



The Attorney General of the
Falkland Islands

AGG60

THE ATTORNEY GENERAL'S GUIDANCE ON THE PROSECUTION OF OFFENCES COMMITTED BY TOURISTS AND OTHER VISITORS

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Foreword

As with all of the Guidance to Prosecutors issued by me as Attorney General, this guide is a public document that will be accessible to the public. Whilst all prosecution decisions are individual and specific to the particular circumstances of an incident this guidance is publicly available so that citizens can see the general principles by which prosecution decisions will be made.

Decisions to prosecute visitors can be challenging and this guide is designed to assist prosecutors in this process.

The Falkland Islands proudly upholds the highest standards of international human rights protection. This is delivered by respect for the rule of law and fair and transparent treatment by investigators, prosecutors and our courts.

Visitors may be here for as little as a few hours or a few days. The brevity of these visits can give rise to particular public interest considerations for prosecutors when deciding whether it is right or not to prosecute. There are also outside pressures which are sometimes brought to bear on prosecutors because of the circumstances of the incident and the personal circumstances of the visitor. Sometimes it is correct to consider these things and sometimes it is not.

The nationality of a suspect is **not** a factor in a prosecution decision. Anyone in the Falkland Islands is subject to our law both for the protection it affords and the rules it sets down. When a visitor enters our jurisdiction, sails into our waters or flies in our airspace they do so in accordance with our laws.

It may appear to some that we treat our visitors differently to local people. The truth is that sometimes we do. We do so because they are short term visitors. This guide seeks to explain why different public interest considerations may apply to visitors because of their temporary status and not because of their nationality.

We wish to make visitors who respect our laws welcome but every effort must be made to bring those who break our laws to justice. The public can support this by reporting matters as quickly as possible to the police and supporting the investigating authorities.

Introduction

This document is to be read in conjunction with the Attorney General’s Code for Prosecutors (AGG2). All factors listed within that Code are relevant to this Guidance.

It is the aim of this Guidance to focus on those elements particularly relevant to the situation where a visitor to the Falkland Islands is suspected of having committed a crime whilst in the jurisdiction.

The Context of this Guidance

Due to their close communities, natural beauty, abundance of wildlife and historical significance, the Falkland Islands are a popular destination for both tourists and short-term visitors. The Falkland Islands warmly welcomes all visitors to its shores.

There are occasions when visitors act in such a manner to lead them to be suspected of having committed criminal offences under the laws of the Falkland Islands. This Guidance sets out the principles and factors prosecutors must consider when deciding whether a visitor to the Falkland Islands should be prosecuted for any criminal offence they are alleged to have committed.

This guidance applies where the length of stay of the visitor is so short as to be likely to impact upon the usual timescale for a criminal investigation. This guidance applies to visitors who are in the Falkland Islands for less than 30 days. This will apply not only to tourists but also short-term workers.

The Application of the Laws of the Falkland Islands to Visitors to the Falkland Islands

Any person who is in the Falkland Islands, irrespective of whether they are resident here or a visitor, has the protections offered by the laws of the Falkland Islands. The Falkland Islands Constitution applies to everyone within the Falkland Islands irrespective of their status.

However, this also means that everyone within the Falkland Islands is required to act in accordance with the law. The criminal laws of the Falkland Islands do not distinguish between those who are resident here and those visiting on a temporary basis. Each and every person in the Falkland Islands has a duty to respect its laws and act in accordance with them.

Any person who breaches the criminal laws of the Falkland Islands can, and should, expect to be investigated by the appropriate authority and, where appropriate, prosecuted.

**Practical Issues with the Detection of Crimes Committed
by Visitors to the Falkland Islands**

The Royal Falkland Islands Police, Customs and Immigration and the Department of Natural Resources (Fisheries) have powers to investigate criminal offences. It is the aim of those departments to always act swiftly to respond to any reported criminal offence. The reporting of a criminal offence can take place in several ways. The most common methods of reporting are:

- a) by a member of the public who witnesses the crime being committed;
- b) by a member of the public who either witnesses or is affected by the effect of a crime;
- c) by a member of an investigation Department witnessing a crime being committed; and
- d) the provision of data or information to a Government Department which then reveals that a crime may have been committed.

The Reporting of Crime

Swift and timely reporting of crime is crucial to its detection. **If a member of the public witnesses any criminal offence being committed, they should report it immediately.** It must be appreciated that many visitors are only in the Falkland Islands for a short time. A visitor who commits a crime may do so in the hope that they will have left the Falkland Islands by the time their offence has been discovered.

Extradition

This is a very real issue in the Falkland Islands as it is often impossible to secure the return of an offender to the Falkland Islands by extraditing them from their own country. Extradition is the legal means by which a person who commits an offence in one country and then leaves that country can be brought back to the country where the crime was committed to face justice. Difficulties with extradition arise for a number of reasons such as:

- a. Extradition is only available for more serious offences. Those who commit certain less serious offences cannot be forced to return to the Falkland Islands.
- b. The lack of extradition agreements with other countries. The Falkland Islands is party to a number of such agreements but there are certain countries that have chosen not to enter into such agreements or, if they have done so, do not recognise their validity.

This means that there are occasions where a crime is committed by a visitor but no action can be taken against them as the offence has only been detected after they have left the Falkland Islands. This can also cause difficulties where a visitor is suspected of having committed a crime but a lack of evidence means that a case cannot be brought prior to the visitor leaving the Falkland Islands.

Investigators’ Discretion

Prosecutors and the public need to understand that investigators are the people on the ground when dealing with an incident. Those investigators, quite properly, have discretion as to how they deal with that incident. Prosecutors must always try to support investigators in the exercise of that discretion. By the time prosecutors receive files it is likely that some time will have passed from the incident. It is easy to judge an investigator’s actions with the benefit of hindsight and some matters are best dealt with by a practical and discretionary approach on the part of the investigator.

The Attorney General’s Code for Prosecutors

As indicated above, it is important that this Guidance is read in accordance with the Attorney General’s Code for Prosecutors (AGG2). In brief, that Code requires, in most circumstances, prosecutors to apply a two stage test when considering whether to prosecute a suspect for a crime. The stages are:

- a. Is there sufficient evidence to provide a realistic prospect of conviction?
- b. If there is sufficient evidence, is it in the public interest to prosecute?

Only if there is sufficient evidence to prosecute can prosecutors go on to consider the public interest issues. If there is not sufficient evidence to prosecute then that is the end of the matter.

Is there sufficient evidence to provide a realistic prospect of conviction?

Prosecutors will always apply the same criteria when considering this question irrespective of whether the suspect is resident in or is a visitor to the Falkland Islands.

The status of the person concerned makes no difference to the question of whether there is sufficient evidence to prosecute. There will never be a situation where a visitor is treated differently from a resident in this respect.

Investigators must gather evidence swiftly and comprehensively in order to present the best possible case to a prosecutor. Prosecutors must be confident that a thorough investigation has been conducted. Evidence gathering in respect of offences committed by visitors must be conducted in the same thorough manner as an investigation into an offence committed by a non-visitor.

If there is sufficient evidence, is it in the public interest to prosecute?

As indicated above, this test is only considered if there is sufficient evidence to prosecute. If prosecutors are satisfied that the evidence is sufficient, they must then go on to consider the public interest. “Public interest” does not refer to decisions that are publically popular. Indeed in some cases the public interest may be markedly different to what is apparently a popular public cause.

Such a decision is made by balancing all of the factors within a case. Decisions in respect of the public interest are often difficult and this is particularly the case in respect of visitors of certain nationalities. When considering the public interest, prosecutors must take an impartial and fair view when making any decision in this respect. Prosecutors will not be swayed by irrelevant considerations or public or political pressure but will take proper account of all matters of public interest and importance.

It is a fundamental principle that prosecutors must always consider each and every case independently and separately. There can never be a blanket approach to the question of public interest. Each set of circumstances is unique and prosecutors must use their experience, knowledge and expertise and apply it to the specific facts of a case. This means that prosecutors must never decide that they will apply a standard approach to a particular type of offence. Each case is assessed individually.

A natural consequence of this is that similar types of offences may result in different offenders being dealt with in a different way. For example, one offender who commits an offence may be prosecuted yet another person who is with him and commits the same offence may not be prosecuted, given that different public interest considerations apply to the second offender.

Depending upon the many different circumstances of any offence and the offender concerned, the status of the offender will be a relevant consideration when assessing the public interest.

In this respect, there are a number of public interest factors prosecutors should have in mind when considering whether to prosecute a visitor to the Falkland Islands. Not all factors listed in the Attorney General’s Code for Prosecutors are included here but prosecutors should remember that all relevant factors in the Code must be considered. The following headings raise specific issues in respect of crimes committed by visitors.

(i) The Seriousness of the Offence

The more serious the offence a visitor has committed, the more likely it will be that a prosecution for that offence will be required. The more serious the offence, the more likely it is that other public interest factors tending against prosecution will be outweighed.

(ii) The Culpability of the Suspect

This is a very important consideration when assessing whether to prosecute. It is more likely that a visitor will be prosecuted for an offence where evidence exists to demonstrate:

- a. that the offence was premeditated or planned; or
- b. that the visitor took a leading role in the offence or encouraged others to commit the offence; or
- c. that the visitor has a history of committing criminal offences; or
- d. that it is likely that the offence will be repeated or will continue unless a prosecution occurs.
- e. that there has been attempt to intimidate the public or to deliberately cause public unrest.

Prosecutors must note, however, that there are special considerations in respect of visitors to the Falkland Islands. It may be difficult to establish whether a visitor has a history of committing previous offences.

While this may not cause significant difficulties if the visitor comes from a country with good relations with the Falkland Islands such as the United Kingdom, Republic of Ireland, members of the Commonwealth, members of the European Union and other British Overseas Territories, very real practical difficulties arise where the visitor comes from a country which does not have a diplomatic relationship with the Falkland Islands. It will be impossible to obtain reliable information in those circumstances.

Prosecutors must never assume that a person has a history of offending and must only act upon reliable and evidentially admissible information.

It is important to note that the likelihood of further offending is not limited to the Falkland Islands. The Falkland Islands Government takes their international responsibilities seriously. Despite being a small country, it strives not only to protect the interests of its own residents and visitors but also of residents in other nations. The Falkland Islands Government will bring offenders to justice here with a view to preventing the commission of offences in other countries.

It will also share information with investigators abroad. It is well established that those who commit certain types of offences are likely to continue to offend. It must never be the stance of prosecutors to limit their assessment of the likelihood of offending to the geographical confines of the Falkland Islands. Where a visitor is considered to pose a risk of re-offending in another country, prosecutors must take this factor into account. Where appropriate, this may be a powerful factor in favour of prosecution particularly where the offence is regarded as serious.

It is the policy of the Falkland Islands Government to prevent those who have committed serious offences here to return. This is factor prosecutors can take account of when assessing the public interest.

(iii) The Likely Penalty for the Offence and the Availability of Out of Court Disposals

Where a visitor is likely to only receive a nominal penalty for an offence, this will be a public interest factor tending against prosecution. The courts of the Falkland Islands apply recognised sentencing guidelines. Prosecutors should not attempt to precisely foresee the penalty that a court might impose in any given case. Prosecutors should consider the likely sentencing range for an offence and decide whether the court is likely to impose a significant sentence within it. It is for the court alone to sentence offenders. Prosecutors must not assume that a court may take some exceptional course due to the fact that the offender is a visitor.

Also, prosecutors should be alive to the use of proportionate other means of disposal. The circumstances of a case may indicate that it is appropriate to either issue a verbal warning to a visitor or administer a citeable caution. Such disposals can act as a formal record that an offence was committed and may have implications for the visitor should they attempt to return to the Falkland Islands in future. However, the use of out of court disposals must never be used for reasons of convenience. The use of out of court disposals must be proportionate and proper in the circumstances.

Respect for Justice and the Rule of Law

Our community is fair and tolerant. It is important for prosecutors to bear in mind that decisions they make will have an impact on the view taken by other countries of how it regards respect for the Rule of Law.

It is important that it is seen internationally that the Falkland Islands expects its visitors to respect the law. This will often mean that repeated breaches of our criminal law in a similar manner will demand prosecution. Even where those repeated offences are minor in nature the public interest may demand prosecution.

Impact of Offending on the Victim or the Community

Prosecutors should ensure that they have sufficient evidence to properly assess the effect of any crime which appears to offend against these principles. It is important to obtain either Victim Impact Statements or Community Impact Statements to fully understand the effect of such a crime.

Protection of the National Interest (including the Economy) of the Falkland Islands

The Falkland Islands economy continues to thrive and grow. However, given its island status, the economy is dependent upon natural resource industries such as:

- a. Agriculture.
- b. Commercial fishing.
- c. Future hydrocarbon production.

Tourism is also becoming increasingly important to the economy of the Falkland Islands.

Any offence which is calculated to interfere on any significant scale with such industry should be regarded as serious.

Furthermore, it should always be noted that those who interfere with, or take advantage of in some unauthorised fashion, the industries of the Falkland Islands are likely to be motivated by financial gain. Such motive will always make it more likely that an offender will be prosecuted. Prosecution can act as a significant deterrent to those who may be minded to illegally exploit the natural resources of the Falkland Islands and this should always be considered where such acts occur.

Proportionality of Prosecution

Although prosecutors should not decide the public interest on the basis of this factor alone, regard should be had to the cost of criminal proceedings to the Falkland Islands Government, especially where it could be regarded as excessive when weighed against any likely penalty. The Falkland Islands has limited financial resources and it faces many challenges and demands upon the public purse. It is essential that regard is also given to the public interest factors identified above when considering the public interest, the cost of criminal proceedings is a relevant factor when making an overall assessment of the public interest. An example of a factor to be taken account of in these circumstances may be the expense in securing the attendance of witnesses living in other countries.

Where an offence is serious and likely to result in a significant penalty being imposed, this factor will be of much lower importance in the overall public interest decision. However, where a minor offence has been committed, this factor (when coupled with the other public interest considerations) may assume more significance in determining whether action other than prosecution can properly be taken.

Considerations Not to be Taken into Account when Assessing the Public Interest

The ability of a visitor to financially support themselves while an investigation or prosecution is ongoing

Prosecutors must not take account of the fact that visitors who are under investigation or being prosecuted for a criminal offence may be put to extra expense by having to remain in the Falkland Islands pending the conclusion of the case. Likewise, prosecutors should not take this factor into account if that extra expense falls upon the Falkland Islands Government.

Inconvenience to a visitor in leaving the Falkland Islands as originally planned

Prosecutors must not be influenced by the fact that an investigation or prosecution may prevent a visitor who is suspected of having committed an offence from leaving the country according to their original travel plans.

The fact that the visitor is soon to leave the Falkland Islands

Likewise the prosecutor must not authorise a charge of the suspect simply because he or she is shortly due to leave the Falkland Islands. At all times the prosecutors must apply the Code and if circumstances mean that a person may be able to leave prior to a decision being properly made then that fact should not influence the prosecutor towards attempting to make a decision early where it is not right to do so.

Factors beyond the control of the Prosecution

In accordance with the above prosecutors must not allow themselves to be influenced by decisions which may or may not be made by a court in the later stages of a case or the resulting financial implications. It is for a court alone to decide upon issues such as bail and possible deportation. It is always the role of prosecutors to put cases, where appropriate, before the court in order to give it the opportunity to make decisions.

Further copies of this document and information about alternative languages and formats are available from the Law and Regulation Directorate.

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This Document is also available online at: <http://www.fig.gov.fk/legal/>

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