



# The Attorney General Falkland Islands

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## AGG20

# The Attorney General's Guidance on Commencing a Prosecution

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The Law and Regulation Directorate  
The Attorney General's Chambers  
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# 1. Introduction

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1. In the Falkland Islands, in accordance with the Constitution, the control of criminal prosecutions is the sole responsibility of the Attorney General. The Attorney General commences and directs prosecutions on behalf of the Crown in Right and Title of the Falkland Islands and exercises this responsibility free from any other influence, direction or control.
2. The Attorney General delegates the authority to prosecute to Crown Counsel who act as prosecutors, make prosecution decisions and have conduct of criminal proceedings on the Attorney General's behalf.
3. The purpose of this document is to provide guidance on the practical steps to be taken when commencing a prosecution and sets out the roles and responsibilities of the criminal justice agencies involved in the commencement of criminal proceedings.

## 2. Authority to Charge

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4. In accordance with the Constitution the Attorney General has sole control of prosecutions. There is no power in the Falkland Islands for a public officer to lay a written information containing a charge in the absence of an authority to charge issued by a prosecutor.
5. Prosecutors who authorise a charge will issue a written charging decision which will contain the charges that are authorised. Where a prosecutor has issued a charging decision the investigating officers are obliged to follow the decision.
6. A written charging decision will either be in full, setting out the reasons for the decision and applying the Code for Prosecutors, or in short form, stating that the Code for Prosecutors has been applied and setting out the charges that are authorised.
7. A short form charging decision will only be issued where there is a limited time frame in which to issue the decision (e.g. custody cases or where the suspect is shortly due to leave the jurisdiction). The prosecutor who issues a short form charging decision will provide full written reasons for the decision as soon as is reasonably practicable thereafter.

## 3. Commencing Proceedings

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### Methods of commencement

8. In accordance with section 257 of the Criminal Procedure and Evidence Ordinance 2014 all criminal proceedings must be commenced by an information resulting from:
  - (a) laying an information before a judicial authority;  
**(the summons procedure)**
  - (b) bringing before the court a person who is in custody or requiring a person who has been arrested and released on bail to attend before the court.  
**(the charging procedure)**

### The information

9. The information is a written document that sets out the name and details of the accused person as well as the allegations that are made against them. The information must:
  - (a) be in writing;
  - (b) provide the name of the accused;
  - (c) provide the date of birth of the accused;
  - (d) provide the last known address of the accused (if an address is known);
  - (e) set out the allegation (or allegations) by:
    - (i) containing a statement of the offence;
    - (ii) describing the offence in ordinary language;
    - (iii) identifying any legislation that creates the offence;
  - (f) demonstrate that the information is laid in time (if legislation imposes a time limit);
  - (g) demonstrate that the information has the necessary consent (if legislation requires consent).

10. The above requirement to set out the statement of the offence in clear language and to reference the legislation that creates the offence will be satisfied by reproducing the written charge provided by the prosecutor in the written charging decision onto the information.
11. The written charging decision is a privileged document and **must not** be disclosed to the court or attached to the written information.

### The summons procedure

12. The summons procedure is used where the accused is not in custody or on police bail. In these cases criminal proceedings are commenced by laying an information before a judicial authority who can then issue a summons for the accused to attend court. The summons is then served on the accused by an officer.
13. The summons procedure operates in the following way:
  - (a) A prosecutor issues a charging decision authorising a prosecution and containing a written charge or charges.
  - (b) The designated officer prepares a written information using the written charges authorised by the prosecutor.  
*The designated officer should use the written information pro-forma to ensure that all necessary information is presented to the court.*
  - (c) The designated officer should submit the completed written information to a court officer who will arrange for the information to be placed before a judicial authority.  
*The timeframe for the court process is governed by judicial availability and designated officers should wait for the court to notify them of the outcome.*
  - (d) The judicial authority considering the written information must be satisfied that the information:
    - (i) alleges an offence known to law
    - (ii) was served within any applicable time limit for instituting proceedings
    - (iii) that the court has jurisdiction to hear the allegation

- (iv) that any consent necessary to commence proceedings has been obtained

There is also a residual discretion not to issue a summons if the prosecution appears frivolous or vexatious, or if there is some other compelling reason, e.g. undue delay, abuse of process etc.

There is no requirement on the part of the judicial authority to consider the evidence before issuing a summons.

- (e) When a summons is issued by the court the designated officer should collect the summons and serve it on the accused together with any other relevant documents issued by the court (e.g. guilty plea by post documents).  
*See below - Methods of Service*
- (f) The designated officer should endorse the summons with a statement of service and return the endorsed summons to the court officer and provide a copy to the prosecutor at the same time as returning the investigation file.
- (g) It is important that a copy of the summons and the investigation file are returned to the prosecution as soon as reasonably practicable to allow the prosecution to comply with the first stage of the disclosure process.  
*See below - Early Details of the Prosecution Case*

## The charging procedure

14. This procedure is used where the accused person is in police custody or on police bail and a prosecutor has authorised a charge against the person. The person is charged by a police officer and remanded in custody, or released on bail, to appear before the court. The written charge is then placed before the court as the written information.
15. The charging procedure operates in the following way:
  - (a) A prosecutor issues a charging decision authorising a prosecution and containing a written charge or charges.
  - (b) The charging officer liaises with the court officer to be given a court date for the accused person to appear.  
*Where the accused is to be remanded in police custody the court will provide the next practicable date (within 72 hours). In custody cases early liaison with the court is crucial. In bail cases the court will provide the next available date based on judicial availability. The accused person should never be charged to appear on a date without the court having confirmed the date as being appropriate.*

- (c) The charging officer prepares the written charge sheet using the written charges authorised by the prosecutor.
- (d) The accused person is charged in accordance with the police Codes of Practice and the written charge sheet should be completed and signed.
- (e) The charging officer should provide an original copy of the completed written charge sheet to the court officer and provide a copy to the prosecutor at the same time as returning the investigation file.
- (f) It is important that a copy of the written charge sheet and the investigation file are returned to the prosecution as soon as reasonably practicable to allow the prosecution to comply with the first stage of the disclosure process. This is especially crucial in custody cases where disclosure must be prepared in a very short period of time.

*See below - Early Details of the Prosecution Case*

## 4. Consent to Prosecute

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16. Some criminal offences can only be prosecuted with the consent of the Attorney General.
17. A requirement for the Attorney General to consent to a prosecution does not prevent the arrest without warrant, or the issue or execution of a warrant for the arrest, of a person for any offence, or the remand in custody or on bail of a person charged with any offence.
18. Obtaining the Attorney General's consent is the responsibility of the prosecutor making the charging decision. There is no requirement for the Attorney General's consent to be in writing but best practice is for the Attorney General to sign the written consent pro-forma so that a written record of the consent exists. The reason for this best practice is that any document purporting to be the consent of the Attorney General, which is signed by the Attorney General, is admissible as prima facie evidence of consent without further proof being required. In rare cases, where consent to prosecute is raised as an issue, the written consent document will serve as evidence of consent without the need for any other evidence to be produced.
19. There is no requirement that the written consent of the Attorney General be disclosed to the investigating officers or to the defendant.
20. When charges requiring the Attorney General's consent to prosecute are authorised by a prosecutor the prosecutor should state that consent has been obtained on the written charging decision issued to the investigating department.
21. Where the summons procedure is used to commence a prosecution the designated officer can then indicate on the written information that consent to prosecute has been obtained.

## 5. Methods of Service

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22. Methods of service are set out in Part 4 of the Criminal Procedure Rules 2018. A summons may be served by any of the methods described in the rules.
23. A summons may be served on:
- (a) an individual by handing it to him or her;  
*If an individual is under 18, a copy of the summons must be handed to his or her parent, or another appropriate adult, unless no such person is readily available.*
  - (b) an individual by posting it to an address where it is reasonably believed that he or she will receive it;
  - (c) a corporation by handing it to a person holding a senior position in that corporation;
  - (d) a corporation by posting it to its principal office in the Falkland Islands, and if there is no readily identifiable principal office in the Falkland Islands then any place where it carries on its activities or business.
24. A summons cannot be served on a person via a legal representative.
25. Best and current practice is for a designated officer to personally serve the witness summons on the defendant and then make an endorsement as to service on the reverse of the copy of the summons to be returned to the court and the prosecution.

## 6. Early Details of the Prosecution Case

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26. Prior to the first court hearing the prosecution will comply with the first stage in the disclosure process. This stage is called 'early details of the prosecution case' ("EDPC").
27. Part 8 of the Criminal Procedure Rules 2018 govern the provision of the EDPC. The prosecutor must serve EDPC on the court officer and the defendant:
  - (a) as soon as practicable; and
  - (b) in any event, no later than the beginning of the day of the first hearing.
28. EDPC must include:
  - (a) sufficient information of the circumstances of the offence to progress the case;
  - (b) the defendant's criminal record, if any;
  - (c) any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence; and
  - (d) any available statement of the effect of the offence on a victim, a victim's family or others.
29. The purpose of the EDPC process is to allow for the maximum progress to be made at the first hearing of the case by providing as much information as possible, as early as possible.
30. The EDPC encourages guilty pleas to be entered at the first available opportunity and where a not guilty plea is indicated allows for full case management to take place.

# Document Control

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