



Devon & Cornwall Police

Building safer communities together

Force Policy & Procedure	Diplomatic Immunity and Privileges
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Devon & Cornwall Police - Policy & Procedure - D33 Diplomatic Immunity and Privileges

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1. Policy Statement (Open)

- 1.1 The Devon and Cornwall Police aims, by working in partnership with other agencies, to bring about safer communities, reduce disorder, crime and the fear of crime and to contribute to the delivery of justice in a way which secures and maintains public confidence. The policing of Devon, Cornwall and the Isles of Scilly will focus on bringing the police and the community together in the fight against crime.
- 1.2 As part of this aim the Force is committed to the prevention and detection of crime, the protection of vulnerable communities and preserving the rights of individuals. In pursuit of these commitments the Devon and Cornwall Police undertakes to act fully in accordance with both domestic and international law in respect of dealing with all matters relating to diplomatic immunity, entitled by those persons as provided for in law.
- 1.3 The Force will comply with any requirements, conditions and enforcement procedures that are legally binding, in implementing an international obligation and where necessary will work in partnership with other agencies/government departments/organisations to achieve this.

2. Introduction (Open)

- 2.1 Diplomatic Immunity is a form of legal immunity and a policy held between governments, which ensure that diplomats are given safe passage and are considered not susceptible to lawsuit or prosecution under the host country's law.
- 2.2 Diplomats have immunity from prosecution not necessarily arrest.
- (a) The Vienna Convention of Diplomatic Relations 1961.
 - (b) The Diplomatic Privileges Act 1964.
 - (c) The Consular Relations Act 1968.
 - (d) The International Organisations Act 1968.
 - (e) The State Immunity Act 1978.
 - (f) The International Criminal Court Act 2001.
- 2.3 Certain persons are entitled to immunity and privileges. They are persons from:
- (a) Foreign missions.
 - (b) Commonwealth missions.
 - (c) Irish Republic missions.
 - (d) Consular offices.
 - (e) Certain international organisations.
and
 - (f) Sovereign or Head of State, members of family and servants.
- 2.4 Such persons who enjoy varying degrees of immunity and privileges are:
- | | |
|-----------|---|
| Grade A/1 | Ambassador or High Commissioner (including Spouse and dependants) |
| Grade B/1 | Staff with Diplomatic rank (and dependants) |
| Grade C/2 | Administrative and technical staff who perform |

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	clerical, secretarial, communications or similar duties (and dependants)
Grade D/Restricted	Service Staff (not dependants)
Grade E/Restricted	Domestic servants (usually locally employed)

Grade 1	Full immunity from criminal jurisdiction and civil jurisdiction at all times.
Grade 2	Full criminal immunity from criminal jurisdiction and limited immunity from civil jurisdiction.
Restricted	Limited to when the subject is on duty but no immunity for offences under the Road Traffic Act.
Official Act Immunity	'Notified Driver' persons can be registered with Foreign and Commonwealth Office (FCO) as a notified driver. This subject will be employed as a driver . In these circumstances the subject has immunity whilst on official duty.

2.5 Immunity applies to people and not vehicles. It can be withdrawn by the FCO at any time. It can also be waived by the State concerned. For this reason diplomats are careful not to come to notice of the police as the UK is considered one of the world's best postings.

3.0 Procedures

3.1 **Central index of privileged persons** (Closed S.31(1)(a) FOIA 2000)

3.2 **Identity Cards** (Open)

3.2.1 Those enjoying diplomatic privileges are issued with identity cards by the Foreign and Commonwealth Office. The cards do not necessarily indicate entitlement to diplomatic immunity but provide evidence of the holder's identity and appointment. There is at present no issue or expiry date shown on the card and as immunity can be revoked at any time it is not proof of entitlement at any particular time.

3.3 **Arrested person claiming immunity** (Closed S.31(1)(a) FOIA 2000)

3.4 **Drinking and driving** (Open)

3.4.1 Where a police officer has grounds to require a roadside breath test the driver should normally be invited to provide such a sample even if diplomatic immunity has already been claimed. Where an arrest would be normal procedure then the person should be invited to attend the police station. Request / persuasion should be used in order to get the person to the station. If that fails, under no circumstances should they be allowed to continue driving as there is a definite danger to the public.

3.4.2 Persons claiming immunity may not be entitled to that immunity. Verification should only be done at a police station and should not normally be conducted in the street. The MPDPG will verify the level of immunity for the subject at the time

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of the offence. Consideration should also be given to ensuring that the person arrested is positively identified. At the police station it may become apparent that the person is not entitled to diplomatic immunity. It is therefore imperative that the initial drink / drive procedure is carried out correctly otherwise prosecution may be impossible.

- 3.4.3 At the police station the driver should also be invited to provide a breath sample for evidential analysis. The procedures in respect of blood and urine specimens do not apply. The breath test only is involved.
- 3.4.4 There can be no insistence that a person with diplomatic immunity must take a breath test, nor should they be charged with any offence in the event of a positive result or a refusal. However, after a drinking and driving incident involving a diplomat, police must advise the driver and the passengers to make alternative transport arrangements and the driver should be advised not to continue to drive. The driver should not be physically obstructed if such advice is refused but the police must take steps to prevent the car from being driven, e.g. by taking the car keys. If they were to have an accident after the police had stopped them and let them go, the Chief Constable may be liable to civil proceedings from a third party. It is our duty to take charge of that person.
- 3.4.5 A report will be prepared by the officer-in-case, in the following format, and forwarded to Chief Inspector, Special Branch for the attention of the Foreign and Commonwealth Office:
- (a) Subject's name, address and date of birth.
 - (b) Subject's nationality, mission, address of place and employment.
 - (c) Diplomatic status.
 - (d) Description of vehicle and registration mark.
 - (e) Details of any known previous incidents.
 - (f) Full details of incident (attach police officer's statement).
 - (g) Was a screening breath test required? Yes/No.
 - (h) If 'Yes', reason for requirement (indicate if more than one reason applied).
 - (i) Road Collision.
 - (ii) Moving traffic offence.
 - (iii) Suspicion of alcohol.
 - (i) Was subject invited to take an evidential breath test at the police station? Yes/No.
 - (j) If 'Yes', result:
 - (i) Refused.
 - (ii) Attempted but failed to provide.
 - (iii) Indicate result of evidential breath test.
 - (k) If answer to Q9. is 'No' state reason subject not invited to take a test.
 - (l) Indicate whether police would have taken proceedings, and for which offence(s), had the subject NOT been a diplomat.
 - (m) Was the diplomat helpful? Yes/No
 - (n) If 'No', expand on the diplomat's manner
 - (i) obstructive
 - (ii) violent or abusive etc.
 - (o) Any other relevant information.

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3.5 Notification of incidents (Open)

- 3.5.1 Every incident or offence involving a person who claims or is found to be entitled to diplomatic immunity, including one who is reported as a missing person or is the victim of a crime, will be immediately notified to the BCU Commander and Headquarters Special Branch by the officer in charge of the incident by way of email.
- 3.5.2 A detailed report setting out the full circumstances of the incident or offence will be submitted as soon as possible to the Assistant Chief Constable (Crime and Operations) through the Head of Criminal Justice Department. In the case of an offence, the report will be submitted via the local criminal justice unit and will cover the following points:
- (a) If the person had not been entitled to diplomatic immunity, would he/she have been charged? If so, full details of the charge.
 - (b) If the person was accompanied by someone who was not entitled to diplomatic immunity and that other person has been charged, full particulars are to be shown with a further report giving the result of any criminal proceedings instituted. Should committal proceedings be involved, interim reports will be required.
- 3.5.3 Copies of all reports will be sent to Chief Inspector, Special Branch who will maintain liaison with the Home Office and/or Foreign and Commonwealth Office as applicable.
- 3.5.4 In the following circumstances the Metropolitan Police Diplomatic Protection Group must be informed immediately when the diplomat is / has been:
- (a) arrested
 - (b) a witness to an incident
 - (c) a victim of an incident
 - (d) committing offences.

This should be followed by a full report of the circumstances, immediately in arrest cases and in any other case within seven days.

3.6 Process against subject entitled to diplomatic immunity (Open)

- 3.6.1 Any person who appears to be entitled to diplomatic immunity, whether or not a claim is made at the time will **not** be made the subject of:
- (a) Summons.
 - (b) Warrant.
 - (c) Notice of intended prosecution.
 - (d) Report for process.
 - (e) Form HO/RT 1, or required to produce documents.
- 3.6.2 In circumstances whereby a warrant or summons has been applied for, issued or served and it is believed that the person may be entitled to diplomatic immunity whether or not that person intends to claim it, the justices' clerk and the Assistant Chief Constable (Crime and Operations) will be notified immediately.

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3.6.3 If the person who appears entitled to immunity gives any reason to believe that he/she will not claim it, Headquarters Special Branch must be informed immediately. Such persons should not evade the official consequences of their acts, as distinct from any court proceedings, by concealing the fact that they are on a list of persons entitled to diplomatic immunity.

3.7 Evidence at inquests or court proceedings (Open)

3.7.1 If a person who is, or may be entitled to diplomatic immunity, is required to give evidence at an inquest, or in connection with any court proceedings, the Duty Officer at Headquarters Special Branch will be informed immediately by telephone so that the Home Office can be consulted on the question of waiving immunity.

3.8 Waiver of immunity (Open))

3.8.1 It is open to the sending state to waive immunity in any particular case and the Home Office/ Foreign and Commonwealth Office will inform the police whenever this course of action is taken.

3.9 Diplomatic and consular vehicles (Closed S.27 FOIA 2000)

4.0 Audit Declaration (Certification Of Compliance) (FOIA - Open)

4.1 This policy has been drafted and audited in accordance with the principles of Human Rights Legislation, Race Relations (Amendment) Act 2000, Disability Discrimination Act 1995, the Policing Bureaucracy Gateway, and the Freedom Of Information Act 2000. Public disclosure is approved unless where otherwise indicated and justified by relevant exemptions.

5.0 Review and Ownership (Open)

5.1 Ownership of this policy is the responsibility of Commander Crime Department.

5.2 This policy will be reviewed annually, administered by the Force Policy Administration Unit.