



Prosecution of Offences Act 1985

1985 CHAPTER 23

PART I

THE CROWN PROSECUTION SERVICE

Constitution and functions of Service

1 The Crown Prosecution Service

- (1) There shall be a prosecuting service for England and Wales (to be known as the "Crown Prosecution Service") consisting of—
 - (a) the Director of Public Prosecutions, who shall be head of the Service;
 - (b) the Chief Crown Prosecutors, designated under subsection (4) below, each of whom shall be the member of the Service responsible to the Director for supervising the operation of the Service in his area ; and
 - (c) the other staff appointed by the Director under this section.
- (2) The Director shall appoint such staff for the Service as, with the approval of the Treasury as to numbers, remuneration and other terms and conditions of service, he considers necessary for the discharge of his functions.
- (3) The Director may designate any member of the Service who is a barrister or solicitor for the purposes of this subsection, and any person so designated shall be known as a Crown Prosecutor.
- (4) The Director shall divide England and Wales into areas and, for each of those areas, designate a Crown Prosecutor for the purposes of this subsection and any person so designated shall be known as a Chief Crown Prosecutor.
- (5) The Director may, from time to time, vary the division of England and Wales made for the purposes of subsection (4) above.
- (6) Without prejudice to any functions which may have been assigned to him in his capacity as a member of the Service, every Crown Prosecutor shall have all the powers

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of the Director as to the institution and conduct of proceedings but shall exercise those powers under the direction of the Director.

- (7) Where any enactment (whenever passed)—
- (a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another; or
 - (b) requires any step to be taken by or in relation to the Director;
- any consent given by or, as the case may be, step taken by or in relation to, a Crown Prosecutor shall be treated, for the purposes of that enactment, as given by or, as the case may be, taken by or in relation to the Director.

2 The Director of Public Prosecutions

- (1) The Director of Public Prosecutions shall be appointed by the Attorney General.
- (2) The Director must be a barrister or solicitor of not less than ten years' standing.
- (3) There shall be paid to the Director such remuneration as the Attorney General may, with the approval of the Treasury, determine.

3 Functions of the Director

- (1) The Director shall discharge his functions under this or any other enactment under the superintendence of the Attorney General.
- (2) It shall be the duty of the Director—
 - (a) to take over the conduct of all criminal proceedings, other than specified proceedings, instituted on behalf of a police force (whether by a member of that force or by any other person);
 - (b) to institute and have the conduct of criminal proceedings in any case where it appears to him that—
 - (i) the importance or difficulty of the case makes it appropriate that proceedings should be instituted by him; or
 - (ii) it is otherwise appropriate for proceedings to be instituted by him ;
 - (c) to take over the conduct of all binding over proceedings instituted on behalf of a police force (whether by a member of that force or by any other person);
 - (d) to take over the conduct of all proceedings begun by summons issued under section 3 of the Obscene Publications Act 1959 (forfeiture of obscene articles);
 - (e) to give, to such extent as he considers appropriate, advice to police forces on all matters relating to criminal offences;
 - (f) to appear for the prosecution, when directed by the court to do so, on any appeal under—
 - (i) section 1 of the Administration of Justice Act 1960 (appeal from the High Court in criminal cases);
 - (ii) Part I or Part II of the Criminal Appeal Act 1968 (appeals from the Crown Court to the criminal division of the Court of Appeal and thence to the House of Lords); or
 - (iii) section 108 of the Magistrates' Courts Act 1980 (right of appeal to Crown Court) as it applies, by virtue of subsection (5) of section 12

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of the Contempt of Court Act 1981, to orders made under section 12 (contempt of magistrates' courts); and

- (g) to discharge such other functions as may from time to time be assigned to him by the Attorney General in pursuance of this paragraph.

- (3) In this section—

" the court " means—

- (a) in the case of an appeal to or from the criminal division of the Court of Appeal, that division ;
(b) in the case of an appeal from a Divisional Court of the Queen's Bench Division, the Divisional Court; and
(c) in the case of an appeal against an order of a magistrates' court, the Crown Court;

" police force " means any police force maintained by a police authority under the Police Act 1964 and any other body of constables for the time being specified by order made by the Secretary of State for the purposes of this section ; and

" specified proceedings " means proceedings which fall within any category for the time being specified by order made by the Attorney General for the purposes of this section.

- (4) The power to make orders under subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

4 Crown Prosecutors

- (1) Crown Prosecutors shall have, in any court, the rights of audience enjoyed by solicitors holding practising certificates and shall have such additional rights of audience in the Crown Court as may be given by virtue of subsection (3) below.

- (2) The reference in subsection (1) above to rights of audience enjoyed in any court by solicitors includes a reference to rights enjoyed in the Crown Court by virtue of any direction given by the Lord Chancellor under section 83 of the Supreme Court Act 1981.

- (3) For the purpose of giving Crown Prosecutors additional rights of audience in the Crown Court, the Lord Chancellor may give any such direction as respects Crown Prosecutors as he could give under section 83 of the Act of 1981 in respect of solicitors.

- (4) In section 88 of the Solicitors Act 1974 (which, amongst other things, provides that solicitors in public departments are not required to hold practising certificates) the following subsection shall be inserted after subsection (1)—

“(1A) The exemption from the requirement to hold a practising certificate conferred by subsection (1) above shall not apply to solicitors who are Crown Prosecutors.”

- (5) In section 11 of the Act of 1974 (fees payable on issue of practising certificates), the following subsection shall be inserted after subsection (2)—

“(2A) An order under subsection (1) may specify reduced fees for practising certificates which are issued to solicitors who are Crown Prosecutors.”

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- (6) In Schedule 2 to the Act of 1974 (the compensation fund), in paragraph 2, for the words " sub-paragraph (2)" there shall be substituted the words " sub-paragraphs (2) and (2A) " and after sub-paragraph (2) there shall be inserted the following sub-paragraph—

“(2A) Sub-paragraph (1) above shall not apply to any solicitor who is a Crown Prosecutor.”

5 Conduct of prosecutions on behalf of the Service

- (1) The Director may at any time appoint a person who is not a Crown Prosecutor but who is—
- (a) a solicitor ; or
 - (b) a barrister who is a member of the staff of a public authority;
- to institute or take over the conduct of such criminal proceedings as the Director may assign to him.
- (2) Any person conducting proceedings assigned to him under this section shall have all the powers of a Crown Prosecutor but shall exercise those powers subject to any instructions given to him by a Crown Prosecutor.

6 Prosecutions instituted and conducted otherwise than by the Service

- (1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.
- (2) Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.

7 Delivery of recognizances etc. to Director

- (1) Where the Director or any Crown Prosecutor gives notice to any justice of the peace that he has instituted, or is conducting, any criminal proceedings, the justice shall—
- (a) at the prescribed time and in the prescribed manner; or
 - (b) in a particular case, at the time and in the manner directed by the Attorney General;
- send him every recognizance, information, certificate, deposition, document and thing connected with those proceedings which the justice is required by law to deliver to the appropriate officer of the Crown Court.
- (2) The Attorney General may make regulations for the purpose of supplementing this section; and in subsection (1) above " prescribed " means prescribed by the regulations.
- (3) The Director or, as the case may be, Crown Prosecutor shall—
- (a) subject to the regulations, cause anything which is sent to him under subsection (1) above to be delivered to the appropriate officer of the Crown Court; and
 - (b) be under the same obligation (on the same payment) to deliver to an applicant copies of anything so sent as that officer.

- (4) It shall be the duty of every justices' clerk to send to the Director, in accordance with the regulations, a copy of the information and of any depositions and other documents relating to any case in which—
- (a) a prosecution for an offence before the magistrates' court to which he is clerk is withdrawn or is not proceeded with within a reasonable time ;
 - (b) the Director does not have the conduct of the proceedings ; and
 - (c) there is some ground for suspecting that there is no satisfactory reason for the withdrawal or failure to proceed.

Reports

8 Reports to Director by chief officers of police

- (1) The Attorney General may make regulations requiring the chief officer of any police force to which the regulations are expressed to apply to give to the Director information with respect to every offence of a kind prescribed by the regulations which is alleged to have been committed in his area and in respect of which it appears to him that there is a prima facie case for proceedings.
- (2) The regulations may also require every such chief officer to give to the Director such information as the Director may require with respect to such cases or classes of case as he may from time to time specify.

9 Reports by Director to Attorney General

- (1) As soon as practicable after 4th April in any year the Director shall make to the Attorney General a report on the discharge of his functions during the year ending with that date.
- (2) The Attorney General shall lay before Parliament a copy of every report received by him under subsection (1) above and shall cause every such report to be published.
- (3) The Director shall, at the request of the Attorney General, report to him on such matters as the Attorney General may specify.

Guidelines

10 Guidelines for Crown Prosecutors

- (1) The Director shall issue a Code for Crown Prosecutors giving guidance on general principles to be applied by them—
 - (a) in determining, in any case—
 - (i) whether proceedings for an offence should be instituted or, where proceedings have been instituted, whether they should be discontinued ; or
 - (ii) what charges should be preferred ; and
 - (b) in considering, in any case, representations to be made by them to any magistrates' court about the mode of trial suitable for that case.
- (2) The Director may from time to time make alterations in the Code.

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- (3) The provisions of the Code shall be set out in the Director's report under section 9 of this Act for the year in which the Code is issued; and any alteration in the Code shall be set out in his report under that section for the year in which the alteration is made.

Transfer of staff, etc.

11 Transfer of staff

- (1) The Attorney General may, with the approval of the Treasury, by regulations make such provision as he considers appropriate in relation to the transfer to the staff of the Director of such persons employed by any authority wholly or mainly in connection with the discharge of prosecution functions as may be specified in the regulations.
- (2) The regulations may, in particular, make provision—
- (a) as to the method by which any staff or group of staff are transferred;
 - (b) as to the terms and conditions of the transfer; and
 - (c) for the termination of the employment with the authorities concerned of persons to whom the regulations apply (whether or not they are transferred in accordance with the regulations) and as to the consequences of that termination;
- and (without prejudice to section 29(2) of this Act) may make different provision with respect to staff employed in different areas.
- (3) The regulations may include provision for the determination of questions arising under them and may make such modifications in the application of any enactment as the Attorney General considers appropriate in connection with any provision of the regulations of a kind mentioned in subsection (2)(c) above.
- (4) Staff transferred in accordance with the regulations shall be exempt from any requirement to the effect that before a person is appointed to Her Majesty's Home Civil Service a certificate of qualification must be issued in respect of him by the Civil Service Commissioners.
- (5) For the purposes of Schedule 13 to the Employment Protection (Consolidation) Act 1978 (as it applies for the purposes of computing an employee's period and continuity of employment for the purposes of that Act and any other enactment) in its application to a person who is transferred to the staff of the Director as a result of this Part—to the period of his employment in the employment from which he is transferred shall count as a period of Crown employment; and (b) the change of employment shall not break the continuity of his employment.
- (6) Where a person ceases to be a member of the staff of an authority—
- (a) on becoming a member of the staff of the Service in consequence of any regulations made under this section ; or
 - (b) having unreasonably refused to be transferred in pursuance of the regulations;
- he shall not, on ceasing to be a member of the staff of the authority, be treated for the purposes of any regulations or scheme made under the Superannuation Act 1972 as having ceased to hold his employment by reason of redundancy.
- (7) In this section " authority " means any police authority or other authority or body mentioned in section 17(6)(c) or (d) of this Act; and " police authority", in relation to the metropolitan police district, means the Commissioner of Police of the Metropolis.

12 Staff commission

- (1) The Attorney General, after consulting such bodies representing authorities or persons employed by authorities as appear to him to be concerned, shall not later than three months after the passing of this Act, establish a staff commission for the purpose of—
 - (a) considering the general effect of this Part on staff employed by any authority wholly or mainly in connection with the discharge of prosecution functions; and
 - (b) advising the Attorney General and Director on the arrangements necessary to safeguard the interests of such staff.
- (2) The functions of the staff commission shall not extend to the giving of advice with respect to recruitment to, or the terms and conditions of service in, Her Majesty's Home Civil Service.
- (3) The Attorney General may give directions to the staff commission as to their procedure; and it shall be the duty of the commission to comply with the directions.
- (4) Any expenses incurred by the staff commission under this section shall be paid by the Director.
- (5) The Attorney General may give to any authority employing staff in connection with the discharge of prosecution functions, directions with respect to—
 - (a) the furnishing of information to the staff commission;
 - (b) the implementation of any advice given by the commission ; or
 - (c) any other matters connected with the employment of such staff;and it shall be the duty of the authority to comply with the directions.
- (6) In this section " authority " means any police authority or other authority or body mentioned in section 17(6)(c) or (d) of this Act; and " police authority ", in relation to the metropolitan police district, means the Commissioner of Police of the Metropolis.

13 Premises formerly used in connection with Director's new functions

- (1) This section shall have effect—
 - (a) as respects any premises which were, up to the transfer date, being used to any extent in connection with the discharge of prosecution functions; and
 - (b) as respects the local authority or police authority who were providing the premises ;and shall have effect in particular to ensure that prosecutions, including proceedings in cases in the course of hearing on the transfer date, can be conducted without any interruption or interference in the transition to the arrangements for prosecuting offences established by this Part.
- (2) On and after the transfer date it shall be the duty of the authority, to the extent to which the premises were being used in connection with the discharge of prosecution functions—
 - (a) to make the premises available for the Service ; or
 - (b) where it is not reasonably practicable to make them so available, to make available for the Service premises which, in the opinion of the Director, are a suitable alternative.
- (3) It shall also be the duty of the authority to—

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- (a) make available for the Service—
 - (i) all fittings, furniture, equipment and other chattels previously made available for use in connection with the discharge of prosecution functions ; or
 - (ii) in a case falling within subsection (21(b) above, those items or items which, in the opinion of the Director, are suitable alternatives ;
 - (b) provide such services and facilities as were previously provided by them in connection with the discharge of those functions;
 - (c) heat any accommodation made available for the Service ;
 - (d) clean, light and maintain the premises and maintain any thing else made available for the Service under this section; and
 - (e) pay all outgoings in respect of the premises so made available.
- (4) The Secretary of State shall pay to an authority making premises available under this section—
- (a) such amount as is a reasonable payment for the use of the premises;
 - (b) the reasonable and necessary charges for heating, lighting and cleaning the premises ; and
 - (c) a fair contribution—
 - (i) to the cost of any services or facilities provided by the authority in accordance with subsection (3) (b) above; and
 - (ii) in respect of the maintenance of the premises and of anything else made available for the Service under this section.
- (5) Where, immediately before the transfer date, the premises were occupied by the authority under a tenancy—
- (a) the obligations imposed on the authority by this section in relation to those premises shall, if they have not ended by virtue of subsection (6) or (7) below, come to an end—
 - (i) with the termination of the tenancy by the landlord in accordance with the provisions of Part II of the Landlord and Tenant Act 1954; or
 - (ii) where the provisions of sections 24 to 28 of that Act have been excluded in relation to the tenancy, on the date on which the term for which the tenancy is granted is due to expire by effluxion of time; and
 - (b) for the purposes of Part II of the Act of 1954, the authority shall, while complying with those obligations, be taken to be occupying the premises for the purposes of a business carried on by them.
- (6) The obligations imposed by this section on any authority in relation to any premises shall end with—
- (a) the expiry of the period of five years beginning with the transfer date; or
 - (b) where the Secretary of State is of the opinion, in relation to those premises, that no suitable alternative premises will be available to the Service within that period, the expiry of such longer period (beginning with the transfer date and not exceeding ten years) as he may specify in a written notice given to the authority concerned before the expiry of the period of four years beginning with the transfer date.
- (7) Where the Secretary of State-

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- (a) is of the opinion that the obligations imposed by this section in relation to any premises can be brought to an end on a date earlier than that determined in accordance with subsection (6) above ; and
 - (b) has given the authority concerned such notice as he considers reasonable of his intention to bring those obligations to an end on the date specified in the notice;they shall end on the date so specified.
- (8) While the obligations imposed by this section are in force in relation to any premises, members of the Service shall, to the extent necessary to enable them to carry out their functions, enjoy the same rights and privileges in relation to the premises as were previously enjoyed by those occupying the premises in connection with the discharge of prosecution functions,
- (9) In a case falling within subsection (2)(b) above, subsection (8) above shall not apply but the premises offered by the authority shall not be regarded as a suitable alternative unless the Director is satisfied that the members of the Service who will occupy the premises will have such rights and privileges in relation to them as will be necessary to enable those members to carry out their functions.
- (10) An authority shall not be taken to have acted in breach of any covenant, condition, term or other provision by reason of their complying with any obligation imposed on them by this section.
- (11) Any question arising under this section shall, in the event of disagreement between the Secretary of State and the authority, be determined by such person as may be appointed for the purpose—
 - (a) by the Secretary of State, with the agreement of the authority; or
 - (b) failing that agreement, by the Lord Chancellor.
- (12) Where the premises were provided jointly by two or more authorities, the obligations imposed by this section shall be shared among them in a way corresponding to that in which they provided the premises in connection with the discharge of prosecution functions.
- (13) In this section—
 - " police authority ", in relation to the metropolitan police district, means the Receiver for the Metropolitan Police District; and
 - " transfer date ", in relation to any prosecution functions, means the date on which the staff in question were transferred to the staff of the Director.

Miscellaneous

14 Control of certain fees and expenses etc. paid by the Service

- (1) The Attorney General may, with the approval of the Treasury, by regulations make such provision as he considers appropriate in relation to—
 - (a) the fees of counsel briefed to appear on behalf of the Service in any criminal proceedings ; and
 - (b) the costs and expenses of witnesses attending to give evidence at the instance of the Service.
- (2) The regulations may, in particular—

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- (a) prescribe scales or rates of fees, costs or expenses ; and
- (b) specify conditions for the payment of fees, costs or expenses.

15 Interpretation of Part I

(1) In this Part—

" binding over proceedings" means any proceedings instituted (whether by way of complaint under section 115 of the Magistrates' Courts Act 1980 or otherwise) with a view to obtaining from a magistrates' court an order requiring a person to enter into a recognizance to keep the peace or to be of good behaviour ;

" Director " means the Director of Public Prosecutions ;

" police force " has the same meaning as in section 3 of this Act;

" prosecution functions " means functions which by virtue of this Part become functions of the Director ;

" public authority " has the same meaning as in section 17 of this Act;

" Service " means the Crown Prosecution Service ; and

" solicitor " means a solicitor of the Supreme Court.

(2) For the purposes of this Part, proceedings in relation to an offence are instituted—

- (a) where a justice of the peace issues a summons under section 1 of the Magistrates' Courts Act 1980, when the information for the offence is laid before him ;
- (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the information for the offence is laid before him ;
- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge ;
- (d) where a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section, when the bill of indictment is preferred before the court;

and where the application of this subsection would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times.

- (3) For the purposes of this Part, references to the conduct of any proceedings include references to the proceedings being discontinued and to the taking of any steps (including the bringing of appeals and making of representations in respect of applications for bail) which may be taken in relation to them.
- (4) For the purposes of sections 3(2)(b), 5, 6 and 7 (1) of this Act, binding over proceedings shall be taken to be criminal proceedings.
- (5) For the purposes of section 5 of this Act, proceedings begun by summons issued under section 3 of the Obscene Publications Act 1959 (forfeiture of obscene articles) shall be taken to be criminal proceedings.
- (6) The functions which become functions of the Director by virtue of this Part shall be treated as transferred functions for the purposes of section 95 of the Employment Protection (Consolidation) Act 1978 (effect of certain provisions where functions are transferred to the Crown) but shall not be so treated for the purposes of paragraph

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1(2) of Schedule 3 to the Pensions (Increase) Act 1971 (meaning of " last employing authority ").

- (7) The person who, immediately before the commencement of section 2 of this Act, holds the office of Director shall be treated on the commencement of that section as holding that office in pursuance of an appointment made by the Attorney General.