

EXPLANATORY MEMORANDUM TO
THE PROSECUTION OF OFFENCES ACT 1985 (SPECIFIED PROCEEDINGS)
(AMENDMENT) ORDER 2020

2020 No. 562

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Attorney General’s Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Secondary Legislation Scrutiny Committee and the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999 (“the 1999 Order”). It provides that all offences contrary to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (together, “the Regulations”) become “specified proceedings” for the purposes of section 3 of the Prosecution of Offences Act 1985 (“the 1985 Act”).
- 2.2 Section 3 requires the Director of Public Prosecutions (DPP), and therefore the Crown Prosecution Service (CPS), to take conduct of all criminal proceedings instituted by the police, apart from proceedings which are “specified proceedings”. The police will institute proceedings for offences contrary to the Regulations by serving a notice and the evidence on an accused person. This instrument provides that, if in response the accused person pleads guilty in writing or does not respond to the notice and evidence served upon them, that a court can deal with the case (because the proceedings are specified) without the CPS taking conduct of the proceedings. The CPS will as a matter of practice take conduct of proceedings if the accused pleads not guilty or does not consent to being dealt with by a court under this process. Furthermore, the CPS is obliged to take conduct by virtue of section 3 and the 1999 Order in this situation before the court can begin to receive evidence in the proceedings.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Attorney General acknowledges that the date for the coming into force of this Order breaches the convention that instruments subject to annulment should ordinarily be laid before Parliament for a period of no less than 21 days before coming into force, particularly in respect of an instrument that relates to criminal matters. In this case, the Attorney General considers that a departure from this general rule is justified in order to enable the timely and efficient institution of proceedings. This is in order to ensure the summary resolution of a volume of offences: as of 7 May, more than 12,000 fixed penalty notices had been issued.
- 3.2 Following designation by the Secretary of State for Health and Social Care on 23 April 2020, the ACRO Criminal Records Office (“ACRO”) became the central police unit responsible for issuing fixed penalty notices under the Regulations. A person

issued with a fixed penalty notice has 28 days to pay following which they become liable to prosecution. Therefore the first prosecutions for ACRO-issued fixed penalty notices may be instituted from 22 May onwards. This instrument comes into force 12 calendar days after 22 May. Any further delay to the institution of proceedings, and the creation of a greater backlog of cases impacting upon the prompt and efficient enforcement of the Regulations, would not be appropriate.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 3(3) of the 1985 Act provides a power for the Attorney General to specify certain proceedings by Order made by statutory instrument. “Specified proceedings” are proceedings which are an exception to the requirement in section 3(2)(a) that it is the duty of the Director of Public Prosecutions to take over the conduct of all criminal proceedings instituted on behalf of a police force.

7. Policy background

What is being done and why?

- 7.1 Section 3(2)(a) and (3) of the 1985 Act provides a power, exercisable by Order, to create exceptions to the general requirement that the DPP, and therefore the CPS, must take over conduct of criminal proceedings instituted by the police. This is in recognition of the fact that a limited category of offences may more appropriately be prosecuted in this way. Factually straightforward offences punishable only by a fine may in particular be suitable to be dealt with by a court without the CPS having conduct of the case. Previous Orders have specified certain road traffic, fireworks and minor public order offences. In this case, offences contrary to the Regulations are also likely to be factually straightforward and are punishable only by a fine. Where there is a high volume of offences to be prosecuted summarily, in addition to the usual workload of the courts, dealing with them promptly and efficiently is imperative.
- 7.2 A fixed penalty notice may be issued to a person who commits an offence contrary to the Regulations. A person who does not pay a fixed penalty notice becomes liable to prosecution no sooner than 28 days later. This instrument only relates to prosecutions which follow a failure, having been given sufficient opportunity, to pay a fixed penalty notice. A prosecution may be initiated under the “single justice procedure”, see section 16A of the Magistrates’ Court Act 1980, whereby the police serve a notice

and evidence upon the accused. This permits a court to deal with the accused on the basis of the evidence served on them, without their attendance at court. A judge can accept a written response indicating a guilty plea from the accused and issue a fine. Alternatively, where the accused does not respond, a judge can try the accused on the evidence served (but only the evidence served) and, if finding the person guilty, issue a fine.

- 7.3 The effect of section 3(2)(a) of the 1985 Act, however, is that the CPS must take conduct of all proceedings, whether those proceedings are to be dealt with under the single justice procedure or otherwise. Following the designation of ACRO, the National Police Chiefs' Council (NPCC), the CPS and Her Majesty's Courts and Tribunals Service (HMCTS) invited the Attorney General to consider making proceedings in relation to an offence contrary to the Regulations "specified proceedings" by virtue of an Order under section 3 of the 1985 Act.
- 7.4 The Attorney General considers that it is not proportionate for the CPS to have conduct of these cases where the accused pleads guilty or does not respond to the notice and evidence served upon them, in circumstances where the offences are factually straightforward and punishable only by a fine, and where more than 12,000 fixed penalty notices as of 7 May had been issued. The instrument therefore specifies that the CPS need not take conduct of these cases.
- 7.5 Proceedings cease to be specified when the court begins to receive evidence other than under the single justice procedure: see 3(3) of the 1999 Order. "Receive evidence" does not include considering the evidence where an accused has not responded under the single justice procedure outlined above, something clarified by the Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2018 ("the 2018 Order"). Therefore for a prosecution to continue when a defendant pleads not guilty or does not consent to the single justice procedure the CPS will as a matter of practice take conduct of it (and are obliged to by the time the court begins to receive evidence). Those who wish to challenge a fixed penalty notice may continue to do so in this way.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 No public consultation was undertaken. Specifying proceedings under the Regulations was considered in conjunction with the NPCC, CPS and HMCTS who are in support of it. In practice, this instrument will only apply in relation to individuals who plead guilty or do not enter a plea. As individuals continue to have the right to plead not guilty or indeed simply not consent to the procedure, wider consultation was not deemed necessary.

11. Guidance

- 11.1 The procedure is set out in section 16A Magistrates' Court Act 1980 and Part 7 of the Criminal Procedure Rules 2015. Guidance is available on the internet, for instance at:

<https://www.gov.uk/single-justice-procedure-notice> The CPS has issued guidance about the Regulations offences in England: <https://www.cps.gov.uk/legal-guidance/coronavirus-health-protection-coronavirus-restrictions-england-regulations-2020> and will issue guidance in relation to Regulations offences in Wales.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because, whilst the volume of new offences introduced by the Regulations will have an impact on the police, CPS and the courts, this instrument combined with the 1999 Order and the 2018 Order is limited to providing that the CPS will have conduct of some but not all prosecutions.

13. Regulating small business

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

14. Monitoring & review

- 14.1 It is not proposed to monitor or review this instrument. The NPCC, CPS and HMCTS will continue to have oversight of proceedings brought for offences contrary to the Regulations and, through ACRO, this is being administered by a single police unit. The Regulations themselves are due to expire at the end of the period of six months beginning with the day on which they come into force: see regulations 12 (England) and 15 (Wales) respectively.

15. Contact

- 15.1 Tom Guest at the Attorney General's Office Telephone: 0207 271 2458 or email: tom.guest@attorneygeneral.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Kelby Harnes, Deputy Director for Public Law and Litigation Team at the Attorney General's Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Her Majesty's Attorney General at the Attorney General's Office can confirm that this Explanatory Memorandum meets the required standard.