

## **Book of Regulations: Chapter 21 - Reporting to the Crown Office**

### **Procedure in reporting cases to Crown Office 21.01**

Procurators Fiscal are referred to the terms of paragraph 19.01 of the Book of Regulations as to the procedure in reporting cases to Crown Office for the instructions of Crown Counsel. These procedures apply equally in respect of cases which should be reported to Crown Office prior to the commencement of proceedings for instructions. In addition Procurators Fiscal should enclose either the police report or the report from the reporting agency involved for the attention of the particular unit of Crown Office concerned or Crown Counsel. Further, the Procurator Fiscal should express his view on the sufficiency of evidence contained in the report.

Procurator Fiscals are reminded that the following offences should be reported to Crown Office prior to the commencement of proceedings:

### **Abortion Act 1967 21.02**

#### **Abortion (Scotland) Regulations 1991**

In the event of any question arising as to the legality of the termination of a pregnancy by a medical practitioner, or in the event of any failure to comply with regulations made under the Act, the circumstances should be reported for the consideration of Crown Counsel before any action is taken.

### **Anti-Fraud Unit Cases 21.03**

The Anti-Fraud Unit of the Intervention Board was set up with the purpose of investigating allegations of fraud on the Community Agricultural Policy (CAP). The Intervention Board ensures that payments from the European Community are only made to those entitled to them and that all levies payable to the community are collected.

The Intervention Board was established under Section 6 of the European Communities Act 1972. Further powers were given to the Board by various statutory instruments, the most recent of which being the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992 (SI 1992/314) which revoked all earlier orders and regulations. The 1992 Regulations give authorised officers powers to enter land or vehicles to inspect land, vehicles, animals or equipment to inspect and take samples of specified commodities or other substances, documents, to require the production of copies or extracts of documents and to seize and retain documents.

The Anti-Fraud Unit should report offences to the Fraud and Specialist Services Unit at Crown Office. If any cases are reported direct to a Procurator Fiscal, they should be referred to the Crown Office for the attention of the Fraud Unit in the first instance.

### **Banking Act 1987 21.04**

All Contraventions of the Banking Act 1987 should be reported to Crown Office for the attention of the Fraud Unit before proceedings are commenced by Procurators Fiscal. For the purposes of investigation of any offence under the Act the Bank of England is prepared to offer any assistance it can and contact with the Bank of England will be made via Crown Office.

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### **Bankruptcy Offences 21.05**

Usually, intimation of the possible commission of bankruptcy offences is first made to the Crown Office Fraud Unit which receives from the Accountant in Bankruptcy suspected offence reports by trustees, before sending the papers and appropriate case to the Procurator Fiscal for investigation. Where the Procurator Fiscal receives from a trustee or from other sources notification of allegations of the commission of bankruptcy offences, these should continue to be reported for the attention of the Fraud Unit who will obtain the instructions of Crown Counsel.

Procurators Fiscal should also note that by virtue of section 68(1) of the Bankruptcy (Scotland) Act 1985, summary proceedings may be commenced at any time within the period of 12 months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings came to his knowledge. This is subject to Section 1A which states that no proceedings shall be commenced by virtue of this section more than 3 years after the commission of the offence. If an extended time limit for prosecution is necessary then matters should be reported to Crown Office with a request for a certificate of the Lord Advocate as referred to in Section 68(3). The report should include the following:

- (1) The date on which the report of the offence was received at the Procurator Fiscal's office. If further enquiries have been instructed to obtain additional essential evidence, the date of receipt of such evidence should be stated as this will be the relevant date for any certificate;
- (2) An express statement that in the opinion of the Procurator Fiscal there is sufficient evidence to justify proceedings;
- (3) A copy of the report detailing the circumstances of the alleged offence;
- (4) A statement by the Procurator Fiscal that he considers that there has been no undue delay on the part of those reporting the case. The Lord Advocate will not allow a certificate to be used to cure an administrative delay for which there is no justification.

Procurators Fiscal should also see **Lord Advocate's Certificates 21.17** in relation to Lord Advocate's certificates generally.

### **Child Abduction Act 1984 21.06**

The attention of Procurators Fiscal is drawn to the above Act which came into force on 12 October 1984.

The purpose of the Act is to deal with cases where children involved in custody disputes are removed from the United Kingdom and effectively placed beyond the jurisdiction of the civil courts. By creating criminal offences coupled with powers of arrest, the Act seeks to prevent those who abduct children from removing them from the United Kingdom before the civil courts have had time to act.

Part II of the Act, which contains the Scottish provision differs substantially from the English provisions. There is no Scottish equivalent of Section 2 (necessary in England and Wales because of the requirement of force or fraud contained in their kidnapping law) since the common law of plagium will apply. It is not clear that plagium covers the situation where one parent removes a child from the custody of another and it would be unsatisfactory for a

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parent to be able to remove a child from England and take it out of the United Kingdom via Scotland. Section 6 therefore creates a limited offence in Scotland whereby a person connected with a child in respect of which a court order has been made commits an offence if he takes or sends the child out of the United Kingdom without the appropriate consent, all these terms being defined in the Act.

The offence is one of strict liability subject to two important statutory defences. The first relates to consent; the second to knowledge of the existence of any court order.

Sections 9 and 10 contain certain evidential provisions designed to facilitate the proof of court documents.

Prosecutions for offences under the Act are likely to involve difficult questions of interpretation and evidence and will, no doubt, attract a considerable degree of publicity.

Procurators Fiscal are therefore instructed to report all such cases to Crown Office.

### **Children and Young Persons (Harmful Publications Act) 1955 21.07**

In the event of any case being reported by the police under the above Act Procurators Fiscal should, before taking any proceedings, report such cases to Crown Office for the instructions of Crown Counsel. If the police report received is sufficiently comprehensive it should be forwarded along with a report giving the views of the Procurator Fiscal as to whether proceedings should be taken and stating whether any application should be made for a Search Warrant under Section 3(1) of the Act. If copies are available of the publications or works complained of then these should also be forwarded to Crown Office for the consideration of Crown Counsel.

### **Culpable Homicide arising from supply/administration of drugs 21.08**

Before an accused is placed on petition on a charge of culpable homicide by unlawfully supplying a controlled drug for the purpose of ingestion, a report should be sent to Crown Office for consideration of Crown Counsel. If it is thought appropriate for the accused to remain in custody or to be the subject of bail conditions pending preparation and consideration of such a report, a charge in terms of section 4(3)(a) of the Misuse of Drugs Act 1971 may be libelled in the first instance.

### **Deforcement 21.09**

The Lord Advocate has considered the application of the crime of deforcement in present times. There is no recent case law on the matter and some contemporary legal authors have expressed the view that the matter would be dealt with nowadays as an aggravated assault. The Lord Advocate does not share that view and considers that it is open to the Crown to charge the crime of deforcement in appropriate cases. All cases reported to Procurators Fiscal which may raise the possibility of a charge of deforcement of messengers or sheriff officers should be reported to Crown Office for the instructions of Crown Counsel.

### **Demonstrations against Fox Hunting 21.10**

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Prior to the commencement of proceedings Procurators Fiscal should send to Crown Office all reports which they receive regarding alleged offences arising out of demonstrations against fox hunting.

### **Environmental Protection Act 1990 21.11**

#### **Section 91: Summary Proceedings by Persons Aggrieved by Litter**

As this section allows for the prosecution of the relevant litter authority and problems may arise with the reporting of such cases to the Procurator Fiscal any case under this section should be reported to Crown Office before proceedings are instituted.

#### **Section 92: Summary Proceedings by Principal Litter Authorities**

Proceedings under this section should not be instituted where an appeal against a litter abatement order is pending and any cases under this section should be reported by Procurators Fiscal to Crown Office before proceedings are instituted.

### **European Law 21.12**

Should any question arise or be reasonably anticipated to arise in any case concerning the compatibility of UK legislation with European law or should any question arise concerning the interpretation of European law which might ultimately be referred by the High Court of Justiciary to the European Court of Justice, Procurators Fiscal should immediately report a case to Crown Office, if necessary by telephone, for the attention of the Appeals Unit.

### **Firearms Act 1968 Section 1 (3) (a) 21.13**

#### **Section 1(3)(a) of the Firearms Act 1968 is as follows:**

1(3)(a) This section applies to every firearm except (a) a shotgun within the meaning of this Act, that is to say a smooth bore gun (not being an air gun) which -

- i. has a barrel not less than 24 inches in length and does not have any barrel with a bore exceeding 2 inches in diameter;
- ii. either has no magazine or has a non-detachable magazine incapable of holding more than 2 cartridges; and
- iii. is not a revolver gun.

Procurators Fiscal are directed to **Annex 1 Conversion of Firearms - Firearms Act 1968 Section 1** to this Chapter which is an Opinion by Crown Counsel in relation to a case reported to Crown Office where the rifling in a .303 rifle had been removed. In that particular case the weapon was still capable of chambering a 0.303 cartridge and of being fired as designed. The length of the barrel was about 25 inches. A literal interpretation of Section 1(3)(a) of the Act appeared to involve that the weapon fulfilled the description of shotgun "being a smooth bore gun with a barrel not less than 24 inches in length not being an air gun" and hence that a firearms certificate would not be required for it. The Annexed Opinion makes reference to the English decision of **R v Hucklebridge 1981 WLR 1284**. It seems unlikely that the High Court of Justiciary will take a different line from the Court of Appeal in

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*R v Hucklebridge*. If such cases are reported Procurators Fiscal should seek Crown Counsel's instructions before proceedings are instituted.

### **Homosexual Offences 21.15**

Procurators Fiscal should report to Crown Office any case involving a homosexual act where both participants are over 16 years and the act appears to have been consensual and in private but is an offence by reason of the fact one or both are under 18 years. Procurators Fiscal should refer to Crown Office Circular 12/2003 (now withdrawn) in this regard.

### **Human Fertilisation and Embryology Act 1990 21.16**

Procurators Fiscal should report any cases reported to them, to Crown Office for the attention of the Policy Group prior to the commencement of proceedings. The Policy Unit will obtain Crown Counsel's instructions

### **Lord Advocate's Certificates 21.17**

The Lord Advocate has instructed that in those cases in which a time limit runs from the date on which evidence sufficient in his opinion to justify proceedings comes to his attention, all requests for certificates certifying this fact should in normal circumstances be requested from Crown Office prior to the commencement of proceedings.

The Lord Advocate also instructs that the practice of averring the date of the receipt of such evidence in the complaint is now of such long standing that it should be followed in every case. This instruction applies not only to those cases in which the Lord Advocate grants a certificate but also to those in which a certificate can competently be, and is, granted by a Procurator Fiscal. Procurators Fiscal should also refer to **paragraph 21.05** in this regard.

The Lord Advocate will not acquiesce in inappropriate or unjustified requests for certificates. The report must include a comprehensive chronology of events, from the beginning of the investigation. Where the reporting agency has provided insufficient detail, staff will seek further information from the agency prior to submitting the request.

Explanations must be provided for any delays noted in the chronology. In particular, any delays in the Fiscal's handling of the case, including those resulting from administrative difficulties, should be highlighted. Where delays result from procedures undertaken by external agencies, the procedures must be described and the delays explained.

Certificate requests should be submitted to Crown Office, with the police or agency report, using the **standard form at Annex 3**.

### **Merchant Shipping Act 1995 (Compulsory Insurance, Section 163(5)) 21.18**

Section 163(1) of the Merchant Shipping Act 1995 provides that all ships entering or leaving ports in the United Kingdom or arriving at a terminal in the territorial sea of the United Kingdom while carrying in bulk a cargo of more than 2,000 tons of oil, of a description specified in regulations made by the Secretary of State, should have in force a certificate showing that there is in force a contract of insurance in respect of the ship covering the owner's liability.

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Where Procurators Fiscal have reported to them by the Marine Survey Office, alleged contraventions of Section 163(5), that is, of a ship entering or leaving or attempting to enter or leave a port or terminal without having such a certificate in force, such cases should be reported, wherever practicable, to Crown Office before a decision on the commencement of proceedings is taken. In cases of urgency, a telephone communication should be made. Generally, such cases will be reported to Crown Office in the first instance and particular Procurators Fiscal contacted by Crown Office in respect of proceedings and this instruction is to cover the unusual case of a Procurator Fiscal being consulted initially by the Marine Survey Office in this regard.

In the event of any reports being submitted under the above Act, these should be submitted by Procurators Fiscal to Crown Office for the attention of Crown Counsel. Reports should be marked for the attention of the Policy Division.

### **Official Secrets Act 1920 21.19**

Section 6(1) of this Act allows a Chief Officer of Police to apply to the Secretary of State for permission to exercise the powers conferred by the section. The section applies where a Chief Officer of Police has a reasonable ground for suspecting that an offence under section 1 of the Official Secrets Act 1911 has been committed and for believing that any person is able to furnish any information as to the offence or suspected offence.

The offences under section 1 of the 1911 Act are offences of spying. Section 1 of the 1911 Act reads as follows:

1(1) If any person for any purpose prejudicial to the safety or interest of the State

(a) approaches, inspects, passes over or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act: or

(b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code word, or password or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; he shall be guilty of a felony.

Where a Chief Officer of Police has reasonable grounds for suspecting the above he may authorise a Superintendent of Police or any Police Officer not below the rank of Inspector to require the particular person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence. Section 6(1) of the 1920 Act states that a person thus required to give information relating to an offence or suspected offence and who fails to comply with such requirement or knowingly gives false information shall be guilty of an offence.

The power of interrogation conferred upon the Police by section 6 of the 1920 Act will only be exercised if special authorisation from the Secretary of State has been obtained and such special authorisation will only be given in cases where the information disclosed, in contravention of section 1 of the 1911 Act, is itself of serious public importance.

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It is impracticable to define precisely the nature of information which may be regarded as of serious public importance and in situations in which Chief Constables view it as desirable to avail themselves of the powers conferred by section 6 of the 1920 Act they should not proceed without referring firstly to the Procurator Fiscal who should report the facts to Crown Office and obtain Crown Counsel's instructions. Prosecutions under section 6 of the 1920 Act should not be instituted except with Crown Counsel's instructions. Difficulties are liable to arise if any preliminary steps are taken by the Police in pursuance of the powers under section 6 before Crown Counsel have had an opportunity to consider whether the case is one in which, if the person interrogated refuses to give the information, the Crown would be prepared to prosecute.

Under section 9(1) of the 1911 Official Secrets Act a justice of the peace may grant a search warrant where there are reasonable grounds for suspecting that an offence under the Act has been or is about to be committed in a particular place. Section 9(2) allows a Superintendent of Police to authorise a search without warrant where the case is one of great emergency and where the interest of the State makes necessary immediate action. A Superintendent of Police may give such authority to any Constable and thereafter the sub-section indicates that such Constable would have the same authority to search as he would have had if he was in possession of a search warrant.

This exceptional and drastic power of search without a warrant is not intended to be used by the Police in any and every case where it is suspected that an offence under the Official Secrets Act has been or is about to be committed but should be reserved for cases where there is not only urgency but the paramount interest of the State necessitating immediate action of so exceptional a character.

Unless the urgency and importance of the matter is such that any delay would tend to defeat the whole object of the search it is desirable that reference should be made to the Procurator Fiscal by the Police. The Procurator Fiscal should then report to Crown Office and obtain Crown Counsel's instructions before application is made to a justice of the peace for a search warrant.

### **Perjury 21.20**

The Lord Advocate considers that it is appropriate that cases of perjury or subornation of perjury should be considered by Crown Counsel before proceedings are instituted and accordingly no proceedings should be instituted for perjury or subornation of perjury without the instructions of Crown Counsel. Should it be necessary to obtain instructions as a matter of urgency communication should be made by telephone or fax with Crown Office. Where, exceptionally, proceedings are instructed by a trial Advocate Depute during the trial the Procurator Fiscal should give immediate intimation to Crown Office.

### **Public Order Act 1986, Section 20 21.21**

This section renders a person presenting or directing the public performance of a play which involves the use of threatening, abusive or insulting words of behaviour liable to prosecution, if that person intends thereby to stir up racial hatred or if, taking all the circumstances into consideration and the performance as a whole into consideration, racial hatred is likely to be stirred up by the public performance of the play. Prior to the commencement of proceedings under this section Procurators Fiscal should send a copy of the police report with their own

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report to Crown Office. This report from the Procurator Fiscal to Crown Office should include a recommendation and a note of the views of the Procurator Fiscal as to whether proceedings are appropriate.

### **Sexual Offences (Conspiracy and Incitement) Act 1996 21.22**

This Act (which received Royal Assent on 4 July 1996 and came into force on 1 October 1996) makes provision about conspiracy, or incitement, to commit certain acts outside the United Kingdom.

Sections 1 to 5 inclusive concern the law in England and Wales, and also in Northern Ireland. Section 6 concerns the law in Scotland only.

Section 6 inserts a new section, Section 16A, into the Criminal Law (Consolidation) (Scotland) Act 1995 and that is reproduced in the annex to this Circular.

Procurators Fiscal who receive reports of incidents which are likely to invoke this Act are required to obtain an instruction from Crown Counsel before proceeding.

### **Stalking 21.23**

The common law crime of Breach of the Peace was previously used to prosecute stalking behaviour. The limitations of the common law in relation to conduct without a public element became apparent in the case of HMA v Harris [2010] HCJAC 102. Procurators Fiscal will be aware that Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 creates the statutory offence of stalking. The new offence does not require a public element and can be committed in public or in private. The offence carries maximum penalties of 12 months imprisonment on Summary Complaint and 5 years imprisonment on indictment.

Please see the Case Marking Guidelines on Section 39 Stalking for further details

Procurators Fiscal will find further guidance on the matter in Crown Office Circular dealing with the Protection from Harassment Act 1997 (Crown Office Circulars 55/1998 - withdrawn or superseded).

### **Theatres Act 1968 21.24**

#### **Section 2(1)**

This section renders a person presenting or directing the performance of a play which is deemed to be obscene, if its effect is such as to attempt to defray or even corrupt persons who are likely to attend it, liable to prosecution on summary complaint or on indictment. Before commencing proceedings Procurators Fiscal should report cases under this section to Crown Office with a copy of the police report and their own report including a recommendation and a note of the views of the Procurator Fiscal as to whether proceedings are appropriate.

#### **Section 6**

This section renders a person presenting or directing a public performance of a play which involves the use of threatening, abusive or insulting words or behaviour, if that person presented or directed the performance with intent to provoke a breach of the peace or, if the

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performance, taken as a whole, was likely to occasion a breach of the peace liable to prosecution on summary complaints. This offence is triable in summary complaint only by virtue of Schedule 3 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1985. Prior to commencing proceedings in cases under section 6 Procurators Fiscal should report cases to Crown Office. Again a note of the views of the Procurator Fiscal as to whether proceedings are appropriate should be included in the report.

### **Allegations Against Teachers 21.25**

When dealing with any case involving an allegation against a teacher of an offence committed against a pupil in the course of his or her employment, and where there appears to be sufficient evidence. Procurators Fiscal must report to Crown Counsel for instruction. Where an SPR is received, the Procurator Fiscal should order full statements and any relevant productions, including any CCTV or video recorded joint investigative interviews. A report should be prepared outlining a summary of the circumstances, an analysis of the evidence and a recommendation for disposal of the case. The report should be forwarded to the Office of the Deputy Crown Agent Serious Casework (DCA Office) for Crown Counsel's Instruction. Procurators Fiscal should be aware that accused persons in such cases are often are suspended from employment pending the outcome of criminal proceedings. Statements and relevant productions should be requested at the earliest opportunity with a view to reporting to Crown Counsel within priority timescales.

Handling of cases involving a child witness or witnesses should conform to the guidelines in relation to **Child and Vulnerable Witnesses**.

Please note that guidance may be sought from the DCA Office in relation to such cases.

### **Travelling People 21.26**

Before commencing proceedings for unlawful encampment in any case involving a large group of travelling people (normally consisting of more than 21 caravans but not including large traditional gatherings of travellers at, for example, traditional fairs) Procurators Fiscal should report to Crown Office in order that a consistent and co-ordinated approach may be taken to such cases. Procurators Fiscal should also refer to Crown Office Circular 84/1998 (now withdrawn)