

EXPLANATORY MEMORANDUM TO

The Attorney General's Human Rights Guidance (Cooperation and Operational Independence) Order (Northern Ireland) 2016

SR 2016 No. 386

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the 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 for the Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS) and Forensic Science Northern Ireland (FSNI) in relation to cooperation and operational independence by the Attorney General for Northern Ireland on the exercise of PSNI, PPS and FSNI functions in a manner consistent with international human rights standards.

3. Background

- 3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation guidance for the PSNI, the PPS and FSNI 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 purpose of section 75 of the Northern 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. This 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

HUMAN RIGHTS GUIDANCE FOR THE POLICE SERVICE FOR NORTHERN IRELAND, THE PUBLIC PROSECUTION SERVICE AND FORENSIC SCIENCE NORTHERN IRELAND COOPERATION AND OPERATIONAL INDEPENDENCE

INTRODUCTION

1. Human rights standards are designed to make life better for individuals and communities. Human rights standards should not be, and should not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.
2. This guidance is without prejudice to the requirement on all public authorities to comply with obligations arising under section 6 of the Human Rights Act 1998 and those arising under EU Law.

THIS GUIDANCE IS ADDRESSED TO THE POLICE SERVICE OF NORTHERN IRELAND, THE PUBLIC PROSECUTION SERVICE AND FORENSIC SCIENCE NORTHERN IRELAND

3. This guidance deals with cooperation between these organisations and operational independence. Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. It will be revised in light of adjustments in human rights standards and the experience both of those to whom it is addressed and the public.

4. In this guidance 'operational independence' means the ability of each organisation to conduct its own work free from external pressure to produce any particular outcome or result.

INTERNATIONAL STANDARDS

5. This guidance is based on international human rights standards. It is based, in particular, on:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- The Charter of Fundamental Rights of the European Union;
- The International Covenant on Civil and Political Rights;
- The United Nations Convention on the Rights of the Child;
- The Council of the European Union Framework Decision 2009/905/JHA on Accreditation of forensic service providers carrying out laboratory activities;
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime;
- Council of Europe Recommendation (2010) 3 on effective remedies for excessive length of proceedings;
- Council of Europe Recommendation (2000) 19 on the role of public prosecution in the criminal justice system;
- Council of Europe Recommendation (2001) 10 on the European Code of Police Ethics;

- Council of Europe Resolution (2002) 12 establishing the European Commission for the efficiency of justice (CEPEJ);
- The European Commission for the Efficiency of Justice (CEPEJ) CEPEJ (2006) 13 Compendium of “best practices” on time management of judicial proceedings;
- Council of Europe Recommendation (2006) 8 on assistance to crime victims;
- The Guidelines on the Role of Prosecutors - Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, between 27th August and 7th September 1990;
- The Human Rights Standards and Practice for the Police published by the Office of the United Nations High Commissioner for Human Rights in 2004.

INDEPENDENCE

6. Respect for the rule of law depends on public trust. The operational independence of the criminal justice organisations provides a solid foundation for public trust and confidence in the fairness, impartiality, and reliability of the criminal justice system.
7. The role of each organisation within the criminal justice process must be carried out with independence and objectivity. The relationships between criminal justice organisations must avoid giving rise to bias, or the reasonable perception of bias.
8. Each organisation should have sufficient resources to carry out its work to a sufficiently rigorous standard and, in particular, with appropriate scientific analysis.

9. While it is vital to maintain high standards of operational independence, effective and appropriate co-operation and communication, are crucial factors in improving efficiency and in reducing unnecessary delay in the criminal justice system.

PERFORMANCE MEASURES

10. To enable a streamlined approach consideration of the criminal justice process as a whole must inform performance targets and effective working for each organisation.
11. A measure of timeliness which applies to just one organisation or a part or parts of the criminal justice process may be counter-productive. An approach which is informed by, and is reflective of, the criminal justice process as a whole will enable more effective management from the start of the process to its conclusion.
12. This approach requires each organisation to have performance indicators which take into account other stages of the process and the work of other organisations.

PSNI/PPS INVESTIGATION AND PRE-TRIAL

13. In order to improve the effectiveness and efficiency of the criminal justice system agreed standards for file quality and for disclosure should be established between the PPS and the PSNI.
14. Guidance should be developed by the PPS for the PSNI on how the agreed standards can be most effectively achieved, where such guidance is likely to assist in the efficiency and effectiveness of the criminal justice system.
15. The prosecutor should ensure that clarity is provided to the PSNI in relation to the material required for any hearing and he

or she should inform the relevant PSNI officer as soon as possible of any incomplete or missing material.

16. Post charge investigation is an important part of the investigative process. Disclosure, preparation for trial and the trial process itself are integral parts of the criminal justice process and should be considered as such by investigating officers.
17. The PSNI must pursue 'all reasonable lines of enquiry' and relay all relevant information to the PPS. This includes information which may not assist the prosecution but which will be necessary for the prosecutor to have in order to progress the case. For example, where obvious avenues of investigation are no longer being pursued, the reason for this must to be made clear to the PPS.

PPS /FSNI - FORENSIC PROCESS

18. To assist in the resolution of scheduling or timetabling issues, direct communication between the organisations should be supported.
19. In particular, consultation between the PPS and FSNI at the earliest possible stage should occur in order to facilitate the efficient use of forensic material.
20. As soon as possible FSNI should be informed of the issues in the case that require investigation, including those raised by the Defence, and they should also be advised as early as possible of those potential issues that do not require investigation in the particular case.
21. The PPS should inform FSNI of all court dates and timetables set by the court as soon as possible after these are set by the

relevant court to ensure that FSNI is aware of whether and when a particular analysis is required.

PSNI/FSNI – INDEPENDENT SCIENTIFIC ANALYSIS

22. Independent forensic processing of evidential material is crucial to the reliability of the resulting data.
23. Experts should act in accordance with the applicable professional principles of their respective disciplines in order to protect their integrity and objectivity.
24. Given the need for a forensic process which is objective, accurate, valid and reliable, appropriate steps must be taken to protect against any potential for cognitive bias in all stages of the forensic process including exhibit selection, examination, analysis, evaluation and interpretation. Such steps may include bias countermeasures such as blinding precautions, using a structured approach (such as 'Analysis, Comparison Evaluation and Verification' or 'Case Assessment and Interpretation') applying appropriate method development to control against risk, the avoidance of role and reconstructive effects and the provision of the appropriate training for staff.
25. The rights of victims or defendants should not be compromised by the effort to speed up justice. Where an analysis has been undertaken there should be an appropriate qualification of results that is properly reflective of the depth of that analysis.
26. The PSNI should ensure that any forensic examination or analysis carried out for the purpose of criminal proceedings is undertaken by providers accredited with the current relevant ISO/IEC standards or any additional relevant standard or guidance provided by the Forensic Science Regulator.

27. The primary obligation of those providing expert opinion evidence is to the court and that this overrides any obligation to those instructing them.

PSNI/PPS -VICTIMS AND WITNESSES

28. A risk assessment for each person should be carried out by the PSNI to identify vulnerable witnesses or those witnesses likely to be intimidated.
29. In order to ensure that special measures are applied for timeously and appropriately, the PSNI should ensure that, where possible, evidence in support of special measures applications is included in case files to the PPS as early as possible.
30. Both the PSNI and the PPS should ensure that employees who are likely to have direct contact with victims and witnesses have training appropriate to their level of contact with victims and witnesses.
31. The PPS and the PSNI should ensure that witnesses have explained to them what will happen at court. In particular witnesses should be helped to understand how their role fits into that process.

GENERAL

32. The PSNI, PPS and FSNI should ensure that the above guidance is circulated to all staff and to ensure awareness of and adherence to, the above standards.
33. It is similarly important that the general public is aware of the standards. This guidance should be made available to others who may have an interest in, or who may be affected by, the work of the PSNI, PPS and FSNI.

34. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

REVIEW AND MONITORING

35. Difficulties encountered in the application of this guidance by the PSNI, PPS and FSNI should be notified to the Attorney General as soon as possible.
36. The Attorney General will formally seek the views of the PSNI, PPS and FSNI on the review or amendment of this guidance annually. It is open to the PSNI, PPS and FSNI to suggest revision or amendment of this guidance at any time.

John F Larkin QC
Attorney General for Northern Ireland