**EXPLANATORY MEMORANDUM TO**

**THE PROSECUTION OF OFFENCES ACT 1985 (SPECIFIED PROCEEDINGS) (AMENDMENT) ORDER 2014**

**2014 No. 1229**

**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.

## 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") specifies certain proceedings for these purposes. Such proceedings 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 Anti-social Behaviour, Crime and Policing Act 2014 includes provisions to extend police-led prosecutions to the new summary-only offence of "low-level shoplifting" (of goods worth £200 or less). This instrument extends the list of specified proceedings to proceedings for this offence.

## 5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

## 6. European Convention on Human Rights

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. This instrument extends specified proceedings to the new summary-only offence of low-level shoplifting (of goods worth £200 or less) as provided for by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014.

7.2 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.

7.3 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.

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

- Consolidation

7.5 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, representatives of the judiciary and various retail associations, to test both the practicality and potential impact of the proposed changes.

8.2 Concerns have been raised about how specified proceedings for the new offence will be conducted in practice and the likely impact on efficiency and quality. Police-led prosecution of the new offences will be tested in certain 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 and Attorney General's Office are working with the Association of Chief Police

Officers, the Justices' Clerks' Society, the Magistrates' Association and retailers to develop guidance to the police, prosecutors and courts on the implementation of these changes.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as these changes will enable the police to deal with shoplifters in a more proportionate and less bureaucratic way.

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 The intention is to 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 learning from these tests will inform a best practice model for use by all local areas.

## 13. Contact

Alex Solomon at the Attorney General's Office, Tel: 020 7271 2495 or email: Alex.Solomon@attorneygeneral.gsi.gov.uk can answer any queries regarding the instrument.