

## **EXPLANATORY MEMORANDUM TO**

### **The Attorney General's Human Rights Guidance (Protection of Life) Order (Northern Ireland) 2013**

**SR 2013 No. 102**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by section 8(3)(c) of the Justice (Northern Ireland) Act 2004 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Statutory Rule brings into operation human rights guidance by the Attorney General for criminal justice organisations on the protection of the right to life of those in their employment against the criminal acts of third parties.

#### **3. Background**

- 3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance to the following organisations: the Public Prosecution Service for Northern Ireland, the Probation Board for Northern Ireland, the Police Ombudsman for Northern Ireland, the functions of the Department of Justice mentioned in section 69(1) of the Judicature (Northern Ireland) Act 1978, the Northern Ireland Prison Service, the Youth Justice Agency, Forensic Science Northern Ireland, the State Pathologist's Department and the Compensation Agency, on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation the guidance issued by the Attorney General as required by section 8(3)(c) of the 2004 Act.

#### **4. Consultation**

- 4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(1A) and section 8(5A) of the Justice (Northern Ireland) Act 2004 .

#### **5. Equality Impact**

- 5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purposes of section 75 of the Northern Ireland Act 1998.
- 5.2. The Statutory Rule provides for the coming into force of the guidance under section 8 of the Justice (Northern Ireland) Act 2004. The section 8 guidance is based upon international human rights standards and therefore the principles of equality and non-discrimination form a central component of the guidance which the Statutory Rule brings into operation.

## **6. Regulatory Impact**

6.1. A Regulatory Impact Assessment is not required.

## **7. Financial Implications**

7.1. Not applicable.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1. Not applicable.

## **10. Parity or Replicatory Measure**

10.1. The Attorney General is making the Statutory Rule in fulfilment of a legal requirement under section 8 of the Justice (Northern Ireland) Act 2004.

10.2. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

## **11. Additional Information**

11.1. The text of the guidance is attached to this Explanatory Memorandum at Annex A.

## ANNEX A

### **GUIDANCE FOR CRIMINAL JUSTICE ORGANISATIONS IN NORTHERN IRELAND ON HUMAN RIGHTS STANDARDS RELEVANT TO THE PROTECTION OF THE RIGHT TO LIFE**

1. This guidance is addressed to the following criminal justice organisations:  
  
The Public Prosecution Service for Northern Ireland  
The Probation Board for Northern Ireland  
The Police Ombudsman for Northern Ireland  
The Northern Ireland Courts and Tribunals Service  
The Northern Ireland Prison Service  
The Youth Justice Agency  
Forensic Science Northern Ireland  
The State Pathologist's Department  
The Compensation Agency
2. It is intended to assist them in discharging their duty to protect the lives of those in their employment against the criminal acts of third parties.

#### **INTERNATIONAL STANDARDS**

3. This guidance is based on international human rights standards, in particular
  - Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms
  - Article 6 of the International Covenant on Civil and Political Rights
  - Article 12(2) of the International Covenant on Economic, Social and Cultural Rights
  - Customary international law and *ius cogens* requiring protection of human life.

#### **INTRODUCTION**

4. International human rights standards require States to adopt positive measures to protect the life and health of individuals within their jurisdiction. Criminal justice organisations therefore have a duty to protect the lives of individuals where they know or ought to know, in view of the circumstances, that those individuals are at real and immediate risk from the criminal acts of a third party. There is therefore an obligation on criminal justice agencies to take reasonable precautions to minimise any potential risk and to protect their employees.

5. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998.

## **THE PROTECTION OF THE RIGHT TO LIFE**

6. The international human rights standards expressed in the ECHR, ICCPR, customary international law and *ius cogens* provide that everyone's right to life shall be protected. These standards require the State to take appropriate measures to safeguard life and oblige the State to provide a legal and administrative regime that effectively protects life. Unlawful killing must be subject to criminal sanctions; all deaths must be properly investigated, and the law must be effectively implemented.
7. Subject to narrow exceptions international standards require not only that killing be prohibited by the criminal law but also that sufficient mechanisms exist to ensure that the law is enforced. Consequently, whether life has been sufficiently protected by law will involve consideration not only of the content of the law, but also of the mechanisms for its enforcement and their application in practice. An effective legislative and administrative framework is required to provide sufficient protection against threats to the right to life.
8. Criminal justice organisations must take measures which are reasonably necessary and sufficient to protect the lives of their employees. Appropriate practical measures therefore should be adopted where these can reduce the risk to life. Where necessary, guidelines or policies should ensure that practical measures are undertaken and that practical guidance is provided to ensure the effective protection of people whose lives may be endangered.
9. Relevant guidance or policies must provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels.
10. Criminal justice organisations must do everything within their power to protect individuals from the immediate and known risks to which they are exposed. They must display due diligence in protecting the right to life and do all that could reasonably be expected of them to avoid a real and immediate risk to life. This includes taking preventative operational measures to protect individuals whose lives are at risk from the criminal acts of another individual.

## **REQUIRED MEASURES**

11. Organisations must therefore take such steps as are necessary to avoid the risk to life. Such measures should include:

### Appropriate risk assessment

- a. A regular risk analysis should be undertaken by criminal justice organisations. Information should be sought from the Police Service of Northern Ireland or other appropriate sources on a regular basis about general and specific threat levels.
- b. A regular review or audit of policies and procedures designed to deal with risks to life should be undertaken to ensure they are appropriate and effective.

### Administrative framework

- c. Organisations should ensure an administrative framework to provide effective protection against the threat to the right to life – internal rules, policies, or guidance as appropriate should be in place, geared to the features of the risk and with regard to the level of potential risk to life.

### Action

- d. Implementing measures which would limit, reduce or remove risks to the right to life. In dangerous situations all appropriate and necessary steps should be taken to reduce the risk to life.
- e. Ensuring adequate monitoring of current strategies and appropriate implementation of strategies effective in reducing risk.
- f. Not permitting identifiable and avoidable risks to continue where preventative action would be appropriate to reduce the risks to life.
- g. Dealing appropriately with factors identified as causing or aggravating risk.
- h. Reviewing situations and practices to ensure there is an adequate system in place to minimise any risk to life.
- i. Permitting employees to articulate concerns about risk and, on receipt of such concerns, evaluate them and take all measures that are reasonably necessary as a result.

### Information

- j. Particular emphasis should be placed on the right to information. New and relevant information on the nature of any risk should be communicated to the Police Service of Northern Ireland and any relevant employee where that information may be of assistance in risk limitation or avoidance.

- k. Appropriate warnings and guidance should be provided to individuals who may be at risk and to those who are responsible for them to allow appropriate consideration of risks and of any potential action required.

## **GENERAL**

12. Criminal justice organisations should ensure that the above guidance is made available to staff to ensure awareness of the above standards.

## **REVIEW AND MONITORING**

13. Difficulties encountered in the application of this guidance should be notified to the Attorney General as soon as possible.
14. The Attorney General will formally seek the views of the relevant criminal justice organisations on the revision or amendment of this guidance annually. It is open to those organisations to suggest revision or amendment of this guidance at any time.

[Signed]

John F Larkin QC  
Attorney General for Northern Ireland