

SFO OPERATIONAL HANDBOOK

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Designations

To exercise a statutory power or use a statutory gateway it is essential to have the appropriate designation or authority.

Attempting to exercise a statutory power or use a statutory gateway without the appropriate designation or authority could be unlawful and may harm the viability of the case as well as the reputation of the SFO.

Introduction

The Criminal Justice Act 1987 ("CJA 87") gives the Director of the Serious Fraud Office a number of investigative and information sharing powers.

For practical reasons the Director cannot exercise these powers personally on every occasion. He therefore assigns some of his powers by designating or granting authority for others to exercise them on his behalf. In some cases the designation or authority is granted expressly by the Director to a named individual, (or post holder) for a set period. Some categories of SFO staff have standing designations.

Some designations are conditional on employment status and completion of prescribed training.

Members of the SFO

The term 'member of the SFO' is significant, especially regarding section 1(7) designation, section 2 authority, and section 3(5), which are considered individually below.

Members of the SFO include:

- Permanent employees recruited to the Civil Service through fair and open competition
- Fixed-term employees recruited to the Civil Service for the duration of employment through fair and open competition
- Fixed-term employees for up to two years, permissibly recruited to the Civil Service for the duration but not through fair and open competition
- Civil servants from other government departments (e.g. a GLS lawyer based elsewhere or an investigator on secondment from HMRC) brought into the SFO on secondment for a fixed period

The following are not Members of the SFO:

- Secondees who are not civil servants (e.g. a lawyer on secondment from a law firm or an investigator on secondment from a private

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company) brought into the SFO pursuant to a tripartite agreement with the employer, the individual and the SFO

- Agency staff / contractors employed by a third-party agency who are not civil servants

Lawyers

For the purposes of designation, the term 'lawyer' includes

- a barrister in England, Wales or Northern Ireland;
- a solicitor of the Senior Court; or
- a solicitor of the Supreme Court of Judicature of Northern Ireland.

Section 1(7) Designation

Legal Background

Section 1(5) CJA 87 provides that the Director may:

- institute and have conduct of criminal proceedings which appear to him to relate to serious or complex fraud; and
- take over the conduct of any such proceedings at any stage.

Section 1(7) CJA 87 allows the Director to designate, for the purposes of section 1(5) CJA 87, any member of the SFO who is:

- a barrister in England, Wales or Northern Ireland;
- a solicitor of the Senior Court; or
- a solicitor of the Supreme Court of Judicature of Northern Ireland.

Since 23 April 2012, all SFO lawyers of grade 7 or above, who are members of the SFO, are designated under section 1(7) from the point they join the SFO. For the avoidance of doubt, SEO lawyers are not designated under section 1(7).

Any SFO lawyer so designated has all the powers of the Director as to the institution and conduct of proceedings, but exercises those powers under the direction of the Director.

The individual section 1(7) designation continues until:

- the lawyer ceases to be a member of staff; or
- a new Director of the SFO is appointed, at which time new section 1(7) designation arrangements may apply.

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Section 2 Authority

Legal background

The types of section 2 CJA 87 authority and how each works are set out in the Section 2 Powers chapter.

Section 2(11) confirms the authority of the Director to assign functions to members of the SFO, in any investigation. This incorporates his authority expressly to authorise individual members of the SFO for the use of section 2 powers, under certain circumstances. Such authorities are issued by letter signed personally by the Director.

Members and non-members may be granted section 2 authority. Usually members are granted with a general section 2 authority which can be exercised on all SFO cases; whereas non-members are usually only granted authority to exercise section 2 powers in regards to a specific case.

Care must be taken by case controllers to ensure that the correct type of authority is applied for, and granted.

Section 2 – Authorisation

The authority letter issued to members of the SFO generally covers the general use of powers under section 2(2) and 2(3).

For more information see **The Designation Process [ID 70]**.

Section 3(5) Designation

Legal Background

The SFO's principal basis for disclosing protected information to a third party is section 3(5) of the CJA87, which permits (but does not require) disclosures to be made by SFO staff designated by the Director for this purpose. Unlike section 2 designations, members of staff designated under s3(5) do not receive an individual designation authority. Section 3(5) is known as a 'gateway' for passing information from the SFO.

All staff in a post below grade 6 who have section 2 authority and have completed the relevant training will be designated to disclose information under s3(5); those with section 2 authority in positions of grade 6 and above, will automatically be designated. Named SCS staff have a wider section 3(5) designation which is not restricted to s3(5)(c).

For more information about the requirements to be designated under section 3(5) see **The Designation Process [ID70]**

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For more information see the copies of the Director's Designations with the attached Guidance and Explanatory Notes on ID87/88/89 s3(5)

Designations.

Staff in the Intelligence Unit, who are at grade SEO or above will be designated under s3(5), once they have received the appropriate training. This designation is restricted according to the guidance attached to the Director's Designation for Intelligence Unit and the Chief Investigator's Restrictions. See ID105/106 IU s3(5) Designation and Chief Investigator's Restrictions.

Section 2C(2) Proceeds of Crime Act 2002 (POCA)

In addition to the CJA 87, the Director also has powers under the Proceeds of Crime Act 2002. The Director may designate these to specific members of SFO staff. The Director's authority to do so derives from section 2(C)(2) of POCA, which provides "*Anything which the Director of the Serious Fraud Office is authorised or required to do under, or in relation to, Part 2, 4, 5, 7 or 8 of this Act may be done by a member of his staff if the member of staff is authorised by the Director (generally or specifically) for that purpose.*" See ["Powers and Designations under POCA 2002"].

Pre-charge bail designation

The Policing and Crime Act 2017 introduced new provisions into Police and Criminal Evidence Act 1984 regarding pre-charge bail. The only people in the SFO who are able to make a pre-charge bail application are members of the SFO who have received the relevant pre-charge bail training.

See "**Bail**" chapter for more information.