

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is for internal guidance only and is published on the SFO's website solely in the interests of transparency. It is not published for the purpose of providing legal advice and should not therefore be relied on as the basis for any legal advice or decision. Some of the content of this document may have been redacted.

Introduction

The Attorney General's consent ('fiat') to prosecute is required in respect of particular offences. Consent offences are created by statute to prevent certain types of offences from being prosecuted in inappropriate cases.

Section 1 of the Law Officers Act 1997 enables the Solicitor General to grant consent as well as the Attorney General.

SFO Prosecutors must familiarise themselves with the requirements set out in Framework agreement between the Law Officers and the Director of the Serious Fraud Office. Prosecutors should check in each case whether the charges which are proposed require consent.

If you are considering prosecuting an offence for which consent is required, you should contact Strategic and Policy at the earliest opportunity (please also see 'Procedure' below).

Cases Requiring the Consent of the Attorney General

Some offences of bribery, for example under the Public Bodies Corruption Act 1889 and the Prevention of Corruption Act 1906, may not be prosecuted without the Attorney General's consent. Offences of bribery which occur after 1 July 2011, which are prosecuted under the Bribery Act 2010, require the consent of the Director of the SFO, as to which see below.

Inchoate Offences

Consent is required in cases alleging attempt or statutory conspiracy to commit an offence which itself requires consent. Accordingly, prosecutors will need to check the specific legislation to determine if consent is required. In addition, the consent of the Attorney General is required to prosecute conspiracy to commit offences outside England and Wales (see sections 1A and 4(5) of the Criminal Law Act 1977 and the guidance provided by the Court of Appeal in *R v Smith (Wallace Smith) (No. 4)* [2004] EWCA Crim 631.

Consent is also required in cases involving aiding, abetting, counselling or procuring an offence where that offence itself requires consent or where it is governed by Schedule 4 of the Serious Crime Act 2007 (extra-territoriality; see also section 53 of the Serious Crime Act 2007).

In cases where there is a choice of charges, and there is at least one that requires consent, section 6.1 of the Code for Crown Prosecutors allows the prosecutor to select the charge(s) that do not require the Attorney's consent so long as the proposed charges reflect the criminality and the court's sentencing powers are adequate.

Version OGW 3, Published © Crown Copyright, May 2019.

OGI This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is for internal guidance only and is published on the SFO's website solely in the interests of transparency. It is not published for the purpose of providing legal advice and should not therefore be relied on as the basis for any legal advice or decision. Some of the content of this document may have been redacted.

When to Seek the Law Officers' Consent

Consent should be obtained at the earliest opportunity.

Where a case is to be commenced by way of information and summons, or by requisition and charge, consent must be in place before the information is laid or the requisition and charge issued.

Section 25(2) of the Prosecution of Offences Act 1985 enables a suspect to be arrested, charged and remanded in custody where the Attorney General's consent would otherwise be required, but has not yet been obtained. Consent must however be obtained prior to plea before venue (in either way cases) or sending to the Crown Court under the Crime and Disorder Act 1988 (in indictable only cases; see *R v CW and MM* [2015] EWCA Crim 906 and *R v Welsh and others* [2015] EWCA Crim 1516). In such a case, it would be necessary to apply for an adjournment of proceedings in the magistrates' court and to submit an application for consent to the Attorney General's Office (AGO) as a matter of urgency.

Where the Director has agreed that a prosecution is appropriate the AGO should be contacted through Strategy and Policy who will agree a timetable and advise on the consent application. If for operational reasons an expedited procedure is needed and a defendant is to be arrested and charged, Strategy and Policy should be notified at the earliest opportunity.

Procedure for Obtaining Consent

Once Strategic and Policy have agreed that it is appropriate to seek consent, applications should be addressed to the Deputy Director, Criminal Law, Attorney General's Office, 5-8 The Sanctuary, London SW1P 3JS consents@attorneygeneral.gsi.gov.uk.

The application must be made in a timely manner to allow the Law Officers sufficient time to consider. Timing may vary according to the complexity of the case. Since 'custody' cases generally take priority, prosecutors should apply through Strategy and Policy to the AGO as soon as it is realised that consent is required. (Delay may affect the public interest consideration – see below).

The Prosecutor should prepare a written submission and draft charges under the cover of a letter and attach the following documents:

- Counsel's advice
- Copies of key statements
- Copies of key exhibits
- Other key documents (e.g. witness antecedents)
- Details of the prosecutor with conduct of the case.

Version OGW 3, Published © Crown Copyright, May 2019.

OGI This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is for internal guidance only and is published on the SFO's website solely in the interests of transparency. It is not published for the purpose of providing legal advice and should not therefore be relied on as the basis for any legal advice or decision. Some of the content of this document may have been redacted.

AGO's Continuing Involvement

The AGO should be kept updated on progress following each court appearance and be informed of other developments. If the case no longer meets the evidential test the AGO should be informed and the case terminated. [See the "Termination of Proceedings" topic.]

If new public interest factors come to light after consent has been given, or the public interest considerations change, this must be brought to the attention of the AGO; it will be for the Attorney General to decide whether a prosecution is still in the public interest.

Director's Personal Consent

Prosecutions under the Bribery Act 2010 and for failure to prevent facilitation of overseas tax evasion contrary to s46 Criminal Finances Act 2017, require the Director's personal consent (see s10(4) Bribery Act 2010 and s49(2) Criminal Finances Act 2017). When the Director is unavailable the consent may be given by a person designated in writing by the Director to exercise his function under s10 (s10 (5) Bribery Act 2010 and s49(4) Criminal Finances Act 2017).

Procedure for seeking the Director's personal consent

The Director's written consent should be sought at the earliest opportunity by sending a submission and draft Consent Notice [See "Personal Consent of DSFO" in "Operational Stock Forms"] in respect of each defendant to the Director's private secretary after it has been assured and approved by the relevant Head of Division. It should be copied to the General Counsel.

The submission should be prepared by the Case Controller (lawyer) or senior prosecutor (if the Case Controller is not a lawyer) and should attach Counsel's advice and copies of the proposed charges/indictment.