



## **DIRECTOR OF PUBLIC PROSECUTIONS**

# **INTERIM GUIDELINES ON THE HANDLING OF CASES WHERE THE JURISDICTION TO PROSECUTE IS SHARED WITH PROSECUTING AUTHORITIES OVERSEAS (The Guidelines)**

## **INTRODUCTION**

1. Investigators and prosecutors in England and Wales are committed to working with investigation and prosecution agencies in other countries to combat crime. Where crime is committed in more than one jurisdiction, different offences may be committed in different locations. This document provides guidance for CPS prosecutors in cases where it is apparent that a course of criminal conduct may have resulted in the commission of offences in different jurisdictions and where criminal investigations have been commenced in more than one jurisdiction. These guidelines are interim guidelines and they have immediate effect. At the end of the consultation period, they will be reviewed in light of the responses received. Thereafter final guidelines will be published. In this document such cases are referred to as cases of concurrent jurisdiction. Complementary guidance can be found in the Eurojust Guidelines issued in 2003 and the guidance on the handling of terrorist cases where the jurisdiction to prosecute is shared by prosecuting authorities within the UK issued in 2009.
2. The guidelines follow a step-by-step approach to determining issues arising in cases with concurrent jurisdiction. Firstly, there should be early sharing of

information<sup>1</sup> between prosecutors with an interest in the case. Secondly, prosecutors should consult on cases and the issues arising from concurrent jurisdiction. Thirdly, in reaching a decision on whether a prosecution should take place in England and Wales, CPS prosecutors should apply the principles set out in these guidelines. As a matter of principle any decision on questions arising from concurrent jurisdiction should be, and should be seen to be, fair and objective. Each case should be considered on its own facts and merits.

## **SHARING INFORMATION IN CASES OF CONCURRENT JURISDICTION**

3. Where issues of concurrent jurisdiction arise, investigators and prosecutors in England and Wales should consult closely from the outset of investigations, consistent with the procedures established by the agencies. They should also, where possible and appropriate to do so, consult closely with investigators and prosecutors in such other countries which have an interest in prosecuting the conduct. The aim of a co-operative approach is to agree a co-ordinated strategy in relation to the particular case that respects the independence of the individual jurisdictions but recognises the benefits of co-operation in achieving effective law enforcement.
4. Where it is possible and appropriate to share information, the information shared between investigators and prosecutors in England and Wales and the investigators and prosecutors in such other countries as have an interest in prosecuting the case 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.
5. The information shared in accordance with this guidance is provided in order that prosecutors in England and Wales and in other countries with an interest in prosecuting the case may reach decisions on issues arising from concurrent jurisdiction. The information should not be disclosed to other countries without permission of the originating state.

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<sup>1</sup> To the extent that is lawfully permissible

## CONSULTATION

6. The aim of consultation, having shared the information set out at paragraph 4, is to enable each country's prosecutors to decide on the issues arising from concurrent jurisdiction 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 different jurisdictions
7. It is for the prosecuting authority, having applied the principles set out in this guidance, to decide whether a case should properly be prosecuted in its country where that is in accordance with the law and the public interest. In England and Wales any decision to prosecute in this jurisdiction must be made in accordance with the Code for Crown Prosecutors (the Code).

## PRINCIPLES TO BE APPLIED

8. In deciding where a case with concurrent jurisdiction should be prosecuted, CPS prosecutors in England and Wales should apply the following principles:
  - 1) So long as appropriate charges can properly be brought which reflect the seriousness and extent of the offending supported by admissible evidence, a prosecution should ordinarily be brought in the jurisdiction where most of the criminality or most of the loss or harm occurred.
  - 2) Where potentially relevant material may be held in another jurisdiction, the prospects of the material being identified and provided to prosecutors in England and Wales for review in accordance with disclosure obligations in

this jurisdiction will be an important consideration in deciding whether appropriate charges can properly be brought in England and Wales.

- 3) Provided it is practicable to do so and consistent with principles 1) and 2) above, where crime is committed in more than one jurisdiction, all relevant prosecutions should take place in one jurisdiction.
- 4) Other factors relevant to any determination by CPS prosecutors as to where a prosecution should take place include:
  - i) the location of the witnesses, their ability to give evidence in another jurisdiction and where appropriate, their right to be protected;
  - ii) the location of the accused;
  - iii) the location of any co-defendants and/or other suspects; and
  - iv) the availability or otherwise of extradition or transfer proceedings and the prospect of such proceedings succeeding.
- 5) Where all other factors are finely balanced, any delay introduced by proceeding in one jurisdiction rather than another and the cost and resources of prosecuting in one jurisdiction rather than another may be relevant.
- 6) Although the relative sentencing powers and/or powers to recover the proceeds of crime should not be a primary factor in determining where a case should be prosecuted, CPS prosecutors should always ensure that there are available potential sentences and powers of recovery to reflect the seriousness and extent of the offending supported by the evidence.
9. Decisions in cases of concurrent jurisdiction may need to be reviewed where circumstances change, but circumstances will rarely change to such an extent that a compelling case could be made for proceedings already underway in one jurisdiction to be discontinued and commenced instead in another jurisdiction.

10. Unless the criminal conduct relied upon in an extradition request is already being investigated with a view to prosecution in England and Wales, the receipt of such a request, and the making of any orders pursuant to such a request, do not, without more, require CPS prosecutors in England and Wales to consider or reconsider whether a prosecution for the conduct in question should be brought in this jurisdiction.

11. A few offences allow the courts of England and Wales to try UK nationals for offences committed wholly abroad, which is known as extraterritorial jurisdiction. Specific public policy considerations apply in these cases which the current Guidelines are not designed to cover. Accordingly prosecutorial decisions in such case are not bound by these Guidelines.