EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (NEW METHOD OF INSTITUTING PROCEEDINGS) (SPECIFICATION OF RELEVANT PROSECUTORS) ORDER 2016

2016 No. 430

1. Introduction

1.1 This explanatory memorandum has been prepared by Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Section 29 of the Criminal Justice Act 2003 ("the 2003 Act") gives certain prosecutors the power to bring criminal proceedings by written charge. This includes any persons specified by order by the Secretary of State. The Order specifies the Environment Agency, the Natural Resources Body for Wales, local authorities, train and certain tramway operators and TV Licensing/the BBC as relevant prosecutors for the purposes of section 29. This allows them to make use of the new procedure for trial by single justice on the papers for low level offending.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 29 of the 2003 Act, as amended by section 46 of the Criminal Justice and Courts Act 2015 ("the 2015 Act") allows criminal proceedings to be commenced by way of written charge and requisition or by written charge and single justice procedure notice. The 2015 Act amended the Magistrates' Courts Act 1980 to introduce the possibility of trial by single justice on the papers. This single justice procedure, which applies only to cases involving adults charged with summary-only non-imprisonable offences, is a new form of criminal proceeding. It enables such cases to be dealt with by a single magistrate, on the papers without the attendance of either prosecutor or the defendant. The defendant instead is able to engage with the court in writing and has a right to be heard in a traditional courtroom if he or she does not wish to follow the single justice procedure.

4.2 The single justice procedure provisions in sections 46-50 of and Schedule 11 to the 2015 Act came into force on 13 April 2015. This Order is being made to specify a wider range of prosecutors able to use the new procedure.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 The territorial application of this instrument is 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

What is being done and why

7.1 The Single Justice procedure offers a new, streamlined mechanism for dealing with uncontested summary-only non-imprisonable cases by requiring a defendant to provide written information to the court instead of attending a hearing in person. It enables a prosecutor to decide initially whether a case is suitable for the procedure and fundamentally, enables one magistrate, rather than a full bench, to convict and sentence simple cases outside of the traditional courtrooms.

7.2 Dealing with the case in writing enables any available court to hear cases and introduces more flexibility in terms of place, date and time at which cases can be heard.

7.3 The SJP Prototype at Lavender Hill Magistrates' Court began in April 2015 and has been generally well-received by magistrates, prosecutors and court staff. The Single Justice Procedure is currently being introduced at courts across the country through a managed implementation by HM Courts and Tribunals Service.

7.4 Certain prosecutors require authorisation by statutory instrument to use the Single Justice Procedure. Those who were already empowered to use postal charges and requisitions before the new procedure came into force are automatically also empowered to also use the Single Justice Procedure. This includes all police forces and a small number of other prosecutors such as the DVLA and Transport for London and account for about two thirds of all eligible cases. The 2015 Act extended the scope of the legislation to allow other relevant prosecutors to be authorised to use the Single Justice Procedure, as well as those prosecutors named in statute. Certain of these prosecutors are not yet empowered to use the Single Justice Procedure.

7.5 The organisations this statutory instrument empowers prosecute high numbers of summary-only non-imprisonable cases such as TV Licence evasion, rail and other public transport fare evasion, and offences relating to fishing without a licence.

Consolidation

7.6 This instrument does not amend an earlier instrument.

8. Consultation outcome

8.1 While the government does not consider that it is necessary to consult on the specification of these bodies as a relevant prosecutor, HM Courts and Tribunals Service has engaged with the prosecutors named in the instrument and has secured commitment from a range of relevant prosecutors to adopt the single justice procedure.

9. Guidance

9.1 The relevant prosecutors have worked closely with HM Courts and Tribunals in developing business processes and guidance in preparation for the new procedure. Prosecutors will be responsible for training their 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.

9.2 A protocol agreement that records the respective intentions and expectations of HM Courts & Tribunals Service and prosecutors has been prepared to assist with implementing the single justice procedure.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 No Impact Assessment has been prepared for this instrument because no impact on the public sector, business, charities or voluntary bodies is foreseen.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Ministry of Justice will monitor these bodies' activities as relevant prosecutors on an ongoing basis. Their performance will inform any future decision to specify any other person as a relevant prosecutor for the purposes of using Postal Charging and Single Justice Procedure Notices to institute criminal proceedings.

13. Contact

13.1 Mike Logan at the Ministry of Justice, Telephone: 0203 334 6293, email: CTDD-CrimeSupport@hmcts.gsi.gov.uk can answer any queries regarding the instrument.