



Commissioners for Revenue and Customs Act 2005

2005 CHAPTER 11

Prosecutions

34 The Revenue and Customs Prosecutions Office

- (1) The Attorney General shall appoint an individual as Director of Revenue and Customs Prosecutions.
- (2) The Director may, with the approval of the Minister for the Civil Service as to terms and conditions of service, appoint staff.
- (3) The Director and his staff may together be referred to as the Revenue and Customs Prosecutions Office.
- (4) Schedule 3 (which makes provision about the Office) shall have effect.

Commencement Information

II S. 34 in force at 7.4.2005 by [S.I. 2005/1126](#), [art. 2\(1\)](#)

35 Functions

- (1) The Director—
 - (a) may institute and conduct criminal proceedings in England and Wales relating to a criminal investigation by the Revenue and Customs, and
 - (b) shall take over the conduct of criminal proceedings instituted in England and Wales by the Revenue and Customs.
- (2) The Director shall provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to—
 - (a) a criminal investigation by the Revenue and Customs, or

Status: Point in time view as at 06/04/2008.

Changes to legislation: Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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. (See end of Document for details)

- (b) criminal proceedings instituted in England and Wales relating to a criminal investigation by the Revenue and Customs.
- (3) In this section a reference to the Revenue and Customs is a reference to—
 - (a) the Commissioners,
 - (b) an officer of Revenue and Customs, and
 - (c) a person acting on behalf of the Commissioners or an officer of Revenue and Customs.
- (4) The Attorney General may by order assign to the Director a function of—
 - (a) instituting criminal proceedings,
 - (b) assuming the conduct of criminal proceedings, or
 - (c) providing legal advice.
- [^{F1}(4A) The Director has the functions conferred on him by, or in relation to, Part 5 or 8 of the Proceeds of Crime Act 2002 (c. 29) (civil recovery of the proceeds etc. of unlawful conduct, civil recovery investigations and disclosure orders in relation to confiscation investigations).]
- (5) In this section—
 - (a) a reference to the institution of criminal proceedings shall be construed in accordance with section 15(2) of the Prosecution of Offences Act 1985 (c. 23), and
 - (b) “criminal investigation” means any process—
 - (i) for considering whether an offence has been committed,
 - (ii) for discovering by whom an offence has been committed, or
 - (iii) as a result of which an offence is alleged to have been committed.

Textual Amendments

- F1** S. 35(4A) inserted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 165](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

Commencement Information

- I2** S. 35 in force at 18.4.2005 by [S.I. 2005/1126](#), [art. 2\(2\)\(f\)](#)

36 Functions: supplemental

- (1) The Director shall discharge his functions under the superintendence of the Attorney General.
- (2) The Director or an individual designated under section 37 or 39 or appointed under section 38 must have regard to the Code for Crown Prosecutors issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985 (c. 23)
 - (a) in determining whether proceedings for an offence should be instituted,
 - (b) in determining what charges should be preferred,
 - (c) in considering what representations to make to a magistrates' court about mode of trial, and
 - (d) in determining whether to discontinue proceedings.

Status: Point in time view as at 06/04/2008.

Changes to legislation: Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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. (See end of Document for details)

- (3) Sections 23 and 23A of the Prosecution of Offences Act 1985 (power to discontinue proceedings) shall apply (with any necessary modifications) to proceedings conducted by the Director under this Act as they apply to proceedings conducted by the Director of Public Prosecutions.
- (4) A power of the Director under an enactment to institute proceedings may be exercised to institute proceedings in England and Wales only.

Commencement Information

I3 S. 36 in force at 18.4.2005 by [S.I. 2005/1126](#), [art. 2\(2\)\(g\)](#)

37 Prosecutors

- (1) The Director may designate a member of the Office (to be known as a “Revenue and Customs Prosecutor”) to exercise any function of the Director under or by virtue of section 35 [^{F2}(excluding any function mentioned in subsection (4A) of that section)].
- (2) An individual may be designated as a Prosecutor only if he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41) (qualification for judicial appointments).
- (3) A Prosecutor shall act in accordance with any instructions of the Director.

Textual Amendments

F2 Words in s. 37(1) inserted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 166](#); [S.I. 2008/755](#), [art. 2\(1\)\(a\)](#) (with arts. 3-14)

Modifications etc. (not altering text)

C1 S. 37(1) modified (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), [ss. 38\(6\)](#), [178\(8\)](#); [S.I. 2006/378](#), [art. 4\(1\)](#), [Sch. para. 5](#)

Commencement Information

I4 S. 37 in force at 7.4.2005 by [S.I. 2005/1126](#), [art. 2\(1\)](#)

38 Conduct of prosecutions on behalf of the Office

- (1) An individual who is not a member of the Office may be appointed by the Director to exercise any function of the Director under or by virtue of section 35 in relation to—
 - (a) specified criminal proceedings, or
 - (b) a specified class or description of criminal proceedings.

[^{F3}(1A) An individual who is not a member of the Office may be appointed by the Director to appear in—

- (a) specified proceedings, or
- (b) a specified class or description of proceedings,

in which the Director or a Prosecutor would otherwise appear by virtue of section 302A of the Proceeds of Crime Act 2002 (cash recovery proceedings).]

Status: Point in time view as at 06/04/2008.

Changes to legislation: Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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. (See end of Document for details)

- (2) An individual may be appointed under this section only if he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (qualifications for judicial appointments).
- (3) An individual appointed under this section shall act in accordance with any instructions of—
 - (a) the Director, or
 - (b) a Prosecutor.

Textual Amendments

F3 S. 38(1A) inserted (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 84\(3\)](#), [94\(1\)](#); [S.I. 2008/755](#), [art. 17\(1\)\(h\)](#)

Modifications etc. (not altering text)

C2 [S. 38\(1\)](#) modified (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), [ss. 38\(6\)](#), [178\(8\)](#); [S.I. 2006/378](#), [art. 4\(1\)](#), [Sch. para. 5](#)

Commencement Information

I5 [S. 38](#) in force at 7.4.2005 by [S.I. 2005/1126](#), [art. 2\(1\)](#)

39 Designation of non-legal staff

- (1) The Director may designate a member of the Office—
 - (a) to conduct summary bail applications, and
 - (b) to conduct other ancillary magistrates' criminal proceedings.
- [^{F4}(1A) The Director may designate a member of the Office to appear in—
 - (a) specified proceedings, or
 - (b) a specified class or description of proceedings,
 in which the Director or a Prosecutor would otherwise appear by virtue of section 302A of the Proceeds of Crime Act 2002 (cash recovery proceedings).]
- (2) In carrying out a function for which he is designated under this section an individual shall have the same powers and rights of audience as a Prosecutor.
- (3) In subsection (1)—
 - (a) “summary bail application” means an application for bail made in connection with an offence—
 - (i) which is not triable only on indictment, and
 - (ii) in respect of which the accused has not been sent to the Crown Court for trial, and
 - (b) “ancillary magistrates' criminal proceedings” means criminal proceedings other than trials in a magistrates' court.
- (4) An individual designated under this section shall act in accordance with any instructions of—
 - (a) the Director, or
 - (b) a Prosecutor.

Status: Point in time view as at 06/04/2008.

Changes to legislation: Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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. (See end of Document for details)

Textual Amendments

F4 S. 39(1A) inserted (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 84\(4\), 94\(1\)](#); S.I. 2008/755, [art. 17\(1\)\(h\)](#)

Commencement Information

I6 S. 39 in force at 7.4.2005 by S.I. 2005/1126, [art. 2\(1\)](#)

40 Confidentiality

- (1) The Revenue and Customs Prosecutions Office may not disclose information which—
- (a) is held by the Prosecutions Office in connection with any of its functions, and
 - (b) relates to a person whose identity is specified in the disclosure or can be deduced from it.
- (2) But subsection (1)—
- (a) does not apply to a disclosure which—
 - (i) is made for the purposes of a function of the Prosecutions Office, and
 - (ii) does not contravene any restriction imposed by the Director,
 - (b) does not apply to a disclosure made to Her Majesty's Revenue and Customs in connection with a function of the Revenue and Customs (within the meaning of section 25),
 - (c) does not apply to a disclosure made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom),
 - ^{F5}(ca) does not apply to a disclosure made for the purposes of—
 - (i) the exercise of any functions of the prosecutor under Parts 2, 3 and 4 of the Proceeds of Crime Act 2002 (c. 29),
 - (ii) the exercise of any functions of the Serious Organised Crime Agency under that Act,
 - (iii) the exercise of any functions of the Director of Public Prosecutions, the Director of the Serious Fraud Office, the Director of Public Prosecutions for Northern Ireland or the Scottish Ministers under, or in relation to, Part 5 or 8 of that Act,
 - (iv) the exercise of any functions of an officer of Revenue and Customs^{F6}, an accredited financial investigator] or a constable under Chapter 3 of Part 5 of that Act, or
 - (v) investigations or proceedings outside the United Kingdom which have led or may lead to the making of an external order within the meaning of section 447 of that Act,
 - (cb) does not apply to a disclosure of information obtained in the exercise of functions under the Proceeds of Crime Act 2002 (c. 29) if the disclosure is made for the purposes of the exercise of a function which the Secretary of State thinks is a public function and which he designates by order,]
 - (d) does not apply to a disclosure which in the opinion of the Director is desirable for the purpose of safeguarding national security,
 - (e) does not apply to a disclosure made in pursuance of an order of a court,
 - (f) does not apply to a disclosure made with the consent of each person to whom the information relates, and
 - (g) is subject to any other enactment.

Status: Point in time view as at 06/04/2008.

Changes to legislation: Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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. (See end of Document for details)

- (3) A person commits an offence if he contravenes subsection (1).
- (4) Subsection (3) does not apply to the disclosure of information about internal administrative arrangements of the Revenue and Customs Prosecutions Office (whether relating to a member of the Office or to another person).
- (5) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed—
- (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (6) In this section a reference to the Revenue and Customs Prosecutions Office includes a reference to—
- (a) former members of the Office, and
 - (b) persons who hold or have held appointment under section 38.
- (7) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (8) A prosecution for an offence under this section may be instituted in England and Wales only—
- (a) by the Director of Revenue and Customs Prosecutions, or
 - (b) with the consent of the Director of Public Prosecutions.
- (9) A prosecution for an offence under this section may be instituted in Northern Ireland only—
- (a) by the Commissioners, or
 - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (10) In the application of this section to Scotland or Northern Ireland the reference in subsection (7)(b) to 12 months shall be taken as a reference to six months.
- [^{F7}(10A) An order under subsection (2)(cb)—
- (a) may include transitional or incidental provision,
 - (b) shall be made by statutory instrument, and
 - (c) shall not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.]

(11) In subsection (2) the reference to an enactment does not include—

 - (a) an Act of the Scottish Parliament or an instrument made under such an Act, or
 - (b) an Act of the Northern Ireland Assembly or an instrument made under such an Act.

Textual Amendments

- F5** S. 40(2)(ca)(cb) inserted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 167\(2\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

Status: Point in time view as at 06/04/2008.

Changes to legislation: Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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. (See end of Document for details)

- F6** Words in s. 40(2)(ca)(iv) inserted (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 11 para. 16](#); [S.I. 2008/755](#), art. 17(1)(f)
- F7** S. 40(10A) inserted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 167\(3\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

Commencement Information

- I7** S. 40 in force at 7.4.2005 by [S.I. 2005/1126](#), [art. 2\(1\)](#)

41 Disclosure of information to Director of Revenue and Customs Prosecutions

- (1) A person specified in subsection (2) may disclose information held by him to the Director for a purpose connected with a specified investigation or prosecution^{F8} or for the purpose of the exercise by the Director of his functions under the Proceeds of Crime Act 2002 (c. 29)].
- (2) Those persons are—
- a constable,
 - the Director General of the National Criminal Intelligence Service,
 - the Director General of the National Crime Squad,
 - the Director of the Serious Fraud Office,
 - the Director General of the Serious Organised Crime Agency,
 - the Director of Public Prosecutions,
 - the Director of Public Prosecutions for Northern Ireland, and
 - such other persons as the Attorney General may specify by order.
- (3) An order under subsection (2)(h)—
- may specify a person only if, or in so far as, he appears to the Attorney General to be exercising public functions,
 - may include transitional or incidental provision,
 - shall be made by statutory instrument, and
 - shall not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (4) In relation to a person if or in so far as he exercises functions in respect of Northern Ireland subsections (2)(h) and (3)(a) shall have effect as if a reference to the Attorney General were a reference to—
- the Advocate General for Northern Ireland, or
 - before the commencement of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the Attorney General for Northern Ireland.
- (5) In the application of this section to Scotland, references to the Attorney General are to be read as references to a Minister of the Crown (including the Treasury).
- (6) Nothing in this section authorises the making of a disclosure which—
- contravenes the Data Protection Act 1998 (c. 29), or
 - is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).

Status: Point in time view as at 06/04/2008.

Changes to legislation: Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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. (See end of Document for details)

Textual Amendments

- F8** Words in s. 41(1) inserted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 168](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

Modifications etc. (not altering text)

- C3** [S. 41\(1\)](#) applied (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 2 para. 11](#); [S.I. 2008/755](#), art. 15(1)(h)

Commencement Information

- I8** [S. 41](#) in force at 7.4.2005 by [S.I. 2005/1126](#), [art. 2\(1\)](#)

42 Inspection

Section 2 of the Crown Prosecution Service Inspectorate Act 2000 (c. 10) shall apply to the Revenue and Customs Prosecutions Office as it applies to the Crown Prosecution Service.

Commencement Information

- I9** [S. 42](#) in force at 7.4.2005 by [S.I. 2005/1126](#), [art. 2\(1\)](#)

Status:

Point in time view as at 06/04/2008.

Changes to legislation:

Commissioners for Revenue and Customs Act 2005, Cross Heading: Prosecutions is up to date with all changes known to be in force on or before 21 June 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.