

EXPLANATORY MEMORANDUM TO
THE PROSECUTION OF OFFENCES ACT 1985 (SPECIFIED PROCEEDINGS)
(AMENDMENT) ORDER 2018

2018 No. 198

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice in conjunction with the Attorney General’s Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999 (“the 1999 Order”) to clarify that the Director of Public Prosecutions (DPP), as head of the Crown Prosecution Service (CPS), is not under a duty to take over conduct of any criminal proceedings tried in accordance with the Single Justice Procedure (SJP). The SJP is the procedure by which a defendant aged 18 or over can be tried for a summary only, non-imprisonable offence by a single justice on the papers without a hearing. Accordingly, there is no hearing which the CPS could take conduct of.
- 2.2 The DPP has a duty to take over the conduct of any criminal proceedings that are instituted by or on behalf of the police. There is an exception to this for ‘specified proceedings’, that is, proceedings the Attorney General has specified in an Order. In such ‘specified proceedings’ that duty does not apply and the police therefore retain responsibility for the conduct of proceedings.
- 2.3 The 1999 Order specifies proceedings for certain offences and also describes particular circumstances in which proceedings are either not specified or cease to be specified. However, because the 1999 Order pre-dates the SJP, it makes no explicit provision about how those circumstances should apply in the context of SJP cases.
- 2.4 This Order therefore amends the 1999 Order to clarify that the circumstances in which proceedings cease to be specified do not include proceedings tried in accordance with the SJP.

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

Specified proceedings

- 4.1 The **Prosecution of Offences Act 1985** (“the 1985 Act”) sets out the functions of the DPP. These include taking over the conduct of all criminal proceedings instituted by or on behalf of a police force (section 3(2)(a)), unless the proceedings are specified in an Order made by the Attorney General under section 3(3) of that Act.
- 4.2 The **1999 Order** (made under section 3(3) of the 1985 Act) specifies proceedings for certain offences. It also describes circumstances in which proceedings cease to be specified, including the following:
 - 4.2.1 under article 3(2), “*where a summons [or requisition] has been issued in respect of a [specified] offence, proceedings for that offence cease to be specified when the summons [or requisition] is served on the accused unless the documents described in section 12(3)(b) of the Magistrates' Courts Act 1980 (pleading guilty by post etc.) are served upon the accused with the summons [or requisition].*”; and
 - 4.2.2 under article 3(3), “*proceedings for an offence cease to be specified if at any time a magistrates' court begins to receive evidence in those proceedings*”

Single Justice Procedure

- 4.3 The **Criminal Justice and Courts Act 2015** created the SJP by way of inserting new sections 16A to 16F into the **Magistrates Courts Act 1980** (“the 1980 Act”).
- 4.4 The following aspects of how the SJP works are relevant:
 - 4.4.1 The SJP permits proceedings to be initiated by any ‘relevant prosecutor’, which includes the police. This is done by means of an SJP Notice which is served on the accused in accordance with **Criminal Procedure Rule 24.9(2)**, which provides:
 - (2) The material that the prosecutor must serve to set out the facts of the offence is—
 - (a) a summary of the evidence on which the prosecution case is based;
 - (b) any—
 - (i) written witness statement to which Part 16 (Written witness statements) applies, or
 - (ii) document or extract setting out facts; or
 - (c) any combination of such a summary, statement, document or extract.

- 4.4.2 Under the SJP, instead of receiving a date to attend court, the defendant receives the SJP Notice and details of the charge and evidence against them, and is required to make their plea in writing (by post or online). The procedure is optional - any defendant who wishes to plead guilty may choose to have their case dealt with through the SJP, and this means that their case will be heard by a single magistrate “on the papers”, i.e. not in open court, without the defence or prosecution being present.
- 4.4.3 Under SJP provisions, a magistrate has the power to issue a summons to the accused requiring him or her to appear before a magistrates’ court for a trial in open court where they do not wish a case to proceed any further through the SJP. This power is contained in sections 16B(3)(b) and 16C(3)(b) of the 1980 Act which apply where the conditions of SJP are not met (e.g. the accused objects to SJP) or the court considers SJP inappropriate (e.g. because it needs to hear mitigation on a potential driving disqualification.)

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies to 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 This Order inserts a new paragraph (5) into article 3 of the 1999 Order to make it clear that proceedings tried in accordance with the SJP under section 16A of the 1980 Act do not cease to be specified.
- 7.2 There are two instances where ambiguity could arise about whether a case under the SJP ceases to be specified (and therefore whether the CPS should take over the conduct of proceedings). These are:
- 7.2.1 by virtue of article 3(3), which provides that proceedings for an offence will cease to be specified if a magistrates’ court begins to receive evidence in those proceedings. New paragraph (5) makes clear that “evidence” does not include evidence considered by a single justice ‘on the papers’ in an SJP case.
- 7.2.2 by virtue of article 3(2), which provides when proceedings would cease to be specified in the event that a summons or requisition were issued by the court and served on the accused. New paragraph (5) makes clear that “summons” in this case does not include a summons issued by a single justice requiring the accused to appear before a magistrates’ court for a trial in open court when the case is not to proceed any further through the SJP.
- 7.3 The purpose of these changes is to clarify how existing provision on specified proceedings should be understood in the particular circumstances of cases that are brought by the police and dealt with under the SJP, as opposed to cases brought by the

police and heard in open court. This will make clear when proceedings cease to be specified in SJP cases and when they do not, and therefore clarify when the DPP's duty to take over the conduct of proceedings does and does not take effect.

8. Consultation outcome

- 8.1 No public consultation was undertaken. The amendment was discussed with HM Courts and Tribunals Service (HMCTS), and with the Office of the Attorney General, as the Attorney General makes the Order under section 3(3) of the 1985 Act. As this is a clarification of, and not an amendment to, the law, it was not considered that external consultation was needed.

9. Guidance

- 9.1 No guidance is necessary. There is already a protocol between relevant prosecutors for the SJP and HMCTS on how cases should be prosecuted under the SJP. This Order makes no change to the way in which they should do this, therefore no changes or updates to this protocol are required.

10. Impact

- 10.1 No impact on the private or voluntary sectors is foreseen.
- 10.2 The impact on the public sector is expected to be minimal, as the clarification provided through these amendments reflects what is already practised by prosecutors and HMCTS.
- 10.3 A full regulatory impact assessment has therefore not been produced for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The operation of the SJP is kept under review by HMCTS following its roll-out across England and Wales in 2016/17.

13. Contact

- 13.1 Catherine Sampson at the Ministry of Justice (telephone: 07870 976 732) or email: Catherine.sampson@justice.gov.uk) can answer any queries regarding the instrument.