

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 2003 (NEW METHOD OF INSTITUTING
PROCEEDINGS) (PUBLIC PROSECUTOR SPECIFICATION) ORDER
2011

2011 No. 2224

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Order specifies Transport for London (“TfL”) as a “public prosecutor” for the purposes of section 29 of the Criminal Justice Act 2003 (“the 2003 Act”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 There are no matters of special interest to the Joint Committee on Statutory Instruments.
4. **Legislative Context**
 - 4.1 Sections 29 and 30 of the 2003 Act provide for a new method of instituting criminal proceedings. By this new method, a “public prosecutor” may institute criminal proceedings by issuing a written charge and requisition, thereby eliminating the need to lay an information in a Magistrates’ Court. The charge and requisition are, in common with a summons, issued by post and are accordingly referred to collectively as a “Postal Charge and Requisition”. Sections 29 and 30 of the 2003 Act have been brought into force for specified purposes by a number of commencement Orders.
 - 4.2 Section 29(5)(h) of the 2003 Act empowers the Secretary of State to specify a person not specified in the primary legislation as a “public prosecutor”. In specifying TfL as a public prosecutor, this is the first time that the power in section 29(5)(h) will be used.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 This new method of instituting criminal proceedings by Postal Charging and Requisitions was introduced in legislation following the Auld Review 2001,

which identified that there was an anomaly in the charging procedure. In the most serious cases, the police may initiate a prosecution by charging a suspect without the intervention of the court whereas with the summons procedure, (used in a large volume of less serious offences), the magistrates' court's involvement is required. The review further identified that the courts' role in the summons procedure is exercised in so notional a manner as to make it unnecessary, and suggested that: 'there is no reason why the police should not have similar powers in a summoning process to those that they already have for the more serious cases in which they charge the suspect.'¹ This resulted in the introduction of sections 29 and 30 of the Criminal Justice Act 2003.

- 7.2 The new method is already used by a number of police areas following the pilot in 2007/8 and the rollout to police forces in Essex and Gloucestershire in January 2011. All remaining police forces in England and Wales will be able to use the new method from 3rd October 2011 on the coming into force of the Criminal Justice Act 2003 (Commencement No. 26) Order 2011.
- 7.3 Public prosecutors other than the police who use the new method include the Department for Work and Pensions, the Driver and Vehicle Licensing Agency and the Vehicle and Operator Services Agency.

8. Consultation outcome

- 8.1 The Government does not consider that it is necessary to consult on the specification of TfL as a public prosecutor.

9. Guidance

- 9.1 TfL will be responsible for training its own staff and agreeing local business processes, supported by the Ministry of Justice who will provide examples of best practice and guidance to support a successful implementation.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies. An equalities impact assessment was undertaken in September 2006 and no negative impacts were reported. We are currently updating the equalities impact assessment and have asked users of Postal Charging and Requisitions to report any new impacts to us as part of their post-implementation review process so that we can consider if any policy changes be investigated as part of our review of the equalities impact assessment during 2012.

11. Regulating small business

- 11.1 Sections 29 and 30 of the 2003 Act, as mainstream criminal law, have general application. However, there are no additional implications for small businesses arising from this Order.

¹ Sir Robin Auld, "Review of the Criminal Courts of England and Wales," Chapter 10 paragraph 55.

12. Monitoring & review

- 12.1 The Ministry of Justice will monitor TfL's activities as a public prosecutor on an ongoing basis. Its performance will inform any future decision to specify any other person as a public prosecutor for the purposes of using Postal Charging and Requisitions to institute criminal proceedings.

13. Contact

Sally Grocott at the Ministry of Justice (Tel: 0203 334 2261 or email: sally.grocott@cjs.gsi.gov.uk) can answer any queries regarding the instrument.