

## PART 11

### DEFERRED PROSECUTION AGREEMENTS

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#### When this Part applies

**11.1.**—(1) This Part applies to proceedings in the Crown Court under Schedule 17 to the Crime and Courts Act 2013(a).

(2) In this Part—

- (a) 'agreement' means a deferred prosecution agreement under paragraph 1 of that Schedule;
- (b) 'prosecutor' means a prosecutor designated by or under paragraph 3 of that Schedule; and
- (c) 'defendant' means the corporation, partnership or association with whom the prosecutor proposes to enter, or enters, an agreement.

*[Note. Under Schedule 17 to the Crime and Courts Act 2013, a designated prosecutor may make a deferred prosecution agreement with a defendant, other than an individual, whom the prosecutor is considering prosecuting for an offences or offences listed in that Schedule. Under such an agreement, the defendant agrees to comply with its terms and the prosecutor agrees that, if the Crown Court approves those terms, then paragraph 2 of the Schedule will apply and —*

- (a) the prosecutor will serve a draft indictment charging the defendant with the offence or offences the subject of the agreement;*
- (b) the prosecution will be suspended under that paragraph, and the suspension may not be lifted while the agreement is in force; and*
- (c) no-one may prosecute the defendant for the offence or offences charged while the agreement is in force, or after it expires if the defendant complies with it.*

*The Code for prosecutors issued under paragraph 6 of that Schedule contains guidance on the exercise of prosecution functions in relation to a deferred prosecution agreement.]*

#### Exercise of court's powers

**11.2.**—(1) The court must determine an application to which this Part applies at a hearing, which—

- (a) must be in private, under rule 11.3 (Application to approve a proposal to enter an agreement);

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(a) 2013 c. 22.

- (b) may be in public or private, under rule 11.4 (Application to approve the terms of an agreement), rule 11.6 (Application to approve a variation of the terms of an agreement) or rule 11.9 (Application to postpone the publication of information by the prosecutor);
  - (c) must be in public, under rule 11.5 (Application on breach of agreement) or rule 11.7 (Application to lift suspension of prosecution), unless the court otherwise directs.
- (2) If at a hearing in private to which rule 11.4 or rule 11.6 applies the court approves the agreement or the variation proposed, the court must announce its decision and reasons at a hearing in public.
- (3) The court must not determine an application under rule 11.3, rule 11.4 or rule 11.6 unless—
- (a) both parties are present;
  - (b) the prosecutor provides the court with a written declaration that, for the purposes of the application—
    - (i) the investigator enquiring into the alleged offence or offences has certified that no information has been supplied which the investigator knows to be inaccurate, misleading or incomplete, and
    - (ii) the prosecutor has complied with the prosecution obligation to disclose material to the defendant; and
  - (c) the defendant provides the court with a written declaration that, for the purposes of the application—
    - (i) the defendant has not supplied any information which the defendant knows to be inaccurate, misleading or incomplete, and
    - (ii) the individual through whom the defendant makes the declaration has made reasonable enquiries and believes the defendant's declaration to be true.
- (4) The court must not determine an application under rule 11.5 or rule 11.7—
- (a) in the prosecutor's absence; or
  - (b) in the absence of the defendant, unless the defendant has had at least 28 days in which to make representations.
- (5) If the court approves a proposal to enter an agreement—
- (a) the general rule is that any further application to which this Part applies must be made to the same judge; but
  - (b) the court may direct other arrangements.
- (6) The court may adjourn a hearing—
- (a) if either party asks, or on its own initiative;
  - (b) in particular, if the court requires more information about—
    - (i) the facts of an alleged offence,
    - (ii) the terms of a proposal to enter an agreement, or of a proposed agreement or variation of an agreement, or
    - (iii) the circumstances in which the prosecutor wants the court to decide whether the defendant has failed to comply with the terms of an agreement.
- (7) The court may—
- (a) hear an application under rule 11.4 immediately after an application under rule 11.3, if the court approves a proposal to enter an agreement;
  - (b) hear an application under rule 11.7 immediately after an application under rule 11.5, if the court terminates an agreement.

*[Note. See paragraphs 7(4), 8(5), (6) and 10(5), (6) of Schedule 17 to the Crime and Courts Act 2013.*

*The Code for prosecutors issued under paragraph 6 of that Schedule contains guidance on fulfilling the prosecution duty of disclosure.]*

**Application to approve a proposal to enter an agreement**

**11.3.**—(1) This rule applies where a prosecutor wants the court to approve a proposal to enter an agreement.

(2) The prosecutor must—

- (a) apply in writing after the commencement of negotiations between the parties but before the terms of agreement have been settled; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the defendant.

(3) The application must—

- (a) identify the parties to the proposed agreement;
- (b) attach a proposed indictment setting out such of the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013 as the prosecutor is considering;
- (c) include or attach a statement of facts proposed for inclusion in the agreement, which must give full particulars of each alleged offence, including details of any alleged financial gain or loss;
- (d) include any information about the defendant that would be relevant to sentence in the event of conviction for the offence or offences;
- (e) specify the proposed expiry date of the agreement;
- (f) describe the proposed terms of the agreement, including details of any—
  - (i) monetary penalty to be paid by the defendant, and the time within which any such penalty is to be paid,
  - (ii) compensation, reparation or donation to be made by the defendant, the identity of the recipient of any such payment and the time within which any such payment is to be made,
  - (iii) surrender of profits or other financial benefit by the defendant, and the time within which any such sum is to be surrendered,
  - (iv) arrangement to be made in relation to the management or conduct of the defendant's business,
  - (v) co-operation required of the defendant in any investigation related to the offence or offences,
  - (vi) other action required of the defendant,
  - (vii) arrangement to monitor the defendant's compliance with a term,
  - (viii) consequence of the defendant's failure to comply with a term, and
  - (ix) prosecution costs to be paid by the defendant, and the time within which any such costs are to be paid;
- (g) in relation to those terms, explain how they comply with—
  - (i) the requirements of the code issued under paragraph 6 of Schedule 17 to the Crime and Courts Act 2013, and
  - (ii) any sentencing guidelines or guideline cases which apply;
- (h) contain or attach the defendant's written consent to the proposal; and
- (i) explain why—
  - (i) entering into an agreement is likely to be in the interests of justice, and
  - (ii) the proposed terms of the agreement are fair, reasonable and proportionate.

(4) If the proposed statement of facts includes assertions that the defendant does not admit, the application must—

- (a) specify the facts that are not admitted; and

- (b) explain why that is immaterial for the purposes of the proposal to enter an agreement.

[*Note. See paragraphs 5 and 7 of Schedule 17 to the Crime and Courts Act 2013.*]

### Application to approve the terms of an agreement

**11.4.**—(1) This rule applies where—

- (a) the court has approved a proposal to enter an agreement on an application under rule 11.3; and  
(b) the prosecutor wants the court to approve the terms of the agreement.

(2) The prosecutor must—

- (a) apply in writing as soon as practicable after the parties have settled the terms; and  
(b) serve the application on—  
(i) the court officer, and  
(ii) the defendant.

(3) The application must—

- (a) attach the agreement;  
(b) indicate in what respect, if any, the terms of the agreement differ from those proposed in the application under rule 11.3;  
(c) contain or attach the defendant's written consent to the agreement;  
(d) explain why—  
(i) the agreement is in the interests of justice, and  
(ii) the terms of the agreement are fair, reasonable and proportionate;  
(e) attach a draft indictment, charging the defendant with the offence or offences the subject of the agreement; and  
(f) include any application for the hearing to be in private.

(4) If the court approves the agreement and the draft indictment, the court officer must—

- (a) endorse any paper copy of the indictment made for the court with—  
(i) a note to identify it as the indictment approved by the court, and  
(ii) the date of the court's approval; and  
(b) treat the case as if it had been suspended by order of the court.

[*Note. See paragraph 8 of Schedule 17 to the Crime and Courts Act 2013. See also rule 11.9 (Application to postpone the publication of information by the prosecutor).*]

*Under paragraph 2(1) of Schedule 17 to the 2013 Act and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(a), the draft indictment to which this rule applies becomes an indictment when the court approves the agreement and consents to the service of that draft. Part 10 contains rules about indictments.*

*Under paragraph 2(2) of Schedule 17 to the 2013 Act, on approval of the draft indictment the proceedings are automatically suspended.*

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(a) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).

*Under paragraph 13(2) of Schedule 17 to the 2013 Act, where the court approves an agreement the statement of facts contained in that agreement is to be treated as an admission by the defendant under section 10 of the Criminal Justice Act 1967(a) (proof by formal admission) in any criminal proceedings against the defendant for the alleged offence.]*

### **Application on breach of agreement**

**11.5.**—(1) This rule applies where—

- (a) the prosecutor believes that the defendant has failed to comply with the terms of an agreement; and
- (b) the prosecutor wants the court to decide—
  - (i) whether the defendant has failed to comply, and
  - (ii) if so, whether to terminate the agreement, or to invite the parties to agree proposals to remedy that failure.

(2) The prosecutor must—

- (a) apply in writing, as soon as practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the defendant.

(3) The application must—

- (a) specify each respect in which the prosecutor believes the defendant has failed to comply with the terms of the agreement, and explain the reasons for the prosecutor's belief; and
- (b) attach a copy of any document containing evidence on which the prosecutor relies.

(4) A defendant who wants to make representations in response to the application must serve the representations on—

- (a) the court officer; and
- (b) the prosecutor,

not more than 28 days after service of the application.

*[Note. See paragraph 9 of Schedule 17 to the Crime and Courts Act 2013. See also rule 11.9 (Application to postpone the publication of information by the prosecutor).]*

### **Application to approve a variation of the terms of an agreement**

**11.6.**—(1) This rule applies where the parties have agreed to vary the terms of an agreement because—

- (a) on an application under rule 11.5 (Application on breach of agreement), the court has invited them to do so; or
- (b) variation of the agreement is necessary to avoid a failure by the defendant to comply with its terms in circumstances that were not, and could not have been, foreseen by either party at the time the agreement was made.

(2) The prosecutor must—

- (a) apply in writing, as soon as practicable after the parties have settled the terms of the variation; and
- (b) serve the application on—
  - (i) the court officer, and

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(a) 1967 c. 80.

- (ii) the defendant.
- (3) The application must—
  - (a) specify each variation proposed;
  - (b) contain or attach the defendant’s written consent to the variation;
  - (c) explain why—
    - (i) the variation is in the interests of justice, and
    - (ii) the terms of the agreement as varied are fair, reasonable and proportionate; and
  - (d) include any application for the hearing to be in private.

*[Note. See paragraph 10 of Schedule 17 to the Crime and Courts Act 2013. See also rule 11.9 (Application to postpone the publication of information by the prosecutor).]*

### **Application to lift suspension of prosecution**

- 11.7.**—(1) This rule applies where—
- (a) the court terminates an agreement before its expiry date; and
  - (b) the prosecutor wants the court to lift the suspension of the prosecution that applied when the court approved the terms of the agreement.
- (2) The prosecutor must—
- (a) apply in writing, as soon as practicable after the termination of the agreement; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the defendant.
- (3) A defendant who wants to make representations in response to the application must serve the representations on—
- (a) the court officer; and
  - (b) the prosecutor,
- not more than 28 days after service of the application.

*[Note. See paragraphs 2(3) and 9 of Schedule 17 to the Crime and Courts Act 2013.]*

### **Notice to discontinue prosecution**

- 11.8.**—(1) This rule applies where an agreement expires—
- (a) on its expiry date, or on a date treated as its expiry date; and
  - (b) without having been terminated by the court.
- (2) The prosecutor must—
- (a) as soon as practicable give notice in writing discontinuing the prosecution on the indictment approved by the court under rule 11.4 (Application to approve the terms of an agreement); and
  - (b) serve the notice on—
    - (i) the court officer, and
    - (ii) the defendant.

*[Note. See paragraph 11 of Schedule 17 to the Crime and Courts Act 2013.]*

### **Application to postpone the publication of information by the prosecutor**

- 11.9.**—(1) This rule applies where the prosecutor—

- (a) makes an application under rule 11.4 (Application to approve the terms of an agreement), rule 11.5 (Application on breach of agreement) or rule 11.6 (Application to approve a variation of the terms of an agreement);
  - (b) decides not to make an application under rule 11.5, despite believing that the defendant has failed to comply with the terms of the agreement; or
  - (c) gives a notice under rule 11.8 (Notice to discontinue prosecution).
- (2) A party who wants the court to order that the publication of information by the prosecutor about the court's or the prosecutor's decision should be postponed must—
- (a) apply in writing, as soon as practicable and in any event before such publication occurs;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the other party; and
  - (c) in the application—
    - (i) specify the proposed terms of the order, and for how long it should last, and
    - (ii) explain why an order in the terms proposed is necessary.

*[Note. See paragraph 12 of Schedule 17 to the Crime and Courts Act 2013.*

*Part 6 of these Rules contains rules about applications for a restriction on reporting what takes place at a public hearing, or public access to what otherwise would be a public hearing.]*

#### **Duty of court officer, etc.**

- 11.10.**—(1) Unless the court otherwise directs, the court officer must—
- (a) arrange for the recording of proceedings on an application to which this Part applies;
  - (b) arrange for the transcription of such a recording if—
    - (i) a party wants such a transcript, or
    - (ii) anyone else wants such a transcript (but that is subject to the restrictions in paragraph (2)).
- (2) Unless the court otherwise directs, a person who transcribes a recording of proceedings under such arrangements—
- (a) must not supply anyone other than a party with a transcript of a recording of—
    - (i) a hearing in private, or
    - (ii) a hearing in public to which reporting restrictions apply;
  - (b) subject to that, must supply any person with any transcript for which that person asks—
    - (i) in accordance with the transcription arrangements made by the court officer, and
    - (ii) on payment by that person of any fee prescribed.
- (3) The court officer must not identify either party to a hearing in private under rule 11.3 (Application to approve a proposal to enter an agreement) or rule 11.4 (Application to approve the terms of an agreement)—
- (a) in any notice displayed in the vicinity of the courtroom; or
  - (b) in any other information published by the court officer.

#### **Court's power to vary requirements under this Part**

- 11.11.**—(1) The court may—
- (a) shorten or extend (even after it has expired) a time limit under this Part;
  - (b) allow there to be made orally—
    - (i) an application under rule 11.4 (Application to approve the terms of an agreement), or

- (ii) an application under rule 11.7 (Application to lift suspension of prosecution) where the court exercises its power under rule 11.2(7) to hear one application immediately after another.
- (2) A party who wants an extension of time must—
  - (a) apply when serving the application or notice for which it is needed; and
  - (b) explain the delay.