*Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.*

DRAFT STATUTORY INSTRUMENTS

# 2014 No.

# PUBLIC BODIES

## The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014

*Made - - - -* ***

*Coming into force in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 2(1), 6(1) and (2), 23(1), (2), (5) and (6), 24(1) and 35(2) of the Public Bodies Act 2011(**1**) ("the Act").

In accordance with section 8 of the Act, the Secretary of State—

(a) having had regard to the factors set out in section 8(1) of the Act, considers that this Order serves the purpose of improving the exercise of public functions; and

(b) considers that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The Secretary of State has consulted in accordance with section 10 of the Act.

A draft of this Order and an explanatory document containing the information required by section 11(2) of the Act have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3). In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 and comes into force on the day after the day on which it is made.

(**1**) 2011 c. 24.

(2) Any amendment, repeal or revocation made by this Order has the same extent as the enactment to which it relates.

### Interpretation

**2.** In this Order—

"the CPS" means the Crown Prosecution Service;

"the CRCA 2005" means the Commissioners for Revenue and Customs Act 2005(**2**);

"the DPP" means the Director of Public Prosecutions;

"the DRCP" means the Director of Revenue and Customs Prosecutions;

"the POA 1985" means the Prosecution of Offences Act 1985(**3**);

"the RCPO" means the Revenue and Customs Prosecutions Office.

### Abolition of the DRCP and transfer of statutory functions to the DPP: merger of offices

**3.**—(1) The office of the DRCP(**4**) is abolished.

(2) Subject to provision made by Schedules 1 to 3 to this Order, the functions of the DRCP are transferred to the DPP.

(3) The following Schedules have effect—

(a) Schedule 1 (amendments of the POA 1985 and the CRCA 2005);

(b) Schedule 2 (amendments of other Acts);

(c) Schedule 3 (amendments of secondary legislation).

### Transfer of property, rights and liabilities

**4.**—(1) All property, rights and liabilities to which the DRCP or the RCPO is entitled or subject at the coming into force of this Order are transferred to the DPP or, as the case may be, the CPS.

(2) Paragraph (1) has effect in relation to property, rights and liabilities—

(a) whether or not they would otherwise be capable of being transferred;

(b) without any instrument or other formality being required;

(c) irrespective of any requirement for consent that would otherwise apply.

### The abolition of the office of the DRCP: supplementary

**5.**—(1) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the DRCP before the coming into force of this Order.

(2) Anything done (or having effect as if done) by or in relation to the DRCP has effect, so far as is necessary for continuing its effect after the coming into force of this Order, as if done by or in relation to the DPP.

(3) Anything (including legal proceedings) which at the coming into force of this Order is in the process of being done by or in relation to the DRCP may be continued by or in relation to the DPP.

(**2**) 2005 c. 11.
(**3**) 1985 c. 23.
(**4**) The office of the DRCP was established by section 34(1) of the CRCA 2005. The Director and his staff are together referred to as the RCPO.

(4) So far as is necessary or appropriate, after the coming into force of this Order, a reference to the DRCP in an enactment, agreement (whether written or not), instrument or other document is to be treated as a reference to the DPP.

(5) In this article—

(a) a reference to the DRCP includes a reference to the RCPO, a Revenue and Customs Prosecutor, a member of the staff of the RCPO other than a Revenue and Customs Prosecutor and a person appointed under section 38(**5**) of the CRCA 2005, and

(b) a reference to the DPP is to be read, so far as is necessary or appropriate, as being a reference to the CPS, a Crown Prosecutor, a member of the staff of the CPS other than a Crown Prosecutor or a person appointed under section 5(**6**) of the POA 1985.

**Saving of powers to conduct proceedings**

**6.**—(1) Where the DPP has conduct of proceedings by virtue of article 5(3), the DPP is to be treated, notwithstanding the repeals and amendments made by this Order—

(a) as acting under the enactment under which the DRCP was acting at the coming into force of this Order, and

(b) as having the same powers to take steps in relation to those proceedings as the DRCP would have had.

(2) In this article—

(a) a reference to the DRCP includes a reference to a Revenue and Customs Prosecutor and a person appointed under section 38 of the CRCA 2005, and

(b) a reference to the DPP is to be read, so far as is necessary or appropriate, as being a reference to a Crown Prosecutor or a person appointed under section 5 of the POA 1985.

**Transfer of appointments, etc**

**7.** An appointment of a person under section 38 of the CRCA 2005 (appointment of person to conduct proceedings on behalf of the RCPO) relating to—

(a) specified proceedings, or

(b) a specified class or description of proceedings,

is to be treated after the coming into force of this Order as if it were an appointment of a person by the DPP under section 5 of the POA 1985 relating to the same proceedings or the same class or description of proceedings.

**Assignment of functions**

**8.** An assignment of a function to the DRCP by order under section 31(1) of the Borders, Citizenship and Immigration Act 2009(**7**) (power to assign prosecution functions relating to criminal investigations by designated customs officials etc) is to be treated after the coming into force of this Order as if it were an assignment to the DPP under section 3(2)(g)(**8**) of the POA 1985.

(**5**) Section 38(1A) was inserted by the Serious Crime Act 2007 (c. 27), section 84(3).
(**6**) Section 5(1) was amended by the Courts and Legal Services Act 1990 (c.41), section 71(2), Schedule 10, paragraph 61(2) and by the Extradition Act 2003, section 190(1) and (4).
(**7**) 2009 c. 11.
(**8**) No amendments have been made to section 3(2)(g). Amendments to section 3 appear below.

**Confidentiality of information**

**9.** Information held by the CPS by reason of a transfer of property, rights and liabilities to the DPP or the CPS under article 4 is to be treated for the purposes of section 40(**9**) of the CRCA 2005 (as amended by this Order) as if it were information disclosed to the DPP by Her Majesty's Revenue and Customs for use in connection with a Revenue and Customs function of the DPP (within the meaning of section 40(6A) of the CRCA 2005).

**Superintendence of the Attorney General**

**10.** Functions exercisable by the DPP by virtue of this Order are to be discharged under the superintendence of the Attorney General.

Signed by the authority of the Secretary of State

*Name*
Minister of State
Ministry of Justice

Date

(**9**) Section 40(2)(ca) was inserted by the Serious Crime Act 2007, section 74(2), Schedule 8, paragraph 167(1) and (2); amended by that Act, section 79, Schedule 11, paragraph 16; and amended by the Crime and Courts Act 2013, section 15(3), Schedule 8, paragraph 186. Section 40(2)(cb) was inserted by the Serious Crime Act 2007, section 74(2), Schedule 8, paragraph 167(1) and (2). Section 40(10A) was inserted by the Serious Crime Act 2007, section 74(2), Schedule 8, paragraph 167(1) and (3).

SCHEDULE 1 Article 3(3)

Amendments of the POA 1985 and the CRCA 2005

# PART 1

## The POA 1985

**1.** The POA 1985 is amended as follows.

**2.**—(1) Section 3(**10**) (functions of the DPP) is amended as follows.

(2) After subsection (2)(aa) insert—

"(ab) to take over the conduct of any criminal proceedings instituted in England and Wales by the Revenue and Customs;".

(3) After subsection (2)(ba) insert—

"(bb) where it appears to him appropriate to do so, to institute and have the conduct of any criminal proceedings in England and Wales relating to a criminal investigation by the Revenue and Customs;".

(4) After subsection (2)(ed) insert—

"(ee) to give, to such extent as he considers appropriate, and to such persons as he considers appropriate, advice on matters relating to—

(i) a criminal investigation by the Revenue and Customs; or

(ii) criminal proceedings instituted in England and Wales relating to a criminal investigation by the Revenue and Customs;".

(5) In subsection (3), at the appropriate place, insert—

""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;".

(6) After subsection (3) insert—

"(3A) In this section a reference to the Revenue and Customs is a reference to—

(a) the Commissioners for Her Majesty's Revenue and Customs;

(b) an officer of Revenue and Customs; or

(c) a person acting on behalf of the Commissioners or an officer of Revenue and Customs.".

(**10**) Section 3(2) was amended by the Criminal Justice Act 1987 (c. 38), section 15, Schedule 2, paragraph 13; the Immigration and Asylum Act 1999 (c. 33), section 164; the Police Reform Act 2002 (c. 30), section 107, Schedule 7, paragraph 10; the Anti-social Behaviour Act 2003 (c. 38), section 86(6) and 92 and Schedule 3; the Extradition Act 2003 (c. 41), section 190; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 7; the Constitutional Reform Act 2005 (c. 4), section 40(4), Schedule 9, paragraph 41(1) and (2); the Serious Organised Crime and Police Act 2005 (c. 15), section 140(5), Schedule 4, paragraph 47; the Violent Crime Reduction Act 2006 (c. 38), sections 7(10), 8(7) and 52(2) and Schedule 3, paragraph 15; the Serious Crime Act 2007 (c. 27), section 74(2), Schedule 8, paragraph 149; and the Crime and Courts Act 2013 (c. 22), section 15(3), Schedule 8, paragraph 30. Section 3(3) was amended by the Police Act 1996 (c. 16), section 103(1), Schedule 7, paragraph 39; the Police Act 1997 (c. 50), section 134(1), Schedule 9, paragraph 48; the Serious Organised Crime and Police Act 2005, sections 59 and 174(2), Schedule 4, paragraph 47 and Schedule 17, Part 2; and the Police Reform and Social Responsibility Act 2011 (c. 13), section 99, Schedule 16, paragraph 171.