

War Crimes/Crimes Against Humanity: Guidance for making an application for DPP consent for an application for a private arrest warrant in accordance with section 1(4A) of the Magistrates' Courts Act 1980

Publication

Updated April 2016

- Introduction
- Guidance

Introduction

The war crimes team of the Metropolitan Police Counter Terrorism Command (SO15) is responsible for the investigation of all allegations of war crimes, crimes against humanity, genocide and torture. It has the specialist skills to conduct an investigation or to decide that an investigation is not feasible. It is well placed to evaluate the process of obtaining the necessary evidence from abroad, the prospects of being able to protect witnesses and to secure their evidence at trial. The Counter Terrorism Division (CTD) of the Crown Prosecution Service, Special Crime and Counter Terrorism Division, has responsibility for prosecuting any such crimes.

This guidance is to be followed when there is an imminent prospect of a suspect arriving in this jurisdiction and a private prosecutor wants to apply for a private arrest warrant.

Where evidence has been collated by a private prosecutor in anticipation of making a future application for an arrest warrant, it is preferable that this should be referred to SO15 in accordance with the SO15/CTD Referral Guidelines as SO15 is the most appropriate body to carry out complex investigations of this type.

On this basis it is anticipated that applications for DPP consent for the making of an application for an arrest will be made when there is no ongoing SO15 scoping exercise or investigation because where there is an ongoing scoping exercise or investigation any decision to arrest or interview will be made by SO15 after the benefit of a full investigation and full review of the evidence by CTD in accordance

with the Code for Crown Prosecutors. Any such arrest will be in accordance with the Police and Criminal Evidence Act 1984 which means that a suspect can be interviewed about potential involvement prior to charge and searches can take place in order to maximise the potential evidence available.

If a suspect, who has already been referred to SO15 in accordance with these Referral Guidelines, is known to be coming into this jurisdiction before the police have completed their investigative scoping as per Sections A to C of the Guidelines, it is not anticipated that a private prosecutor will make a separate application for the consent of the DPP to make an application for a private arrest warrant. Such an application would be premature as without the completion of a proper criminal investigation it is unlikely that the DPP could make a fully informed judgement on the sufficiency of evidence stage of the Code Test. In these circumstances it is anticipated that the procedure as set out in the SO15/CTD Referral Guidelines will continue and any decision to arrest or interview will take place by SO15 with consideration to operational issues and after a review by CTD in accordance with the Code for Crown Prosecutors.

This document is intended to be a living document that can be amended and updated in the light of continuing experience. It will be reviewed every six months.

Guidance

1. An information for the issue of an arrest warrant can be laid before a justice of the peace by any individual with a grievance or by his counsel or solicitor.
2. Section 153 of the Police and Social Responsibility Act 2011 amended section 1 of the Magistrates' Courts Act 1980 by inserting a new subsection (4A) which provides as follows: *"Where a person who is not a public prosecutor lays an information before a justice of the peace in respect of an offence to which this subsection applies, no warrant shall be issued under this section without the consent of the Director of Public Prosecutions."*
3. This section applies to offences under section 1 of the Geneva Conventions Act 1957 (grave breaches of Geneva conventions), offences under section 1 of the Taking of Hostages Act 1982 (hostage-taking) and offences under section 134 of the Criminal Justice Act 1988 (torture).
4. Applications for these warrants are made to a District Judge at Westminster Magistrates' Court.
5. A District Judge will only hear an application if there is recent DPP consent. In these circumstances an application for DPP consent for the making of an

application for a private arrest warrant should only be applied for when there is a reasonable belief that a suspect will be entering this jurisdiction within 14 days of the application. It is essential that the prosecutor is given sufficient time in which to read and review the request.

6. Any application for the consent of the DPP for the making of an application for a private arrest warrant for a particular suspect should be submitted to the Counter Terrorism Division (CTD) of the Special Crime and Counter Terrorism Division of the Crown Prosecution Service.
7. Each application should contain:
 - a request for the DPP to consent to an application for an arrest warrant;
 - full details of the suspect;
 - details of when he/she is arriving into the jurisdiction and by what means;
 - details of his/her position of authority and the nature of his/her visit;
 - details of the charges for which DPP consent is sought;
 - sufficient **admissible and reliable** and credible evidence in accordance with the rules of the criminal courts of England and Wales or capable of being put into such a format within a relatively short period of time to provide a realistic prospect of conviction for each of the charges;
 - where possible an analysis of the evidence setting out which evidence supports which charges;
 - where known, any unused material which might undermine the prosecution case or assist the defence.
 - details of any other complaints made by the complainant about the suspect in other jurisdictions, and, if there are any such complaints, the details of the investigating/prosecuting body.
8. All evidence should, wherever possible, be submitted to CTD in paper and electronic format at least 48 hours in advance of any anticipated application.
9. The CTD specialist prosecutor will then consider the evidence that has been collated by the private individual, lawyer or organisation in accordance with the Code for Crown Prosecutors.
10. During the review of the evidence the CTD specialist prosecutor will, wherever possible, provide the private individual, lawyer or organisation with a timescale for his/her decision-making. Where the material is particularly voluminous and the prosecutor believes that there is insufficient time for the papers to be read and reviewed, the applicant will be given a reasonable deadline by which the review can take place.
11. In an exceptional case, where there is the need for an emergency application for an arrest warrant, the CTD specialist prosecutor will consider the case

based upon the material submitted as there will be no opportunity to rectify or materially improve the evidence at that stage.

12. If there is insufficient evidence to satisfy the evidential stage of the Full Code Test, the CTD specialist prosecutor will consider the principles set out in the Threshold Test. This may only be applied where the suspect presents a substantial bail risk and not all the evidence is available at the time when he or she must be released from custody unless charged.
13. The conditions for applying the Threshold Test are contained in paragraphs 5.2 - 5.12 of the Code.
14. The first part of the Threshold Test requires the prosecutor to be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.
15. If so satisfied the prosecutor must also be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further identifiable evidence, with a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.
16. If the Threshold test is satisfied the CTD specialist prosecutor will provide written guidance to the private individual, lawyer or organisation as to what evidence is required to bring the evidence to the standard required to satisfy the Full Code Test.
17. In relation to the public interest stage the DPP will consider the public interest factors in favour and against granting consent including the more common public interest factors set out in the Code. The DPP will consult the Attorney General in the usual way.
18. If there is sufficient evidence and it is in the public interest the DPP will grant consent for the application for the issue of a warrant.
19. The consent function for the issue of a warrant will be exercised by the DPP personally or the Head of Special Crime and Counter Terrorism Division (SCCTD) or the Deputy Head of SCCTD.
20. If the DPP grants consent for the issue of a warrant this will be recorded or otherwise evidenced in writing and be provided to the person applying for the arrest warrant. In accordance with CPS published policy on private prosecutions, the CPS will take over the prosecution, which will be dealt with by a specialist prosecutor in CTD.
21. The CTD specialist prosecutor will also inform Westminster Magistrates' Court and SO15 war crimes team as members of that team will attend court in order to execute any warrant granted.

22. Where the evidential and public interest stages in the Code test are not satisfied, the DPP cannot consent to an application for a warrant.
23. In these circumstances the complainant, lawyer or organisation will be informed of this in writing.
24. If consent is refused on evidential grounds the CTD specialist prosecutor will provide written guidance to a private individual, solicitor or organisation suggesting further lines of enquiry or ways in which information can be turned into admissible evidence. Where time is of the essence the prosecutor will provide oral guidance which will be followed by written guidance.
25. If consent is refused on evidential grounds the CTD specialist prosecutor may also suggest that the private individual, solicitor or organisation refer the evidence to SO15 as the most appropriate body to conduct an investigation.
26. If the private individual, solicitor or organisation does then refer the matter to SO15 this will allow SO15 to conduct their scoping exercises as per Section A and C of the published Referral Guidelines which should then be followed.
27. It may be that after either granting or refusing consent the DPP will issue a public statement.