

EXPLANATORY MEMORANDUM TO
THE PROSECUTION OF OFFENCES ACT 1985 (SPECIFIED
PROCEEDINGS) (AMENDMENT NO. 2) ORDER 2012

2012 No. 2067

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 corrects a drafting error in the Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2012 (S.I. 2012/1635) ("the first 2012 Order").

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 (Specified Proceedings) Order 1999 ("the 1999 Order") lists certain offences, proceedings for which are exempt from the duty of the Director of Public Prosecutions under section 3(2)(a) of the Prosecution of Offences Act 1985 to take over the conduct of criminal proceedings commenced on behalf of a police force. These are known as "specified proceedings".

4.2 Prior to amendment by the first 2012 Order, the 1999 Order had the effect that specified proceedings ceased to be so specified at any time when a magistrates' court begins to hear evidence in relation to the offence. The first 2012 Order was intended to amend the 1999 Order with the effect that proceedings do not cease to be specified where a magistrates' court proceeds against a defendant in his absence.

4.3 Due to a drafting error, the actual effect of the amendment made by the first 2012 Order is that proceedings continue to be specified where a magistrates' court proceeds against a defendant in his absence, but only if the defendant is under the age of 18. However, further to the first 2012 Order, proceedings still cease to be specified where a court proceeds in the absence of an adult defendant.

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 It was the Government's intention, in making the first 2012 Order, that proceedings would continue to be specified where a magistrates' court proceeds in the absence of any defendant, regardless of age. This Order achieves that aim by correcting the drafting error in the 2012 Order. This is done by further amending the 1999 Order by substituting a reference to section 11(1) of the Magistrates' Courts Act 1980 (which gives a magistrates' court the power to proceed in the absence of a defendant) for the reference to section 11(1)(a) of that Act (which concerns proceedings in the absence of a juvenile defendant only).

- Consolidation

7.2 The department does not intend to consolidate the relevant legislation at this stage.

8. Consultation outcome

8.1 There has been no further consultation.

9. Guidance

9.1 No further guidance is necessary.

10. Impact

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

10.2 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 In the circumstances, no further provision is being made for monitoring and review.

13. Contact

Sarah Goom at the Attorney General's Office Tel: 020 7271 2479 or email: Sarah.Goom@attorneygeneral.gsi.gov.uk can answer any queries regarding the instrument.