

EXPLANATORY MEMORANDUM TO
THE PROSECUTION OF OFFENCES ACT 1985 (SPECIFIED
PROCEEDINGS) (AMENDMENT NO. 3) ORDER 2012

2012 No. 2681

1. This explanatory memorandum has been prepared by the Attorney General's Office and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 The instrument extends the range of offences that the police can prosecute in magistrates' courts, while making provision for additional circumstances in which the Crown Prosecution Service must take over the conduct of proceedings for such offences.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 The Prosecution of Offences Act 1985 places a duty on the Director of Public Prosecutions to take over the conduct of all criminal proceedings instituted by or on behalf of the police, except proceedings specified by Order.

4.2 The Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999 ("the 1999 Order") lists certain offences, proceedings for which are specified for these purposes. Proceedings for these offences cease to be specified at any time when a magistrates' court begins to hear evidence in relation to the offence. However, material read out to the court under section 12(7) of the Magistrates Court Act 1980 does not count as evidence.

4.3 The practical effect of the current legislation is that proceedings for specified offences are conducted without the participation of the Crown Prosecution Service, provided that the summons is served with either a statement of facts, or a written copy of the witness statements, in accordance with section 9 of the Criminal Justice Act 1967, and the defendant enters a guilty plea by post using the summons and the section 9 form.

4.4 In a Written Ministerial Statement laid on 16 May 2012, the Home Secretary announced proposals to extend the range of circumstances in which specified proceedings may be prosecuted by the police, in order to reduce unnecessary bureaucracy and ensure swifter justice. These changes initially came into force on 17 July 2012 (see S.I. 2012/1635, and also S.I. 2012/2067 which corrected a defect in it and came into force on 3 September 2012).

4.5 In a Written Ministerial Statement laid on 23 October 2012, the Home Secretary announced proposals to extend this approach to a wider range of low-level offences for which this simpler police-led model would be appropriate.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 This instrument amends the 1999 Order so as to extend the range of offences which can be prosecuted by the police as specified proceedings. Currently specified offences are a range of minor traffic offences, including speeding, driving without insurance and failing to produce a driving licence.

7.2 This instrument extends specified proceedings to the following offences:

- Criminal damage where the value of the property involved is no more than £5,000 (not including arson);
- Careless or inconsiderate driving;
- Failing to comply with a traffic direction;
- Failing to stop, report an accident or give information or documents;
- Consumption of alcohol in a designated public place;
- Disorderly behaviour while drunk in a public place;
- Being drunk in a highway, other public place or licensed premises;
- Failing to give a sample for the purposes of testing for the presence of Class A drugs;
- Failing to attend an assessment following testing for the presence of Class A drugs;
- Trespassing or throwing stones on the railway;
- Knowingly giving a false alarm of fire;
- Behaviour likely to cause harassment, alarm or distress;
- Throwing fireworks in a thoroughfare;
- Contravention of a prohibition or failure to comply with a requirement imposed by or under fireworks regulations or making false statements;
- Depositing and leaving litter

7.3 This instrument sets out that proceedings cannot be specified if the accused is under 16 when the proceedings commence. Defendants aged 10 years old and over to 15 years old and under will continue to be dealt with under current provisions for these offences.

7.4 This instrument further sets out that proceedings are not specified if these are commenced by the accused being charged by a custody officer at a police station. This instrument clarifies that specified proceedings may be commenced by written charge and requisition under Part 4 of the Criminal Justice Act 2003. The practical effect of this instrument is that to prosecute an offence under specified proceedings, proceedings must be commenced either by summons or postal requisition.

7.5 At present, all of the offences listed in the 1999 Order are triable only in a magistrates' court. This instrument adds the offence of criminal damage, which is triable either in a magistrates' court or the Crown Court. However, proceedings for criminal damage are only specified where it is the prosecution's case that the value of the damage is less than £5,000. Where it is clear to a magistrates' court that the value of the damage is below this level, the court must treat the offence as though it was triable only in a magistrates' court. Accordingly this instrument extends the existing provision that an offence will cease to be specified if either a statement of facts, or a written copy of the witness statements, is not served with the summons or requisition that begins proceedings, to the either way offence of criminal damage.

7.6 The practical effect of the current legislation is that, provided the summons is served with either a statement of facts, or a written copy of the witness statements in accordance with section 9 of the Criminal Justice Act 1967, and the defendant enters a guilty plea by post by completing the relevant parts of the summons and section 9 form, the defendant is not required to attend court. This is not available in the case of an offence triable either way, which has the practical effect that although proceedings may be specified for an offence of criminal damage under the value of £5000, excluding arson, the defendant must still attend court for a first hearing.

7.7 The CPS must take over the proceedings if they become "de-specified". Under current legislation this happens if: the defendant pleads guilty but evidence is given in relation to sentence (this happens most frequently when evidence of special reasons is given in order to avoid a driving disqualification); or the defendant pleads not guilty and the prosecution call evidence in a contested trial. This instrument does not make changes to these provisions. It does, however, provide for proceedings to be de-specified if the magistrates' court indicates that it is considering imposing a custodial sentence.

7.8 There is no impact on the defendant's rights or the sentencing powers available to the courts.

- Consolidation

7.9 This instrument amends the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999(b). The department does not intend to consolidate the relevant legislation at this stage.

8. Consultation outcome

8.1 Consultation has been carried out with the Association of Chief Police Officers and representatives of the judiciary, including the Magistrates Association, Justice Clerks' Society, National Bench Chairs' Forum, Chief Magistrate's Office, the Judicial College, and the Senior Presiding Judge's Office, to test both the practicality and potential impact of the proposed changes.

8.2 Responses suggest an appetite for the proposed changes. Concerns have been raised about how specified proceedings for the new offences will be conducted in practice, particularly in the case of criminal damage under the value of £5000, and the likely impact on efficiency and quality. Police-led prosecution of the new offences will be tested in pathfinder areas to assess the impact of the changes.

8.3 As this was not a public consultation, it was not subject to the 12 weeks duration criteria. Consultation with stakeholders was managed in line with government guidance on Consultation Principles.

9. Guidance

9.1 The Home Office, Ministry of Justice, Crown Prosecution Service, Attorney General's Office and HM Courts and Tribunals Service will work with the Association of Chief Police Officers, the Justices' Clerks' Society and the Magistrates' Association to develop guidance to the police, prosecutors and courts on the implementation of these changes.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal as these changes will reduce burden and bureaucracy around specified proceedings cases, in particular with regards to police, court and prosecutor time.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Success criteria for the changes will be significant savings in police, prosecutor and court time, a reduction in bureaucracy, and enhanced police discretion in seeing cases through to completion.

12.2 Pathfinders will test the implementation and impact of the changes in a mix of rural, semi-rural and urban areas, with a good geographical spread and variety of sizes and populations. The review of these pathfinders will inform a best practice model for use by all local areas.

13. Contact

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