

2012 No. 1635

CRIMINAL LAW, ENGLAND AND WALES

**The Prosecution of Offences Act 1985 (Specified Proceedings)
(Amendment) Order 2012**

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| <i>Made</i> - - - - | <i>21st June 2012</i> |
| <i>Laid before Parliament</i> | <i>26th June 2012</i> |
| <i>Coming into force</i> - - | <i>17th July 2012</i> |

The Attorney General makes the following Order in exercise of the powers conferred by section 3(3) of the Prosecution of Offences Act 1985(a).

Citation and commencement

1. This Order may be cited as the Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2012 and comes into force on the 17th July 2012.

Amendment of the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999

2.—(1) The Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999(b) is amended as follows.

(2) In article 3, for paragraph (3) substitute -

“(3) Proceedings for an offence cease to be specified if at any time a magistrates’ court begins to receive evidence in those proceedings, other than evidence—

- (a) received in proceedings held in the absence of the accused under section 11(1)(a) of the Magistrates’ Courts Act 1980(c) (non-appearance of accused: general provisions);
- (b) read out before the court under section 12(7) of that Act (non-appearance of accused: plea of guilty); or
- (c) received for the purposes of considering whether there are grounds for mitigating the normal consequences of a conviction under section 35(1) of the Road Traffic Offenders Act 1988(d) (disqualification for repeated offences).”

(a) 1985 c. 23. Section 3(3) was amended by paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), paragraph 48 of Schedule 9 to the Police Act 1997 (c. 50), paragraph 47 of Schedule 4 and Part 2 of Schedule 17 to the Serious Organised Crime and Police Act 2005 (c. 15) and paragraph 171 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

(b) S.I. 1999/904.

(c) 1980 c. 43. Section 11(1) was amended by section 54 of the Criminal Justice and Immigration Act 2008 (c. 4). Section 12 was substituted by paragraph 1 of Schedule 5 to the Criminal Justice and Public Order Act 1994 (c. 33), and subsection (7) was further amended by section 1 of the Magistrates’ Courts (Procedure) Act 1998 (c. 15).

(d) 1988 c. 53. Section 35(1) was amended by paragraph 95 of Schedule 4 to the Road Traffic Act 1991 (c. 40).

21st June 2012

Dominic Grieve
Attorney General

EXPLANATORY NOTE

(This note is not part of the Order)

Section 3 of the Prosecution of Offences Act 1985 sets out the functions of the Director of Public Prosecutions. These include taking over the conduct of all criminal proceedings instituted on behalf of a police force, unless the proceedings are specified in an Order made by the Attorney General under section 3(3). The Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999 (“the 1999 Order”) specifies proceedings for certain offences, but provides that proceedings cease to be specified if at any time a magistrates’ court begins to receive evidence in the proceedings. Material read out to the court, in circumstances where the accused does not appear but has indicated by post that he wishes to plead guilty, does not count as evidence for these purposes.

This Order amends the 1999 Order with the effect that proceedings do not cease to be specified where a magistrates’ court begins to receive evidence, provided that the court does so in defined circumstances. The first of these is where the accused has not appeared, and the court proceeds in his absence. The second is where evidence is read out in the case of an accused who has indicated a guilty plea by post – this maintains the position under the existing Order. The third is where evidence is received for the purposes of the court’s consideration of whether an accused who has been convicted of repeated motoring offences should be spared obligatory disqualification under the “totting up” provisions. In general such evidence concerns the exceptional hardship that disqualification would cause to the accused.

A full regulatory impact assessment has not been produced for this Order as no impact on the private or voluntary sectors is foreseen.

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