



Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 1 **U.K.**

THE SERIOUS ORGANISED CRIME AGENCY

CHAPTER 1 **U.K.**

SOCA: ESTABLISHMENT AND ACTIVITIES

Prosecutions

38 **Prosecution of offences investigated by SOCA** **U.K.**

- (1) The Director of Revenue and Customs Prosecutions—
 - (a) may institute and conduct criminal proceedings in England and Wales that arise out of a criminal investigation by SOCA relating to a designated offence, and
 - (b) must take over the conduct of criminal proceedings instituted by SOCA in England and Wales in respect of a designated offence.
- (2) The Director of Revenue and Customs Prosecutions must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to—
 - (a) a criminal investigation by SOCA relating to a designated offence, or
 - (b) criminal proceedings instituted in England and Wales that arise out of such an investigation.
- (3) The Director of Public Prosecutions—
 - (a) may institute and conduct criminal proceedings in England and Wales that arise out of a criminal investigation by SOCA relating to a non-designated offence, and

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- (b) must take over the conduct of criminal proceedings instituted by SOCA in England and Wales in respect of such an offence.

But paragraph (b) does not apply where the Director of the Serious Fraud Office has the conduct of the proceedings.

- (4) The Director of Public Prosecutions must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to—
- (a) a criminal investigation by SOCA relating to a non-designated offence, or
 - (b) criminal proceedings instituted in England and Wales that arise out of such an investigation.
- (5) Sections 23 and 23A of the Prosecution of Offences Act 1985 (c. 23) (power to discontinue proceedings) apply (with any necessary modifications) to proceedings conducted by the Director of Revenue and Customs Prosecutions in accordance with this section as they apply to proceedings conducted by the Director of Public Prosecutions.
- (6) In the Commissioners for Revenue and Customs Act 2005 (c. 11)—
- (a) section 37(1) (prosecutors), and
 - (b) section 38(1) (conduct of prosecutions by appointed persons),
- have effect as if the reference to section 35 of that Act included a reference to this section.
- (7) For the purposes of this section and section 39—
- (a) “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;
 - (b) an offence is a “designated offence” if criminal proceedings instituted by SOCA in respect of the offence fall (or, as the case may be, would fall) to be referred to the Director of Revenue and Customs Prosecutions by virtue of directions under section 39(1);
 - (c) “non-designated offence” means an offence which is not a designated offence;
 - (d) a reference to the institution of criminal proceedings is to be construed in accordance with section 15(2) of the Prosecution of Offences Act 1985 (c. 23); and
 - (e) a reference to the institution of proceedings by SOCA includes a reference to their institution by the Director General of SOCA or a person authorised by him.

Commencement Information

II S. 38 in force at 1.4.2006 by S.I. 2006/378, art. 4(1), **Sch. para. 5** (with art. 4(2)-(7))

39 Directions as to reference of cases and proceedings to appropriate prosecutor **U.K.**

- (1) The Directors may give directions to SOCA—
- (a) for enabling SOCA to determine whether cases arising out of criminal investigations by SOCA are to be referred to the Director of Revenue and

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- Customs Prosecutions, or to the Director of Public Prosecutions, in order for him to consider whether to institute proceedings in accordance with section 38(1)(a) or (3)(a);
- (b) for enabling SOCA to determine whether criminal proceedings instituted by SOCA are to be referred to the Director of Revenue and Customs Prosecutions, or to the Director of Public Prosecutions, in order for him to take over their conduct in accordance with section 38(1)(b) or (3)(b);
 - (c) specifying, in relation to any cases or proceedings that are to be so referred to the Director of Revenue and Customs Prosecutions or the Director of Public Prosecutions, the steps to be taken by SOCA in connection with referring them to him.
- (2) Directions under subsection (1) may provide for cases or proceedings to be referred to one or other of the Directors by reference to—
- (a) whether the cases or proceedings relate to an offence falling within a category of offences specified in the directions; or
 - (b) whether any criteria so specified are satisfied with respect to the cases or proceedings; or
 - (c) such other matters as the Directors think fit.
- (3) The Directors may from time to time revise any directions given under this section.
- (4) The Directors must publish in such manner as they think fit—
- (a) any directions given under this section, and
 - (b) any revisions made to such directions;
- and they must give a copy of any such directions or revisions to SOCA.
- (5) A report to which this subsection applies must set out —
- (a) any directions given under this section, and
 - (b) any revisions made to such directions,
- in the year to which the report relates.
- (6) Subsection (5) applies to—
- (a) a report under section 9 of the Prosecution of Offences Act 1985 (c. 23) (report to Attorney General by Director of Public Prosecutions), and
 - (b) a report under paragraph 6 of Schedule 3 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (report to Attorney General by Director of Revenue and Customs Prosecutions).
- (7) Directions under this section may make different provision for different cases, circumstances or areas.
- (8) If there is a failure to comply with directions under this section in relation to the reference of any matter to one of the Directors, neither—
- (a) the reference, nor
 - (b) anything subsequently done in connection with the matter,
- is invalid by reason of anything in the directions or in section 38.
- (9) In this section “the Directors” means the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions, acting jointly.

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Commencement Information

I2 S. 39 in force at 1.1.2006 by S.I. 2005/3495, art. 2(1)(e)

40 Functions of Director of Revenue and Customs Prosecutions as to persons arrested for designated offence **U.K.**

- (1) Sections 37 to 37B of the Police and Criminal Evidence Act 1984 (c. 60) (duties of custody officers; guidance etc.) have effect, in relation to a person arrested following a criminal investigation by SOCA relating to a designated offence, as if references to the Director of Public Prosecutions were references to the Director of Revenue and Customs Prosecutions.
- (2) In subsection (1) the reference to a designated offence is to be read in accordance with section 38(7)(b) of this Act.

Commencement Information

I3 S. 40 in force at 1.4.2006 by S.I. 2006/378, art. 4(1), Sch. para. 6 (with art. 4(2)-(7))

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