



## **PROTOCOL ON THE ROLES OF HIS MAJESTY'S ATTORNEY GENERAL FOR GIBRALTAR**

### **INTRODUCTION**

This Protocol seeks to define the various roles and responsibilities of His Majesty's Attorney General for Gibraltar ("the Attorney General") and to provide guidance on how the Attorney General should act where potential conflict may arise in the performance and discharge of those roles and responsibilities.

It covers:

#### **1. THE ATTORNEY GENERAL'S ROLES AND RESPONSIBILITIES.**

- 1A. The Constitution
- 1B. Statute
- 1C. Established constitutional practice and convention
- 1D. The position of the Director of Public Prosecutions

#### **2. GUIDANCE ON PERFORMANCE OF ROLES AND RESPONSIBILITIES AND POTENTIAL FOR CONFLICT.**

- 2A. Responsibility for prosecutions
- 2B. Attorney General's/DPP's consent to prosecute
- 2C. Directions or discontinuances necessary to safeguard national security
- 2D. Cases on which the Attorney General will not be consulted
- 2E. Superintendence of casework
- 2F. Seeking Ministerial representations on the public interest
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#### **3. DEVELOPMENT OF POLICY, DEALING WITH MEDIA AND COMPLAINTS.**

- 3A. Development of policy
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#### **4. AGREEMENT OF ATTORNEY GENERAL AND DPP.**

The Attorney General



## **1. THE ATTORNEY GENERAL'S ROLES AND RESPONSIBILITIES.**

1.1. The office of the Attorney General is a public office established by section 59 of the Gibraltar Constitution Order 2006 ("the Constitution"). The Attorney General is appointed by the Governor acting in accordance with the advice of the Specified Appointments Commission, as set out in section 56 of the Constitution. The role and responsibilities of the office are set out in the Constitution, in statute and in established constitutional practice and convention.

### **1A. The Constitution**

1.2. Under section 59(2) of the Constitution, the Attorney General has the power in any case in which he or she considers it desirable so to do:

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary 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, instituted or undertaken by him or herself or any other person or authority.

1.3. Those powers may be exercised by the Attorney General in person or through other persons acting in accordance with his general or special instructions (section 59(3)).

1.4. Under section 59(4), the powers conferred upon the Attorney General by subsection (2)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority (subject to a proviso that other persons can withdraw proceedings which they have brought before charge).

1.5. In the exercise of the powers conferred by section 59, the Attorney General shall not be subject to the direction or control of any other person or authority (section 59(5)).



- 1.6. The Attorney General also has the power to apply to the Supreme Court or intervene in proceedings to determine questions as to membership of the Gibraltar Parliament under section 31 of the Constitution.

### **1B. Statute**

- 1.7. The Attorney General also has statutory powers and responsibilities, including the following:

- (a) consideration and provision of consent as required for certain prosecutions<sup>1</sup>;
- (b) the power to apply for certain directions, orders, warrants or their variation<sup>2</sup>;
- (c) the duty to apply for certain directions, orders or their variation<sup>3</sup>.
- (d) the power to refer points of law in criminal cases to the Supreme Court or the Court of Appeal<sup>4</sup>;
- (e) to be a member of the Legal Services Regulatory Authority, *ex officio*<sup>5</sup>.

### **1C. Established constitutional practice and convention**

- 1.8. As well as constitutional and statutory roles and responsibilities, the Attorney General also has roles and responsibilities derived from established constitutional practice and convention.

#### **(i) Chief Legal Adviser**

- 1.9. Foremost amongst these, and in common with the role of the Attorney General in the British Overseas Territories, the Attorney General acts as the chief legal adviser to both the elected Government, including government departments and ministries, and to the Governor.

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<sup>1</sup> For instance, sections 16(3), 31(1), 42(5), 48(3), 49(4), 60(1), 78(3), 79(3), 110(1), 145(1), 149(4), 159(10), 188(2), 190(7), 206(3), 259(2), 430(3), 474(3), 483(4), 488(3), 491(5), 495(3), 517(2), 524(4), 534(2), 546(6), 575 Crimes Act 2011, section 20 Judicial Service Act 2007.

<sup>2</sup> For instance, sections 78(4), 260(1), 314(1), 377(2), 378(1), 379(1), 380(1), 381(1) Crimes Act 2011.

<sup>3</sup> For instance, sections 313(4), 326(5), 329(1), 333(1), 337(1), 340(1) Crimes Act 2011.

<sup>4</sup> For instance, section 17(2) of the Supreme Court Act 1960.

<sup>5</sup> Legal Services Act 2017, Sch 3 para 1(1)(d).



## **(ii) The Government Law Offices**

- 1.10. The Attorney General also has general responsibility and accountability for the Government Law Offices (“GLO”) which comprise the Attorney General’s Chambers, the Office of Advisory Counsel (“OAC”), the Office of Criminal Prosecutions and Litigation (“OCPL”) and the Office of Parliamentary Counsel (“OPC”). The OAC is headed by the Solicitor General (“SG”) and provides legal advice principally to His Majesty’s Government of Gibraltar, including ministries and departments. The OCPL is headed by the Director of Public Prosecutions (“DPP”) and deals with criminal prosecutions and litigation involving public bodies. As the only prosecutorial organisation in Gibraltar, the OCPL is responsible for reviewing cases following charge as well as prosecuting statutory and common law crimes across the whole spectrum of offences in Gibraltar. The OPC is headed by the Parliamentary Counsel (“PC”) and is responsible for the preparation of legislation, assisting in piloting Bills through the Gibraltar Parliament and for ensuring the coherence of Gibraltar’s statute book. The Attorney General, the DPP, the SG and the PC are collectively referred to in this Protocol as “the Law Officers”.
- 1.11. The Attorney General plays an overarching superintendence role for the legal services provided by the GLO. This includes setting the strategic direction for the GLO in conjunction with the DPP, the PC and the SG. High-level objectives are agreed in line with the strategic direction, and the GLO are organised in the most effective and efficient way in order to deliver those objectives.
- 1.12. The Attorney General holds periodic discussions with Crown Counsel and administrative staff from the GLO on strategy, reviewing and monitoring of financial management and performance, encouraging joint work where appropriate, and identifying and pursuing opportunities to achieve maximum efficiency and effectiveness.
- 1.13. The DPP, PC and SG report to the Attorney General periodically on the discharge of their functions. The Attorney General will publish an annual report on his or her actions and those of the GLO.



**(iii) Additional functions, roles and responsibilities**

1.14. In addition, the Attorney General has the following powers and performs the following roles and functions:

- (a) the power to bring or intervene in legal proceedings in the public interest (as “*guardian of the public interest*”);
- (b) provide advice to Parliament on certain issues, including matters of privilege and procedure, and the meaning and effect of proposed legislation;
- (c) conduct reviews referred to him or her under the Victims in Criminal Proceedings Regulations 2015;
- (d) act as Advocate of the Crown in important court cases;
- (e) Leader of the Bar, *ex officio*;
- (f) Member of the Judicial Services Commission;
- (g) Member of the Gibraltar Contingency Council.

1.15. The Attorney General is not a member of the Cabinet, although he or she may be invited to Cabinet meetings where his or her advice is sought on one or more matters on the agenda.

**1D. The position of the Director of Public Prosecutions.**

1.16. Section 3(1) of the Director of Public Prosecutions Act 2018 (“the DPP Act 2018”) established the office of DPP. The DPP carries out such functions and exercises such powers as may be bestowed upon him or her under general or special instructions issued by the Attorney General pursuant to section 59(3) of the Constitution<sup>6</sup>.

1.17. There is in force an Instruction under section 59(3) of the Constitution issued by the Attorney General on 6 May 2022 (“the Instruction”), instructing the DPP to exercise the powers conferred on the Attorney General by section 59(2) of the Constitution, with the exception of the Attorney General’s powers to (i) take over and continue criminal proceedings under section 59(2)(b) of the Constitution; and (ii) discontinue

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<sup>6</sup> Section 5(1) DPP Act 2018.



criminal proceedings under section 59(2)(c) of the Constitution and section 223 of the Criminal Procedure and Evidence Act 2011. Under section 59(2)(4) of the Constitution, the powers conferred by subsections (2)(b) and (c) cannot be delegated, but the subsection expressly recognises that it does not prevent “*the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court*”. This is reflected in sections 231 and 232 of the Criminal Procedure and Evidence Act 2011, which discontinuances are, in practice, carried out by the DPP or OCPL Crown Counsel on the Attorney General’s behalf. The Instruction also delegates to the DPP, pursuant to section 44(1) of the Interpretation and General Clauses Act 1962, the exercise of such powers and the performance of such duties and obligations as are bestowed on the Attorney General in the legislation set out in the Appendix to the Instruction<sup>7</sup>.

- 1.18. The DPP is responsible to the Attorney General for the discharge of his or her duties under the DPP Act 2018<sup>8</sup>, and shall not exercise the powers bestowed on him or her (a) where the Attorney General exercises them him or herself, or (b) where the Attorney General instructs the DPP, in writing, to exercise or not exercise those powers in a particular manner, in any manner contrary to such instructions<sup>9</sup>.

## **2. GUIDANCE ON PERFORMANCE OF ROLES AND RESPONSIBILITIES AND POTENTIAL FOR CONFLICT.**

### **2A. Responsibility for prosecution decisions**

- 2.1. The decision whether or not to prosecute, and, if so, for what offence, or whether to use an out of court disposal, is a quasi-judicial function which requires the evaluation of the strength of the evidence and also a judgment about whether prosecution is needed in the public interest. Prosecutors take such decisions in a fair and impartial

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<sup>7</sup> See Annex to this Protocol.

<sup>8</sup> Section 3(2) DPP Act 2018.

<sup>9</sup> Section 5(3) DPP Act 2018.



way, acting at all times in accordance with the highest ethical standards and in the best interests of justice. In this way, prosecutors are central to the maintenance of a just, democratic and fair society based on a scrupulous adherence to the rule of law.

2.2. Prosecutors exercise their powers regarding the conduct (and, exceptionally, institution, which is normally a matter for the Royal Gibraltar Police or other appropriate law enforcement authority) of proceedings under the direction of the DPP. They take casework decisions and conduct individual cases applying the law and the framework of principles set out in the UK Code for Crown Prosecutors, together with any supplementary guidance issued by the DPP or the Attorney General. The Attorney General is not informed of, nor involved in, the conduct of the vast majority of individual cases.

2.3. Other than in the exceptional cases described in section 2C below, decisions to prosecute or not to prosecute, or decisions as to whether to offer evidence at trial (whether because of evidential insufficiency or applying the public interest test), are taken entirely by the DPP or OCPL Crown Counsel prosecutors. Where the DPP or an OCPL Crown Counsel gives notice to the Magistrates' Court under section 231(3), or to the Supreme Court under section 232(2) of the Criminal Procedure and Evidence Act 2011 that he or she does not wish the proceedings to continue, he or she is required (under sections 231(5) and 232(3) respectively) to give reasons for not wishing the proceedings to continue in such a notice. The Attorney General will not seek to give a direction in an individual case save very exceptionally where necessary to safeguard the public interest (as per section 2C below).

## **2B. Attorney General's/DPP's consent to prosecute**

2.4. For certain offences, Parliament has made statutory provision for the Attorney General's consent to be legally required before a prosecution is brought. Most such consents have been delegated by the Attorney General to the DPP and OCPL Crown Counsel under the Instruction.



- 2.5. It is a constitutional principle that when taking a decision whether to consent to a prosecution, the Attorney General (or, where delegated, the DPP or relevant OCPL Crown Counsel) acts quasi-judicially and independently of government, applying well established prosecution principles of evidential sufficiency and public interest.
- 2.6. Where a prosecutor considers that there is sufficient evidence to prosecute for one of these offences and that a prosecution is or may be in the public interest, the prosecutor seeks the Attorney General's or, where delegated, the DPP's consent to bring a prosecution. That decision is taken by the Attorney General or, where delegated, the DPP. Complex or sensitive cases may involve more detailed discussion between the Attorney General and the DPP or the relevant OCPL Crown Counsel prosecutor.
- 2.7. When providing consent, the Attorney General or, where delegated, the DPP must be satisfied that the evidential test and the public interest test of the Code for Crown Prosecutors are met in respect of each proposed defendant on each proposed charge. It is for the DPP or the relevant OCPL Crown Counsel to confirm the final charges as the responsible body for prosecuting these offences.
- 2.8. Timings for decisions may vary due to complexity, need for follow-up, or competing workload. However, urgent cases can be decided within hours. All cases will be dealt with in a timely manner.
- 2.9. In cases of a conflict of interest, the Attorney General or the DPP can delegate consent to another of the Law Officers, alternative GLO Crown Counsel, and/or may either seek independent legal advice from external counsel in relation to the decision, or delegate consent to external counsel by way of special instruction under section 59(3) of the Constitution.
- 2.10. Once a prosecution is commenced in one of these cases, the prosecutor keeps the Attorney General informed of its progress and, whenever practicable, consults the Attorney General if the prosecutor is contemplating either dropping the case on public interest grounds, or accepting pleas.



2.11. If the case can no longer proceed for evidential reasons which emerge after a prosecution is started, the prosecutor informs the Attorney General of the decision as soon as it is taken.

## **2C. Directions or discontinuances necessary to safeguard the public interest**

2.12. The one exceptional category of case in which the Attorney General will consider the possibility that he or she may either (a) direct that a prosecution is not started or not continued or (b) discontinue the prosecution under section 59(2)(c) of the Constitution and/or section 223 of the Criminal Procedure and Evidence Act 2011, is where the Attorney General is satisfied that it is necessary to do so for the purpose of safeguarding the public interest.

2.13. Some offences may require the Attorney General's consent to a prosecution in any event. But if public interest considerations emerge partway through a case or investigation, or in cases which do not require consent, the DPP will inform the Attorney General as soon as this becomes evident.

2.14. Before considering the possibility that he or she may direct in this way, which will only be in the most exceptional cases, the Attorney General will consult the DPP. The possibility of direction does not prevent the DPP from taking a decision not to start or continue a prosecution on public interest grounds.

2.15. If any such direction or discontinuance is made on grounds of either (a) national security, (b) international relations or (c) any matter which, in the Attorney General's consideration, would be of direct interest to Parliament, the Attorney General will make a report to Parliament, so far as the Attorney General considers it is compatible with the relevant public interest.



## **2D. Cases on which the Attorney General will not be consulted**

- 2.16. Unless for any reason a decision is required from the Attorney General by law (such as in a consent case) and subject to paragraph 2.17 below, the Attorney General will not be consulted in:
- a. Prosecution decisions relating to Ministers.
  - b. Prosecution decisions relating to matters where there is or may be a conflict or perceived conflict between (i) the Attorney General's role in making or contributing to that decision and (ii) the Attorney General's role(s) in advising the Government, a Minister and/or the Governor on a related matter.
  - c. Any case in which the Attorney General or the DPP considers that the Attorney General has a personal or professional conflict of interest in accordance with the relevant professional Codes.
- 2.17. The Attorney General may assist the DPP and the OCPL in identifying such cases, and provide any context or advice which is agreed to be proper.
- 2.18. In identifying conflicts of interest, real risks of conflicts of interest or perceived lack of independence, the Attorney General adopts a cautious and 'beyond reproach' threshold. A list of conflicts will be kept by the GLO, and the Attorney General will work with the DPP and the SG to revise the list of conflicts identified. Where conflicts have been ascertained and a set of actions identified for those conflicts, the Attorney General will take steps to ensure that he or she (or any other of the Law Officers or GLO Crown Counsel who may be affected) is appropriately limited in his or her involvement on matters related to the relevant matter or area of government policy or related litigation. The list of conflicts will be kept under review and amended – for example, when new government policies or litigation emerge, or when new Law Officers or GLO Crown Counsel join the GLO. In situations where one of the Law Officers or Crown Counsel is conflicted, another of the Law Officers or Crown Counsel will be asked to act in their place. Where internal allocation would not sufficiently



safeguard propriety, independence, operational separation or public confidence, then external counsel will be consulted.

- 2.19. In cases where the Attorney General considers him or herself to have a personal or professional conflict of interest in respect of a prosecution where he or she is required to either consent under section 2B above or may be required to make a direction under section 2C above, the Attorney General will either delegate the matter to the DPP or other OCPL Crown Counsel, or alternatively appoint independent leading counsel to advise. In the event that there is a decision to either withhold consent or direct the non-commencement or discontinuance of a prosecution, that advice will be published so far as the Attorney General considers it is compatible with national security or other public interest that is sought to be protected.

## **2E. Superintendence of casework**

- 2.20. As set out in paragraph 2.3 above, the Attorney General will have no involvement in the vast majority of criminal prosecutions. The Attorney General is also responsible for safeguarding the independence of prosecutors taking decisions whether or not to prosecute in individual cases.
- 2.21. The Attorney General's responsibilities for superintendence mean that he or she, acting in the wider public interest, needs occasionally to engage with the DPP about a case because it:
- a. is particularly sensitive; and/or
  - b. has potential precedent-setting implications for prosecution or criminal justice policy or practice; and/or
  - c. reveals some systemic issues for the framework of the law, or the operation of the criminal justice system.
- 2.22. In these circumstances the Attorney General will be alerted to a case by the DPP at the earliest opportunity, or may call for information about a case, or will discuss the case with the DPP. The DPP will keep the Attorney General informed as significant



developments occur. The Attorney General may express any concerns. The decisions in these cases remain the DPP's or the relevant OCPL Crown Counsel prosecutor's.

- 2.23. The DPP may raise with the Attorney General for advice or discussion in any cases, except those identified in section 2D above, at any time. Consultation and discussion between the DPP and the Attorney General ensures that the Attorney General can provide public assurance, as necessary, that all relevant considerations have been taken into account.
- 2.24. The Attorney General may additionally ask for information about an individual case in order to perform another of the Attorney General's functions, such as considering a potential contempt of court, making references on a point of law, or deciding whether to refer an unduly lenient sentence. This does not involve consultation on any prosecution decision by the DPP.
- 2.25. The DPP may be called upon to help prosecutors to resolve cases where they have not reached agreement, for example where prosecutors have overlapping remits over the same case or adopt different approaches to the same legal question or where there is concurrent jurisdiction.

## **2F. Seeking Ministerial representations on the public interest**

- 2.26. The UK Code for Crown Prosecutors sets out the general public interest considerations which are relevant to prosecution decisions.
- 2.27. In a few very exceptional cases the Attorney General or the DPP may conclude that it is appropriate to be informed in doing so by consulting relevant Government Ministers about the relevant public interest considerations as part of the decision-making process. In such a case the DPP may raise such a case with the Attorney General, and the Attorney General may advise on whether it is in the public interest to seek ministerial representations in a public interest consultation exercise; in a consent case, the Attorney General may decide to seek such representations of their own motion.



- 2.28. The purpose of the exercise is confined to identifying particular public interest considerations which are relevant to the prosecution decision of the Attorney General or the DPP.
- 2.29. The notion of the public interest has important limits. It is not synonymous with the interest of the ruling party in Parliament, and should not encompass political considerations that are unrelated to the purpose of the law under which the matter is being prosecuted.
- 2.30. The relevance and weight to be given to such representations are a matter for the DPP or the Attorney General. Ministers are not able to dictate what the decision ought to be. The responsibility for the eventual decision rests with the Attorney General or the DPP, depending on the case. This reflects the Shawcross principle applied by the UK Attorney General, although the Constitutional context is different in Gibraltar, where the Attorney General is not a member of Cabinet.
- 2.31. The Attorney General ensures that public interest consultation exercises are conducted with propriety, that Ministers who are consulted are informed that the decision is for the DPP or the Attorney General alone, and that the Attorney General and the DPP will probe rigorously the representations made where, and as far as, it appears to them appropriate to do so.

## **2G. Conflicts between the Attorney General's advisory roles**

- 2.32. It is incumbent on the Attorney General to give objective, independent and professional legal advice to the Government, Ministers and the Governor, and these different obligations should not cause a problem for the Attorney General or those clients most of the time.
- 2.33. However, there will be occasions where the Attorney General's duties as legal advisor to (i) the Government, (ii) Ministers and (iii) the Governor may give rise to conflict or a real risk of conflict. In such circumstances, the Attorney General will take appropriate steps to address such conflicts or potential conflicts and ensure that all clients receive independent advice of sufficient expertise and experience, either by delegating one



or more of his or her advisory roles to other Law Officers or Crown Counsels of the GLO, or by appointing external counsel to advise one or more of the clients. The conflict or potential conflict should first be identified and assessed, including whether it is an actual or potential conflict, and whether internal separation is realistically workable in the circumstances. The options open to the Attorney General include the following:

1. Appointing external counsel to act either (i) as a single adviser between both clients, (ii) for each client (i.e. with two or more separate external counsel being appointed), or (iii) act for one client while the Attorney General advises the other client.
2. Appointing either the SG or another GLO Crown Counsel to advise one of the clients while the Attorney General advises the other client, with appropriate measures put in place to safeguard each client's interests.
3. With the consent of both clients and where the Attorney General (or the relevant Law Officer or GLO Crown Counsel) is satisfied that it is appropriate, acting as a single adviser to both clients on a transparent, independent and objective basis (this may be appropriate, for example, where two Government Ministers or Departments seek advice on an issue affecting both of them).
4. Where one of the clients is the Governor, he or she may have recourse to legal advisers from the Foreign, Commonwealth and Development Office, in which case the Attorney General may be in a position to advise the other client(s) (although this would still require an assessment for conflict and potential conflict in line with this Protocol).

2.34. The decision as to which option is to be preferred will be taken by the Attorney General in consultation with the relevant client(s), subject always to professional obligations, institutional independence and the availability of an unconflicted adviser.

2.35. Requests may also arise from time to time for the Attorney General and/or the OAC and/or the OCPL to provide advice to statutory authorities, agencies, commissions or other public bodies, but any such engagement would require careful consideration of remit, independence (including perception of independence) and conflicts of interest



(including real risks of conflict). This will be the subject of a separate protocol or similar document.

### **3. DEVELOPMENT OF POLICY, DEALING WITH THE MEDIA AND COMPLAINTS.**

#### **3A. Development of policy**

- 3.1. The Attorney General has constitutional responsibility for prosecutions, and as such is responsible, with the DPP, for liaising with Ministers (in particular, the Minister for Justice) and seeking that in the development of Government policy, due account is taken of the role of the prosecutors, of the impact of policy proposals on prosecution, and of the contribution which prosecutors can make.
- 3.2. In his or her support of the Attorney General in the exercise of this function, the DPP provides the Attorney General with information and advice and ensures that the knowledge and expertise of prosecutors are made available to those developing Government policy.
- 3.3. The DPP is responsible for ensuring that, where appropriate, policies and guidance adopted by the OCPL are consistent with, and give due effect to, relevant Government policy. This does not affect the independence of prosecutors in taking prosecution decisions, which must always be free from any party political or other improper influence.
- 3.4. The Attorney General is not consulted about the generality of prosecutors' guidance, but is consulted and informed in a timely way about any proposed statement of guidance which raises difficult or sensitive questions of law or public policy.
- 3.5. The Attorney General is consulted about guidance on matters in which the Attorney General exercises functions by law or as part of the wider constitutional role. Examples may include contempt of court, public interest immunity, unduly lenient sentences and consent cases.



- 3.6. The Attorney General oversees and coordinates legal and practice issues, both domestic and international, which cross over departments and affect all prosecutors. To ensure consistency of practice across prosecutors generally, the Attorney General may issue guidelines.
- 3.7. Given the Attorney General's public interest role, the Attorney General's views are accorded particular weight on difficult questions of balancing competing public interest considerations in prosecution guidance.

### **3B. Dealings with the press and other media**

- 3.8. Recognising that the media have a legitimate interest, on behalf of the public, in the DPP and the OCPL and their activities, the Attorney General and the DPP may make available appropriate information about them. The DPP and the Attorney General cooperate closely on media-handling issues, including the appropriate approach to briefing the media, or making any other public comment, on any particular issue.

### **3C. Dealing with complaints**

- 3.9. Without prejudice to the responsibilities and public accountabilities for decisions set out in Part 1 of this Protocol, there are specific arrangements for dealing with complaints from individuals:
  - a. The DPP has a procedure for dealing with complaints about the way in which particular cases have been dealt with by the OCPL.
  - b. Where a complaint is not satisfactorily resolved by the OCPL, the complainant is notified that they may refer the matter to the Attorney General.
  - c. The DPP ensures that the Attorney General is provided with all relevant information regarding the complaint and the case to which it refers.
  - d. The Attorney General is able, but is not required in every case, to commission an independent review of the way in which the complaint has been handled.



#### **4. AGREEMENT OF ATTORNEY GENERAL AND DPP.**

- 4.1. This Protocol sets out the main aspects of the relationship between the Attorney General and the DPP, and, to the extent that is relevant, the other Law Officers and relevant GLO Crown Counsel. The Attorney General, the DPP and all relevant GLO Crown Counsel, as well as, to the extent relevant, the SG and the PC agree to apply it in a spirit of mutual understanding, respect and support for the functions engaged on each part, and of commitment to their organisations, their work, and the contribution it is expected to make to justice, the rule of law, and the economic wellbeing in Gibraltar.
- 4.2. This Protocol is not intended to be an exhaustive statement of the relevant legal functions of the Attorney General or of the DPP and their GLO Crown Counsel. Its operation will be reviewed by the Attorney General and the DPP at intervals of not more than three years. It will also be reviewed following the appointment of any new Attorney General or DPP.

**Michael Llamas CMG KC**  
**His Majesty's Attorney General for Gibraltar**

**Christian Rocca KC**  
**Director of Public Prosecutions**

**17 April 2026**



**Annex to the Protocol**



**IN THE MATTER OF HER MAJESTY'S ATTORNEY  
GENERAL'S POWER OF DELEGATION**

In exercise of the powers conferred upon Her Majesty's Attorney General for Gibraltar under Section 59(3) of the Gibraltar Constitution Order 1, **MICHAEL LLAMAS CMG QC** hereby instruct **CHRISTIAN MANUEL ROCCA QC**, Director of Public Prosecutions, and any Counsel appointed to act in his capacity to exercise the powers conferred by Section 59(2) of the Gibraltar Constitution Order 2006. This delegation is inclusive of the right of appeal and any ancillary applications, forfeiture, confiscation or any duties or obligations connected to or arising from criminal proceedings save that this general instruction does not extend to Her Majesty's Attorney General's power to enter a *nolle prosequi* under the Criminal Procedure and Evidence Act.

Further, in exercise of the powers conferred upon Her Majesty's Attorney General for Gibraltar under Section 44(1) of the Interpretation and General Clauses Act, I **MICHAEL LLAMAS CMG QC** hereby delegate **CHRISTIAN MANUEL ROCCA QC**, Director of Public Prosecutions, and any Counsel appointed to act in his capacity to exercise such powers or perform such duties and obligations as prescribed in Appendix 1 of this certificate of delegation or other such duties or obligations in consultation with Her Majesty's Attorney General for Gibraltar.

Dated this 6th day of May 2022

**MICHAEL LLAMAS CMG QC**  
Her Majesty's Attorney  
General for Gibraltar

**SCHEDULE 1**

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**IN THE MATTER OF HER MAJESTY'S ATTORNEY GENERAL'S  
CERTIFICATE OF DELEGATION**

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No.	Date	Section	Legislation	Powers, Duties and Obligations	Brief Description
	1990	3	Barristers & Solicitors	Chairman of Admissions & Disciplinary Committee	
	1962	7(3)	Charities Act	Objections to Registration	May bring an appeal in the Supreme Court against any decision of the Board of Charity Commissioners to enter or not to enter in institution in the register of charities, or to remove an institution from the register.
		17(5)(a)	"	Concurrent jurisdiction with Supreme Court (of Commissioners)	Commissioners may order by exercise the same jurisdiction and powers, in certain circumstances as are exercisable by the Supreme Court in charity proceedings. On the application of the AG they can also exercise this jurisdiction over charities not having any income from property of over £50 a year.
		17(10)	"	Bringing an appeal against any order of the Commissioners.	Can appeal any order of the Commissioners
		18(5)	"	Application or preparation of a reference.	Must make an application or a reference before Commissioners can proceed to establish a scheme for the administration of the charity.
		27(7)	"	Taking of legal proceedings.	Charity proceedings may be taken by AG with reference to a charity either by the charity.
		29	"	Presenting Petition for winding up.	Winding up of the charity under the Companies Act.
		38	"	Appeals from Commissioners	AG is entitled to appear and be heard.

2014	20, 21	Civil Partnership Act	Intervention of the Attorney General.	Can be directed by the Court to argue any question in relation to a matter which the Court considers necessary in proceedings for a dissolution, nullity or presumption of death order. Can show cause why an order should not be made final.
	39	"	Intervention of the AG in proceedings for declarations.	May intervene in proceedings for a declaration.
2014	48	Civil Partnership Rules	Intervention to show cause	
2014	8	Companies Act	Power to bring civil proceedings on companies behalf	If it appears to the AG that any civil proceedings ought in the public interest to be brought by any corporate body, he may himself bring such proceedings in the name and on behalf of the corporate body.  He should also consider whether to indemnify the corporate body against any costs or expenses incurred by it in or in connection with such proceedings. Can request an inquest be adjourned.
1889	11	Coroner Act	Adjourn an inquest.	
2011	16(3)	Crimes Act	Consent regarding proceedings by and against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's spouse, or for any attempt or conspiracy to commit such an offence, or for encouraging or assisting such an offence.	Subject to s. 16(4), proceedings may not be commenced against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's spouse, or for any attempt or conspiracy to commit such an offence, or for encouraging or assisting such an offence, except by, or with the consent of, the Attorney-General

			Crimes Act	Consent to proceedings being brought under section 27 for conspiracy to commit any offence or offences.	Proceedings under section 27 for conspiracy to commit any offence or offences may not be commenced against any person except by, or with the consent of, the Attorney-General.
	31(1),		Crimes Act	Consent to proceedings being instituted for an offence which is only triable by reason of a provision of section 41.	No proceedings for an offence triable by reason only of a provision of section 41 may be instituted except by, or with the consent of, the Attorney-General.
	42(5)		Crimes Act	Consent to the commencement of proceedings for an offence under section 48(1)	No proceedings may be commenced for an offence under section 48(1) except by, or with the consent of, the Attorney-General.
	48(3)		Crimes Act	Consent to proceedings being commenced for an offence under section 49.	No proceedings may be commenced for an offence under section 49 except by, or with the consent of, the Attorney-General.
	49(4)		Crimes Act	Consent to proceedings being commenced for an offence of riot or the encouragement or assistance of riot.	No prosecution for an offence of riot or the encouragement or assistance to riot may be commenced except by, or with the consent of, the Attorney-General.
	60(1)		Crimes Act	Consent to proceedings being commenced for an offence under section 78.	No prosecution for an offence against section 78 may be commenced except by, or with the consent of, the Attorney-General.
	78(3)		Crimes Act	Consent to further proceedings being taken against a person charged before a court with an offence against section 79.	If a person is charged before a court with an offence against section 79, no further proceedings in respect of it may be taken against him without the consent of the Attorney-General, except that the court may remand the person in custody or on bail to secure the due appearance of the person.
	79(3)		Crimes Act		

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110(1)	Crimes Act	Consent to proceedings being commenced for an offence under sections 99 to 104.	No proceedings for an offence under any of sections 99 to 104 may be commenced except by, or with the consent of, the Attorney-General.
145(1)	Crimes Act	Consent to proceedings being commenced for an offence under Part 9.	Proceedings for an offence under Part 9 may not be commenced except by or with the consent of the Attorney-General.
149(4)	Crimes Act	Consent for prosecution to be brought for murder or any other fatal offence if the injury alleged to have caused the death was sustained more than 3 years before the death occurred.	In relation to murder and other fatal offences there is no requirement that the death should occur within a year and a day after the infliction of injury, but no prosecution for murder or any other fatal offence may be brought except by or with the consent of the Attorney-General if- (a) the injury alleged to have caused the death was sustained more than 3 years before the death occurred; or (b) the defendant has previously been convicted of an offence alleged to be connected with the death.
159(10)	Crimes Act	Consent to proceedings being commenced for an offence under section 159.	No prosecution for an offence against section 159 may be commenced except by, or with the consent of, the Attorney-General.
188(2)	Crimes Act	Consent to proceedings being commenced under sections 184 and 186. It is acknowledged that there is currently a typographical error in s. 188(2) of the Crimes Act, which makes reference to section 1856. Section 188 relates to section 184 and 186, which creates the offences of child abduction as such, the view has been taken that the reference to section 1856 is in fact a reference to section 186.	No prosecution for an offence against either section 184 or section 1856 may be commenced except by, or with the consent of, the Attorney-General.

190(7)	Crimes Act	Consent to proceedings being commenced for an offence under section 190.	No prosecution for an offence under section 190 may be commenced except by, or with the consent of, the Attorney-General.
206(3)	Crimes Act	Consent to proceedings being instituted for the offence of corporate manslaughter.	Proceedings for an offence of corporate manslaughter may not be instituted except by, or with the consent of, the Attorney-General.
259(2)	Crimes Act	Consent to proceedings being instituted for an offence under section 256 and/or 257.	Proceedings for an offence under section 256 or 257 may not be instituted except by or with the consent of the Attorney-General.
430(3)	Crimes Act	Consent to proceedings being commenced against a person under for any offence of stealing property or for any attempt, encouraging or assisting the commission of or conspiracy to commit such an offence which at the time of the offence belongs to that person's wife or husband.	Subject to section 430(5), proceedings against a person for any offence of stealing property which at the time of the offence belongs to that person's wife or husband, or for any attempt, encouraging or assisting the commission of or conspiracy to commit such an offence, may not be commenced except by, or with the consent of, the Attorney-General.
474(3)	Crimes Act	Consent to proceedings being commenced for an offence under section 474.	No prosecution for an offence under section 474 may be commenced except by, or with the consent of, the Attorney-General.
483(4)	Crimes Act	Consent to proceedings being instituted under Part 19 for a contempt of court.	Proceedings for a contempt of court under Part 19 may not be instituted except by or with the consent of the Attorney-General or on the motion of a court having jurisdiction to deal with it.
488(3)	Crimes Act	Consent to proceedings being commenced for an offence under section 488.	A prosecution for an offence under section 488 may not be commenced except by, or with the consent of, the Attorney-General.

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	491(5)	Crimes Act	Consent to proceedings being commenced for the offence of publication and possession of obscene matter under section 491 where the article in question is a moving picture film and the relevant publication or the only other reasonably have been expected to follow from the relevant publication took place or (as the case may be) was to take place in the course of a film exhibition.	Proceedings for an offence under section 491 may not be commenced except by, or with the consent of, the Attorney-General if the article in question is a moving picture film and the relevant publication or the only other publication which followed or could reasonably have been expected to follow from the relevant publication took place or (as the case may be) was to take place in the course of a film exhibition.
	517(2)	Crimes Act	Consent to proceedings being instituted for an offence on board a ship under Part 21 or Schedule 8.	No proceedings under Part 21 or Schedule 8 for an offence on board a ship may be instituted except by or with the consent of the Attorney-General.
	524(4)	Crimes Act	Consent to proceeding against a person by indictment for an offence under Part 21.	No person may be proceeded against by indictment for an offence against Part 21 unless the proceedings are instituted by, or with the consent of, the Attorney-General. A person may be proceeded against by indictment without the consent of the Attorney-General if the person charged claims, pursuant to Part 8 of the Criminal Procedure and Evidence Act 2011, to be tried by a jury.
	534(2)	Crimes Act	Consent to proceedings being commenced for an offence against section 534.	No prosecution for an offence against section 534 may be commenced except by, or with the consent of, the Attorney-General.

546(6)	Crimes Act	Consent to proceedings being commenced for an offence under section 546.	No proceedings for an offence under section 546 may be commenced against any person except by, or with the consent of, the Attorney-General.
575	Crimes Act	Consent to proceedings being commenced under Part 24.	No proceedings under Part 24 may be instituted except by, or with the consent of, the Attorney-General.
1997	Tobacco Act	Consent to proceedings being instituted for any offence or offences contrary to the Tobacco Act 1997.	Proceedings for any offence or offences contrary to the Tobacco Act 1997 shall not be instituted against any person except by or with the consent of the Attorney-General.
1951	Crown Proceedings	Commencing civil proceedings.	Commencing civil proceedings by the Crown.
1995	Drug Trafficking Offences Ordinance (Designated Countries and Territories) Order	Representation of Government of a designated country.	To act on its behalf in any proceedings in a Court in Gibraltar under s.47 or any other section of the Drugs Trafficking Offences Act 1995.
1995	Drug Trafficking Offences Act	Receiving requests for assistance.	From a convention state or other country or territory for obtaining evidence in Gibraltar.
1997	Deep Sea Mining (Licencing)	Issuing a Certificate.	Certifying that sovereign rights are not exercisable in relation to any part of the sea bed by the United Kingdom or by any other Sovereign Power.
1954	Employment Act	Review evidence relating to an offence under the Employment Act and determine whether there is sufficient evidence to justify a prosecution.	Notwithstanding any provision in any other law, proceedings for an offence under the Employment Act may be commenced at any time within the period of six months from the date on which evidence, sufficient in the opinion of the Attorney-General to justify a prosecution for the offence comes to his knowledge.

1954	83(2)	Employment Act	Issue a signed certificate setting out the date on which sufficient evidence came to the knowledge of Mr Christian Rocca, as Director of Public Prosecution pursuant, to the delegated power, duty and responsibility under s. 83(1) of the Employment Act.	For the purposes of section 83 (1) of this section a certificate purporting to be signed by or on behalf of the Attorney-General as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.
1954	84	Employment Act	Consent to proceedings being instituted under the Employment Act.	No proceedings shall be instituted under the Employment Act except by or with the consent of the Attorney-General.
1990	6(3)	Endangered Species Act	Consider whether evidence warrants commencement of proceedings and must sign certificate as to when that evidence came to his knowledge.	Regarding the restriction of movement of certain live animals after importation.
2010	46	Family Proceedings (Matrimonial Causes) Rules	Intervention to show cause	Show cause against a Decree Nisi being made absolute.
	58	"	Appointment as a Guardian Ad Litem	For children requiring representation in proceedings.
2011	11	Gibraltar Land Titles Act	Party to proceedings for late registration.	Can be made a party to proceedings for late registration of a deed or will.
1993	116	Gibraltar Merchant Shipping (Safety etc) Act	Recovery of fines.	Can due for recovery of fines and forfeitures under the Act.
2011	381	Insolvency Act	Application to prevent distribution of surplus	For the Court to make an Order directing that the Trustee does not distribute the surplus.
1948	40	Marriage Act	Forfeiture of Property acquired by marriage had by fraudulent means	Sue for a forfeiture of all estate or interest in any property accruing to the offending party.

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2005	36	Market Abuse Act	Instituting civil proceedings	In respect of contravention of any part of the Act.
1962	26, 28	Matrimonial Causes Act	Duties of Queens Proctor	May show cause why a Decree Nisi should not be made absolute.
	117	Merchant Shipping Act	Liability for costs and damages	If there was no reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the ships provisional detention.
	165	"	Suing for recovery of receiver's expenditure	Expenditure incurred by the receiver in removing any vessel (or part of it) or other property.
	206	"	Instituting legal proceedings	Under the Act
1950	51	Parliament Act	Duty to make inquiries	Where information is given to the AG that any corrupt or illegal practice has occurred in reference to any election, it shall be his duty to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.
	57(6)	"	Attendance at a trial of an election petition	By himself or by his representative. It is his duty to obey any directions given to him by the Court with respect to the summoning and examination of any witness to give evidence at the trial.
	82	"	Sanction	May institute a prosecution for an offence under Part V of the Act.
2015	Part V	Proceeds of Crime Act	Civil recovery of the proceedings etc of unlawful conduct.	

1977	56(1)(e)	Public Finance (Control and Audit) Act	Writing an opinion on question of law for Principal Auditor	Must give a written opinion on any question of law as requested by the principal auditor.
1950	49	Public Health Act	Power to require removal or alteration of work not in conformity with rules or executed notwithstanding rejection of plans.	Can apply for an injunction for the removal or alteration of any work on the ground that it contravenes any rule or any enactment in the Act.
1952	34	Social Security (Employment Injuries Insurance)	Appeal from and review of Director's decision	Any question of law arising in consequence of any determination of a question mentioned in s.33(1) may, if the Director thinks fit, be referred at the instance of the Attorney General for decision to the Supreme Court.
	42	"	Referral to Supreme Court	Any question of law arising in connection with any review by the Director may, if the Director thinks fit, at the instance of the Attorney General, be referred for decision to the Supreme Court.
1955	32	Social Security (Insurance) Act	Referral to Supreme Court for the determination of questions and claims under the Act by the Director.	Any question of law arising in connection with such determination, if the Director thinks fit, at the instance of the Attorney General, be referred for decision to the Supreme Court.
2005	43	Stamp Duties Act	Commencing proceedings for recovery of fines	

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1960	17	Supreme Court Act	Power of Review	Application by the Attorney General (or on his behalf) for inferior court to send to Supreme Court the record of proceedings in any criminal case or matter (must be made within 30 days or Order or judgment from inferior Court.
	27(B)	"	Trial with Lay Assessors	Application that the case be conducted with lay assessors.
1999	28	Town Planning Act	Recovery of expenses	Incurred by the demolition of any building by the Commission
1935	9	Trustees Incorporation Act	Enforcing Orders and Directions	Can enforce all conditions and directions inserted in any Certificate of Incorporation.

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