

Chapter 12 - Courts and Trials

Internal Guidance

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Our public statement

- [Support for British Nationals Abroad: A Guide](#) , pages 22, 23 and 27.

Although we **cannot give legal advice, start legal proceedings or investigate a crime**, we **can offer basic information about the local legal system**, including whether a legal-aid scheme is available. We can give you a list of local interpreters and local lawyers if you want, although **we cannot pay** for either. It is important to consider carefully whether you want to have legal representation and to discuss all the costs beforehand with the legal representative.

If appropriate, we will consider approaching the local authorities if you are **not treated in line with internationally-accepted standards**. This may include where your trial does not follow internationally-recognised standards for a fair trial or is unreasonably delayed compared to local cases.

We can also help to put you in contact with the charity [Fair Trials International](#).

We may be able to give you information about any local procedures for a prisoner's early release in exceptional circumstances. These procedures are generally known as **pardon or clemency**. We will only **consider** supporting pardon or clemency pleas:

- in compelling compassionate circumstances, such as where a prisoner or close family member is chronically ill or dying and this would leave no-one to care for the dependants;
- in cases of minors imprisoned overseas; or
- as a last resort, in cases where we have evidence that seems to point to a miscarriage of justice.

Friends or relatives of British nationals in detention overseas - our public statement

If a relative or friend has been detained or held in prison overseas, we can give the following support.

We can provide general information about the country involved, prison conditions and the local legal system.

Other useful publications are: [Transfers home for prisoners abroad](#) , [In prison abroad](#).

Who to contact in Consular Directorate

- **REDACTED THIRD PARTY DATA**

Key points

- British nationals often need legal advice when abroad. An up-to-date **list of local lawyers** is essential.
- Be aware of the international standards of **fair trials** and raise any concerns about the conduct of a criminal prosecution with Consular Directorate.
- Wherever there is a possibility that the **death penalty** may be imposed upon a British national, consult Consular Directorate as soon as possible. Our aim in all these cases is to try and avoid the imposition of a death sentence and to have any imposed sentence commuted to a term of imprisonment.

Attending court hearings

1. If a British national asks you to attend a court hearing as an observer you should explain that consular staff do not normally attend court hearings. If asked, you should explain that we are not legally trained and cannot, therefore, comment on proceedings; nor can we provide interpretation of those proceedings. There are serious resource implications in sending one or more members of a consular section as observers to hearings that may run for several days.

2. In certain **exceptional** cases you may consider attending a court hearing. Cases and local circumstances will vary from Post to Post. You should **always** discuss the case with the Country Casework Team in Consular

Directorate before reaching any decision. You may also wish to consult the Consular Directorate Human Rights Adviser and should always do so in death penalty cases.

3. Should you decide to attend the case, make it clear to the British national involved that you are attending purely as an observer and that your presence at a particular hearing is the exception rather than the rule. Remember that just because you attend certain significant hearings, such as committal and sentencing, does not mean that you should attend all hearings.

If you are called as a witness

4. Under the Vienna Convention on Consular Relations 1963 (VCCR) members of a consular post are not obliged to give evidence in a court of the receiving state on matters connected with the exercise of their functions. However, HMG would normally expect all staff overseas to assist local police and judicial authorities in host countries. Any request for staff by the local authorities to make a witness statement or appear in court should be transmitted to the mission through the MFA. Before responding, Post should consult HRD-OPS Immunity & Local Staff and Consular Directorate (including their legal advisers). London will take a decision on whether staff should provide evidence including, where appropriate, any waivers of immunity. You should also seek local legal advice, which will assist the Team in making a decision. If you are asked to appear as a witness by a British national, or their legal team, consult Consular Directorate and HRD-OPS Immunity & Local Staff before responding.

Legal representation for persons facing charges - duty of consular officers

5. Where possible, consular officers should try to ensure that British nationals under arrest or detention are provided with useful information about their rights under local law generally and, in particular, information on the availability of legal aid and how to obtain legal representation. This should be included in the prisoner pack.

Legal representation for persons facing charges - contacting the person charged

6. If the British national has been charged and is being held in custody after being charged, a consular officer's first contact with them may be while they are being held.

7. If a British national has been arrested and charged and released on bail, that person is then at liberty to contact post or anyone else for advice and help.

Local Lawyers Lists

- All Posts should ensure that they have an up-to-date lawyers list available to give to British prisoners or any other Distressed British National.
- The lawyers list should have details of the local lawyer and firm, contact details, addresses, telephone, fax numbers and e-mail address, opening hours, out of hours availability, consultation fee (if applicable), legal speciality, other standard services and any additional information.
- Posts should ensure that they have suitable lawyers to cover the areas of expertise most relevant to consular work. For example, Posts should have lawyers on their lists covering criminal law and family law in particular and also have a range of lawyers who cover public and private law.
- When maintaining a list of local lawyers you should present information clearly and avoid technical jargon. Consular officers should try to ensure that British nationals can make an informed choice.
- Provide a sensible degree of choice. Ten lawyers/firms should normally be a maximum and ideally the lawyer should speak English. Where it is not possible to find lawyers with a particular specialism who speak English, non-English speakers can be listed but this should be made very clear on the list.
- **REDACTED**
- If genuine concerns are raised over the suitability of any lawyer or you receive consistently negative feedback on their services, they should be removed from the list.
- Maintain impartiality: you should not direct British nationals to a particular lawyer, or offer any recommendations.
- Conduct an annual review on or around 1 July to update the list and keep it accurate.
- Where possible, be informed about the lawyers listed, maintain regular contact with them, and check if they wish to remain on the list.
- It is advisable to consult the Honorary Legal Adviser when you wish to select a new lawyer for the list, conduct your annual review of the list or require a specialist lawyer beyond the scope of the usual list.
- If a lawyer applies to be added to the list, Post should consult the Honorary Legal Adviser and ask them to check that they are part of a relevant local professional body. Post should also arrange an informal meeting to check the lawyer's standard of English.

The local lawyers' list must include a disclaimer, such as:

Neither the Government nor the relevant British Embassy, High Commission or Consulate can make any guarantee in relation to the professional ability or character of any person or company on the list, nor can they be

held responsible in any way for you relying on any advice you are given. We welcome any feedback on the people and companies listed.

Intervention

8. HMG is normally entitled to intervene when we have concerns for the health, welfare or human rights of British nationals or fear they are being discriminated against. Consular officials at Post should try to:

- watch for these issues and take seriously any complaints they receive;
- consider possible grounds for intervention and the most appropriate and effective way of doing so;
- contact Consular Directorate and our Human Rights Adviser in Assistance Policy & Prisoners Section for support and advice.

9. Note that we should avoid anything that constitutes interference.

Grounds for intervention

10. The criminal process can differ greatly from country to country, and issues of human rights, discrimination and delay can arise at different stages in many different ways. Many issues are more appropriately and effectively addressed by the defendant or their lawyer. But there are also occasions we can and should consider intervening. For example:

- **Discrimination:** Is the defendant being treated worse than local nationals? Or is s/he being discriminated against on grounds of sex, race or religion?
NOTE: British nationals should be treated the same as local nationals and in accordance with international human rights law, whichever is the higher standard. Equal treatment as local nationals is not generally a defence to the breach of international minimum standards or human rights.
- **Charges:** Defendants should be informed of the charges against them promptly, and in a language they understand. This is likely to be crucial in future proceedings.
- **Preparation of defence:** Adequate facilities should be made available to prepare their defence. They should have access to necessary documents/evidence and confidential contact with their lawyer.
- **Trial within a reasonable time:** What is considered a 'reasonable time' will depend on the facts and complexity of the case; whether the defendant has deliberately obstructed proceedings; and how the prosecution has behaved.
- **Legal assistance:** Defendants should be able to represent themselves or instruct a lawyer. If they are unable to pay, a lawyer should be made available free of charge, where it would be in the 'interests of justice' to do so.
- **Assistance of an interpreter:** If required, defendants should have access to an interpreter free of charge during court proceedings. This includes the translation of documents and statements necessary to establish a fair trial.
- **Independent and impartial court:** The court or tribunal must be established by law and free from interference. Judges must be and seen to be impartial and independent.
- **Innocent until proven guilty:** Defendants should be presumed innocent until proven guilty. Defendants have the right not to be forced to testify or confess guilt: any evidence obtained by force should not be used against them.
- **Fair and public hearing:** Hearings should normally be held in public; members of the public and the press should be allowed to attend. There are limited exceptions to this, e.g. in cases concerning national security, public order and morals. Both parties should have a reasonable opportunity to present their case and call and cross-examine witnesses. Both parties should be treated equally.
- **Right to be present at trial:** Defendants have a right to be present during their trial. This includes being able to hear, understand, and follow proceedings.
- **Appeal:** Defendants have a right to have their sentence and conviction reviewed by a higher tribunal/court according to law.
- **Corporal punishment:** We will consider registering our disapproval of corporal punishment (caning, lashes etc.) even if it is legal in that country. (The defendant's views will also be taken into account.)

- **Bail:** We will rarely intervene on bail conditions unless there are grounds to suggest due process has not been followed or the court has discriminated against the defendant. Note: foreign nationals will frequently be denied bail on the often justifiable grounds that they pose a greater flight risk.
- **Death penalty**
- **Miscarriages of justice.**
- **Torture**
- 11. This description of basic rights and standards is only intended as a general guide. Consular staff should familiarise themselves with this table when dealing with criminal trials. **Post should note problems British defendants regularly face and local practices in those areas.** For example, are interpretation services only provided on the day of the trial or sooner? Do British nationals regularly face severe delay. You might also consult your Honorary Legal Adviser as well as Chancery Section and DfID. The completed table should be available to everyone in the Consular Section and Country Casework Team.

Interventions: who & how?

12. Once we have established the grounds for intervention we need to consider whether to intervene in a particular case. We do not have to intervene even if we have grounds to do so. There may be many reasons not to do so, not least because we may judge intervention to be likely to be counterproductive. Where we have the grounds and decide upon a course of action, interventions should be appropriate and effective. We should decide who we should intervene with, (e.g. the police, the prosecutor, the MFA) and how to do so. We should not do anything that constitutes interference in the internal affairs of a sovereign state and should be aware of other cases, relationships and priorities. But we should promote the human rights of British nationals and can remind local authorities of their international obligations.

- Consider to whom we should address our concerns. Who is best placed to make a difference: the police, the prosecution, the Ministry of Foreign Affairs?
- Understand the local systems - who is responsible for what, who can influence who - and develop strong relationships with key authorities. Remember, your relationships are only valuable if they are used to assist British nationals.
- Consider who should represent us at each stage: a consular official, the head of mission or a minister? It may be useful to leave some room to escalate the issue.

13. Lobbying local authorities can take many forms, and is often an ongoing process. You may wish to consider the following:

Consular officers can **check the progress** of a case, most often through direct contact with the court registrar, and consider further representations as a result.

Expressions of interest are an easy and discreet way to let local authorities know that we are following a case and can prevent problems further down the line. They can serve to bring a local case to the attention of central authorities. It is important to emphasise that we do not intend to interfere or pass judgment on the substance of the case, e.g. guilt or innocence. Expressions of interest can come from any level, including ministerial, and should be addressed to the executive arms of government, not the courts themselves.

Consider raising specific concerns orally or in writing with local authorities at whatever level you think appropriate and effective. A simple well-targetted phone call may be enough.

Notes verbale are a more formal way to raise our concerns, and often carry greater

weight with local authorities. They are a good way to remind local authorities of their international obligations, e.g. on the treatment of hunger strikers

Diplomatic representations may prove necessary if less senior consular representatives are proving ineffective. It might help to discuss the issue with chancery colleagues; there may be cross-over with broader human rights and projects work.

Similarly, consider **ministerial representations**, in the form of a letter or a phone call if diplomatic representations are insufficient. Also consider referring to previous ministerial statements or expressions of interest to lower level representations.

Use your **imagination** and find out who is visiting: there are many other ways to bring pressure to bear on host governments. We have sought the support of MPs and MEPs, NGOs, the Foreign Affairs Committee, the Mayor and Lord Mayor of London and the Royal Family. EU and Commonwealth colleagues may also face similar difficulties and be willing to support.

14.

Identifying Cases For Referral To The Human Rights Adviser (HRA)

Key Points To Look Out For And Refer To HRA:

DEATH PENALTY: All cases where imposition of the death penalty on a British national is a possibility or has already been passed down should be reported to the HRA.

DEATHS: Has a British national died in detention overseas? Has the death of a British national overseas in any circumstances not been promptly or adequately investigated? The State must refrain from unlawful killing and may be under a duty to investigate suspicious deaths. Concerns about cases of this nature should be raised with the HRA.

TORTURE: You may receive reports that a British national has been tortured. An act of torture is one which causes severe pain or suffering, physical or mental, and has been intentionally inflicted upon a person:

- to obtain information or a confession; or
- to punish an act committed or one suspected to have been committed; or
- to intimidate or coerce; or
- for any reason based on discrimination of any kind;
- and has been inflicted by/ at the instigation of/ with the consent/acquiescence of a public official or someone acting in an official capacity.

INHUMAN/DEGRADING TREATMENT OR PUNISHMENT: Treatment not severe enough to constitute torture may still be classed as cruel, inhuman or degrading treatment and should also be referred to the HRA. Depending on the circumstances, this may include beatings, food or drink deprivation, subjection to noise or long-term solitary or sensory confinement. Degrading treatment is that which grossly humiliates a person before others or forces someone to act against their will or conscience.

ARBITRARY DETENTION: Is a British detainee being held unlawfully? It is important to find out if a detainee has been informed promptly at the time of arrest, in a language they understand, the reasons for arrest and any charges against them. Equally, has the detainee been brought promptly before a judge and been able to challenge the lawfulness of detention? Any doubts relating to these matters should be referred to the HRA.

INCOMMUNICADO DETENTION: To be detained incommunicado is to be unable to communicate with the outside world. Such detainees are denied access to lawyers, consular officials, family and doctors. Those detained incommunicado may also be at risk of suffering further breaches of their human rights whilst isolated. There may also be a question of whether the detaining state has breached its obligation under the Vienna Convention on Consular Relations in relation to consular access.

UNFAIR TRIAL: Has a detainee been given a fair and public trial within a reasonable time? Refer to the HRA if you are concerned that the tribunal was not independent or impartial. Also alert the HRA if, during trial, a detainee has not been presumed innocent, has not been allowed to defend himself or have legal assistance, or has not had free assistance of an interpreter where necessary.

DISCRIMINATION: The HRA should be notified if you have concerns that a British national is facing discrimination. Discrimination is any difference in treatment based on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status which aims at restricting or denying ones human rights and fundamental freedoms.

EXPRESSING OPINIONS: Freedom of expression allows a person to hold opinions and to receive and communicate information and ideas without public authority interference. Restrictions that are lawful, necessary and proportionate may be imposed for various reasons, such as national security and the prevention of disorder, but all cases should be referred to the HRA for assessment.

RELIGIOUS BELIEFS: Has a British national been denied freedom of thought, conscience or religion? Has he/she been forbidden from practising his/her religion in public or in private? Restrictions that are lawful, necessary and proportionate may be imposed for various reasons, but all cases should be referred to the HRA for assessment.

The guidelines above are in accordance with international human rights law documents and treaties.

Interference

15. Under international law, we cannot interfere in the internal affairs of another State, including their judicial proceedings. Our own internal affairs are similarly protected from foreign interference. On the other hand, we are entitled to intervene at appropriate stages and in appropriate ways. Judging whether our involvement is considered interference or intervention depends on the grounds on which it is justified, the objectives being pursued and the manner in which it is done. Weighing these factors calls for careful consideration.

16. As a general rule, expressing an opinion on the merits of a case such as the guilt or innocence of the accused, or on the interpretation and application of local law would not be appropriate and could be considered interference. But lobbying local authorities to ensure basic procedural rights are upheld, such as being tried without delay or the right of appeal may be appropriate intervention. If in doubt seek the advice of Consular Directorate. The following actions could be considered interference and should be avoided:

- taking a position on the merits of a case particularly before the national local courts have given final judgment;
- seeking inappropriately to influence the court's judgment in a case;
- seeking preferential treatment for a British national over others in a similar situation (unless necessary to meet international human rights standards);
- trying to run a case in a local court or act as a legal representative;
- lobbying against a particular punishment, except capital and corporal punishment;
- criticism of the verdict reached by a court following due process.

Involvement in Civil Cases and Private Disputes

17. In general, consular staff should avoid involvement in private disputes, even where there is no on-going legal process:

- Most of these cases will be open to adjudication by the courts at a later date and we would not wish to prejudge the outcome of any legal hearing.
- We are not legally qualified and cannot assess the validity of the arguments on each side.
- We are not well placed to balance or take a view on the factual allegations made by the opposing sides.

18. We are under the same obligation not to interfere in cases before the civil courts of another state as we are in criminal cases. Consular staff should not try to influence the judgment of the court or challenge its decisions. Examples of appropriate grounds for intervention and the forms that intervention could take are set out above.

19. Where assistance is requested in achieving a **general change** to a law or regulation or to the application of a law or regulation, rather than in respect of a specific case under that law, you should pass the issue on to political staff at Post.

Immigration Cases

20. Consular staff should avoid involvement in the application of immigration policy, for a number of reasons:

- In most countries, immigration decisions can be appealed in the courts. Pre-judging or otherwise challenging the decision of the courts would constitute interference.
- We are unlikely to have first-hand knowledge of the applicant's case and in any case we should not attempt to assess whether the decision reached by the court is the "correct" decision.
- The United Kingdom regards international interference with the decisions of its own immigration officials as unacceptable.

21. Notwithstanding the above, intervention can be considered where there is good reason to believe that it would be appropriate and effective in the circumstances.

22. For resource reasons, consular staff should not check on the progress of, or express interest in, immigration cases as a matter of course, but may do so in exceptional cases after consulting Consular Directorate.

Death Penalty

23. HMG opposes the death penalty in all circumstances. Our public policy is to make representations against the death penalty on behalf of British nationals on death row or facing charges that attract the death penalty at whatever stage and level is judged most appropriate and effective. This includes dual nationals in third countries or in their country of other nationality. Inform Consular Directorate as soon as there is a possibility that the death penalty may be imposed on a British national. Our aim in all such cases is to avoid the imposition of a death sentence and have it commuted to a term of imprisonment.

You should find out whether the relevant country retains the death penalty. You may wish to consult public sources (or your Honorary Legal Adviser).

You should

- Inform Consular Directorate as soon as you become aware of a case where the imposition of the death penalty is a possibility.
- Maintain appropriate contact with the local lawyer handling the case.
- Try to obtain information about the appeals process in death penalty cases (e.g. seek the advice of your Honorary Legal Adviser).
- Consider seeking assistance from an FCO pro-bono lawyer.
- Consult Consular Directorate on whether to attend any court hearings.

Death Penalty: Case strategy and representations

24. The Human Rights Adviser will work with Post and any legal team to develop a strategy for each case. **Representations can be made before, during and after trial, during the appeal process and after sentencing right up to execution.** Careful consideration should be given to when representations will be most effective and appropriate, to whom they should be addressed and by whom they should be made. Some options:

- Representations to prosecuting authorities against seeking the death penalty;
- Written or oral representations to the Clemency Board, Governor or Head of State in support of clemency;
- Written or oral representations from the relevant minister, the Foreign Secretary or, exceptionally, the Prime Minister;
- Representations in conjunction with other Commonwealth or EU partners, or an official EU demarche.

Fair Trials

25. Try to become familiar with the legal system in your country. This table is intended for guidance on when to refer cases of unfair trials back to Consular Directorate.

26. Complete the table with details about how the legal system in your country meets, or may fail to meet, the standards set out. Keep a copy of the table for future reference, keep it up to date, and make sure the Country Casework Team in Consular Directorate has a copy.

27. Consult Consular Directorate when a British national claims they have not received a fair trial or you are concerned that the trial of a British national does not appear to be conforming to the standards set down in the

fair trial guidelines table.

Fair Trials International

28 FTI works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own. FTI pursues its mission by providing individual legal assistance through its expert casework practice. It also addresses the root cause of injustice through broader research and campaigning and builds local legal capacity through targeted training, mentoring and networking activities.

29. FTI is not limited to a particular geographic region, though recognises that it must match its casework, campaigning and capacity-building activities to areas where its limited resources can be deployed to greatest effect.

30. The leaflet “need help ”explains how FTI can help defendants and their families and summarises what FTI can and cannot do. Consular staff at Post should include this leaflet in the prisoner pack.

31. If a detainee is interested in working with FTI, they should complete and sign the questionnaire, which can be sent directly by them to FTI, or forwarded via Consular Staff (FTI contact details are on the questionnaire). The fact that the completed and signed questionnaire has been received by FTI should be noted on Compass.

Pro Bono Lawyers Panel

32. The FCO Pro Bono Lawyers Panel was set up to help promote and protect the human rights of British nationals detained or imprisoned overseas. The panel functions by providing legal expertise and advice to British nationals facing legal proceedings abroad where we have concerns about due process or human rights violations. A member of the panel can only assist when the British national concerned and his or her lawyer agree to assistance. The pro bono lawyer works with the local lawyer rather than replaces him/her. The pro bono lawyer gives all advice and assistance directly to the British national and the local legal team: the pro bono lawyer is instructed by the prisoner and not by the FCO. All requests for a case to be referred to a pro bono lawyer should be made to Assistance Policy and Prisoners Section and copied to the Country Casework Team.

33. The Human Rights Adviser will determine if a case is suitable for referral to a pro bono lawyer. It is important that cases for referral to a pro bono lawyer are identified as early as possible in order to be effective. Desk Officers or Posts should speak with the Human Rights Adviser as soon as:

- there is concern over the fairness of criminal proceedings; or
- there is a possibility that a human rights violation has occurred. or
- the possibility the death penalty is raised; or
- if, after reviewing the case, it appears there may be something a UK pro bono lawyer could assist with.

If in any doubt as to whether a case should be referred, either Post or the Desk Officer should raise the matter with the Human Rights Adviser.

34. There is no ‘correct’ point in criminal proceedings for referring a case; the best time to refer will depend on the individual circumstances of the case and could be at the pre-trial stage, the appeal stage, or even when domestic legal proceedings have come to an end.

35. Once a case has been identified, and the Human Rights Adviser has agreed to refer it to a panel lawyer, Post should contact the British national and offer the service of a pro bono UK lawyer (the HRA will provide the text for this letter). It should be explained that the local lawyer must also agree to assistance and that there is no guarantee that a member of the panel will agree to assist. The British national should also be told that if a UK lawyer does agree to assist, he or she will be asked to formally instruct the lawyer in writing, and that any advice given will be independent and confidential.

36. Once the Human Rights Adviser has found a pro bono lawyer who can help, (s)he will pass on the UK lawyer’s details to Post and the local lawyer’s details to the UK lawyer. Where appropriate, Post may be asked to formally introduce the UK pro bono lawyer to the local lawyer, either by letter or by telephone.

37. At this stage, Post will be asked to obtain from the British national a signed written confirmation form formally instructing the UK pro bono lawyer.

38. FCO post-referral assistance will vary from case to case. There should be no interference with the independent legal relationship between the British national and their legal team. However, logistical and administrative support may be provided where appropriate and available. Such support may include the provision of a translation service for key documents, assistance in finding conference facilities, and arranging prison visits for lawyers.

39. It should be remembered at all times that the UK pro bono lawyer is not instructed or appointed by the FCO and is not being asked to provide legal advice to the FCO.

Extraterritorial Offences

40. Extraterritorial jurisdiction is the ability to prosecute in the UK offences committed abroad. The primary basis of United Kingdom law is TERRITORIAL. That is, for a crime to be prosecuted in the UK, it normally has to have been committed there. However, there are exceptions, including the following:

Murder and Manslaughter	If the suspect is a UK national. The nationality of the victim is irrelevant. (Section 9/10 Offences against the Persons Act 1861)
Terrorism	Persons committing, conspiring or inciting others to commit terrorist attacks overseas can be prosecuted in the UK.. This includes cases of financing terrorism and forgery and counterfeiting offences which are related to terrorism. (Sections 63A, C and D Terrorism Act 2000).
Hostage Taking	Any person, of any nationality, who detains a hostage in order to compel a state, international government organisation or person, to do or abstain from doing, any act, and threatens to kill, injure or continue the detention of the hostage. (Section 1-3 Taking of Hostages Act 1982)
Serious Sexual Offences	In practice, all sexual offences committed anywhere in the world against, with, or towards children under the age of 16, provided the suspect has been a UK national, or resident in the UK since 1 st September 1997. (Section 72 Sexual Offences Act 2003)
Female Genital Mutilation	In Scotland, England and Wales, UK nationals or permanent residents who carry out FGM, or aid, abet, counsel or procure a foreign national to carry out FGM, on a UK national or permanent resident. (Sections 1-4 Female Genital Mutilation Act 2003)
Offences on Board UK-registered Planes and Ships	All criminal offences against UK law committed on board UK-registered planes and ships in non-UK waters or territory, and foreign aircraft bound for the UK, can be prosecuted in the UK. (Section 282 Merchant Shipping Act 1995)
Oil Platforms	All offences by any nationality committed on UK-registered oil and gas platforms anywhere in the world. (Petroleum Act 1998)
Theft, Deception, Forgery, Counterfeiting	If a significant element of these offences takes place in the UK, a person of any nationality can be prosecuted in the UK, even if the final act in the crime, or the advantages of that crime, are realised abroad. (The Criminal Justice Act 1993,

	Part 1)
Bigamy	If a UK national enters into a bigamous marriage abroad. (Section 57, Offences Against the Persons Act 1861)
Official Secrets	All offences committed abroad, provided the offender is a UK national. (Official Secrets Act 1911)
Perjury	This offence can be committed by a person of any nationality, who swears on oath before a British official abroad, entitled to take that sworn oath, and the product of that act is used for a lawful purpose or in judicial proceedings in the UK. This could apply to passport applications. (Perjury Act 1911)
Offences Committed by Servants of the Crown	Indictable (serious) offences committed by servants of HM government, acting, or purporting to act in the course of such employment. (Section 31 Criminal Justice Act 1948)
Bribery and Corruption	This refers to bribery and corruption in relation to international government and business transactions. (Part 12, Anti-Terrorism, Crime and Security Act 2001)
Internationally Protected Persons	Certain serious crimes, such as murder, assault, sexual offences, kidnapping and criminal damage against buildings or vehicles used by such protected persons or their families and households. Such protected persons are designated as such at a governmental level, but this mainly refers to senior government officials and officials of intergovernmental agencies. (Section 1 Internationally Protected Persons Act 1978)
Computer Misuse	Persons who from overseas 'hack' into computer systems to misuse information, cause viruses etc. (Computer Misuse Act 1990)
Conspiracy	A person of any nationality who engages abroad in a conspiracy to commit a crime in the UK. This applies particularly to offences of drugs and people trafficking. (Criminal Justice Act 1993)
Offences Committed in the Republic of Ireland	Many serious crimes, particularly those related to terrorism, committed by a person of any nationality in the Republic of Ireland, can be prosecuted in Northern Ireland. (Sections 1-3, Criminal Jurisdiction Act 1975)

Extraterritorial offences

41. Most questions from posts on whether or not an offence committed abroad can be prosecuted in the UK,

concern matters of **murder, manslaughter** and **sexual offences** where the victim is under 16 and the suspect is a UK national. Although in strict legal terms they can, **it is rare for this to happen in practice**. There are two main reasons for this:

Diplomatically. In all probability the offence would have been reported to the local judicial authorities, who in most cases would be reluctant to give up jurisdiction, and who would probably have objections to UK police officers conducting enquiries in their country. It could also appear insensitive to exercise jurisdiction if the matter was already being investigated overseas. In addition, if a case had actually been prosecuted overseas, UK courts would not normally exercise jurisdiction, because the rule against 'double jeopardy' (the rule against being tried twice for the same crime) means that a person can only be tried twice in very limited circumstances.

Logistically. The offence would have been committed abroad, so the scene, forensic evidence and witnesses would be there. It would be very difficult to transfer all this to the UK. UK courts also have no power to compel witnesses from abroad to give evidence in the UK (although in practice such witnesses sometimes give evidence in the UK voluntarily).

42. Any questions around this issue should be referred to Desk Officers in London, who can consult the Police Adviser in Consular Directorate.

Courts and Trials – guidance is for internal purposes only

43. This guidance is for internal purposes only. It is subject to change and is not intended for dissemination outside the FCO. A public statement of our Consular Policy is in [Support for British Nationals Abroad: A Guide](#)

Preliminary points to note:

1. This table contains fundamental and basic human rights standards concerning arrest, pre-trial detention and trial. Although reference is only made to the European Convention of Human Rights, the International and Civil Political Rights, and the Standard Minimum Rules for the Treatment of Prisoners, these are by no means the only relevant human rights instruments. For example there is also the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights, to name but two. The rights detailed here usually appear in one form or another in other human rights instruments.

2. The majority of human rights are not absolute but qualified, and so not every apparent breach will be a violation. Some apparent breaches can be justified, such as when necessary and proportionate to a legitimate aim (e.g. an arrested person *may* initially be refused access to a lawyer, but only in exceptional circumstances in order to maintain security or public order). The exception is the prohibition of torture, which is absolute and must *never* be breached.

3. This table is a guide only and is not an exhaustive and detailed account of international human rights standards.

4. States will only be bound under international law to comply with international treaty provisions (and with the Protocols to treaties) if they are States Parties to the particular instrument. Not all the standard setting documents are legally binding; for example the UN Standard Minimum Rules for the Treatment of Prisoners are not legally binding but provide guidance to states.

5. Before deciding whether a State is or may be in breach it will be necessary not just to check that the state has signed and ratified the relevant treaty, but also to check whether it has entered any reservations or declarations in respect of the relevant provision. You should consult Consular Directorate and/or the Human Rights Adviser if you are unsure and before making any representations.

6. Because we advocate for worldwide acceptance of and adherence to international human rights standards, we can where appropriate raise concerns about many basic human rights, including the right to a fair trial, even when a state is not party to a particular human rights treaty. In such cases, our concern will be raised generally without reference to a specific international obligation that the state has undertaken.

Text reference:

ECHR - European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950)

SMRTP - United Nations Standards Minimum Rules for the Treatment of Prisoners (Approved by UN ECOSOC Resolution 663 of 31 July 1957)

VCCR – Vienna Convention on Consular Relations (24 April 1963)

ICCPR – International Covenant on Civil and Political Rights (16 December 1966)