

## SCHEDULES

### SCHEDULE 17

Section 45

#### DEFERRED PROSECUTION AGREEMENTS

##### PART 1

##### GENERAL

###### *Characteristics of a deferred prosecution agreement*

- 1 (1) A deferred prosecution agreement (a “DPA”) is an agreement between a designated prosecutor and a person (“P”) whom the prosecutor is considering prosecuting for an offence specified in Part 2 (the “alleged offence”).
- (2) Under a DPA—
  - (a) P agrees to comply with the requirements imposed on P by the agreement;
  - (b) the prosecutor agrees that, upon approval of the DPA by the court (see paragraph 8), paragraph 2 is to apply in relation to the prosecution of P for the alleged offence.

###### *Effect of DPA on court proceedings*

- 2 (1) Proceedings in respect of the alleged offence are to be instituted by the prosecutor in the Crown Court by preferring a bill of indictment charging P with the alleged offence (see section 2(2)(ba) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (bill of indictment preferred with consent of Crown Court judge following DPA approval)).
- (2) As soon as proceedings are instituted under sub-paragraph (1) they are automatically suspended.
- (3) The suspension may only be lifted on an application to the Crown Court by the prosecutor; and no such application may be made at any time when the DPA is in force.
- (4) At a time when proceedings are suspended under sub-paragraph (2), no other person may prosecute P for the alleged offence.

###### *Designated prosecutors*

- 3 (1) The following are designated prosecutors—
  - (a) the Director of Public Prosecutions;
  - (b) the Director of the Serious Fraud Office;
  - (c) any prosecutor designated under this paragraph by an order made by the Secretary of State.

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- (2) A designated prosecutor must exercise personally the power to enter into a DPA and, accordingly, any enactment that enables a function of a designated prosecutor to be exercised by a person other than the prosecutor concerned does not apply.
- (3) But if the designated prosecutor is unavailable, the power to enter into a DPA may be exercised personally by a person authorised in writing by the designated prosecutor.

*Persons who may enter into a DPA with a prosecutor*

- 4 (1) P may be a body corporate, a partnership or an unincorporated association, but may not be an individual.
- (2) In the case of a DPA between a prosecutor and a partnership—
  - (a) the DPA must be entered into in the name of the partnership (and not in that of any of the partners);
  - (b) any money payable under the DPA must be paid out of the funds of the partnership.
- (3) In the case of a DPA between a prosecutor and an unincorporated association—
  - (a) the DPA must be entered into in the name of the association (and not in that of any of its members);
  - (b) any money payable under the DPA must be paid out of the funds of the association.

*Content of a DPA*

- 5 (1) A DPA must contain a statement of facts relating to the alleged offence, which may include admissions made by P.
- (2) A DPA must specify an expiry date, which is the date on which the DPA ceases to have effect if it has not already been terminated under paragraph 9 (breach).
- (3) The requirements that a DPA may impose on P include, but are not limited to, the following requirements—
  - (a) to pay to the prosecutor a financial penalty;
  - (b) to compensate victims of the alleged offence;
  - (c) to donate money to a charity or other third party;
  - (d) to disgorge any profits made by P from the alleged offence;
  - (e) to implement a compliance programme or make changes to an existing compliance programme relating to P's policies or to the training of P's employees or both;
  - (f) to co-operate in any investigation related to the alleged offence;
  - (g) to pay any reasonable costs of the prosecutor in relation to the alleged offence or the DPA.

The DPA may impose time limits within which P must comply with the requirements imposed on P.

- (4) The amount of any financial penalty agreed between the prosecutor and P must be broadly comparable to the fine that a court would have imposed on P on conviction for the alleged offence following a guilty plea.

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- (5) A DPA may include a term setting out the consequences of a failure by P to comply with any of its terms.

*Code on DPAs*

- 6 (1) The Director of Public Prosecutions and the Director of the Serious Fraud Office must jointly issue a Code for prosecutors giving guidance on—
- (a) the general principles to be applied in determining whether a DPA is likely to be appropriate in a given case, and
  - (b) the disclosure of information by a prosecutor to P in the course of negotiations for a DPA and after a DPA has been agreed.
- (2) The Code may also give guidance on any other relevant matter, including—
- (a) the use of information obtained by a prosecutor in the course of negotiations for a DPA;
  - (b) variation of a DPA;
  - (c) termination of a DPA and steps that may be taken by a prosecutor following termination;
  - (d) steps that may be taken by a prosecutor when the prosecutor suspects a breach of a DPA.
- (3) The Code must be set out in the report made by the Director of Public Prosecutions to the Attorney General under section 9 of the Prosecution of Offences Act 1985 for the year in which the Code is issued.
- (4) The Code may from time to time be altered or replaced by agreement between—
- (a) the Director of Public Prosecutions,
  - (b) the Director of the Serious Fraud Office, and
  - (c) any prosecutor who is for the time being designated by an order made under paragraph 3.
- (5) If the Code is altered or replaced, the new Code must be set out in the report made by the Director of Public Prosecutions to the Attorney General under section 9 of the Prosecution of Offences Act 1985 for the year in which the Code is altered or replaced.
- (6) A prosecutor must take account of the Code in exercising functions under this Schedule.

*Court approval of DPA: preliminary hearing*

- 7 (1) After the commencement of negotiations between a prosecutor and P in respect of a DPA but before the terms of the DPA are agreed, the prosecutor must apply to the Crown Court for a declaration that—
- (a) entering into a DPA with P is likely to be in the interests of justice, and
  - (b) the proposed terms of the DPA are fair, reasonable and proportionate.
- (2) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (1).
- (3) The prosecutor may make a further application to the court for a declaration under sub-paragraph (1) if, following the previous application, the court declined to make a declaration.

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- (4) A hearing at which an application under this paragraph is determined must be held in private, any declaration under sub-paragraph (1) must be made in private, and reasons under sub-paragraph (2) must be given in private.

*Court approval of DPA: final hearing*

- 8 (1) When a prosecutor and P have agreed the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that—
- (a) the DPA is in the interests of justice, and
  - (b) the terms of the DPA are fair, reasonable and proportionate.
- (2) But the prosecutor may not make an application under sub-paragraph (1) unless the court has made a declaration under paragraph 7(1) (declaration on preliminary hearing).
- (3) A DPA only comes into force when it is approved by the Crown Court making a declaration under sub-paragraph (1).
- (4) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (1).
- (5) A hearing at which an application under this paragraph is determined may be held in private.
- (6) But if the court decides to approve the DPA and make a declaration under sub-paragraph (1) it must do so, and give its reasons, in open court.
- (7) Upon approval of the DPA by the court, the prosecutor must publish—
- (a) the DPA,
  - (b) the declaration of the court under paragraph 7 and the reasons for its decision to make the declaration,
  - (c) in a case where the court initially declined to make a declaration under paragraph 7, the court’s reason for that decision, and
  - (d) the court’s declaration under this paragraph and the reasons for its decision to make the declaration,
- unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

*Breach of DPA*

- 9 (1) At any time when a DPA is in force, if the prosecutor believes that P has failed to comply with the terms of the DPA, the prosecutor may make an application to the Crown Court under this paragraph.
- (2) On an application under sub-paragraph (1) the court must decide whether, on the balance of probabilities, P has failed to comply with the terms of the DPA.
- (3) If the court finds that P has failed to comply with the terms of the DPA, it may—
- (a) invite the prosecutor and P to agree proposals to remedy P’s failure to comply, or
  - (b) terminate the DPA.
- (4) The court must give reasons for its decisions under sub-paragraphs (2) and (3).

- (5) Where the court decides that P has not failed to comply with the terms of the DPA, the prosecutor must publish the court's decision and its reasons for that decision, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (6) Where the court invites the prosecutor and P to agree proposals to remedy P's failure to comply, the prosecutor must publish the court's decisions under sub-paragraphs (2) and (3) and the reasons for those decisions, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (7) Where the court terminates a DPA under sub-paragraph (3)(b), the prosecutor must publish—
  - (a) the fact that the DPA has been terminated by the court following a failure by P to comply with the terms of the DPA, and
  - (b) the court's reasons for its decisions under sub-paragraphs (2) and (3),unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (8) If the prosecutor believes that P has failed to comply with the terms of the DPA but decides not to make an application to the Crown Court under this paragraph, the prosecutor must publish details relating to that decision, including—
  - (a) the reasons for the prosecutor's belief that P has failed to comply, and
  - (b) the reasons for the prosecutor's decision not to make an application to the court,unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

#### *Variation of DPA*

- 10 (1) At any time when a DPA is in force, the prosecutor and P may agree to vary its terms if—
  - (a) the court has invited the parties to vary the DPA under paragraph 9(3)(a), or
  - (b) variation of the DPA is necessary to avoid a failure by P to comply with its terms in circumstances that were not, and could not have been, foreseen by the prosecutor or P at the time that the DPA was agreed.
- (2) When the prosecutor and P have agreed to vary the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that—
  - (a) the variation is in the interests of justice, and
  - (b) the terms of the DPA as varied are fair, reasonable and proportionate.
- (3) A variation of a DPA only takes effect when it is approved by the Crown Court making a declaration under sub-paragraph (2).
- (4) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (2).
- (5) A hearing at which an application under this paragraph is determined may be held in private.

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- (6) But if the court decides to approve the variation and make a declaration under sub-paragraph (2) it must do so, and give its reasons, in open court.
- (7) Where the court decides not to approve the variation, the prosecutor must publish the court's decision and the reasons for it, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).
- (8) Where the court decides to approve the variation the prosecutor must publish—
  - (a) the DPA as varied, and
  - (b) the court's declaration under this paragraph and the reasons for its decision to make the declaration,
 unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

*Discontinuance of proceedings on expiry of DPA*

- 11 (1) If a DPA remains in force until its expiry date, then after the expiry of the DPA the proceedings instituted under paragraph 2(1) are to be discontinued by the prosecutor giving notice to the Crown Court that the prosecutor does not want the proceedings to continue.
- (2) Where proceedings are discontinued under sub-paragraph (1), fresh criminal proceedings may not be instituted against P for the alleged offence.
- (3) But sub-paragraph (2) does not prevent fresh proceedings from being instituted against P in a case where, after a DPA has expired, the prosecutor finds that, during the course of the negotiations for the DPA—
- (a) P provided inaccurate, misleading or incomplete information to the prosecutor, and
  - (b) P knew or ought to have known that the information was inaccurate, misleading or incomplete.
- (4) A DPA is not to be treated as having expired for the purposes of sub-paragraph (1) if, on the expiry date specified in the DPA—
- (a) an application made by the prosecutor under paragraph 9 (breach) has not yet been decided by the court,
  - (b) following an application under paragraph 9 the court has invited the parties to agree proposals to remedy P's failure to comply, but the parties have not yet reached an agreement, or
  - (c) the parties have agreed proposals to remedy P's failure to comply following an invitation of the court under paragraph 9(3)(a) but P has not yet complied with the agreement.
- (5) In the case mentioned in sub-paragraph (4)(a)—
- (a) if the court decides that P has not failed to comply with the terms of the DPA, or that P has failed to comply but does not take action under paragraph 9(3), the DPA is to be treated as expiring when the application is decided;
  - (b) if the court terminates the DPA, the DPA is to be treated as not having remained in force until its expiry date (and sub-paragraph (1) therefore does not apply);

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- (c) if the court invites the parties to agree proposals to remedy P's failure to comply, the DPA is to be treated as expiring when the parties have reached such an agreement and P has complied with it.
- (6) In the case mentioned in sub-paragraph (4)(b), the DPA is to be treated as expiring when the parties have reached an agreement and P has complied with it.
- (7) In the case mentioned in sub-paragraph (4)(c), the DPA is to be treated as expiring when P complies with the agreement.
- (8) Where proceedings are discontinued under sub-paragraph (1), the prosecutor must publish—
  - (a) the fact that the proceedings have been discontinued, and
  - (b) details of P's compliance with the DPA,unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

#### *Court order postponing publication of information by prosecutor*

- 12 The court may order that the publication of information by the prosecutor under paragraph 8(7), 9(5), (6), (7) or (8), 10(7) or (8) or 11(8) be postponed for such period as the court considers necessary if it appears to the court that postponement is necessary for avoiding a substantial risk of prejudice to the administration of justice in any legal proceedings.

#### *Use of material in criminal proceedings*

- 13 (1) Sub-paragraph (2) applies where a DPA between a prosecutor and P has been approved by the Crown Court under paragraph 8.
- (2) The statement of facts contained in the DPA is, in any criminal proceedings brought against P for the alleged offence, to be treated as an admission by P under section 10 of the Criminal Justice Act 1967 (proof by formal admission).
- (3) Sub-paragraph (4) applies where a prosecutor and P have entered into negotiations for a DPA but the DPA has not been approved by the Crown Court under paragraph 8.
- (4) Material described in sub-paragraph (6) may only be used in evidence against P—
  - (a) on a prosecution for an offence consisting of the provision of inaccurate, misleading or incomplete information, or
  - (b) on a prosecution for some other offence where in giving evidence P makes a statement inconsistent with the material.
- (5) However, material may not be used against P by virtue of sub-paragraph (4)(b) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of P in the proceedings arising out of the prosecution.
- (6) The material is—
  - (a) material that shows that P entered into negotiations for a DPA, including in particular—
    - (i) any draft of the DPA;
    - (ii) any draft of a statement of facts intended to be included within the DPA;

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- (iii) any statement indicating that P entered into such negotiations;
- (b) material that was created solely for the purpose of preparing the DPA or statement of facts.

*Money received by prosecutor under a DPA*

- 14 Any money received by a prosecutor under a term of a DPA that provides for P to pay a financial penalty to the prosecutor or to disgorge profits made from the alleged offence is to be paid into the Consolidated Fund.

**PART 2**

OFFENCES IN RELATION TO WHICH A DPA MAY BE ENTERED INTO

*Common law offences*

- 15 Conspiracy to defraud.
- 16 Cheating the public revenue.

*Statutory offences*

- 17 An offence under any of the following sections of the Theft Act 1968—
  - (a) section 1 (theft);
  - (b) section 17 (false accounting);
  - (c) section 20 (suppression etc of documents);
  - (d) section 24A (dishonestly retaining a wrongful credit).
- 18 An offence under any of the following sections of the Customs and Excise Management Act 1979—
  - (a) section 68 (offences in relation to exportation of prohibited or restricted goods);
  - (b) section 167 (untrue declarations etc);
  - (c) section 170 (fraudulent evasion of duty etc).
- 19 An offence under any of the following sections of the Forgery and Counterfeiting Act 1981—
  - (a) section 1 (forgery);
  - (b) section 2 (copying a false instrument);
  - (c) section 3 (using a false instrument);
  - (d) section 4 (using a copy of a false instrument);
  - (e) section 5 (offences relating to money orders, share certificates, passports etc).
- 20 An offence under section 450 of the Companies Act 1985 (destroying, mutilating etc company documents).
- 21 An offence under section 72 of the Value Added Tax Act 1994 (fraudulent evasion of VAT).
- 22 An offence under any of the following sections of the Financial Services and Markets Act 2000—



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- (a) section 23 (contravention of prohibition of carrying on regulated activity unless authorised or exempt);
  - (b) section 25 (contravention of restrictions on financial promotion);
  - (c) section 85 (prohibition of dealing etc in transferable securities without approved prospectus);
  - (d) section 346 (provision of false or misleading statements to auditor or actuary);
  - (e) section 397 (misleading statements and practices);
  - (f) section 398 (misleading the FSA).
- 23 An offence under any of the following sections of the Proceeds of Crime Act 2002—
- (a) section 327 (concealing etc criminal property);
  - (b) section 328 (arrangements facilitating acquisition etc of criminal property);
  - (c) section 329 (acquisition, use and possession of criminal property);
  - (d) section 330 (failing to disclose knowledge or suspicion of money laundering);
  - (e) section 333A (tipping off).
- 24 An offence under any of the following sections of the Companies Act 2006—
- (a) section 658 (general rule against limited company acquiring its own shares);
  - (b) section 680 (prohibited financial assistance);
  - (c) section 993 (fraudulent trading).
- 25 An offence under any of the following sections of the Fraud Act 2006—
- (a) section 1 (fraud);
  - (b) section 6 (possession etc of articles for use in frauds);
  - (c) section 7 (making or supplying articles for use in frauds);
  - (d) section 11 (obtaining services dishonestly).
- 26 An offence under any of the following sections of the Bribery Act 2010—
- (a) section 1 (bribing another person);
  - (b) section 2 (being bribed);
  - (c) section 6 (bribery of foreign public officials);
  - (d) section 7 (failure of commercial organisations to prevent bribery).
- 27 An offence under regulation 45 of the Money Laundering Regulations 2007 ([S.I. 2007/2157](#)).

#### *Ancillary offences*

- 28 Any ancillary offence relating to an offence specified in this Part.

#### *Interpretation of this Part*

- 29 “Ancillary offence”, in relation to an offence, means—
- (a) aiding, abetting, counselling or procuring the commission of the offence;
  - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
  - (c) attempting or conspiring to commit the offence.

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- 30 This Schedule applies in relation to conduct occurring before the commencement of this Schedule as if an offence specified in this Part included any corresponding offence under the law in force at the time of the conduct (and for the purposes of this paragraph, the common law offence of inciting the commission of another offence is to be treated as an offence corresponding to an offence under Part 2 of the Serious Crime Act 2007).

*Power to amend this Part*

- 31 The Secretary of State may by order amend this Part by—
- (a) adding an offence of financial or economic crime;
  - (b) removing an offence.

### PART 3

#### CONSEQUENTIAL AND TRANSITIONAL PROVISION

*Consequential amendments*

- 32 In section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (procedure for indictment of offenders), in subsection (2) after paragraph (b) insert—
- “(ba) the bill is preferred with the consent of a judge of the Crown Court following a declaration by the court under paragraph 8(1) of Schedule 17 to the Crime and Courts Act 2013 (court approval of deferred prosecution agreement); or”.
- 33 In section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (issue of witness summons on application to the Crown Court), after subsection (6) insert—
- “(6A) Where the proceedings concerned relate to an offence that is the subject of a deferred prosecution agreement within the meaning of Schedule 17 to the Crime and Courts Act 2013, an application must be made as soon as is reasonably practicable after the suspension of the proceedings is lifted under paragraph 2(3) of that Schedule.”
- 34 In Schedule 1 to the Contempt of Court Act 1981 (times when proceedings are active for purposes of strict liability rule for contempt of court), in paragraph 7, after paragraph (aa) insert—
- “(ab) in England and Wales, if they are discontinued by virtue of paragraph 11 of Schedule 17 to the Crime and Courts Act 2013 (deferred prosecution agreements);”.
- 35 In section 15 of the Prosecution of Offences Act 1985 (interpretation), in subsection (2)(d) after “(b)” insert “or (ba)”.
- 36 In section 51 of the Criminal Justice and Public Order Act 1994 (intimidation etc of witnesses, jurors and others), in subsection 10(a)(iii) after “2(2)(b)” insert “or (ba)”.
- 37 (1) The Criminal Procedure and Investigations Act 1996 is amended as follows.
- (2) In section 1 (application of Part 1: disclosure), in subsection (2), after paragraph (f) insert “, or
- (g) following the preferment of a bill of indictment charging a person with an indictable offence under the authority of section 2(2)(ba)

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of the Administration of Justice (Miscellaneous Provisions) Act 1933 (bill of indictment preferred with consent of Crown Court judge following approval of deferred prosecution agreement), the suspension of the proceedings against the person under paragraph 2(2) of Schedule 17 to the Crime and Courts Act 2013 is lifted under paragraph 2(3) of that Schedule.”

- (3) In section 28 (application of Part 3: preparatory hearings), in subsection (1)(c) after “2(2)(b)” insert “or (ba)”.
  - (4) In section 39 (meaning of pre-trial hearing), in subsection (2)(a) after “2(2)(b)” insert “or (ba)”.
  - (5) In Schedule 3 (fraud), in paragraph 8(1)(c) after “2(2)(b)” insert “or (ba)”.
- 38 In section 85 of the Proceeds of Crime Act 2002 (proceedings), in subsection (1)(c) at the end insert “or subsection (2)(ba) of that section (preferment by Crown Court judge following approval of deferred prosecution agreement)”.

*Transitional provision*

- 39 (1) Conduct constituting an alleged offence that occurred before the relevant commencement day may be taken into account for the purposes of this Schedule.
- (2) In this paragraph, the “relevant commencement day” means—
- (a) in a case where the alleged offence is an offence that is specified in Part 2 when this Schedule comes into force, the day on which this Schedule comes into force;
  - (b) in a case where the alleged offence is an offence that is subsequently added to Part 2 (whether by order under paragraph 31 or otherwise), the day when the enactment adding that offence to Part 2 comes into force.