

The Government of Ireland's role in and co-operation with Stormont House Agreement institutions and legacy inquests

This paper gives an overview of how the Irish Government will meet its commitments to cooperate with the Stormont House Agreement institutions. It also includes updated information on work to facilitate cooperation with legacy inquests in Northern Ireland.

If groups or individuals wish to discuss the Government's approach to legacy issues in more detail, please contact us by email or in writing and a meeting with officials will be arranged.

E-mail: legacy@dfa.ie

Postal Address

*Legacy Issues
Political and Reconciliation Section
Ireland, UK and Americas Division
Department of Foreign Affairs and Trade
80 St Stephen's Green
Dublin 2*

Legislative measures underpinning cooperation with the Historical Investigations Unit

Criminal Justice (Mutual Assistance) Act 2008

Immediate co-operation between the Garda Authorities and the HIU is already possible in respect of the HIU's criminal investigation role. No legislative provision or amendment is required.

In this regard, the Irish authorities can receive and respond to requests for assistance through the existing criminal mutual legal assistance arrangements and can provide 'police-to-police' support to the HIU as soon as the HIU has been established and commences its work.

The framework for assistance in the conduct of criminal investigations and proceedings is set out in the 2000 European Union Convention on Mutual Assistance in Criminal Matters and in a number of Council of Europe conventions to which both Ireland and the UK are parties. It has been given effect in Irish law by the Criminal Justice (Mutual Assistance) Act 2008.

The mutual assistance framework under the 2008 Act is well established and enables a range of assistance to be provided by the Irish authorities to the competent authorities in other jurisdictions, including frequent assistance to authorities in the UK, for the purposes of the investigation and prosecution of criminal offences. This assistance includes the taking of witness testimony for use in court proceedings, the transmission of evidence, including files and other documentation, information about financial transactions and the freezing and seizure of property. Further details are available on the Department of Justice and Equality [website](#).¹ The 2008 Act is available [here](#).²

¹ http://www.justice.ie/en/JELR/Pages/mutual_legal_assistance

² <http://www.irishstatutebook.ie/eli/2008/act/7/enacted/en/print.html>

Timeframe: Immediate – the mutual assistance framework will apply to the criminal investigations being undertaken by the HIU as soon as the HIU is established.

Section 28 Garda Síochána Act 2005

Section 28 of the Garda Síochána Act 2005 provides a legal basis for An Garda Síochána to enter into agreements on cooperation and information exchange with law enforcement agencies outside the State. As the HIU will be a law enforcement agency this provision can enable a broad level of co-operation with the activities of the HIU insofar as these are the police-type or the criminal investigation functions in addition to the co-operation facilitated by the mutual assistance framework.

The text of Section 28 is available [here](#).³

Timeframe: Steps to establish such an Agreement could begin immediately upon establishment of the HIU.

In respect of the non-police or non-criminal investigation functions of the HIU – for example, functions that would relate to the examination of police discipline issues – amendments to section 28 of the Garda Síochána Act 2005 are being prepared as part of the Criminal Justice (International Cooperation) Bill 2017. These amendments will provide for co-operation agreements between Irish authorities and non-police or non-law enforcement bodies outside the State, which could facilitate further co-operation with the HIU. Such agreements will include arrangements to provide for information exchange.

Timeframe: These amendments are proposed as part of the Criminal Justice (International Cooperation) Bill. The Government approved the priority drafting of this Bill in November 2017 and the General Scheme has been published. It is available on the Department of Justice and Equality [website](#).⁴

Disclosure of Information and Transparency

The Government is committed to full co-operation with the HIU and its work, including full disclosure, consistent with its constitutional obligations and in accordance with law.

In the course of co-operation with the HIU, the Garda Commissioner will, as is now the case with all criminal co-operation requests, including those from the PSNI, comply with constitutional and fundamental rights' obligations (including those under Articles 2, 6 and 8 of the European Convention on Human Rights) and with obligations in law, in particular under the Garda Síochána Acts 2005-2015. These Acts set out the Garda Commissioner's responsibilities with respect to providing security services to the State (see section 3A of the Garda Síochána Acts 2005-2015 at Appendix 1).

³ <http://www.irishstatutebook.ie/eli/2005/act/20/section/28/enacted/en/html>

⁴ [http://www.justice.ie/en/JELR/General Scheme of Criminal Justice \(International Co-operation\) Bill.pdf/Files/General Scheme of Criminal Justice \(International Co-operation\) Bill.pdf](http://www.justice.ie/en/JELR/General%20Scheme%20of%20Criminal%20Justice%20(International%20Co-operation)%20Bill.pdf/Files/General%20Scheme%20of%20Criminal%20Justice%20(International%20Co-operation)%20Bill.pdf)

Some redactions may on rare occasions be required before material can be shared. If this occurs the rationale for the proposed redactions will be explained fully to the Director of the HIU.

The Minister for Justice and Equality will put in place a judicial arrangement to assist the Garda Commissioner and the Director of the HIU in the decision-making process in respect of individual cases where needed.

This arrangement would, of course, be without prejudice to the right of the Director of the HIU to challenge the decision of the Garda Commissioner by way of Judicial Review. (See below for further details).

The Government has already confirmed that it will seek no role in relation to reviewing family reports prepared by the HIU where they include information received from Irish authorities. In order to ensure transparency the Government also requested the inclusion of a specific provision in the UK Bill (Clause 18 (5)) whereby the HIU Director must include in any relevant report a statement about the cooperation given by the Government of Ireland and whether any of the information given was in a redacted form.

The Government is willing to consider what further confidence-building measures in respect of disclosure it might be possible to take in the interests of supporting the overall legacy framework and advancing the work of the bodies to be established. These measures would, of course, have to take account of the fact that information from Ireland (unlike that being provided from UK agencies) will be crossing an international border and identical provisions will not therefore be legally possible.

Judicial Review

Judicial review is a well-established mechanism before the High Court, founded in the Constitution and the procedures governing the operation of judicial review are governed by the Rules of the Superior Courts.

All natural and legal persons may apply to the High Court for leave bring judicial review proceedings challenging decisions made by public bodies in exercise of their public functions. Judicial review proceedings can be brought against any person or body exercising a public function.

In the context of a judicial review, the High Court has jurisdiction to examine and adjudicate on issues of fairness and propriety of procedures in decision-making and the substantive lawfulness of public bodies' decisions including the Garda Commissioner.

The Court of Appeal and the Supreme Court have jurisdiction to hear appeals from decisions of the High Court.

Legislation establishing the Independent Commission for Information Retrieval

An international agreement was concluded between the two Governments on 15 October 2015 to provide for the establishment of the ICIR and legislation is under preparation to give effect to this.

This legislation will, inter alia, grant the ICIR the immunities and privileges of an international body and ensure it is not subject to judicial review, Freedom of Information, Data Protection and National Archives legislation. Analogous provisions to those in the UK draft Bill in relation to the creation of criminal offences for unauthorised disclosure ('leaks') will also be provided. In addition, the legislation will also provide that information given to ICIR will not be admissible in Court proceedings.

The ICIR will be under a duty to protect life in the exercise of its functions. In light of this duty and in recognition that the ICIR will not test information to an evidential standard, ICIR reports will not name alleged perpetrators or disclose the identities of people who provide information.

The international agreement to establish the ICIR is available [here](#).⁵

Timeframe: It is intended that the Government's approval will be sought before the summer. The General Scheme of a Bill will then be published before the end of the public consultation on the UK legislation.

Legislative measures underpinning cooperation with inquests in Northern Ireland

There is currently no international legal framework, analogous to the mutual legal assistance framework for criminal matters, to regulate the transmission of information or evidence for use in non-criminal inquiries such as coroner's inquests or the work of police oversight bodies (where such matters are not criminal inquiries).

Amendment to Section 28 Garda Síochána Act 2005

As noted above, section 28 of the Garda Síochána Act 2005 provides a legal basis for An Garda Síochána to enter into agreements on cooperation and information exchange with police and law enforcement agencies outside the State. There is no corresponding provision for An Garda Síochána to enter into such agreements with 'civil' agencies and bodies outside the State (or in respect of the non-law enforcement functions of police/law enforcement bodies) where that cooperation would be compatible with the functions of An Garda Síochána.

The amendments to the Act described above will provide for the possible establishment of co-operation agreements with non-police or non-law enforcement bodies. This could further facilitate co-operation with the Legacy Inquests being conducted by the Northern Ireland Coroner and with the Office of the Police Ombudsman for Northern Ireland in respect of some of its inquiries.

Criminal Justice (International Cooperation) Bill 2017

The primary purpose of the Bill is to facilitate co-operation by An Garda Síochána with Coroners' Inquests in Northern Ireland and Great Britain that are examining troubles-related

⁵ http://opac.oireachtas.ie/AWData/Library3/FATRdoclaid210116_100026.pdf

deaths, whether caused by paramilitaries or by the security forces, and that have a substantial connection with this State.

The Bill also proposes to expand the scope of Section 28 of the Garda Síochána Act 2005, to allow for the Garda Commissioner to enter into agreements, with the prior approval of the Government, for general co-operation with bodies outside the State that are not police services or law enforcement agencies but which may have functions that are consistent with the responsibilities of An Garda Síochána.

This amendment will support and enhance further co-operation with bodies such as the Northern Ireland Coroner's Service in relation to legacy inquests.

Timeframe: The Government approved the priority drafting of a Criminal Justice (International Cooperation) Bill on 21 November 2017 and for the publication of the General Scheme of the Bill.

Other Stormont House Agreement bodies

Oral History Archive

The Irish Government will legislate as required to provide for protection from defamation and other proceedings for persons making oral contributions to the Archive.

The Irish authorities will also engage with the OHA to promote and facilitate contributions from within its jurisdiction as appropriate.

Implementation and Reconciliation Group

The Government will nominate a member of the IRG in accordance with the Stormont House Agreement.

The two Governments have unique roles in the development of the IRG given their commitments under the Stormont House Agreement to consider making statements of acknowledgment. At the conclusion of the work of the IRG, the Government would intend to make a statement of acknowledgement, and hopes and expects that others would do the same.

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