual Amendments

**F6** Words substituted by virtue of [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), [Sch. 10 para. 61\(2\)](#) [Editorial Note: The amending legislation provides that the new words in s. 5(1) should be substituted for the words from "who is" to "authority". The words "who is" occur three times in s. 5(1) as enacted. It is thought that the context requires the substitution to begin with the second occurrence of those words.]

### 6 Prosecutions instituted and conducted otherwise than by the Service. **E+W**

- (1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.
- (2) Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.

### 7 Delivery of recognizances etc. to Director. **E+W**

- (1) Where the Director or any Crown Prosecutor gives notice to any justice of the peace that he has instituted, or is conducting, any criminal proceedings, the justice shall—
  - (a) at the prescribed time and in the prescribed manner; or
  - (b) in a particular case, at the time and in the manner directed by the Attorney General;send him every recognizance, information, certificate, deposition, document and thing connected with those proceedings which the justice is required by law to deliver to the appropriate officer of the Crown Court.
- (2) The Attorney General may make regulations for the purpose of supplementing this section; and in subsection (1) above "prescribed" means prescribed by the regulations.
- (3) The Director or, as the case may be, Crown Prosecutor shall—
  - (a) subject to the regulations, cause anything which is sent to him under subsection (1) above to be delivered to the appropriate officer of the Crown Court; and
  - (b) be under the same obligation (on the same payment) to deliver to an applicant copies of anything so sent as that officer.

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- (4) It shall be the duty of every justices' clerk to send to the Director, in accordance with the regulations, a copy of the information and of any depositions and other documents relating to any case in which—
- (a) a prosecution for an offence before the magistrates' court to which he is clerk is withdrawn or is not proceeded with within a reasonable time;
  - (b) the Director does not have the conduct of the proceedings; and
  - (c) there is some ground for suspecting that there is no satisfactory reason for the withdrawal or failure to proceed.

[<sup>F7</sup>7A **Bail applications.** **E+W**

- (1) The Director may designate, for the purposes of this section, members of the staff of the Crown Prosecution Service who are not Crown Prosecutors.
- (2) A person so designated shall have all the powers of a Crown Prosecutor in relation to any application for, or relating to, bail in criminal proceedings, but shall exercise those powers subject to instructions given to him by the Director.
- (3) Any such instructions may be given so as to apply generally.
- (4) In this section “bail in criminal proceedings ” has the same meaning as it has in the Bail Act <sup>M8</sup>1976 by virtue of the definition in section 1 of that Act.]

**Textual Amendments**

**F7** S. 7A inserted ( prosp. ) by Courts and Legal Services Act 1990 (c. 41, SIF 37), ss. 114, 124(3)(4)

**Marginal Citations**

**M8** 1976 c.63(39:1).

*Reports*

**8 Reports to Director by chief officers of police.** **E+W**

- (1) The Attorney General may make regulations requiring the chief officer of any police force to which the regulations are expressed to apply to give to the Director information with respect to every offence of a kind prescribed by the regulations which is alleged to have been committed in his area and in respect of which it appears to him that there is a prima facie case for proceedings.
- (2) The regulations may also require every such chief officer to give to the Director such information as the Director may require with respect to such cases or classes of case as he may from time to time specify.

**9 Reports by Director to Attorney General.** **E+W**

- (1) As soon as practicable after 4th April in any year the Director shall make to the Attorney General a report on the discharge of his functions during the year ending with that date.

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- (2) The Attorney General shall lay before Parliament a copy of every report received by him under subsection (1) above and shall cause every such report to be published.
- (3) The Director shall, at the request of the Attorney General, report to him on such matters as the Attorney General may specify.

### *Guidelines*

## **10 Guidelines for Crown Prosecutors. E+W**

- (1) The Director shall issue a Code for Crown Prosecutors giving guidance on general principles to be applied by them—
  - (a) in determining, in any case—
    - (i) whether proceedings for an offence should be instituted or, where proceedings have been instituted, whether they should be discontinued; or
    - (ii) what charges should be preferred; and
  - (b) in considering, in any case, representations to be made by them to any magistrates' court about the mode of trial suitable for that case.
- (2) The Director may from time to time make alterations in the Code.
- (3) The provisions of the Code shall be set out in the Director's report under section 9 of this Act for the year in which the Code is issued; and any alteration in the Code shall be set out in his report under that section for the year in which the alteration is made.

#### **Modifications etc. (not altering text)**

- C4 S. 10(2)(3) modified (prosp.) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 37, 94, [Sch. 2 para. 4](#)  
C5 S. 10(2)(3) modified (prosp.) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 37, 94, [Sch. 2 para. 4](#)

### *Transfer of staff, etc.*

## **11 Transfer of staff. E+W**

- (1) The Attorney General may, with the approval of the Treasury, by regulations make such provision as he considers appropriate in relation to the transfer to the staff of the Director of such persons employed by any authority wholly or mainly in connection with the discharge of prosecution functions as may be specified in the regulations.
- (2) The regulations may, in particular, make provision—
  - (a) as to the method by which any staff or group of staff are transferred;
  - (b) as to the terms and conditions of the transfer; and
  - (c) for the termination of the employment with the authorities concerned of persons to whom the regulations apply (whether or not they are transferred in accordance with the regulations) and as to the consequences of that termination;and (without prejudice to section 29(2) of this Act) may make different provision with respect to staff employed in different areas.

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- (3) The regulations may include provision for the determination of questions arising under them and may make such modifications in the application of any enactment as the Attorney General considers appropriate in connection with any provision of the regulations of a kind mentioned in subsection (2)(c) above.
- (4) Staff transferred in accordance with the regulations shall be exempt from any requirement to the effect that before a person is appointed to Her Majesty's Home Civil Service a certificate of qualification must be issued in respect of him by the Civil Service Commissioners.
- (5) For the purposes of Schedule 13 to the <sup>M9</sup>Employment Protection (Consolidation) Act 1978 (as it applies for the purposes of computing an employee's period and continuity of employment for the purposes of that Act and any other enactment) in its application to a person who is transferred to the staff of the Director as a result of this Part—
  - (a) the period of his employment in the employment from which he is transferred shall count as a period of Crown employment; and
  - (b) the change of employment shall not break the continuity of his employment.
- (6) Where a person ceases to be a member of the staff of an authority—
  - (a) on becoming a member of the staff of the Service in consequence of any regulations made under this section; or
  - (b) having unreasonably refused to be transferred in pursuance of the regulations;
 he shall not, on ceasing to be a member of the staff of the authority, be treated for the purposes of any regulations or scheme made under the <sup>M10</sup>Superannuation Act 1972 as having ceased to hold his employment by reason of redundancy.
- (7) In this section "authority" means any police authority or other authority or body mentioned in section 17(6)(c) or (d) of this Act; and "police authority", in relation to the metropolitan police district, means the Commissioner of Police of the Metropolis.

#### Marginal Citations

**M9** 1978 c. 44.

**M10** 1972 c. 11.

## 12 Staff commission. **E+W**

- (1) The Attorney General, after consulting such bodies representing authorities or persons employed by authorities as appear to him to be concerned, shall not later than three months after the passing of this Act, establish a staff commission for the purpose of—
  - (a) considering the general effect of this Part on staff employed by any authority wholly or mainly in connection with the discharge of prosecution functions; and
  - (b) advising the Attorney General and Director on the arrangements necessary to safeguard the interests of such staff.
- (2) The functions of the staff commission shall not extend to the giving of advice with respect to recruitment to, or the terms and conditions of service in, Her Majesty's Home Civil Service.
- (3) The Attorney General may give directions to the staff commission as to their procedure; and it shall be the duty of the commission to comply with the directions.



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- (4) Any expenses incurred by the staff commission under this section shall be paid by the Director.
- (5) The Attorney General may give to any authority employing staff in connection with the discharge of prosecution functions, directions with respect to—
  - (a) the furnishing of information to the staff commission;
  - (b) the implementation of any advice given by the commission; or
  - (c) any other matters connected with the employment of such staff;and it shall be the duty of the authority to comply with the directions.
- (6) In this section “authority ” means any police authority or other authority or body mentioned in section 17(6)(c) or (d) of this Act; and “police authority ”, in relation to the metropolitan police district, means the Commissioner of Police of the Metropolis.

### 13 Premises formerly used in connection with Director’s new functions. E+W

- (1) This section shall have effect—
  - (a) as respects any premises which were, up to the transfer date, being used to any extent in connection with the discharge of prosecution functions; and
  - (b) as respects the local authority or police authority who were providing the premises;and shall have effect in particular to ensure that prosecutions, including proceedings in cases in the course of hearing on the transfer date, can be conducted without any interruption or interference in the transition to the arrangements for prosecuting offences established by this Part.
- (2) On and after the transfer date it shall be the duty of the authority, to the extent to which the premises were being used in connection with the discharge of prosecution functions—
  - (a) to make the premises available for the Service; or
  - (b) where it is not reasonably practicable to make them so available, to make available for the Service premises which, in the opinion of the Director, are a suitable alternative.
- (3) It shall also be the duty of the authority to—
  - (a) make available for the Service—
    - (i) all fittings, furniture, equipment and other chattels previously made available for use in connection with the discharge of prosecution functions; or
    - (ii) in a case falling within subsection (2)(b) above, those items or items which, in the opinion of the Director, are suitable alternatives;
  - (b) provide such services and facilities as were previously provided by them in connection with the discharge of those functions;
  - (c) heat any accommodation made available for the Service;
  - (d) clean, light and maintain the premises and maintain anything else made available for the Service under this section; and
  - (e) pay all outgoings in respect of the premises so made available.
- (4) The Secretary of State shall pay to an authority making premises available under this section—
  - (a) such amounts as is a reasonable payment for the use of the premises;

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- (b) the reasonable and necessary charges for heating, lighting and cleaning the premises; and
  - (c) a fair contribution—
    - (i) to the cost of any services or facilities provided by the authority in accordance with subsection (3)(b) above; and
    - (ii) in respect of the maintenance of the premises and of anything else made available for the Service under this section.
- (5) Where, immediately before the transfer date, the premises were occupied by the authority under a tenancy—
- (a) the obligations imposed on the authority by this section in relation to those premises shall, if they have not ended by virtue of subsection (6) or (7) below, come to an end—
    - (i) with the termination of the tenancy by the landlord in accordance with the provisions of Part II of the <sup>MII</sup>Landlord and Tenant Act 1954; or
    - (ii) where the provisions of sections 24 to 28 of that Act have been excluded in relation to the tenancy, on the date on which the term for which the tenancy is granted is due to expire by effluxion of time; and
  - (b) for the purposes of Part II of the Act of 1954, the authority shall, while complying with those obligations, be taken to be occupying the premises for the purposes of a business carried on by them.
- (6) The obligations imposed by this section on any authority in relation to any premises shall end with—
- (a) the expiry of the period of five years beginning with the transfer date; or
  - (b) where the Secretary of State is of the opinion, in relation to those premises, that no suitable alternative premises will be available to the Service within that period, the expiry of such longer period (beginning with the transfer date and not exceeding ten years) as he may specify in a written notice given to the authority concerned before the expiry of the period of four years beginning with the transfer date.
- (7) Where the Secretary of State—
- (a) is of the opinion that the obligations imposed by this section in relation to any premises can be brought to an end on a date earlier than that determined in accordance with subsection (6) above; and
  - (b) has given the authority concerned such notice as he considers reasonable of his intention to bring those obligations to an end on the date specified in the notice;
- they shall end on the date so specified.
- (8) While the obligations imposed by this section are in force in relation to any premises, members of the Service shall, to the extent necessary to enable them to carry out their functions, enjoy the same rights and privileges in relation to the premises as were previously enjoyed by those occupying the premises in connection with the discharge of prosecution functions.
- (9) In a case falling within subsection (2)(b) above, subsection (8) above shall not apply but the premises offered by the authority shall not be regarded as a suitable alternative unless the Director is satisfied that the members of the Service who will occupy the premises will have such rights and privileges in relation to them as will be necessary to enable those members to carry out their functions.

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- (10) An authority shall not be taken to have acted in breach of any covenant, condition, term or other provision by reason of their complying with any obligation imposed on them by this section.
- (11) Any question arising under this section shall, in the event of disagreement between the Secretary of State and the authority, be determined by such person as may be appointed for the purpose—
- (a) by the Secretary of State, with the agreement of the authority; or
  - (b) failing that agreement, by the Lord Chancellor.
- (12) Where the premises were provided jointly by two or more authorities, the obligations imposed by this section shall be shared among them in a way corresponding to that in which they provided the premises in connection with the discharge of prosecution functions.
- (13) In this section—
- “police authority”, in relation to the metropolitan police district, means the Receiver for the Metropolitan Police District; and
  - “transfer date”, in relation to any prosecution functions, means the date on which the staff in question were transferred to the staff of the Director.

**Modifications etc. (not altering text)**

C6 S. 13 (except subsection (6)(b)) applied with modifications by S.I. 1986/148, art. 11(7)

**Marginal Citations**

M11 1954 c. 56.

*Miscellaneous*

**14 Control of certain fees and expenses etc. paid by the Service. E+W**

- (1) The Attorney General may, with the approval of the Treasury, by regulations make such provision as he considers appropriate in relation to—
- (a) the fees of [<sup>F8</sup>counsel][<sup>F8</sup>any legal representative] briefed to appear on behalf of the Service in any criminal proceedings; and
  - (b) the costs and expenses of witnesses attending to give evidence at the instance of the Service [<sup>F9</sup>and, subject to subsection (1A) below, of any other person who in the opinion of the Service necessarily attends for the purpose of the case otherwise than to give evidence].

[<sup>F10</sup>(1A) The power conferred on the Attorney General by subsection (1)(b) above only relates to the costs and expenses of an interpreter if the interpreter is required because of the lack of English of a person attending to give evidence at the instance of the Service.]

[<sup>F10</sup>(1B) In subsection (1)(b) above “attending” means attending at the court or elsewhere.]

- (2) The regulations may, in particular—
- (a) prescribe scales or rates of fees, costs or expenses; and
  - (b) specify conditions for the payment of fees, costs or expenses.

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[<sup>F11</sup>(3) Regulations made under subsection (1)(b) above may provide that scales or rates of costs and expenses shall be determined by the Attorney General with the consent of the Treasury.]

#### Textual Amendments

- F8** In s. 14(1)(a) for the word “counsel ” there is substituted (*prosp.*) “any legal representative ” by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), ss. 124(3)(4), 125(3), [Sch. 18 para. 52\(1\)](#)
- F9** Words added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 166(a), [Sch. 8 para. 16](#)
- F10** S. 14(1A)(1B) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 166(1)(b), [Sch. 8 para. 16](#)
- F11** S. 14(3) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 166(1)(c), [Sch. 8 para. 16](#)

## 15 Interpretation of Part I. **E+W**

(1) In this Part—

“binding over proceedings ” means any proceedings instituted (whether by way of complaint under section 115 of the <sup>M12</sup>Magistrates’ Courts Act 1980 or otherwise) with a view to obtaining from a magistrates’ court an order requiring a person to enter into a recognizance to keep the peace or to be of good behaviour;

“Director ” means the Director of Public Prosecutions;

[<sup>F12</sup>“legal representative ” means an authorised advocate or authorised litigator, as defined by section 119(1) of the Courts and Legal Services Act 1990.]

“police force ” has the same meaning as in section 3 of this Act;

“prosecution functions ” means functions which by virtue of this Part become functions of the Director;

“public authority ” has the same meaning as in section 17 of this Act;

“Service ” means the Crown Prosecution Service; [<sup>F13</sup>and

“solicitor ” means a solicitor of the Supreme Court.]

(2) For the purposes of this Part, proceedings in relation to an offence are instituted—

- (a) where a justice of the peace issues a summons under section 1 of the <sup>M13</sup>Magistrates’ Courts Act 1980, when the information for the offence is laid before him;
- (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the information for the offence is laid before him;
- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed on the particulars of the charge;
- (d) where a bill of indictment is preferred under section 2 of the <sup>M14</sup>Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section, when the bill of indictment is preferred before the court;

and where the application of this subsection would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) For the purposes of this Part, references to the conduct of any proceedings include references to the proceedings being discontinued and to the taking of any steps

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(including the bringing of appeals and making of representations in respect of applications for bail) which may be taken in relation to them.

- (4) For the purposes of sections 3(2)(b), 5, 6 and 7(1) of this Act, binding over proceedings shall be taken to be criminal proceedings.
- (5) For the purposes of section 5 of this Act, proceedings begun by summons issued under section 3 of the <sup>M15</sup>Obscene Publications Act 1959 (forfeiture of obscene articles) shall be taken to be criminal proceedings.
- (6) The functions which become functions of the Director by virtue of this Part shall be treated as transferred functions for the purposes of section 95 of the <sup>M16</sup>Employment Protection (Consolidation) Act 1978 (effect of certain provisions where functions are transferred to the Crown) but shall not be so treated for the purposes of paragraph 1(2) of Schedule 3 to the <sup>M17</sup>Pensions (Increase) Act 1971 (meaning of “last employing authority”).
- (7) The person who, immediately before the commencement of section 2 of this Act, holds the office of Director shall be treated on the commencement of that section as holding that office in pursuance of an appointment made by the Attorney General.

#### Textual Amendments

**F12** Definition inserted (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 37), ss. 124(3)(4), 125(3), **Sch. 18 para. 52(2)**

**F13** Definition of “solicitor” and the word “and” immediately preceding it repealed (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 37), ss. 124(3)(4), 125(7), **Sch. 20**

#### Marginal Citations

**M12** 1980 c. 43.

**M13** 1980 c. 43.

**M14** 1933 c. 36.

**M15** 1959 c. 66.

**M16** 1978 c. 44.

**M17** 1971 c. 56.

## PART II **E+W**

### COSTS IN CRIMINAL CASES

#### *Award of costs out of central funds*

#### 16 **Defence costs.** **E+W**

- (1) Where—
  - (a) an information laid before a justice of the peace for any area, charging any person with an offence, is not proceeded with;
  - (b) a magistrates’ court inquiring into an indictable offence as examining justices determines not to commit the accused for trial;
  - (c) a magistrates’ court dealing summarily with an offence dismisses the information;

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that court or, in a case falling within paragraph (a) above, a magistrates' court for that area, may make an order in favour of the accused for a payment to be made out of central funds in respect of his costs (a "defendant's costs order").

(2) Where—

(a) any person is not tried for an offence for which he has been indicted or committed for trial; or

[<sup>F14</sup>(aa) a notice of transfer is given under section 4 of the Criminal Justice Act 1987 but a person in relation to whose case it is given is not tried on a charge to which it relates; or]

(b) any person is tried on indictment and acquitted on any count in the indictment; the Crown Court may make a defendant's costs order in favour of the accused.

(3) Where a person convicted of an offence by a magistrates' court appeals to the Crown Court under section 108 of the <sup>M18</sup>Magistrates' Courts Act 1980 (right of appeal against conviction or sentence) and, in consequence of the decision on appeal—

(a) his conviction is set aside; or

(b) a less severe punishment is awarded;

the Crown Court may make a defendant's costs order in favour of the accused.

(4) Where the Court of Appeal—

(a) allows an appeal under Part I of the <sup>M19</sup>Criminal Appeal Act 1968 against—

(i) conviction;

(ii) a verdict of not guilty by reason of insanity; or

(iii) a finding under section 4 of the <sup>M20</sup>Criminal Procedure (Insanity) Act 1964 that the appellant is under disability;

[<sup>F15</sup>(aa) directs under section 8(1B) of the Criminal Appeal Act 1968 the entry of a judgment and verdict of acquittal;]

(b) on an appeal under that Part against conviction—

(i) substitutes a verdict of guilty of another offence;

(ii) in a case where a special verdict has been found, orders a different conclusion on the effect of that verdict to be recorded; or

(iii) is of the opinion that the case falls within paragraph (a) or (b) of section 6(1) of that Act (cases where the court substitutes a finding of insanity or unfitness to plead); or

(c) on an appeal under that Part against sentence, exercises its powers under section 11(3) of that Act (powers where the court considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below);

the court may make a defendant's costs order in favour of the accused.

[<sup>F16</sup>(4A) The court may also make a defendant's costs order in favour of the accused on an appeal under section 9(11) of the Criminal Justice Act 1987 (appeals against orders or rulings at preparatory hearings).]

(5) Where—

(a) any proceedings in a criminal cause or matter are determined before a Divisional Court of the Queen's Bench Division;

(b) the House of Lords determines an appeal, or application for leave to appeal, from such a Divisional Court in a criminal cause or matter;

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- (c) the Court of Appeal determines an application for leave to appeal to the House of Lords under Part II of the <sup>M21</sup>Criminal Appeal Act 1968; or
- (d) the House of Lords determines an appeal, or application for leave to appeal, under Part II of that Act;

the court may make a defendant's costs order in favour of the accused.

- (6) A defendant's costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.
- (7) Where a court makes a defendant's costs order but is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6) above, the court shall—
  - (a) assess what amount would, in its opinion, be just and reasonable; and
  - (b) specify that amount in the order.
- (8) ..... <sup>F17</sup>
- (9) Subject to subsection (7) above, the amount to be paid out of central funds in pursuance of a defendant's costs order shall—
  - (a) be specified in the order, in any case where the court considers it appropriate for the amount to be so specified and the person in whose favour the order is made agrees the amount; and
  - (b) in any other case, be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section.
- (10) Subsection (6) above shall have effect, in relation to any case falling within subsection (1)(a) or (2)(a) above, as if for the words "in the proceedings" there were substituted the words "in or about the defence".
- (11) Where a person ordered to be retried is acquitted at his retrial, the costs which may be ordered to be paid out of central funds under this section shall include—
  - (a) any costs which, at the original trial, could have been ordered to be so paid under this section if he had been acquitted; and
  - (b) if no order was made under this section in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.

#### Textual Amendments

- F14** S. 16(2)(aa) inserted by Criminal Justice Act 1987 (c. 38, SIF 39:1), s. 15, **Sch. 2 para. 14**
- F15** S. 16(4)(aa) inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 15 para. 103**
- F16** S. 16(4A) added by Criminal Justice Act 1987 (c. 38, SIF 39:1), s. 15, **Sch. 2 para. 15**
- F17** S. 16(8) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, **Sch. 6**

#### Modifications etc. (not altering text)

- C7** S. 16 applied by S.I. 1986/1335, **art. 14(4)**

#### Marginal Citations

- M18** 1980 c. 43.
- M19** 1968 c. 19.

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**M20** 1964 c. 84.

**M21** 1968 c. 19.

## 17 Prosecution costs. **E+W**

- (1) Subject to subsection (2) below, the court may—
  - (a) in any proceedings in respect of an indictable offence; and
  - (b) in any proceedings before a Divisional Court of the Queen’s Bench Division or the House of Lords in respect of a summary offence;
 order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings.
- (2) No order under this section may be made in favour of—
  - (a) a public authority; or
  - (b) a person acting—
    - (i) on behalf of a public authority; or
    - (ii) in his capacity as an official appointed by such an authority.
- (3) Where a court makes an order under this section but is of the opinion that there are circumstances which make it inappropriate that the prosecution should recover the full amount mentioned in subsection (1) above, the court shall—
  - (a) assess what amount would, in its opinion, be just and reasonable; and
  - (b) specify that amount in the order.
- (4) Subject to subsection (3) above, the amount to be paid out of central funds in pursuance of an order under this section shall—
  - (a) be specified in the order, in any case where the court considers it appropriate for the amount to be so specified and the prosecutor agrees the amount; and
  - (b) in any other case, be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section.
- (5) Where the conduct of proceedings to which subsection (1) above applies is taken over by the Crown Prosecution Service, that subsection shall have effect as if it referred to the prosecutor who had the conduct of the proceedings before the intervention of the Service and to expenses incurred by him up to the time of intervention.
- (6) In this section “public authority ” means—
  - (a) a police force within the meaning of section 3 of this Act;
  - (b) the Crown Prosecution Service or any other government department;
  - (c) a local authority or other authority or body constituted for purposes of—
    - (i) the public service or of local government; or
    - (ii) carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or
  - (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.



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**Modifications etc. (not altering text)**

**C8** S. 17 applied by S.I. 1986/1335, art. 14(1)

*Award of costs against accused*

**18 Award of costs against accused. E+W**

- (1) Where—
- (a) any person is convicted of an offence before a magistrates' court;
  - (b) the Crown Court dismisses an appeal against such a conviction or against the sentence imposed on that conviction; or
  - (c) any person is convicted of an offence before the Crown Court;
- the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable.
- (2) Where the Court of Appeal dismisses—
- (a) an appeal or application for leave to appeal under Part I of the <sup>M22</sup>Criminal Appeal Act 1968; or
  - (b) an application by the accused for leave to appeal to the House of Lords under Part II of that Act;
- it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable [<sup>F18</sup>or
- (c) an appeal or application for leave to appeal under section 9(11) of the Criminal Justice Act 1987;]
- (3) The amount to be paid by the accused in pursuance of an order under this section shall be specified in the order.
- (4) Where any person is convicted of an offence before a magistrates' court and—
- (a) under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and
  - (b) the sum so ordered to be paid does not exceed £5;
- the court shall not order the accused to pay any costs under this section unless in the particular circumstances of the case it considers it right to do so.
- (5) Where any person under the age of seventeen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.
- (6) Costs ordered to be paid under subsection (2) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

**Textual Amendments**

**F18** S. 18(2)(c) added by Criminal Justice Act 1987 (c. 38, SIF 39:1), s. 15, Sch. 2 para. 16

**Modifications etc. (not altering text)**

**C9** S. 18 applied by S.I. 1986/1335, art. 14(1)(2)(3)

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### Marginal Citations

M22 1968 c. 19.

### Other awards

## 19 Provision for orders as to costs in other circumstances. **E+W**

- (1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal, in any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.
- (2) Regulations made under subsection (1) above may, in particular—
  - (a) allow the making of such an order at any time during the proceedings;
  - (b) make provision as to the account to be taken, in making such an order, of any other order as to costs . . . <sup>F19</sup> which has been made in respect of the proceedings [<sup>F20</sup>or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988.];
  - (c) make provision as to the account to be taken of any such order in the making of any other order as to costs in respect of the proceedings; and
  - (d) contain provisions similar to those in section 18(4) and (5) of this Act.
- (3) The Lord Chancellor may by regulations make provision for the payment out of central funds, in such circumstances and in relation to such criminal proceedings as may be specified, of such sums as appear to the court to be reasonably necessary—
  - (a) to compensate any witness in the proceedings [<sup>F21</sup>, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence,] for the expense, trouble or loss of time properly incurred in or incidental to his attendance;
  - (b) to cover the proper expenses of an interpreter who is required because of the accused's lack of English;
  - (c) to compensate a duly qualified medical practitioner who—
    - (i) makes a report otherwise than in writing for the purpose of section 30 of the <sup>M23</sup>Magistrates' Courts Act 1980 (remand for medical examination); or
    - (ii) makes a written report to a court in pursuance of a request to which section 32(2) of the <sup>M24</sup>Criminal Justice Act 1967 (report by medical practitioner on medical condition of offender) applies;
 for the expenses properly incurred in or incidental to his reporting to the court.

[<sup>F22</sup>(3A) In subsection (3)(a) above “attendance ” means attendance at the court or elsewhere.]

- (4) The Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate an appellant who is not in custody and who appears before it on, or in connection with, his appeal under Part I of the <sup>M25</sup>Criminal Appeal Act 1968.
- (5) The Lord Chancellor may by regulations provide that any provision made by or under this Part which would not otherwise apply in relation to any category of proceedings

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in which an offender is before a magistrates' court or the Crown Court shall apply in relation to proceedings of that category, subject to any specified modifications.

#### Textual Amendments

- F19** Words repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 12](#), [Sch. 6](#)
- F20** Words inserted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 12](#)
- F21** Words inserted (retrospectively) (1.10.1986) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 166(2) (4), [Sch. 8 para. 16](#)
- F22** [S. 19\(3A\)](#) inserted (retrospectively) (1.10.1986) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 166(3)(4), [Sch. 8 para. 16](#)

#### Marginal Citations

- M23** 1980 c. 43.
- M24** 1967 c. 80.
- M25** 1968 c. 19.

### [<sup>F23</sup>19A Costs against legal representatives etc. **E+W**

- (1) In any criminal proceedings—
- the Court of Appeal;
  - the Crown Court; or
  - a magistrates' court,
- may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.
- (2) Regulations shall provide that a legal or other representative against whom action is taken by a magistrates' court under subsection (1) may appeal to the Crown Court and that a legal or other representative against whom action is taken by the Crown Court under subsection (1) may appeal to the Court of Appeal.
- (3) In this section—
- “legal or other representative ”, in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings;
- “regulations ” means regulations made by the Lord Chancellor; and
- “wasted costs ” means any costs incurred by a party—
- as a result of any improper, unreasonable, or negligent act or omission on the part of any representative or any employee of a representative; or
  - which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.]

#### Subordinate Legislation Made

- P1** [S. 19A](#): s. 20 (with s. 19A) power exercised (21.3.1991) by [S.I.1991/789](#).

#### Textual Amendments

- F23** [S. 19A](#) inserted ( prosp. ) by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), [ss. 111](#), [124\(3\)\(4\)](#)

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VALID FROM 01/02/2004

**[<sup>F24</sup>19B Provision for award of costs against third parties E+W**

- (1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal to make a third party costs order if the condition in subsection (3) is satisfied.
- (2) A “third party costs order” is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings (“the third party”).
- (3) The condition is that—
  - (a) there has been serious misconduct (whether or not constituting a contempt of court) by the third party, and
  - (b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him.
- (4) Regulations made under this section may, in particular—
  - (a) specify types of misconduct in respect of which a third party costs order may not be made;
  - (b) allow the making of a third party costs order at any time;
  - (c) make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;
  - (d) make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.
- (5) Regulations made under this section in relation to magistrates' courts must provide that the third party may appeal to the Crown Court against a third party costs order made by a magistrates' court.
- (6) Regulations made under this section in relation to the Crown Court must provide that the third party may appeal to the Court of Appeal against a third party costs order made by the Crown Court.]

**Textual Amendments**

**F24** S. 19B inserted (1.2.2004) by [Courts Act 2003 \(c. 39\)](#), ss. 93, 110; S.I. 2004/174, art. 2(a)

*Supplemental*

**20 Regulations. E+W**

- (1) The Lord Chancellor may make regulations for carrying this Part into effect and the regulations may, in particular, make provision as to—
  - (a) the scales or rates of payments of any costs payable out of central funds in pursuance of any costs order, the circumstances in which and conditions under which such costs may be allowed and paid and the expenses which may be included in such costs; and

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- (b) the review, as respects costs payable out of central funds in pursuance of any costs order, of any decision on taxation, or determination of the amount, of the costs;
- and any provision made by or under this Part enabling any sum to be paid out of central funds shall have effect subject to any such regulations.
- (2) The Lord Chancellor may by regulations make provision for the recovery of sums paid [<sup>F25</sup>by the Legal Aid Board or out of] central funds in cases where—
- (a) a costs order has been made against a [<sup>F26</sup>party to proceedings][<sup>F26</sup>person] ; and
- (b) the person in whose favour the order was made is a legally assisted person or a person in whose favour a defendant’s costs order or, as the case may be, an order under section 17 of this Act has been made.
- (3) Regulations made under subsection (1) above may provide that rates or scales of allowances payable out of central funds under a costs order shall be determined by the Lord Chancellor with the consent of the Treasury.
- (4) Regulations made under subsection (2) above may, in particular—
- (a) require the person mentioned in paragraph (a) of that subsection to pay sums due under the costs order in accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and
- (b) enable the Lord Chancellor to enforce those directions in cases to which they apply.
- (5) Subsection (4) of section 61 of the Justices of the <sup>M26</sup>Peace Act 1979 (regulations as to accounts of justices’ clerks) shall apply in relation to sums payable to the Lord Chancellor by virtue of regulations made under subsection (2) above as it applies in relation to sums payable to the Secretary of State under that section.
- (6) Any regulations under this Part may contain such incidental and supplemental provisions as the Lord Chancellor considers appropriate.
- (7) Before making any regulations under section 19(1) of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.
- (8) In this section “costs order ” means—
- (a) an order made under or by virtue of this Part for payment to be made—
- (i) out of central funds; or
- (ii) by a party to proceedings; or
- (b) an order made in a criminal case by the House of Lords for the payment of costs by a party to proceedings.

#### Textual Amendments

**F25** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 13](#)

**F26** “person ” substituted (*prosp.*) for “party to proceedings ” by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), ss. 124(3)(4), 125(3), [Sch. 18 para. 53](#)

#### Marginal Citations

**M26** 1979 c. 55.

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## 21 Interpretation, etc. **E+W**

(1) In this Part—

“defendant’s costs order ” has the meaning given in section 16 of this Act;  
 .....<sup>F27</sup>

[<sup>F28</sup>“legally assisted person ”, in relation to any proceedings, means a person to whom representation under the Legal Aid Act 1988 has been granted for the purposes of the proceedings;]

“proceedings ” includes—

- (a) proceedings in any court below; and
- (b) in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal; and

“witness ” means any person properly attending to give evidence, whether or not he gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required his attendance.

(2) Except as provided by or under this Part no costs shall be allowed on the hearing or determination of, or of any proceedings preliminary or incidental to, an appeal to the Court of Appeal under Part I of the <sup>M27</sup>Criminal Appeal Act 1968.

(3) Subject to rules of court made under section 53(1) of the <sup>M28</sup>Supreme Court Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this Part, or under regulations made under this Part, shall be exercised by the criminal division of that Court; and references in this Part to the Court of Appeal shall be construed as references to that division.

(4) For the purposes of sections 16 and 17 of this Act, the costs of any party to proceedings shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

[<sup>F29</sup>(4A) Where one party to any proceedings is a legally assisted person then—

- (a) for the purposes of sections 16 and 17 of this Act, his costs shall be taken not to include either the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor or, if he is liable to make a contribution under section 23 of the Legal Aid Act 1988, any sum paid or payable by way of contribution; and
- (b) for the purposes of sections 18 and 19 of this Act, his costs shall be taken to include the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor (without any deduction on account of any contribution paid or payable under section 23 of the Legal Aid Act 1988) but, if he is liable to make such a contribution his costs shall be taken not to include any sum paid or payable by way of contribution.]

(5) Where, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (6) below, an interpreter is required because of the accused’s lack of English, the expenses properly incurred on his employment shall not be treated as costs of any party to the proceedings.

(6) The cases are—

- (a) where an information charging the accused with an offence is laid before a justice of the peace for any area but not proceeded with and the expenses

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are incurred on the employment of the interpreter for the proceedings on the information; and

- (b) where the accused is committed for trial but not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Crown Court.

#### Textual Amendments

**F27** Definition of “legal aid order ” repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, Sch. 6

**F28** Definition substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, Sch. 5 para. 14

**F29** S. 21(4A) inserted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, Sch. 5 para. 15

#### Marginal Citations

**M27** 1968 c. 19.

**M28** 1981 c. 54.

## PART III **E+W**

### MISCELLANEOUS

#### 22 Power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings. **E+W**

- (1) The Secretary of State may by regulations make provision, with respect to any specified preliminary stage of proceedings for an offence, as to the maximum period—
- (a) to be allowed to the prosecution to complete that stage;
  - (b) during which the accused may, while awaiting completion of that stage, be—
    - (i) in the custody of a magistrates’ court; or
    - (ii) in the custody of the Crown Court;in relation to that offence.
- (2) The regulations may, in particular—
- (a) be made so as to apply only in relation to proceedings instituted in specified areas;
  - (b) make different provision with respect to proceedings instituted in different areas;
  - (c) make such provision with respect to the procedure to be followed in criminal proceedings as the Secretary of State considers appropriate in consequence of any other provision of the regulations;
  - (d) provide for the <sup>M29</sup>Magistrates’ Court Act 1980 and the <sup>M30</sup>Bail Act 1976 to apply in relation to cases to which custody or overall time limits apply subject to such modifications as may be specified (being modifications which the Secretary of State considers necessary in consequence of any provision made by the regulations); and
  - (e) make such transitional provision in relation to proceedings instituted before the commencement of any provision of the regulations as the Secretary of State considers appropriate.

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- (3) The appropriate court may, at any time before the expiry of a time limit imposed by the regulations, extend, or further extend, that limit if it is satisfied—
- (a) that there is good and sufficient cause for doing so; and
  - (b) that the prosecution has acted with all due expedition.
- (4) Where, in relation to any proceedings for an offence, an overall time limit has expired before the completion of the stage of the proceedings to which the limit applies, the accused shall be treated, for all purposes, as having been acquitted of that offence.
- (5) Where—
- (a) a person escapes from the custody of a magistrates' court or the Crown Court before the expiry of a custody time limit which applies in his case; or
  - (b) a person who has been released on bail in consequence of the expiry of a custody time limit—
    - (i) fails to surrender himself into the custody of the court at the appointed time; or
    - (ii) is arrested by a constable on a ground mentioned in section 7(3)(b) of the Bail Act 1976 (breach, or likely breach, of conditions of bail);
 the regulations shall, so far as they provide for any custody time limit in relation to the preliminary stage in question, be disregarded.
- (6) Where—
- (a) a person escapes from the custody of a magistrates' court or the Crown Court; or
  - (b) a person who has been released on bail fails to surrender himself into the custody of the court at the appointed time;
- the overall time limit which applies in his case in relation to the stage which the proceedings have reached at the time of the escape or, as the case may be, at the appointed time shall, so far as the offence in question is concerned, cease to have effect.
- (7) Where a magistrates' court decides to extend, or further extend, a custody or overall time limit, the accused may appeal against the decision to the Crown Court.
- (8) Where a magistrates' court refuses to extend, or further extend, a custody or overall time limit the prosecution may appeal against the refusal to the Crown Court.
- (9) An appeal under subsection (8) above may not be commenced after the expiry of the limit in question; but where such an appeal is commenced before the expiry of the limit the limit shall be deemed not to have expired before the determination or abandonment of the appeal.
- (10) Where a person is convicted of an offence in any proceedings, the exercise, in relation to any preliminary stage of those proceedings, of the power conferred by subsection (3) above shall not be called into question in any appeal against that conviction.
- (11) In this section—
- “appropriate court ” means—
- (a) where the accused has been committed for trial or indicted for the offence, the Crown Court; and
  - (b) in any other case, the magistrates' court specified in the summons or warrant in question or, where the accused has already appeared or been brought before a magistrates' court, a magistrates' court for the same area;



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“custody of the Crown Court ” includes custody to which a person is committed in pursuance of—

- (a) section 6 of the <sup>M31</sup>Magistrates’ Courts Act 1980 (magistrates’ court committing accused for trial); or
- (b) section 43A of that Act (magistrates’ court dealing with a person brought before it following his arrest in pursuance of a warrant issued by the Crown Court); [<sup>F30</sup> or
- (c) section 5(3)(a) of the Criminal Justice Act 1987 (custody after transfer order in fraud case);]

“custody of a magistrates’ court ” means custody to which a person is committed in pursuance of section 128 of the <sup>M32</sup>Magistrates’ Courts Act 1980 (remand);

“custody time limit ” means a time limit imposed by regulations made under subsection (1)(b) above or, where any such limit has been extended by a court under subsection (3) above, the limit as so extended;

“preliminary stage ”, in relation to any proceedings, does not include any stage of the proceedings after the accused has been arraigned in the Crown Court or, in the case of a summary trial, the magistrates’ court has begun to hear evidence for the prosecution at the trial;

“overall time limit ” means a time limit imposed by regulations made under subsection (1)(a) above or, where any such limit has been extended by a court under subsection (3) above, the limit as so extended; and

“specified ” means specified in the regulations.

- (12) For the purposes of the application of any custody time limit in relation to a person who is in the custody of a magistrates’ court or the Crown Court—
  - (a) all periods during which he is in the custody of a magistrates’ court in respect of the same offence shall be aggregated and treated as a single continuous period; and
  - (b) all periods during which he is in the custody of the Crown Court in respect of the same offence shall be aggregated and treated similarly.
- (13) For the purposes of section 29(3) of the <sup>M33</sup>Supreme Court Act 1981 (High Court to have power to make prerogative orders in relation to jurisdiction of Crown Court in matters which do not relate to trial on indictment) the jurisdiction conferred on the Crown Court by this section shall be taken to be part of its jurisdiction in matters other than those relating to trial on indictment.

#### Textual Amendments

**F30** S. 22(11)(c) and the word “or ” immediately preceding it added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, [Sch. 15 para. 104](#)

#### Marginal Citations

**M29** 1980 c. 43.  
**M30** 1976 c. 63.  
**M31** 1980 c. 43.  
**M32** 1980 c. 43.  
**M33** 1981 c. 54.

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VALID FROM 01/06/1999

**[<sup>F31</sup>22A Additional time limits for persons under 18. E+W**

- (1) The Secretary of State may by regulations make provision—
  - (a) with respect to a person under the age of 18 at the time of his arrest in connection with an offence, as to the maximum period to be allowed for the completion of the stage beginning with his arrest and ending with the date fixed for his first appearance in court in connection with the offence (“the initial stage”);
  - (b) with respect to a person convicted of an offence who was under that age at the time of his arrest for the offence or (where he was not arrested for it) the laying of the information charging him with it, as to the period within which the stage between his conviction and his being sentenced for the offence should be completed.
- (2) Subsection (2) of section 22 above applies for the purposes of regulations under subsection (1) above as if—
  - (a) the reference in paragraph (d) to custody or overall time limits were a reference to time limits imposed by the regulations; and
  - (b) the reference in paragraph (e) to proceedings instituted before the commencement of any provisions of the regulations were a reference to a stage begun before that commencement.
- (3) A magistrates’ court may, at any time before the expiry of the time limit imposed by the regulations under subsection (1)(a) above (“the initial stage time limit”), extend, or further extend, that limit; but the court shall not do so unless it is satisfied—
  - (a) that the need for the extension is due to some good and sufficient cause; and
  - (b) that the investigation has been conducted, and (where applicable) the prosecution has acted, with all due diligence and expedition.
- (4) Where the initial stage time limit (whether as originally imposed or as extended or further extended under subsection (3) above) expires before the person arrested is charged with the offence, he shall not be charged with it unless further evidence relating to it is obtained, and—
  - (a) if he is then under arrest, he shall be released;
  - (b) if he is then on bail under Part IV of the <sup>M34</sup>Police and Criminal Evidence Act 1984, his bail (and any duty or conditions to which it is subject) shall be discharged.
- (5) Where the initial stage time limit (whether as originally imposed or as extended or further extended under subsection (3) above) expires after the person arrested is charged with the offence but before the date fixed for his first appearance in court in connection with it, the court shall stay the proceedings.
- (6) Where—
  - (a) a person escapes from arrest; or
  - (b) a person who has been released on bail under Part IV of the <sup>M35</sup>Police and Criminal Evidence Act 1984 fails to surrender himself at the appointed time,

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and is accordingly unlawfully at large for any period, that period shall be disregarded, so far as the offence in question is concerned, for the purposes of the initial stage time limit.

- (7) Subsections (7) to (9) of section 22 above apply for the purposes of this section, at any time after the person arrested has been charged with the offence in question, as if any reference (however expressed) to a custody or overall time limit were a reference to the initial stage time limit.
- (8) Where a person is convicted of an offence in any proceedings, the exercise of the power conferred by subsection (3) above shall not be called into question in any appeal against that conviction.
- (9) Any reference in this section (however expressed) to a person being charged with an offence includes a reference to the laying of an information charging him with it.]

#### Textual Amendments

**F31** S. 22A inserted (1.6.1999) by 1998 c. 37, ss.44, S.I. 1999/1279, art. 2(b)

#### Marginal Citations

**M34** 1984 c.60.

**M35** 1984 c.60.

VALID FROM 01/06/1999

#### **22B Re-institution of proceedings stayed under section 22(4) or 22A(5). E+W**

- (1) This section applies where proceedings for an offence (“the original proceedings”) are stayed by a court under section 22(4) or 22A(5) of this Act.
- (2) If—
- (a) in the case of proceedings conducted by the Director, the Director or a Chief Crown Prosecutor so directs;
  - (b) in the case of proceedings conducted by the Director of the Serious Fraud Office, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, that Director or those Commissioners so direct; or
  - (c) in the case of proceedings not conducted as mentioned in paragraph (a) or (b) above, a person designated for the purpose by the Secretary of State so directs,
- fresh proceedings for the offence may be instituted within a period of three months (or such longer period as the court may allow) after the date on which the original proceedings were stayed by the court.
- (3) Fresh proceedings shall be instituted as follows—
- (a) where the original proceedings were stayed by the Crown Court, by preferring a bill of indictment;
  - (b) where the original proceedings were stayed by a magistrates’ court, by laying an information.

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- (4) Fresh proceedings may be instituted in accordance with subsections (2) and (3)(b) above notwithstanding anything in section 127(1) of the <sup>M36</sup>Magistrates' Courts Act 1980 (limitation of time).
- (5) Where fresh proceedings are instituted, anything done in relation to the original proceedings shall be treated as done in relation to the fresh proceedings if the court so directs or it was done—
  - (a) by the prosecutor in compliance or purported compliance with section 3, 4, 7 or 9 of the <sup>M37</sup>Criminal Procedure and Investigations Act 1996; or
  - (b) by the accused in compliance or purported compliance with section 5 or 6 of that Act.
- (6) Where a person is convicted of an offence in fresh proceedings under this section, the institution of those proceedings shall not be called into question in any appeal against that conviction.

#### Marginal Citations

**M36** 1980 c.43.

**M37** 1996 c.25.

### 23 Discontinuance of proceedings in magistrates' courts. **E+W**

- (1) Where the Director of Public Prosecutions has the conduct of proceedings for an offence, this section applies in relation to the preliminary stages of those proceedings.
- (2) In this section, "preliminary stage" in relation to proceedings for an offence does not include—
  - (a) in the case of a summary offence, any stage of the proceedings after the court has begun to hear evidence for the prosecution at the trial;
  - (b) in the case of an indictable offence, any stage of the proceedings after—
    - (i) the accused has been committed for trial; or
    - (ii) the court has begun to hear evidence for the prosecution at a summary trial of the offence.
- (3) Where, at any time during the preliminary stages of the proceedings, the Director gives notice under this section to the clerk of the court that he does not want the proceedings to continue, they shall be discontinued with effect from the giving of that notice but may be revived by notice given by the accused under subsection (7) below.
- (4) Where, in the case of a person charged with an offence after being taken into custody without a warrant, the Director gives him notice, at a time when no magistrates' court has been informed of the charge, that the proceedings against him are discontinued, they shall be discontinued with effect from the giving of that notice.
- (5) The Director shall, in any notice given under subsection (3) above, give reasons for not wanting the proceedings to continue.
- (6) On giving any notice under subsection (3) above the Director shall inform the accused of the notice and of the accused's right to require the proceedings to be continued; but the Director shall not be obliged to give the accused any indication of his reasons for not wanting the proceedings to continue.

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- (7) Where the Director has given notice under subsection (3) above, the accused shall, if he wants the proceedings to continue, give notice to that effect to the clerk of the court within the prescribed period; and where notice is so given the proceedings shall continue as if no notice had been given by the Director under subsection (3) above.
- (8) Where the clerk of the court has been so notified by the accused he shall inform the Director.
- (9) The discontinuance of any proceedings by virtue of this section shall not prevent the institution of fresh proceedings in respect of the same offence.
- (10) In this section “prescribed” means prescribed by rules made under section 144 of the <sup>M38</sup>Magistrates’ Courts Act 1980.

#### Marginal Citations

M38 1980 c. 43.

VALID FROM 04/01/1999

#### 23A Discontinuance of proceedings after accused has been sent for trial. **E+W**

- (1) This section applies where—
  - (a) the Director of Public Prosecutions, or a public authority (within the meaning of section 17 of this Act), has the conduct of proceedings for an offence; and
  - (b) the accused has been sent for trial under section 51 of the Crime and Disorder Act 1998 for the offence.
- (2) Where, at any time before the indictment is preferred, the Director or authority gives notice under this section to the Crown Court sitting at the place specified in the notice under section 51(7) of the Crime and Disorder Act 1998 that he or it does not want the proceedings to continue, they shall be discontinued with effect from the giving of that notice.
- (3) The Director or authority shall, in any notice given under subsection (2) above, give reasons for not wanting the proceedings to continue.
- (4) On giving any notice under subsection (2) above the Director or authority shall inform the accused of the notice; but the Director or authority shall not be obliged to give the accused any indication of his reasons for not wanting the proceedings to continue.
- (5) The discontinuance of any proceedings by virtue of this section shall not prevent the institution of fresh proceedings in respect of the same offence.

#### Modifications etc. (not altering text)

**C10** S. 23A applied (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 36\(3\), 53; S.I. 2005/1126, art. 2\(g\)](#)

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## 24 [F32 Restriction of vexatious prosecutions.] E+W

(1) Section 42 of the <sup>M39</sup>Supreme Court Act 1981 (restriction of vexatious civil proceedings) shall be amended as follows.

(2) In subsection (1)—

(a) in paragraphs (a) and (b) for the word “legal ” there shall be substituted, in each case, “civil ”;

(b) at the end of paragraph (b) there shall be inserted—

“or

(c) instituted vexatious prosecutions (whether against the same person or different persons),”; and

(c) for the words from “order ” to the end of the subsection there shall be substituted—

“make a civil proceedings order, a criminal proceedings order or an all proceedings order.”.

(3) After subsection (1) there shall be inserted—

“(1A) In this section—

“civil proceedings order ” means an order that—

(a) no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;

(b) any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and

(c) no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;

“criminal proceedings order ” means an order that—

(a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and

(b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and

“all proceedings order ” means an order which has the combined effect of the two other orders.”.

(4) In subsection (3), for the word “legal ” there shall be substituted “civil ”.

(5) After subsection (3) there shall be inserted—

“(3A) Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.”

(6) In subsection (4), for the words from “for the institution ” to the end there shall be substituted “required by virtue of this section ”.

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- (7) An order made under section 42 before the commencement of this section and in force at the time of that commencement shall, for the purposes of that section as amended by this section, be treated as a civil proceedings order.

#### Textual Amendments

**F32** S. 23A inserted (4.1.1999 for specified purposes and otherwise 15.1.2001) by 1998 c. 37, s. 119, **Sch. 8 para.64**; S.I. 1998/2327, **art. 4(2)(c)**; S.I. 2000/3283, **art. 2(c)** (subject to art. 3)

#### Marginal Citations

**M39** 1981 c. 54.

## 25 Consents to prosecutions etc. **E+W**

- (1) This section applies to any enactment which prohibits the institution or carrying on of proceedings for any offence except—
- (a) with the consent (however expressed)— of a Law Officer of the Crown or the Director; or
  - (b) where the proceedings are instituted or carried on by or on behalf of a Law Officer of the Crown or the Director;
- and so applies whether or not there are other exceptions to the prohibition (and in particular whether or not the consent is an alternative to the consent of any other authority or person).
- (2) An enactment to which this section applies—
- (a) shall not prevent the arrest without warrant, or the issue or execution of a warrant for the arrest, of a person for any offence, or the remand in custody or on bail of a person charged with any offence; and
  - (b) shall be subject to any enactment concerning the apprehension or detention of children or young persons.
- (3) In this section “enactment ” includes any provision having effect under or by virtue of any Act; and this section applies to enactments whenever passed or made.

## 26 Consents to be admissible in evidence. **E+W**

Any document purporting to be the consent of a Law Officer of the Crown, the Director or a Crown Prosecutor for, or to—

- (a) the institution of any criminal proceedings; or
- (b) the institution of criminal proceedings in any particular form;

and to be signed by a Law Officer of the Crown, the Director or, as the case may be, a Crown Prosecutor shall be admissible as prima facie evidence without further proof.

## 27 Care proceedings involving allegation of offences. **E+W**

In section 3(2) of the <sup>M40</sup>Children and Young Persons Act 1969 (care proceedings alleging commission of offence by child or young person to be brought only by local authority or constable), after the word “constable ” there shall be inserted the words “and, in the case of proceedings brought by a constable, the Director of Public Prosecutions has consented to the allegation being made ”.

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#### Marginal Citations

M40 1969 c. 54.

### 28 Repeal of s. 9 of Perjury Act 1911. **E+W**

Section 9 of the <sup>M41</sup>Perjury Act 1911 (which gives certain judicial authorities power to order the prosecution of persons for perjury) shall cease to have effect.

#### Marginal Citations

M41 1911 c. 6.

## PART IV **E+W**

### SUPPLEMENTAL

### 29 Regulations. **E+W**

- (1) Any power to make regulations under this Act shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any such regulations may make different provisions with respect to different cases or classes of case.

### 30 Expenses. **E+W**

- (1) There shall be paid out of money provided by Parliament such sums as the Attorney General may, with the consent of the Treasury, direct in respect of the expenditure incurred by the Director of Public Prosecutions in the discharge of his functions under this Act.
- (2) Any expenditure incurred by the Secretary of State or the Attorney General which is attributable to this Act shall be payable out of money provided by Parliament.

### 31 Short title, commencement and extent etc. **E+W**

- (1) This Act may be cited as the Prosecution of Offences Act 1985.
- (2) The following provisions of this Act come into force on its passing—
  - (a) this Part (other than subsections (5) and (6) below);
  - (b) sections 11 to 13; and
  - (c) section 15, so far as it applies in relation to sections 11 to 13;
 and the remaining provisions of this Act shall come into force on such day as the Lord Chancellor or Secretary of State may by order made by statutory instrument appoint.
- (3) An order under subsection (2) above may—
  - (a) appoint different days for different purposes and in relation to proceedings instituted in different areas; and



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- (b) contain such transitional and supplementary provisions as appear to the Lord Chancellor or, as the case may be, Secretary of State to be necessary or expedient.
- (4) Paragraphs (a) and (c) of section 3(2) of this Act shall not apply in relation to proceedings instituted before their commencement and paragraph (d) of section 3(2) shall not apply in relation to proceedings begun by a summons issued before its commencement.
- (5) Schedule 1 to this Act shall have effect for the purpose of making minor and consequential amendments in other enactments.
- (6) The enactments specified in Schedule 2 to this Act (which include certain provisions which are already spent) are hereby repealed to the extent set out in the third column of that Schedule.
- (7) This Act does not extend to Scotland or Northern Ireland.

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**Modifications etc. (not altering text)**

**C11** Power of appointment conferred by s. 31(2)(3) partly exercised: [S.I. 1985/1849](#), 1986/1029, 1334

**Status:**

Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Prosecution of Offences Act 1985 is up to date with all changes known to be in force on or before 20 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.