EXPLANATORY MEMORANDUM TO

THE PROSECUTION OF OFFENCES ACT 1985 (SPECIFIED PROCEEDINGS) (AMENDMENT) ORDER 2012

2012 No. 1635

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 circumstances in which the police can continue to prosecute proceedings for certain minor traffic offences in magistrates' courts. The instrument does not extend the range of offences that can be prosecuted in this way.

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. Such offences are generally minor traffic offences and include speeding, driving without insurance and failing to produce a driving licence. 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 In a Written Ministerial Statement (WMS) 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.

4.4 The WMS also contained a commitment to extend this approach to a wider range of low-level offences for which this simpler police-led model would be appropriate, and to update Parliament on which offences this will cover in due course. This will require a future instrument which is likely to be laid by the end of 2012.

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 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. In such a case there is no requirement for the defendant to attend court, although he may if he wishes to do so.

7.2 The CPS must take over the proceedings if they become "de-specified". This happens if: the defendant pleads guilty but **evidence is given in relation to sentence** (this happens most frequently when evidence of special reasons or exceptional hardship is given in order to avoid a driving disqualification); the defendant does not attend court or indicate a guilty plea by post and the prosecutor has to **prove the case in absence**, either by reading a section 9 statement or calling live witnesses; or the defendant pleads not guilty and the prosecution call evidence in a contested **trial**.

7.3 A review highlighted that approximately a third of specified proceedings cases have to be de-specified, leading to delays whilst files are transferred, backlogs in the courts due to adjournments, and unnecessary burdens for the police and CPS. Therefore, achieving further efficiencies in the way in which such cases are managed is likely to have a significant beneficial impact for the police, magistrates' courts, and CPS.

7.4 This instrument amends the 1999 Order so as to extend the range of circumstances in which the giving of evidence does not cause proceedings to be de-specified. The additional circumstances are where the prosecutor seeks to prove the case in the defendant's absence, and where evidence is given after conviction in relation to exceptional hardship. This instrument maintains the current position whereby proceedings do not cease to be specified where evidence is read to the court following a guilty plea by post.

7.5 This instrument will remove delay in around 120,000 cases each year by adding them to the existing 300-350,000 specified proceedings cases that police are already able to prosecute right through to completion.

7.6 There is minimal public interest in this policy as the majority of cases this applies to are those in which the defendant does not enter a plea or appear in court.

- Consolidation

7.2 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. This position will be reviewed when laying a future instrument as detailed at paragraph 4.4.

8. Consultation outcome

8.1 A three week consultation was carried out with the Association of Chief Police Officers to test both the practicality and potential impact of the proposed changes, and assess the appetite of forces to take on this additional role.

8.2 Analysis of the responses showed an appetite for the proposed changes although there were some concerns about resourcing and funding. As a result models have been investigated to ensure no increased burden on the police or courts. The responses also informed the development of the core best practice model to be tested in "pathfinder" areas over the Autumn 2012.

8.3 As this was not a public consultation, it was not subject to the 12 weeks duration criteria.

8.4 In addition, we have also consulted with other relevant organisations, including: Superintendents' Association, Chief Crown Prosecutors, Justices' Clerks' Society, Magistrates' Association and the Offices of the Senior Presiding Judge and Lord Chief Justice.

9. Guidance

9.1 The Home Office, Ministry of Justice, Crown Prosecution Service and Attorney General's Office 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; and a reduction in bureaucracy, unnecessary adjournments and the transferring of cases between agencies when they become de-specified.

12.2 Pathfinders will be running during the Autumn of 2012 to monitor the implementation and impact of the amendments 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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