



Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 1

THE SERIOUS ORGANISED CRIME AGENCY

CHAPTER 1

SOCA: ESTABLISHMENT AND ACTIVITIES

Prosecutions

38 Prosecution of offences investigated by SOCA

- (1) The Director of Revenue and Customs Prosecutions—
 - (a) may institute and conduct criminal proceedings in England and Wales that arise out of a criminal investigation by SOCA relating to a designated offence, and
 - (b) must take over the conduct of criminal proceedings instituted by SOCA in England and Wales in respect of a designated offence.
- (2) The Director of Revenue and Customs Prosecutions must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to—
 - (a) a criminal investigation by SOCA relating to a designated offence, or
 - (b) criminal proceedings instituted in England and Wales that arise out of such an investigation.
- (3) The Director of Public Prosecutions—
 - (a) may institute and conduct criminal proceedings in England and Wales that arise out of a criminal investigation by SOCA relating to a non-designated offence, and

Status: This is the original version (as it was originally enacted).

- (b) must take over the conduct of criminal proceedings instituted by SOCA in England and Wales in respect of such an offence.

But paragraph (b) does not apply where the Director of the Serious Fraud Office has the conduct of the proceedings.

- (4) The Director of Public Prosecutions must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to—
 - (a) a criminal investigation by SOCA relating to a non-designated offence, or
 - (b) criminal proceedings instituted in England and Wales that arise out of such an investigation.
- (5) Sections 23 and 23A of the Prosecution of Offences Act 1985 (c. 23) (power to discontinue proceedings) apply (with any necessary modifications) to proceedings conducted by the Director of Revenue and Customs Prosecutions in accordance with this section as they apply to proceedings conducted by the Director of Public Prosecutions.
- (6) In the Commissioners for Revenue and Customs Act 2005 (c. 11)—
 - (a) section 37(1) (prosecutors), and
 - (b) section 38(1) (conduct of prosecutions by appointed persons),
 have effect as if the reference to section 35 of that Act included a reference to this section.
- (7) For the purposes of this section and section 39—
 - (a) “criminal investigation” means any process—
 - (i) for considering whether an offence has been committed,
 - (ii) for discovering by whom an offence has been committed, or
 - (iii) as a result of which an offence is alleged to have been committed;
 - (b) an offence is a “designated offence” if criminal proceedings instituted by SOCA in respect of the offence fall (or, as the case may be, would fall) to be referred to the Director of Revenue and Customs Prosecutions by virtue of directions under section 39(1);
 - (c) “non-designated offence” means an offence which is not a designated offence;
 - (d) a reference to the institution of criminal proceedings is to be construed in accordance with section 15(2) of the Prosecution of Offences Act 1985 (c. 23); and
 - (e) a reference to the institution of proceedings by SOCA includes a reference to their institution by the Director General of SOCA or a person authorised by him.