



Charging decisions and police-led prosecutions

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In May 2010, the Home Secretary announced that responsibility for charging decisions for a number of offences would be returned to the police in order to “cut bureaucracy”.

The Labour Government had previously transferred responsibility for charging decisions in all but the most minor of cases to the Crown Prosecution Service (CPS) with the introduction of “statutory charging” between 2004 and 2007.

The present Government ran two pilot schemes trialling the transfer of a wider range of charging decisions back to the police between 2010 and 2012. The changes were subsequently set out in fifth editions of the Director of Public Prosecutions’ *Guidance on Charging*, published in May 2013.

The Government have also made changes in the related area of “specified proceedings” to expand the range of offences and circumstances in which the police are able to prosecute instead of the CPS.

This note provides a summary of recent developments regarding the transfer of responsibility for charging decisions and prosecutions from the CPS to the police.

Changes relate to England and Wales only.

Contents

1	Statutory Charging	2
1.1	2010 Government changes	2
1.2	Second phase of pilot schemes	3
2	Specified proceedings	4
2.1	2012 Government changes	4

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1 Statutory Charging

With the introduction of “statutory charging”, the CPS became responsible for deciding and determining the charges to be brought against suspects in all but the most minor routine cases.

Statutory Charging was introduced in response to the recommendations of Lord Justice Auld in his 2001 [Review of the Criminal Courts in England and Wales](#).¹ He recommended that the CPS should determine the charge to be brought against a suspect in all but minor routine cases, ensuring the correct charge from the outset, weeding out non-viable cases at an early stage and ensuring that the remaining cases are trial-ready at the point of charge.²

The changes were implemented by the *Criminal Justice Act 2003* and phased in between 2004 and 2007.³ The police were still able to charge certain minor offences without referral to the CPS, but the choice of charge had to comply with the Director of Public Prosecution’s *Guidance on Charging*. The third edition, from 2007, included a limited range of offences.⁴

However, the changes were soon criticised as overly bureaucratic for involving the CPS in straightforward charging decisions that could be properly taken by the police.⁵

Jan Berry, a former chairman of the Police Federation, was subsequently asked by the Government to find ways of reducing police bureaucracy and supported improving the statutory charging process by increasing the number of offences the police were able to charge without referral to the CPS:

5.75 However, it is clear that additional capacity could be achieved by increasing the number of offences where police are able to charge without referral to prosecutors. I welcome the consideration currently being given to:

Extending the range of offences able to be charged by police without reference to prosecutors to include all ‘summary only’ offences irrespective of plea (except offences relating to hate crime and domestic abuse) and other offences deemed appropriate.⁶

1.1 2010 Government changes

In May 2010, Home Secretary Theresa May announced in a speech to the Police Federation that responsibility for charging decisions for a number of minor offences would be returned to the police in order to cut bureaucracy.⁷

In 2010, the CPS conducted a number of pilot schemes in which the police were responsible for the charging decisions in a wider range of cases. Cases included nearly all less serious “summary offences” regardless of plea,⁸ criminal damage cases under £5000, as well as handling stolen goods cases and Fraud Act offences where a guilty plea was anticipated.⁹

¹ Lord Justice Auld, [Review of the Criminal Courts in England and Wales](#), 2001, Chapter 10, paras 35-45

² CPS news release, [First phase of Statutory Charging goes live a year ahead of schedule](#), 3 April 2006

³ Section 28 and Schedule 2

⁴ CPS, *Director’s Guidance on Charging*, 3rd edition, 2007, para 3.3

⁵ For example, HMIC, *The Joint Thematic Review of the New Charging Arrangements*, Nov 2008, [para 10.22](#)

⁶ Jan Berry, [Reducing bureaucracy in policing – full report](#), November 2009, p49

⁷ Home Office, [Theresa May’s speech to the Police Federation](#), 19 May 2010

⁸ Previously, the decision would be left to the CPS if a not-guilty plea was expected

⁹ [Police Superintendents’ Association of England and Wales Annual Conference 2010 Lecture by Keir Starmer QC](#), September 2010

The CPS said the pilots were successful and saved significant amounts of police time.¹⁰

The arrangements subsequently came into effect under the fourth edition of the *Director's Guidance on Charging*, and were rolled out nationwide by June 2011.¹¹ This meant the police were now responsible for around 72 per cent of all charging decisions (up from 67 per cent).¹²

It is worth noting that although the police are responsible for the majority of charging decisions, this is made up of high volumes of less serious cases. The CPS are responsible for the charging decisions in a lower volume of cases but are responsible for a larger number of offences, including the most serious and complex.

The Home Office estimated the changes would save around 50,000 hours of police time each year.¹³

1.2 Second phase of pilot schemes

In May 2011, the Home Secretary announced that the CPS would pilot the transfer of further charging decisions to the police, including cases of shoplifting where a not guilty plea is anticipated.¹⁴ The CPS would retain responsibility for charging decisions in the most complex and serious cases.

The second phase of pilots ran from September 2011 to September 2012 and following an internal evaluation by the CPS, the changes came into effect under the fifth edition of the *Director's Guidance on Charging*, published in May 2013.¹⁵ The offences which the police are now able to charge are set out in paragraph 15:

The police may charge:

(i) any Summary Only offence (including criminal damage where the value of the loss or damage is less than £5000) irrespective of plea;

(ii) any offence of retail theft (shoplifting) or attempted retail theft irrespective of plea provided it is suitable for sentence in the magistrates' court; and

(iii) any either way offence anticipated as a guilty plea and suitable for sentence in a magistrates' court;

provided that this is not:

- a case requiring the consent to prosecute of the DPP or Law Officer;
- a case involving a death;
- connected with terrorist activity or official secrets;
- classified as Hate Crime or Domestic Violence under CPS Policies;
- an offence of Violent Disorder or Affray;
- causing Grievous Bodily Harm or Wounding, or Actual Bodily Harm;
- a Sexual Offences Act offence committed by or upon a person under 18;
- an offence under the Licensing Act 2003.

¹⁰ CPS West Midlands press release, *Charging changes cut red tape*, 21 January 2011

¹¹ CPS, *Director's Guidance on Charging*, 4th edition, January 2011

¹² CPS, *Responsibility for charging decisions*, 9 May 2011

¹³ Home Office, *Home Secretary's speech to ACPO summer conference*, 4 July 2011

¹⁴ Home Office, *Theresa May's speech on police bureaucracy ("The deal: one year on")*, 9 May 2011

¹⁵ CPS, *Director's Guidance on Charging*, 5th edition, May 2013

The Home Office estimated the police would have responsibility for nearly 80% of all charging decisions and that the changes would save a further 40,000 hours of police time each year.¹⁶

2 Specified proceedings

Specified proceedings are a limited number of criminal proceedings that the police have responsibility for prosecuting rather than the CPS. Prosecuting the offence involves conducting the criminal proceedings in court. This is distinct from charging, which is the defining of the offence the suspect is to be prosecuted for.

Under the *Prosecution of Offences Act 1985*¹⁷ the CPS has a duty to take over the conduct of all criminal proceedings other than specified proceedings set out by order.

Prior to recent changes, the list of specified proceedings was set out in the *Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999* and was limited to certain low level traffic offences (for example speeding or failing to produce a driving licence).

These offences were only specified proceedings if the necessary documents to enable the case to be dealt with on a written plea of guilty were also served on the offender with the court summons and the court did not begin to receive any evidence in the case. In practice, this meant that the court could only deal with these offences as specified proceedings where it had received a written plea of guilty from the defendant.

2.1 2012 Government changes

In May 2012, the Home Secretary announced plans to extend the range of specified proceedings by extending the range of circumstances in which the police can prosecute to include cases where there is no plea or the defendant fails to appear and where a driver pleads “exceptional hardship” (in addition to when a written guilty plea is received).¹⁸ The Home Office said the changes would reduce bureaucracy and ensure swifter justice.¹⁹

The Home Office estimated that the changes would lead to an additional 120,000 specified proceedings cases each year. There are currently around 350,000 each year.²⁰

The changes came into force by Statutory Instrument on 3 September 2012.²¹

In October 2012, the Home Secretary also announced plans to extend the range of low-level offences treated as specified proceedings to include, among other things, criminal damage cases under £5,000 and careless or inconsiderate driving.²²

The Home Office estimated that the changes would enable the police to prosecute an additional 91,000 cases each year.²³

¹⁶ Home Office, *Theresa May's speech on police bureaucracy ("The deal: one year on")*, 9 May 2011

¹⁷ [Section 3\(2\)\(a\)](#)

¹⁸ [Explanatory memorandum to SI 2012/1635](#)

¹⁹ [HC Deb 16 May 2012 c36WS](#)

²⁰ [Explanatory memorandum to SI 2012/1635](#)

²¹ [Prosecution of Offences Act 1985 \(Specified Proceedings\) \(Amendment\) Order 2012, SI 2012/1635](#)

²² Home Office, *Police powers to prosecute strengthened*, 23 Oct 2012

²³ Home Office, *Police powers to prosecute strengthened*, 23 Oct 2012

The changes came into force by Statutory Instrument on 19 November 2012 and were initially trailed in nine pathfinder areas.²⁴ In January 2014, Damian Green, the Policing Minister said that the changes would be adopted by a further 26 police forces in 2014.²⁵

The offences which can be prosecuted without CPS involvement are:

- criminal damage where the value of the property involved is no more than £5,000 (not including arson)
- careless or inconsiderate driving
- failing to comply with a traffic direction
- failing to stop, report an accident or give information or documents
- consumption of alcohol in a designated public place
- disorderly behaviour while drunk in a public place
- being drunk in a highway, other public place or licensed premises
- failing to give a sample for the purposes of testing for the presence of Class A drugs
- failing to attend an assessment following testing for the presence of Class A drugs
- trespassing or throwing stones on the railway
- knowingly giving a false alarm of fire
- behaviour likely to cause harassment, alarm or distress
- contravention of a prohibition or failure to comply with a requirement imposed by or under fireworks regulations or making false statements
- depositing and leaving litter²⁶

The CPS would still be responsible for prosecuting those cases where the defendant pleads not guilty, is under the age of 16, or if the case starts by the accused being charged by a custody officer at a police station.²⁷

²⁴ [Prosecution of Offences Act 1985 \(Specified Proceedings\) \(Amendment No 3\) Order 2012, SI 2012/2681](#)

²⁵ [Criminal Justice Bulletin](#), Issue1: January 2014, p1

²⁶ Home Office, [Reducing reoffending and improving rehabilitation](#), 26 March 2013

²⁷ [Explanatory memorandum to SI 2012/2681](#)