

**ATTORNEY GENERAL'S DOMESTIC GUIDANCE FOR HANDLING
CRIMINAL CASES AFFECTING BOTH ENGLAND, WALES OR
NORTHERN IRELAND AND THE UNITED STATES OF AMERICA**

Introduction

1. A case that raises concurrent jurisdiction issues means one that may have the potential to be prosecuted in both England, Wales or Northern Ireland and the United States of America. This guidance sets out the domestic procedures to be adopted in such cases by prosecutors and the Attorney General's Office in England, Wales and Northern Ireland. It is important that these cases are co-ordinated nationally by the Attorney General's Office, particularly as one or more prosecuting departments may have cases concerning the same defendant or defendants. National co-ordination will also ensure that the Attorney General, where appropriate, can be consulted at an early stage before final decisions are taken by prosecutors on jurisdiction.
2. This guidance does not seek to address or influence the manner in which independent prosecutors may exercise their discretion in any individual case.
3. The Attorney General considers that decisions on concurrent jurisdiction as between the UK and US are properly to be made by prosecutors. Such decisions should be made by them in a structured manner, in accordance with the tripartite guidance agreed by the Attorneys General and the Lord Advocate.

Prosecuting departments covered by this guidance

4. The prosecuting departments covered by this guidance are: -

- Crown Prosecution Service,
- Revenue and Customs Prosecution Office,
- Serious Fraud Office, and
- Public Prosecution Service of Northern Ireland

Cases covered by this guidance

5. The cases to be covered by this guidance are the most serious, sensitive or complex criminal cases where it is apparent that there are issues of concurrent jurisdiction to be decided. In deciding whether to make contact with the US, the prosecutor should apply the following test: does it appear that there is a real possibility a prosecutor in the US may have an interest in prosecuting the case? Such a case would usually have significant links with the US. A prosecutor who is uncertain whether a case is covered by this test should liaise with the liaison lawyer in his or her own department and, as appropriate, the contact lawyer in the Attorney General's Office.

Information

6. In circumstances where a prosecutor in England, Wales or Northern Ireland becomes aware of a case raising concurrent jurisdictional issues with the US he should, within 7 days, inform the liaison lawyer at the headquarters of his department of the case. In some instances the liaison lawyer will be the prosecutor at headquarters with conduct of the case.
7. The liaison lawyer should be provided with a typed case report which should set out the facts of the case, key evidence, representations on jurisdictional issues and, as appropriate, any other consideration which will enable the liaison lawyer to liaise with the Office of International Affairs in Washington DC

and to brief his or her head of department and the Attorney General's Office.

8. In appropriate cases, for example, where a case is drawn to the attention of the contact lawyer at the Attorney General's Office by defence representatives, he or she will call for a case report from the liaison lawyer or prosecutor, as appropriate, which should be provided within 7 days or by an agreed date.
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9. It is the responsibility of the liaison lawyer to make early contact with the OIA. The liaison lawyer should, within 5 days, share sufficient information on the case so that the OIA can make an informed decision on which American prosecuting agency is likely to have an interest in the case.
 10. At the same time, the liaison lawyer should ensure that a copy of the prosecutor's typed case report is sent to the Director of his or her department and to the contact lawyer at the Attorney General's Office, together with any written information sent to the OIA. It is for the liaison lawyer to ensure that the typed case report from the prosecutor is of the appropriate standard to send to the Director and the Attorney General's Office. The contact lawyer will as soon as possible brief the Law Officers on all relevant issues. This procedure will enable the Director and the Attorney General to determine whether they wish to be consulted on the jurisdictional issues before the prosecutor reaches a final decision.
 11. It is the responsibility of the contact lawyer at the Attorney General's Office, having received the typed case report, to ascertain whether any of the other prosecuting departments have cases concerning the same defendant or defendants or covering the same criminality.

12. It is for the liaison lawyer (if he or she is not the prosecutor), without delay, to inform the prosecutor with conduct of the case of the outcome of the discussion with the OIA, in particular identifying the relevant prosecutor in the US. The liaison lawyer will also notify the Attorney General's Office.
 13. Discussions between UK and US prosecutors should take place with the aim of developing a case strategy on issues arising from concurrent jurisdiction. The information shared between the UK and US should include the facts of the case, key evidence, representations on jurisdictional issues, and, as appropriate, any other consideration which will enable the prosecutors to develop a case strategy and resolve issues arising from concurrent jurisdiction.
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Consultation

14. In accordance with the guidance on concurrent jurisdiction agreed between the UK and US, it is the responsibility of domestic prosecutors to consult on the case with their counterparts in the US.
15. The aim of consultation between prosecutors in England, Wales or Northern Ireland and the US, having shared the information set out at paragraph 13, will be to reach an agreed approach on each issue arising from concurrent jurisdiction through bilateral discussion, including, but not limited to, decisions on:
 - a. Where and how investigations may be most effectively pursued;
 - b. Where and how prosecutions should be initiated, continued or discontinued; or

c. Whether and how aspects of the case should be pursued in the different jurisdictions.

16. In advance of the prosecutors making a decision on jurisdiction, the prosecutor should also consider whether he or she should consult the Director of his or her department. This approach will also facilitate consultation between the Director and the Attorney General. It may well be that in some cases the Attorney General's Office will indicate that the Attorney General should be consulted on the jurisdictional issues.
17. The prosecutor (unless he or she is the liaison lawyer) should inform the liaison lawyer of the outcome of the consultation with the prosecutor in the US. The liaison lawyer in turn should notify the Director of his or her department and the contact lawyer at the Attorney General's Office of the outcome.
18. In cases where the prosecutors in the two jurisdictions have been unable to reach agreement on issues arising from concurrent jurisdiction, the offices of the Attorneys General should take the lead with the aim of resolving those issues.

Dated 18 January 2007

**GUIDANCE FOR HANDLING
CRIMINAL CASES WITH
CONCURRENT JURISDICTION
BETWEEN THE UNITED KINGDOM
AND THE UNITED STATES OF
AMERICA**

GUIDANCE FOR HANDLING CRIMINAL CASES WITH CONCURRENT JURISDICTION ¹ BETWEEN THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

1. Investigation and prosecution agencies in the United Kingdom and the United States of America are committed to working together to combat crime. It is appreciated that there is a need to enhance the exchange of information in criminal cases involving concurrent jurisdiction. Early contact between prosecutors, after discussing the cases with investigators, is intended to enable them to agree on strategies for the handling of criminal investigations and proceedings in particular cases. Such liaison will help to avoid potential difficulties later in the case. In particular, early contact will be valuable in cases which are already the subject of proceedings in the other jurisdiction.
2. This document provides guidance for addressing the most serious, sensitive or complex criminal cases where it is apparent to prosecutors that there are issues to be decided that arise from concurrent jurisdiction. In deciding whether contact should be made with the other country regarding such a case, the prosecutor should apply the following test: does it appear that there is a real possibility that a prosecutor in the other country may have an interest in prosecuting the case? Such a case would usually have significant links with the other country.
3. As a matter of fundamental principle any decision on issues arising from concurrent jurisdiction should be and be seen to be fair and objective. Each case is unique and should be considered on its own facts and merits.

¹ In this context, a case with concurrent jurisdiction means a case which has the potential to be prosecuted in both the UK and the US.

4. This guidance follows a step-by-step approach to determining issues arising in cases with concurrent jurisdiction. Firstly, there should be early sharing of information between prosecutors in the jurisdictions with an interest in the case. Second, prosecutors should consult on cases and the issues arising from concurrent jurisdiction. Third, where prosecutors in the jurisdictions with an interest in the case have been unable to reach agreement on issues arising from concurrent jurisdiction, the offices of their Attorneys General or Lord Advocate, as appropriate, should take the lead with the aim of resolving those issues

Information

5. In the most serious, sensitive or complex cases where issues of concurrent jurisdiction arise, investigators and prosecutors, in the UK and US, should consult closely together from the outset of investigations, consistent with the procedures established by their agencies. Each jurisdiction intends to make its best efforts to ensure that there are arrangements in place requiring investigators, in such cases, to draw issues arising from concurrent jurisdiction to the immediate attention of prosecutors. The aim of such a co-operative approach is to agree to a co-ordinated strategy in relation to the particular case that respects the individual jurisdictions but recognises the benefits of co-operation in these areas.
6. Whenever a prosecutor handling such a case in the US becomes aware of issues arising from concurrent jurisdiction with the UK, he or she should contact the Office of International Affairs (OIA) in the Department of Justice, Washington, DC, except in those cases referred to at paragraph 9. In turn, with the exception of cases in which the US prosecutor already has established contact with a UK prosecutor, the OIA will then contact the liaison lawyer at the appropriate UK prosecution agency to inform him or her of the case. [Annex A gives contact details for these

prosecuting authorities, which will be updated from time to time, together with a general indication of the areas of responsibility of each authority.] The OIA should make initial contact with the Attorney General's Office in London if there is any doubt about which of the prosecuting authorities in England, Wales or Northern Ireland is likely to have an interest in the case.

7. It will be the responsibility of the liaison lawyer in England, Wales or Northern Ireland to draw the US case to the attention of a prosecutor in their department and the contact lawyer in the Attorney General's Office in London. In Scotland, the liaison lawyer at the International Cooperation Unit in Crown Office will have responsibility for informing the appropriate Area Procurator Fiscal of the case.
8. Similarly, whenever a UK prosecutor handling a serious, sensitive or complex case in the UK becomes aware of issues arising from concurrent jurisdiction with the US, he or she should inform the appropriate UK headquarters liaison lawyer of the case. Except in those cases referred to in paragraph 9, the headquarters liaison lawyer should contact the OIA in Washington. OIA should in turn liaise with any prosecuting agency in the United States that is likely to have an interest in the case, consistent with the procedures established by that agency, unless the UK prosecutor is already in contact with that agency. The headquarters liaison lawyer in England, Wales or Northern Ireland should also ensure that the contact lawyer at the Attorney General's Office in London is informed of the case.
9. In particularly sensitive cases, involving for example classified information, it may be appropriate for the sharing of information and the consultation to take place between the heads of prosecuting divisions in the UK and US or between the offices of the Attorneys General or Lord Advocate as appropriate.

10. Discussions between UK and US prosecutors should take place with the aim of developing a case strategy on issues arising from concurrent jurisdiction. The information shared between the UK and US should include the facts of the case, key evidence, representations on jurisdictional issues, and, as appropriate, any other consideration which will enable the prosecutors to develop a case strategy and resolve issues arising from concurrent jurisdiction.
11. The information shared in accordance with this guidance is provided in order that prosecutors in the UK and US may reach decisions on issues arising from concurrent jurisdiction. The information should not be disclosed to other countries without permission of the originating state.

Consultation

12. The procedure set out in this guidance is intended to preserve and strengthen existing channels of communication between prosecutors in the UK and US. This guidance is intended to enable each country's prosecutors to consult closely together on issues arising from concurrent jurisdiction and ensure, where appropriate, that each Attorney General and the Lord Advocate are consulted on such issues.
13. This guidance does not create any rights on the part of a third party to object to or otherwise seek review of a decision by UK or US authorities regarding the investigation or prosecution of a case or issues related thereto.
14. The aim of consultation, having shared the information set out at paragraph 10, will be to enable each country's prosecutors to decide on the issues arising from concurrent jurisdiction through bi-lateral discussion, including, but not limited to:

- a. where and how investigations may be most effectively pursued;
- b. where and how prosecutions should be initiated, continued or discontinued; or
- c. whether and how aspects of the case should be pursued in the different jurisdictions

It is of course for the prosecuting authority, having applied the guidance, to decide that a case should properly be prosecuted in its country, where that is in accordance with the law and the public interest.

The rôle of the offices of the Attorneys General and Lord Advocate

15. In England, Wales and Northern Ireland the Attorney General is the Minister with superintendence of the main prosecution departments, namely the Crown Prosecution Service, Serious Fraud Office, Revenue and Customs Prosecution Office and the Public Prosecution Service of Northern Ireland. In the United States of America, the Attorney General, as the chief federal law enforcement official, acts through the Assistant Attorneys General in the National Security and the Criminal Divisions, the Director of the Federal Bureau of Investigation, and the 94 United States Attorneys in their separate judicial districts, among others, in the investigation and prosecution of violations of federal criminal laws throughout the United States. In Scotland, the Lord Advocate is the Ministerial Head of the Crown Office and Procurator Fiscal Service, and the head of the system of criminal prosecution. The Lord Advocate has responsibility for the direction of investigations into alleged criminal conduct, and through the appointment of procurators fiscal, for the conduct of all prosecutions in Scotland.
16. The offices of the Attorneys General and Lord Advocate should provide such additional domestic guidance to their own agencies and

prosecutors as may be necessary to ensure that their offices are advised at an early stage of serious, sensitive, or complex cases involving issues arising from concurrent jurisdiction.

17. Early contact with the offices of the Attorneys General or Lord Advocate, as appropriate, is intended to ensure that the Attorneys General, or Lord Advocate, can be consulted on these cases before final decisions are taken by the prosecutors on issues arising from concurrent jurisdiction. In such cases it may be necessary for the offices of the Attorneys General or Lord Advocate to make early contact to discuss issues arising from concurrent jurisdiction.

Monitoring

18. The offices of the Attorneys General and Lord Advocate intend to review the implementation of this guidance on an annual basis.

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The Rt Hon the Lord Goldsmith QC
Her Majesty's Attorney General

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Alberto R. Gonzales
Attorney General of the
United States of America

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The Rt Hon Elish Angiolini QC
Her Majesty's Advocate

Dated thisday of January 2007

Annex A

UNITED KINGDOM

Crown Prosecution Service

The CPS is the department responsible for prosecuting the majority of criminal cases investigated by the police in England and Wales.

The CPS Headquarters liaison lawyer is Brian Gibbins, CPS Headquarters, 50 Ludgate Hill, London EC4M 7EX telephone +44 (0) 2077106181, email Brian.Gibbins@cps.gsi.gov.uk

Revenue and Customs Prosecutions Office

The RCPO prosecutes fiscal and customs offences, including drug smuggling, firearms smuggling, tax fraud, money laundering, export control breaches and identity fraud.

The RCPO liaison lawyer is Bill Wheeldon, International, Policy and Advisory Division, RCPO, 2nd floor, New King's Beam House, 22 Upper Ground, London SE1 9PJ, telephone + 44(0) 870 785 8286, email bill.wheeldon@rcpo.gsi.gov.uk.

Serious Fraud Office

The SFO both investigates and prosecutes serious and complex fraud, generally meaning cases where the loss or potential loss is at least £1 million, there is a significant international dimension or the case is likely to raise widespread public concern.

The SFO liaison lawyer is James Kellock, Serious Fraud Office, Elm House, 10-16 Elm Street, London WC1X 0BJ, telephone + 44 (0) 20 7239 7152; email james.kellock@sfo.gsi.gov.uk

Public Prosecution Service of Northern Ireland

The PPSNI is the prosecuting authority in respect of all criminal cases investigated by the police in Northern Ireland.

The PPSNI liaison lawyer is Ms Pamela Atchinson, Belfast Chambers, 93 Chichester Street, Belfast, BT1 3JR, telephone +44 (0)28 90 897193, email Pamela.Atchinson@ppsni.gsi.gov.uk

Crown Office and Procurator Fiscal Service

The COPFS is the department responsible for all criminal prosecutions in Scotland. The contact lawyer for the Lord Advocate and for the Crown Office and Procurator Fiscal Service is Lorna Harris, International Co-operation Unit, Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA, telephone +44 (0)8456 066212, email lorna.harris@copfs.gsi.gov.uk

Attorney General's Office, London

The contact lawyer at the Attorney General's Office in London is Sally Walsh, 9, Buckingham Gate, London SW1E 6JP, telephone +44 (0)20 7271 2408, email Sally.Walsh@attorneygeneral.gsi.gov.uk.

UNITED STATES

Office of International Affairs

The Office of International Affairs (OIA) of the Department of Justice is the Central Authority of the United States for international matters. The contacts at the OIA are Mary Ellen Warlow, Director, 1301 New York Avenue, Washington, DC 20530, 202-515-0008, email molly.warlow@usdoj.gov, or Mary Troland, Department of Justice Attache, U.S. Embassy London, (011)(44) 0207-8940710, email TrolandMB@state.gov.

Assistant Attorney General, National Security Division

For purposes of paragraph 9 of the Guidance, with regard to particularly sensitive cases involving terrorism or national security matters, the head of the prosecuting division in the United States Department of Justice is: Assistant Attorney General Kenneth Wainstein, U. S. Department of Justice, National Security Division, 10th and Constitution Avenues NW, Washington, DC, 20530, telephone 202 514 1057, email Kenneth.Wainstein@crm.usdoj.gov.

Assistant Attorney General, Criminal Division

For purposes of paragraph 9 of the Guidance, with regard to particularly sensitive cases involving all other criminal matters, the head of the prosecuting division in the United States Department of Justice is: Assistant Attorney General Alice Fisher, U. S. Department of Justice, Criminal Division, 10th and Constitution Avenues NW, Washington, DC, 20530, telephone 202 514 7200, email Alice.Fisher@crm.usdoj.gov.

Attorney General's Office, Washington, D.C.

The point of contact at the U.S. Attorney General's Office is Matthew Friedrich, Counsel to the Attorney General, U. S. Department of Justice, 10th and Constitution Avenues NW, Washington, DC, 20530, telephone 202 616-2372, email Matthew.Friedrich2@usdoj.gov.