



***BRITISH-IRISH PARLIAMENTARY ASSEMBLY***

**COMHLAUGHT IDIR-PHARLAIMINTEACH NA BREATAINE  
AGUS NA hÉIREANN**

**REPORT**

**from**

**Committee A (Sovereign Matters)**

**on**

**Cross Border Cooperation between Police Forces**

**Doc No. 149**

## **Background to the inquiry**

1. In February 2008, the Committee agreed to commence an inquiry into cross-border cooperation between police forces with reference to the impact of Criminal Jurisdiction laws north and south on that cooperation.
2. In November 2008, agreement was reached between the political parties in Northern Ireland on the issue of devolution of justice and policing. In February 2009, the Secretary of State for Northern Ireland gave notice of the UK Government's intention to introduce legislation later that month which would enable policing and justice powers to be transferred from Westminster to Stormont. The Northern Ireland Bill 2009 which gives legislative form to the agreements of the Northern Ireland Assembly and the Executive Review Committee completed all stages in the House of Lords and received Royal Assent on 12 March 2009.
3. A series of meetings were arranged in Dublin, Belfast, London, Carrickmacross, and Newry: the Committee heard from the Garda Commissioner, Fáchtina Murphy; the Chief Constable of the Police Service of Northern Ireland (PSNI), Sir Hugh Orde; Brieghe and Stephen Quinn (parents of the late Paul Quinn); members of An Garda Síochána and the PSNI; and officials from the Northern Ireland Office and the Department of Justice, Equality and Law Reform respectively.
4. The Committee wishes to extend its sincere thanks to those who assisted with this inquiry.

## **Level of Cooperation between Forces**

5. In April 2002, the Irish and British Governments signed an Inter-Government Agreement on Police Cooperation which provided a framework for the implementation of certain recommendations of the Report of the Independent Commission on Policing for Northern Ireland (the Patten Report) on enhanced police cooperation. Certain elements of the Agreement aimed to improve the level of cross-community confidence in the impartiality of the criminal justice system.
6. The Committee found the general level of cooperation between An Garda Síochána and the PSNI to be excellent. Both police forces worked closely together on many issues. They maintained regular contact on a daily operational level, with border superintendents North and South meeting formally four times a year. On cross-border cases, for example, the ongoing investigation of the murder of Paul Quinn, the Committee heard that both police forces were working very closely and the Quinn family affirmed their satisfaction at the level of cooperation.

7. As well as formal cooperation on investigations, the Committee found that informal and interpersonal relationships between forces worked well. The Committee heard that both forces engaged in joint training, as well as participation in courses run by external agencies. In addition, there have been an increasing number of short term personnel exchanges between the two forces, usually of two to three month duration.

8. The Organised Crime Task Force (OCTF) had been set up in 2000 to provide a multi-agency approach to tackling organised crime in Northern Ireland. The Committee heard that cooperation between the Criminal Assets Bureau (CAB) and Northern Ireland's Representative in the Serious Organized Crime Agency (SOCA) continued to be strong, following the latter's assumption of the duties of the Assets Recovery Agency. There were a number of "live" cross-border investigations into assets recovery and CAB met with SOCA on a formal basis twice a year. There had also been an increase in the number of "asset profilers" deployed in the border region in the last year focussing on the movements of those associated with organized crime. In addition, a cross-border Fuel Smuggling Group was now operational between the two forces.

### **Threat from Dissident Groups**

9. The Committee heard that dissident Republican groups had been especially active in recent months. The most recent Independent Monitoring Commission (IMC) report of November 2008 noted that the period between March and August 2008 contained "a more concentrated period of attacks" than at any time since the IMC started its reporting four and a half years ago.<sup>1</sup> The report concluded that dissidents had undertaken planning and preparation for other attacks. It stated that the two police forces had maintained a level of effort against dissident Republicans and that those efforts have led to significant successes which in their turn have helped curtail dissident activity.

10. The Committee condemns the recent dissident attacks that took place earlier this month resulting in the deaths of two British soldiers and a member of the PSNI. The Committee welcomes the renewed commitment of the two Governments to continue to work closely together with the political parties in Northern Ireland, to ensure the enormous achievements of peace and stability are sustained and consolidated. The Committee believes that every possible effort is being made by the PSNI to bring the murderers to justice and that An Garda Síochána will give every possible support and co-operation. We trust that all sections of the public will also give full hearted assistance. The efforts of a small number who have no mandate and who would seek to drag Northern Ireland back to the past must not be allowed to succeed.

### **Challenges to cross-border cooperation**

11. In addition to specific agreements covering Criminal Justice Cooperation, there are formal arrangements in the form of international treaties, European legislation and domestic legislation which can allow for cooperation on criminal matters between the

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<sup>1</sup> *Twentieth Report*, Independent Monitoring Commission, November 2008, HC 1112, para 2.9

authorities on both sides of the border.<sup>2</sup> In addition, both jurisdictions took the unprecedented step of passing legislation in the 1970s giving their respective courts jurisdiction over certain offences committed anywhere in either jurisdiction and has led to successful prosecutions.<sup>3</sup> This legislation allows the Gardaí and the PSNI to each conduct independent investigations into offences that take place in the other jurisdiction. Where this legislation is used, both forces may use their full investigative powers within their respective jurisdictions but rely on the assistance of the other State to carry out extra territorial enquiries.

12. The Committee was informed of the European Framework Decision relating to the formation of Joint Investigation Teams (JITs) between national police forces.<sup>4</sup> The formation of such an investigative team is an operational decision and the Committee was told that, to date, no such decision has been taken by either An Garda Síochána or the PSNI. The Committee was told that JITs would not necessarily permit the exercise of police powers in all cases. Furthermore, the time that it would take to get a JIT up and running might militate against the use of JITs in relation to reactive, fluid investigations such as murder cases. However, the current practice is to hold parallel investigations into the same case. Parallel investigations were sometimes challenging to both forces as evidence, suspects and witnesses could be in either jurisdiction; they could also suffer from two separately controlled investigations having different priorities. Nonetheless, operational cooperation was increasingly effective in such cases.

13. The Committee is seriously concerned about the inter-jurisdictional complexities affecting investigations and the bringing of suspects to trial. Exhibits for investigation or for trial purposes are difficult to transfer from one jurisdiction to the other. Evidence obtained in one jurisdiction is not necessarily admissible in the other. For example when a witness has been interviewed in the Republic the results cannot be used in a UK court unless the Police and Criminal Evidence Act provisions have been complied with as well as the Republic's own procedures. The Committee welcomed the fact that the two police forces were actively reviewing their current operational practices with a view to finding ways in which their respective procedures might be better aligned. The Committee heard that an anticipated outcome of that review would be the development of a procedural manual which would act as an authoritative guide for police officers and prosecutors from both sides of the border on the necessary processes in the investigation of cases, e.g. the collection of evidence and interviewing of witnesses. It was intended that the manual of guidance would maximise the chances of successful detections and prosecutions in cross-border cases. Work on the manual was expected to be completed shortly.

14. The Committee also heard that current procedures for the serving of summonses and the transfer of evidence could take months to complete. The result is that some prosecutions are not mounted or sometimes evidence physically deteriorates and cannot

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<sup>2</sup> Garda Síochána Act 2005, Crime (International Co-operation) Act 2003, the European Convention on Mutual Assistance in Criminal Matters 1959 (Strasbourg Convention), the Convention implementing the Schengen Agreement 1985 (Schengen Convention) and the Council Framework Decision on the European Arrest Warrant.

<sup>3</sup> The Criminal Jurisdiction Act 1975 (UK) and the Criminal Law (Jurisdiction) Act 1976 (Republic of Ireland).

<sup>4</sup> The Council Framework Decision on joint investigations teams.

be successfully used in prosecutions. The present cumbersome procedures frequently involve summonses and physical evidence being sent, for example, from Co. Down to Belfast, then to London, then to Dublin in order to reach Co. Monaghan and then returned by the same route. The process requires an “International Letter of Request” and that can take three to six months. All this can affect the prosecution of serious crimes and tends to rule out the cross border investigation and prosecution of lesser crimes.

15. The Letter of Request is a standard legal document seeking the assistance of another judicial authority to help secure evidence and forward it to the requesting country. In the case of requesting evidence from An Garda Síochána for use in a criminal investigation in Northern Ireland, a PSNI officer completed the Letter of Request which was then submitted to the PSNI’s Extradition and International Mutual Assistance Unit for checking and any clarification. It was then forwarded to the Public Prosecution Service’s (PPS) International Section who would use the information to formally draft the request which was signed by the Deputy Director of Prosecutions for Northern Ireland. This can take a number of weeks depending on the urgency of the request. The PPS International Section is a small section and it also has responsibility for High Court work and Extradition work. The completed “Letter of Request” is then forwarded to the United Kingdom Central Authority (UKCA) at the Home Office for onward transmission to the Department of Justice in Dublin.

16. The Committee heard that when the letter reaches the UKCA further delays were experienced. Prior to 1 April 2008, these requests were forwarded through the Northern Ireland Office (NIO) Rights and International Section and the PSNI had a dedicated route for requests and a request could be traced from Belfast via the NIO to its destination. After 1 April 2008, the work carried out by the NIO was transferred to the UKCA in preparation for the devolution of justice matters to the Northern Ireland Executive.

17. As a result, the UKCA retains responsibility for the processing of Letters of Request from Northern Ireland. Delays in the processing of the letters occur primarily because of the large volume of work going through its Judicial Co-operation section, which handles similar requests from all over the world. The PPS can send these letters directly to the Department of Justice, Equality & Law Reform but only in certain circumstances and that was being done where possible to speed up the process. In respect of requests received by the UK, there exists a stated a guideline of 6 months to process a ‘Letter of Request’. This is an unacceptably long time to delay investigations and prosecutions.

18. The Committee also heard that officers from one jurisdiction may not pursue alleged offenders across the border. While there have been instances of offenders evading arrest by simply crossing into the other jurisdiction, there have also been instances of effective cross border cooperation in such cases. Articles 40 and 41 of the Schengen Convention provide a possible framework for cross border surveillance and cross border pursuit by police from one State into another. However, neither Government has signed up to Article 41 (cross border pursuit) and only the United Kingdom has signed up to Article 40 (cross border surveillance). The Committee recommends that the relevant authorities

review this position in the interests of preventing suspects evading arrest by crossing the border.

19. The Committee also heard that, in relation to obtaining evidence through searches, the introduction of the European Search Warrant was expected to make it easier for law enforcement agencies to secure evidence in another jurisdiction. The European Search Warrant is being finalised and its introduction expected shortly.

### **Proposed changes to the Criminal Jurisdiction Acts**

20. A list of Extra-Territorial Offences, agreed to by both jurisdictions, accompanies the Criminal Jurisdiction legislation and the Committee heard details of how criminal proceedings were to be conducted and the right of the accused to be tried in the jurisdiction of his/her choice. The Committee was told by officials and both police forces that there could be merit in examining the list of offences currently covered under the relevant Criminal Jurisdiction Acts in both jurisdictions. It should be borne in mind that these Acts were brought in to enable terrorist suspects to be charged in either jurisdiction. Hence, the list of offences reflects those in which terrorist suspects were likely to be involved at the time. There may be merit at this stage in examining whether the list of offences should be extended to other offences including, for example, Serious Road Traffic Offences, Sexual Offences, Assaults, Theft Offences, Money Laundering and Fraud Offences.

### **Personnel exchanges and secondments**

21. The 2002 Inter-Government Agreement on Policing Cooperation envisaged three levels of movement between the two forces:

- a. Personnel exchanges for all ranks, without policing powers, for up to one year;
- b. Secondments for ranks Sergeants to Chief Superintendent, with policing powers for up to three years, and
- c. Lateral entry by the permanent transfer of officers for ranks above Inspector and under Assistant Commissioner.

22. In October 2005, the first personnel exchanges at Superintendent rank for a period of two months followed the signing of joint protocols in February of that year. In 2006, the opportunity for such exchanges was extended to the ranks of Garda/Constable, Sergeant and Inspector by both forces. In the period 2005–2008, there have been 55 personnel exchanges with a further 20 planned for 2009. These exchanges, which were usually in the region of two to three months duration, have taken place across a range of policing and have included training, human resources, IT, traffic, crime operations (drugs and smuggling) and community policing.

23. The Committee met with officers who had participated in these short term exchanges and found their experiences had been generally positive. However, the Committee was surprised to hear that, until very recently, officers' feedback on the exchanges had not been collated. The Committee expects that both forces will use feedback to strengthen the exchange scheme in future.

24. The Committee noted that there were a number of impediments in relation to “lateral entry” i.e. permanent transfer between An Garda Síochána and the PSNI. One significant obstacle to lateral entry was the issue of transferability of pensions. Differences existed between the two forces in terms of the length of pension accrual and other conditions. This is a difficulty which relates not only to police pensions but also to other public sector workers who move between one jurisdiction and the other. The Pricewaterhouse Coopers Report “Study of Obstacles to Mobility”, undertaken for the North South Ministerial Council in 2001, identified lack of mobility in pensions as an obstacle to the movement of labour between North and South.<sup>5</sup> Officials have been liaising with the Joint Secretariat to the North/South Ministerial Council regarding the work being undertaken on pension transferability between jurisdictions to facilitate lateral entry of healthcare and education workers.

25. The Committee noted that difficulties relating to pension issues did not affect secondments. During the term of an officer’s secondment, his/her pension remained the responsibility of his/her employer. Seconded officers (unlike those on short term personnel exchanges) effectively became a member of the force to which they were seconded exercising full powers, duties, rights and obligations of that service.

26. The Committee found, however, that there had been very little interest in long term secondments (one year or more) between the forces. For example, only one PSNI officer had applied for a secondment to An Garda Síochána and no member of An Garda Síochána had applied for a secondment to the PSNI. The Committee welcomed the fact that both forces were now in the process of examining why the current process was not successful in attracting applicants. In its discussions with members of the PSNI and Gardaí, the Committee heard that concerns about relocating their families were often a disincentive to considering secondment for many officers. In addition, officers from both jurisdictions indicated that while they might find secondment to a post geographically close to their home base attractive, they would not always be inclined to move to a location which was far removed from their own community.

27. To date, the secondments on offer have been at the rank of Superintendent only. However, the Committee was told by officers of both forces that secondments might be more suited to the more junior ranks. The Committee recommends secondment opportunities should be made available to more junior ranking officers on the basis that they are more likely to avail of them. In addition, the Committee found that efforts needed to be made to incentivise secondments. Currently, officers on secondment fill positions equivalent to the rank which they hold in their own force. The Committee recommends that linking secondment with promotion—either serving at a higher level in the other force or having secondment considered as a positive step toward promotion upon return—should be considered in the future by both forces.

28. The Committee also recommends that allowances relating to relocation, housing and subsistence on offer in both jurisdictions be examined to ensure that officers are not disadvantaged as a consequence of secondment.

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<sup>5</sup> <http://www.northsouthministerialcouncil.org/obstacles-to-cross-border-mobility.pdf>

## **Radio Communication Systems**

29. The PSNI digital radio communications system (named Barracuda) was rolled out across all divisions in Northern Ireland in 2005. It uses Terrestrial Based Radio (TETRA) technology. An Garda Síochána is now in the process of rolling out its new TETRA based radio system—National Digital Radio Service—and expected that it would be available in the border region by the end of 2009 and nationwide by April 2011.

30. Full interoperability between the PSNI Barracuda system and the Northern Ireland Ambulance and Fire and Rescue Services was achieved in 2006. This level of operability will also be a feature of the National Digital Radio Service when it is fully deployed in the South and will in turn allow for full interoperability between all emergency services North and South.

31. In addition, the Committee heard that a number of European TETRA system providers were developing an Integrated System Interface (ISI) which would allow for potentially full cross border interoperability. To date, no costings are available for the ISI and both forces will continue to monitor its development.

32. The Committee welcomes the fact that both the PSNI and An Garda Síochána are moving toward full interoperability between their radio communications systems. Such an arrangement will greatly enhance future joint policing operations and cross border police cooperation.



## **Summary & Recommendations**

- A) The Committee found that the current level of cooperation between An Garda Síochána and the PSNI was excellent with evidence that both police forces worked closely together, formally and informally, on many issues. However, the Committee identified a number of areas where the already effective cooperation between the two forces could be improved.**
- B) The evidence of ongoing activity on the part of dissident Republican groups led the Committee to conclude that cross border cooperation between police forces was of paramount importance.**
- C) The Committee condemned the recent dissident attacks that took place earlier this month resulting in the deaths of two British soldiers and a member of the PSNI.**
- D) The Committee welcomed the renewed commitment of the two Governments to continue to work closely together with the political parties in Northern Ireland, to ensure the enormous achievements of peace and stability are sustained and consolidated. The efforts of a small number who have no mandate and who would seek to drag Northern Ireland back to the past must not be allowed to succeed.**
- E) The Committee is seriously concerned about the inter-jurisdictional complexities affecting investigations and the bringing of suspects to trial and welcomes the new procedural manual being developed for the processes involved.**
- F) The Committee considers the present delays involved in the serving of summonses and the transfer of evidence between the two jurisdictions via London and Dublin are unacceptable and urges the relevant authorities to review and improve them.**
- G) The Committee welcomed the agreement that was reached in November 2008 on the issue of devolution of justice and policing. The Committee noted that suspects can evade arrest by crossing the border and urges the relevant authorities to review this situation.**
- H) The Committee recommended that the list of offences currently covered under the relevant Criminal Jurisdiction Acts in both jurisdictions be updated.**
- I) The Committee noted that there were a number of impediments in relation to transfer of personnel between An Garda Síochána and the PSNI, particularly relating to the issue of transferability of pensions, and urged that joint discussions in this regard be progressed and brought to a conclusion.**
- J) The Committee recommended secondment opportunities should be made available to more junior ranking officers and allowances relating to relocation,**

**housing and subsistence on offer in both jurisdictions be examined to ensure that officers were not disadvantaged as a consequence of secondment.**

- K) The Committee recommended that efforts to incentivise the secondment process—through linking secondment with promotion—should be considered in the future.**
- L) The Committee urged that any outstanding issues relating to achieving full interoperability of the radio communications systems between both forces be expedited at the earliest opportunity.**

## **Minutes of Proceedings relating to the Report**

### *Members visiting Dublin and Belfast 23–24 July 2008*

Mr Jim O’Keeffe, TD (Chair),  
Senator John Carty,  
Lord Dubs,  
Rt Hon. Michael Mates MP (Vice-Chair), and  
Mr Dinnie McGinley TD  
Dr Rory O’Hanlon TD.

### *Members visiting London on 8 December 2008*

Mr Jim O’Keeffe, TD (Chair),  
Baroness Blood,  
Senator John Carty,  
Lord Cope of Berkeley,  
Lord Dubs,  
Mr Brian Hayes TD,  
Mr Andrew Mackinlay, MP,  
Rt. Hon. Michael Mates MP (Vice-Chair),  
and  
Dr Rory O’Hanlon TD.

### *Members visiting Dublin, Carrickmacross and Newry on 8 January 2009*

Mr Jim O’Keeffe, TD (Chair),  
Senator John Carty,  
Lord Cope of Berkeley,  
Mr Brian Hayes TD,  
Mr Andrew Mackinlay, MP,  
Rt. Hon. Michael Mates MP (Vice-Chair),  
and  
Dr Rory O’Hanlon TD.

***Ordered, That the Report be made to the Body.***