



# Prosecution of Offences Act 1985

## 1985 CHAPTER 23

### PART I

#### THE CROWN PROSECUTION SERVICE

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

#### **1 The Crown Prosecution Service.**

- (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

- (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.

- (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 [<sup>F4</sup>the <sup>M6</sup>Police Act 1996][<sup>F5</sup>, the National Crime Squad] 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](#)
- F4** Words in the definition of "police force" in s. 3(3) substituted (22.8.1996) by [1996 c. 16, ss. 103, 104\(1\), Sch. 7 Pt. II para. 39](#)
- F5** Words in the definition of "police force" in s. 3(3) inserted (1.4.1998) by [1997 c. 50, s. 134\(1\), Sch. 9 para.48; S.I. 1998/354, art. 2\(2\)\(bb\)](#).

#### 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](#)

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**Marginal Citations**

- M1** 1959 c. 66.
- M2** 1960 c. 65.
- M3** 1968 c. 19.
- M4** 1980 c. 43.
- M5** 1981 c. 49.
- M6** 1996 c. 16.

**4 Crown Prosecutors.**

[<sup>F6</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>F7</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.”

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#### Textual Amendments

- F6** 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](#)
- F7** S. 4(5) repealed by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 125(7), [Sch. 20](#)

#### Marginal Citations

- M7** 1974 c. 47.

### 5 Conduct of prosecutions on behalf of the Service.

- (1) The Director may at any time appoint a person who is not a Crown Prosecutor but [<sup>F8</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

- F8** 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.

- (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.

- (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—
- at the prescribed time and in the prescribed manner; or
  - 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.

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- (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.
- (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>F9</sup>7A Powers of non-legal staff.**

- (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) Subject to such exceptions (if any) as may be specified in the designation, a person so designated shall have such of the following as may be so specified, namely—
  - (a) the powers and rights of audience of a Crown Prosecutor in relation to—
    - (i) applications for, or relating to, bail in criminal proceedings;
    - (ii) the conduct of criminal proceedings in magistrates' courts other than trials;
  - (b) the powers of such a Prosecutor in relation to the conduct of criminal proceedings not falling within paragraph (a)(ii) above.
- (3) A person so designated shall exercise any such powers subject to instructions given to him by the Director.
- (4) Any such instructions may be given so as to apply generally.
- (5) For the purposes of this section—
  - (a) “bail in criminal proceedings” has the same meaning as it would have in the <sup>M8</sup>Bail Act 1976 by virtue of the definition in section 1 of that Act if in that section “offence” did not include an offence to which subsection (6) below applies;
  - (b) “criminal proceedings” does not include proceedings for an offence to which subsection (6) below applies; and
  - (c) a trial begins with the opening of the prosecution case after the entry of a plea of not guilty and ends with the conviction or acquittal of the accused.
- (6) This subsection applies to an offence if it is triable only on indictment, or is an offence—
  - (a) for which the accused has elected to be tried by a jury;
  - (b) which a magistrates' court has decided is more suitable to be so tried; or
  - (c) in respect of which a notice of transfer has been given under section 4 of the <sup>M9</sup>Criminal Justice Act 1987 or section 53 of the <sup>M10</sup>Criminal Justice Act 1991.

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- (7) Details of the following for any year, namely—
- (a) the criteria applied by the Director in determining whether to designate persons under this section;
  - (b) the training undergone by persons so designated; and
  - (c) any general instructions given by the Director under subsection (4) above,
- shall be set out in the Director’s report under section 9 of this Act for that year.]

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**Textual Amendments**

**F9** S. 7A substituted (30.9.1998) by 1998 c. 37, s.53; S.I. 1998/2327, art. 2(1)(n).

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**Marginal Citations**

**M8** 1976 c.63.

**M9** 1987 c.38.

**M10** 1991 c.53.

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