



The Attorney General Falkland Islands

AGG1

The Attorney General's Guidance – Framework

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The Law and Regulation Directorate
The Attorney General's Chambers

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Introduction

1. The Attorney General's role in relation to the prosecution of criminal offences is set out in the Constitution¹.
2. The Attorney General is the head of the Prosecution Service, has sole responsibility for the prosecution of criminal offending on behalf of the Crown and exercises that responsibility free from any influence, direction or control.
3. The Attorney General appoints Crown Counsel to prosecute on behalf of the Crown and all prosecutors undertake to prosecute cases in accordance with the same principles of independence and impartiality².
4. All prosecution decisions are taken independently of the Falkland Islands Government. The independence of the Prosecution Service underpins trust in the Rule of Law and the fairness of the criminal justice system.
5. Prosecution decisions are only ever made in accordance with the Attorney General's Code for Prosecutors³, which guarantees that there will be an objective and impartial analysis of the evidence and relevant public interest considerations when making prosecution decisions.

¹ Section 72 of the Constitution

² A copy of the 'General Instructions in Relation to Criminal Proceedings' can be found in the annex to this guidance. This is the document that the Attorney General issues when appointing prosecutors.

³ See AGG2 – The Attorney General's Code for Prosecutors

Guidance

1. It is often not appropriate for the Attorney General or prosecutors to provide a public commentary on criminal proceedings as to do so could jeopardise a defendant's right to a fair trial, as guaranteed by the Constitution. This would be contrary to the interests of justice and would not be fair on victims and witnesses.
2. The Attorney General and prosecutors have a duty to uphold the Rule of Law and this includes not publicly commenting on judicial decisions once proceedings have ended. In some circumstances judicial decisions can be challenged by the prosecution, and where appropriate this will be done via the court system.
3. It may sometimes be unclear to the general public as to why certain decisions have been made by the prosecution. Whilst it is not always appropriate to provide commentary on specific cases the Attorney General has undertaken to promote transparency and understanding in the Criminal Justice System. The Attorney General has therefore published Guidance to explain the method by which prosecution decisions are made and the legal framework in which those involved in the Criminal Justice System operate.
4. The aim of the Attorney General's Guidance is:
 - (a) To assist prosecutors and criminal justice agencies by providing clear and practical guidance on specific aspects of the criminal justice system; and
 - (b) To make the guidance freely and publicly available so that those interested in the criminal justice system can learn how specific issues are dealt with and how decisions are reached.
5. The criminal law of the Falkland Islands is closely based on the criminal law of England and Wales. Where the Attorney General has not issued guidance on a particular topic, prosecutors in the Falkland Islands may have regard to any relevant guidance from England and Wales.

Where to find the Guidance

1. The Attorney General's Guidance is free to access and publicly available. To see the full list of published Guidance, to download the Guidance, or to read the Guidance online, please visit the Attorney General's webpages at the following address:

<https://www.falklands.gov.fk/legalservices/attorney-general-s-guidance>

2. Alternatively, for information regarding copies of the Attorney General's Guidance and information about the Guidance in alternative languages and formats you can contact the Law and Regulation Department.

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Annex

General Instructions

GENERAL INSTRUCTIONS IN RELATION TO CRIMINAL PROCEEDINGS
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As Attorney General I have a duty to exercise the powers contained in section 72 of the Constitution:

- (a) to institute and undertake criminal proceedings before any court of law
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings

These powers may be exercised personally, or through other persons acting in accordance with my instructions.

I hereby issue general instructions to you, [NAME] to conduct criminal proceedings on my behalf as a Crown Prosecutor in this territory, on the following terms:-

- (a) You will act in accordance with the Code for Prosecutors and abide by the standards contained therein.
- (b) You will keep me appropriately informed and seek special instructions when considering indictable offences, or where the circumstances or nature of an offence are novel, contentious or repercussive;

These instructions take effect from the date upon which they are signed and expire on the completion of your current role or contract of employment with the Falkland Islands Government.

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Attorney General

Dated:

Document Control

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