

PART 12

DISCONTINUING A PROSECUTION

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When this Part applies

12.1.—(1) This Part applies where—

- (a) the Director of Public Prosecutions can discontinue a case in a magistrates' court, under section 23 of the Prosecution of Offences Act 1985(a);
- (b) the Director of Public Prosecutions, or another public prosecutor, can discontinue a case sent for trial in the Crown Court, under section 23A of the Prosecution of Offences Act 1985(b).

(2) In this Part, 'prosecutor' means one of those authorities.

[Note. Under section 23 of the Prosecution of Offences Act 1985, the Director of Public Prosecutions may discontinue proceedings in a magistrates' court, before the court—

- (a) *sends the defendant for trial in the Crown Court; or*
- (b) *begins to hear the prosecution evidence, at a trial in the magistrates' court.*

Under section 23(4) of the 1985 Act, the Director may discontinue proceedings where a person charged is in custody but has not yet been brought to court.

Under section 23 of the 1985 Act, the defendant has a right to require the proceedings to continue. See rule 12.3.

Under section 23A of the 1985 Act, the Director of Public Prosecutions, or a public authority within the meaning of section 17 of that Act(c), may discontinue proceedings where the defendant was sent for trial in the Crown Court under section 51 of the Crime and Disorder Act 1998(d). In such a case—

- (a) *the prosecutor must discontinue before a draft indictment becomes an indictment under rule 10.2(5); and*
- (b) *the defendant has no right to require the proceedings to continue.*

Where a prosecution does not proceed, the court has power to order the payment of the defendant's costs out of central funds. See rule 45.4.]

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- (a) 1985 c. 23; section 23 was amended by section 119 of, and paragraph 63 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 290 of Schedule 8 to the Courts Act 2003 (c. 39) and paragraph 57 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
 - (b) 1985 c. 23; section 23A was inserted by section 119 of, and paragraph 64 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and amended by paragraph 57 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
 - (c) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (d) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

Discontinuing a case

- 12.2.**—(1) A prosecutor exercising a power to which this Part applies must serve notice on—
- (a) the court officer;
 - (b) the defendant; and
 - (c) any custodian of the defendant.
- (2) Such a notice must—
- (a) identify—
 - (i) the defendant and each offence to which the notice relates,
 - (ii) the person serving the notice, and
 - (iii) the power that that person is exercising;
 - (b) explain—
 - (i) in the copy of the notice served on the court officer, the reasons for discontinuing the case,
 - (ii) that the notice brings the case to an end,
 - (iii) if the defendant is in custody for any offence to which the notice relates, that the defendant must be released from that custody, and
 - (iv) if the notice is under section 23 of the 1985 Act, that the defendant has a right to require the case to continue.
- (3) Where the defendant is on bail, the court officer must notify—
- (a) any surety; and
 - (b) any person responsible for monitoring or securing the defendant's compliance with a condition of bail.

Defendant's notice to continue

- 12.3.**—(1) This rule applies where a prosecutor serves a notice to discontinue under section 23 of the 1985 Act.
- (2) A defendant who wants the case to continue must serve notice—
- (a) on the court officer; and
 - (b) not more than 35 days after service of the notice to discontinue.
- (3) If the defendant serves such a notice, the court officer must—
- (a) notify the prosecutor; and
 - (b) refer the case to the court.