

**PROTOCOL REGARDING THE EXERCISE OF
CRIMINAL JURISDICTION IN NORTHERN IRELAND**

Between:

The Director of Public Prosecutions for Northern Ireland

and

The Director of Service Prosecutions

1. Introduction

- 1.1 This protocol (“the protocol”) has been agreed between the Director of Public Prosecutions for Northern Ireland (DPPNI) and the Director of Service Prosecutions (DSP) pursuant to s.320C of the [Armed Forces Act 2006](#) (AFA 06).
- 1.2 The primary purpose of the protocol is to provide guidance for relevant prosecutors regarding the exercise of jurisdiction in respect of conduct of a person subject to Service law which occurs when that person is in Northern Ireland and constitutes an offence under the law of Northern Ireland (as specified in s.320C(2) AFA 06), in cases where (a) the alleged conduct also constitutes an offence under section 42 AFA 2006 (criminal conduct), or (b) the person could, on the same facts, be charged with an offence under section 42 AFA 2006 which is broadly equivalent to the offence under the law of Northern Ireland (section 320C(3) AFA 2006). The protocol identifies principles which are to be considered when a decision is made as to the appropriate jurisdiction in which to bring proceedings.
- 1.3 The DPPNI and the DSP have consulted with the Secretary of State, the Department of Justice in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland (PSNI), the Attorney General for Northern Ireland, and other consultees in accordance with s.320C(8) AFA 06 before agreeing the protocol.
- 1.4 The protocol will be published on the Public Prosecution Service for Northern Ireland (PPSNI) and Service Prosecution Authority (SPA) websites when the agreement has been signed by the parties.

2. Responsibility for decisions about jurisdiction

- 2.1 Initial decisions regarding jurisdiction are likely to be made by the police force(s) investigating the alleged conduct. Accordingly, the protocol is intended to complement corresponding guidance to be issued by the PSNI and the Service Police.

- 2.2 Where a relevant prosecutor¹ is consulted about an investigation, and is aware that the alleged conduct falls within s.320C(2) and s.320C(3) AFA 06, the prosecutor will be responsible for deciding on the appropriate jurisdiction in accordance with the principles set out in section 3 of the protocol and, where relevant, the procedures set out in sections 4 and 5.
- 2.3 A decision as to jurisdiction should be made at the earliest reasonable opportunity and, in any event, before criminal proceedings² have commenced save where there are exceptional circumstances (see paragraph 3.5 below).

3. The principles governing decisions regarding jurisdiction

- 3.1 Decisions regarding jurisdiction are to be approached on a case-by-case basis.
- 3.2. The overriding principle is to promote fair and efficient justice.
- 3.3 Without prejudice to the generality of the overriding principle, the main principles to be applied when deciding in which jurisdiction proceedings should be brought are:
- (a) proceedings relating to alleged conduct which affect the person or property of a civilian³ should ordinarily be brought in the civilian jurisdiction;
 - (b) subject to 3.2(c) and section 4, proceedings relating to alleged conduct which does not affect the person or property of a civilian should ordinarily be brought in the service jurisdiction;
 - (c) proceedings relating to alleged conduct brought jointly against a person subject to service law and one or more civilians should ordinarily be brought in the civilian jurisdiction.
- 3.4 In addition to the main principles contained in paragraph 3.3, a relevant prosecutor should also consider the following non-exhaustive list of factors when deciding the appropriate jurisdiction in accordance with the overriding principle:
- (a) whether the conduct is alleged to constitute or form part of a pattern of offending which includes conduct that should ordinarily be dealt with in either the civilian or service jurisdiction;

¹ See definition of ‘relevant prosecutor’ in s.320C(11) AFA 06

² The phrase ‘criminal proceedings’ in paragraphs 2.3, 3.5 and 5.3.5, includes proceedings for criminal conduct offences under section 42 AFA 2006.

³ A civilian is a person who is not a member of the regular armed forces

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- (b) whether the conduct is alleged to constitute or form part of a pattern of offending which includes conduct that occurred outside Northern Ireland;
- (c) whether there are linked proceedings which have been brought in either the civilian or service jurisdiction;
- (d) the ability of the DSP to charge disciplinary offences which are not available to the PPSNI;
- (e) whether the conduct, if established, would be viewed more seriously within the service jurisdiction because of the service context;
- (f) the availability of different sentencing powers and ancillary orders within the service and civilian jurisdictions;
- (g) the ability of the service police to deploy rapidly to conduct certain investigations outside Northern Ireland;
- (h) matters that impact on operational effectiveness, which indicate that it may be more appropriate for proceedings to be brought in the service jurisdiction, including, for example:
 - whether the suspect will be serving overseas during the course of proceedings;
 - the ability of witnesses to participate in proceedings;
- (i) any views expressed by a victim and, in appropriate cases, members of the victim's family;
- (j) the obligations of the United Nations Convention on the Rights of the Child 1989 (UNCRC) where the accused and/or the victim or witness is a child, (aged under 18 years old). The best interests of the child should be treated as a primary consideration and be given appropriate weight. The assessment of the best interests of the child may include, but will not necessarily be limited to, consideration of the following matters:
 - whether the best interests and welfare needs of the child require a multi-agency approach;
 - the availability of diversion from prosecution and restorative justice in the civilian jurisdiction;
 - the availability of out-of-court disposals in the civilian jurisdiction;
 - the availability of the youth court in the civilian jurisdiction;
 - the range of sentences available in the service and civilian jurisdictions, in particular the various orders available only in the civilian system.
- (k) considerations that may be particularly relevant in cases involving allegations of domestic abuse, sexual abuse or child abuse, including, for example:

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- whether the needs of the victim or any witness require a multi-agency approach;
 - the availability and nature of out-of-court disposals;
 - the range of ancillary and civil orders available within the service and civilian jurisdictions noting, for example, the limitations on the availability of restraining orders in the service jurisdiction, including powers of enforcement on dismissal from Service;
 - the ability to attach conditions to bail in the civilian jurisdiction, both before and after charge;
- (l) any initial decisions made as to which police force should investigate the alleged conduct, and whether those decisions were made in accordance with relevant police guidance, such as guidance relating to the investigation of deaths on land or property owned or controlled by the Ministry of Defence.
- 3.5 There is no legal mechanism to transfer a case between jurisdictions after charge, and there are inherent risks and difficulties in discontinuing proceedings in one jurisdiction and re-commencing them in another. Accordingly, any decision to change jurisdiction after criminal proceedings have been commenced should not be made unless there are exceptional circumstances and then only with the joint approval of the DPPNI and the DSP, in accordance with paragraph 5.3.5 below.

4. Cases where consultation is required

- 4.1. There should be consultation between relevant prosecutors at the PPSNI and the SPA regarding the appropriate jurisdiction in which proceedings should be brought, whether the person affected is a civilian or member of the armed forces, in all cases involving:
- (i) an allegation of an offence of:
 - (a) Murder;
 - (b) Manslaughter;
 - (c) Rape;
 - (d) Sexual assault with penetration;
 - (e) Sexual assault without penetration; or
 - (ii) a suspect or defendant who is under 18 years of age.
- 4.2. In coming to a decision on the appropriate jurisdiction for proceedings, prosecutors should have regard to the principles contained in section 3 of the protocol.

- 4.3. All decisions on the appropriate jurisdiction for these offences should be approved at the level of Assistant Director or Regional Prosecutor (AD or RP) at the PPSNI and someone at the level of Managing Prosecutor or Deputy Director (MP or DD) at the SPA.
- 4.4. Where agreement cannot be reached and there is an issue as to jurisdiction, consultation should take place between the Deputy Director of Public Prosecutions (DDPP) and the Deputy Director of Service Prosecutions (DDSP) at the SPA, in accordance with paragraph 5.3.4 below.

5. Cases where there is an issue as to jurisdiction

- 5.1 It is expected that, in most cases, the relevant police force(s) will have applied their guidance relating to concurrent jurisdiction by the time a relevant prosecutor is first made aware of the investigation by the police. However, a relevant prosecutor, who becomes aware that the alleged conduct being investigated falls within s.320C(2) and s.320C(3) AFA 06, should always consider whether proceedings have been, or are intended to be, brought in the appropriate jurisdiction.
- 5.2 Where a prosecutor has not been consulted by a police force, but nevertheless becomes aware of a case in which there may be an issue as to jurisdiction, the prosecutor should consult with and advise the police force and, if necessary, apply the procedure at paragraph 5.3.
- 5.3 Whereas the majority of cases are investigated by the most appropriate police force, and proceedings brought in the most appropriate jurisdiction, where a relevant prosecutor considers there may be an issue as to the appropriate jurisdiction, the following procedure will apply:
 - 5.3.1 A relevant PPSNI prosecutor⁴ will notify an Assistant Director or Regional Prosecutor at the PPS, who will consider the issue and, where appropriate, will initiate discussions with someone at the level of MP or DD at the SPA.
 - 5.3.2 A relevant SPA prosecutor⁵ will notify someone at the level of MP or DD at the SPA, who will consider the issue and, where appropriate, will initiate discussions with a Assistant Director or Regional Prosecutor at the PPSNI.
 - 5.3.3 The purpose of the discussions referred to at paragraphs 5.3.1 and 5.3.2 above will be to resolve the issue as to which jurisdiction is appropriate in the

⁴ Within the meaning of s.320C(11)(b) AFA 06

⁵ Within the meaning of s.320C(11)(a) AFA 06

circumstances, having regard to the principles contained in section 3 of the protocol. A joint record should be kept of the discussions and decisions made at this and any later stage.

5.3.4 Where agreement cannot be reached, the issue will be discussed between the Deputy DPP in the PPSNI, and the DDSP in the SPA.

5.3.5 If there is still no agreement, or the issue as to the appropriate jurisdiction has arisen after criminal proceedings have been commenced, the DPPNI and the DSP should consider the case and agree a decision. Either Director may consult the Attorney General (England and Wales) / Advocate General for Northern Ireland to seek their view on the appropriate jurisdiction. If they cannot reach an agreement, the final decision on the appropriate jurisdiction will be made by the DPPNI.

6. Review of this protocol

6.1 The protocol will be reviewed when necessary by the DPPNI and DSP and, in any event, at least once every two years from the date on which the protocol is signed.

Signatories

(1) On behalf of the Public Prosecution Service for Northern Ireland:

Stephen Herron (Director of Public Prosecutions)

Dated:

(2) On behalf of the Service Prosecuting Authority:

Jonathan Rees KC (Director of Service Prosecutions)

Dated: