

# 17 Structured Co-operation

## Introduction

- 17.1** Our terms of reference invite us to address and bring forward proposals relating to “the scope for structured co-operation between the criminal justice agencies on both parts of the island”. In this chapter we set out some of the structures under which criminal justice co-operation might occur. We then make some suggestions on particular areas where we believe there is an opportunity for increased structured co-operation between Northern Ireland and the Republic of Ireland.
- 17.2** We have not attempted to list all the areas where co-operation occurs, or might occur in the future, many of which are or can be addressed through informal working arrangements. The development of opportunities will be a joint matter between those involved in criminal justice in Northern Ireland and the Republic of Ireland. We feel it is important to note that there are also opportunities for co-operation in a broader European Union framework and within these islands.

## Human Rights

- 17.3** Both the United Kingdom and Ireland are member states of the European Union, where values are founded on a shared commitment to human rights and respect for such regional and international instruments such as the *European Convention on Human Rights* and the *International Convention on Civil and Political Rights*. At the European Council meeting held at Tampere, Finland in October 1999 there was agreement to draw up a draft charter of fundamental rights of the European Union.<sup>1</sup> This was recognition of the close connection between the protection of rights and the creation of an area of freedom, security and justice in the European Union.

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<sup>1</sup> Presidency Conclusions, Tampere European Council, 15 and 16 October 1999.

- 17.4** The intention is to foster co-operation but also ensure that co-operation between the member states of the European Union is subject to the protection of rights, such as the right to asylum and the right to privacy. Both of these areas raise issues when considering co-operation between jurisdictions on criminal justice matters. The right to asylum, set out in Article 14 of the *Universal Declaration of Human Rights*, may not be invoked in the case of prosecutions genuinely arising from non-political crimes; thus human rights protections should not mean that those who have committed a crime are able to avoid prosecution by crossing to another jurisdiction. A right to privacy has implications for cross-border co-operation in that information must not be shared between jurisdictions without regard for the right to privacy of the individual.
- 17.5** As noted in Chapter 3, the British Government is incorporating the *European Convention on Human Rights* into Northern Ireland law. The Government of Ireland is at present considering the incorporation of the Convention into Irish law. The written Irish Constitution already provides human rights guarantees, which we understand from the Irish Government are equivalent to, or in many cases stronger than, those set out in the Convention. As provided for in the Belfast Agreement, both Governments are establishing Human Rights Commissions with similar mandates and remits; legislation for this purpose is at present before the Dáil. The Belfast Agreement also provides for a joint committee of the two Human Rights Commissions, North and South.

## Current Arrangements

- 17.6** Co-operation on criminal justice matters between North and South has been developing over many years, both on a formal basis and as a result of informal arrangements which have grown up out of contact between policymakers and agencies in both jurisdiction. One example of this co-operation was the Law Enforcement Commission, which resulted in the enactment of the Criminal Jurisdiction Act 1975 and, in Ireland, of the Criminal Law (Jurisdiction) Act in 1976. From 1985 to 1999, the Anglo-Irish Agreement provided the principal framework for this co-operation. Under the Agreement, an Intergovernmental Conference and a joint secretariat were established. The remit of these institutions included security and related matters, legal matters, including the administration of justice, and the promotion of cross-border co-operation. These institutions ceased to exist following the entry into force of new arrangements that flowed from the Belfast Agreement.
- 17.7** Co-operation in the field of justice and home affairs is an area that has been developing rapidly at the European Union level. The member states of the Union are committed to its development as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. Some of the implications for criminal justice co-operation were stated at the Tampere European Council in October 1999 as follows:

“The enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as their own. Criminals must find no way of exploiting differences in the judicial systems of Member States. Judgments and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators. Better compatibility and more convergence between the legal systems of member states must be achieved.”<sup>2</sup>

**17.8** The United Kingdom and Ireland are also members of the Council of Europe, which provides an additional framework for co-operation in criminal justice matters, particularly in the area of legal co-operation. Both the United Kingdom and Ireland are parties to a number of Council of Europe conventions, including: the *European Convention on Mutual Assistance in Criminal Matters*; the *European Convention on the Transfer of Sentenced Persons*; the *European Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime*; and the *European Convention on the Suppression of Terrorism*.

**17.9** Co-operation within both of these frameworks will continue to provide opportunities for the development of co-operation between North and South, through the use of agreed instruments and programmes. Moreover, membership of these bodies is fully compatible with the development of closer bilateral relationships, provided that such co-operation is in keeping with developments within the European Union and the conventions to which both states are parties.

## MUTUAL ASSISTANCE

**17.10** Legal co-operation thus constitutes a common interest for all the countries in the European Union. It can occur on a number of levels. One mechanism is mutual assistance in criminal matters, which aims to make it easier to obtain evidence from other countries, to reinforce agreements allowing investigations and to develop a permanent framework for exchanges of information between investigators and judicial authorities in different countries, where appropriate.

**17.11** Both the United Kingdom and Ireland are party to the 1959 Council of Europe *Convention on Mutual Legal Assistance in Criminal Matters*, which provides for reciprocal assistance on matters such as the provision of evidence and extracts from judicial records and the serving of writs. The Criminal Justice (International Co-operation) Act 1990 provides a legal basis for the United Kingdom to give such practical assistance to judicial and prosecuting authorities in another jurisdiction and to accept such assistance. This can take various forms, including the service of process in the United Kingdom on behalf of another jurisdiction, such as the delivery of summonses, the transfer of a United Kingdom prisoner to give evidence which

<sup>2</sup> Presidency Conclusions, Tampere European Council, 15 and 16 October 1999, paragraph 5.

has been requested by another jurisdiction, and the authorisation of searches for material relevant to an investigation in another jurisdiction. In Ireland, the legal basis on which mutual assistance is provided is the Criminal Justice Act 1994. In 1998, the United Kingdom and Ireland signed an Agreement on Mutual Assistance in Relation to Criminal Matters, which supplements existing international instruments in this field. Both parties agree to grant each other assistance in investigations and proceedings, including the tracing, restraint and confiscation of the proceeds and instruments of crime. The Agreement will come into force when both parties have completed the necessary constitutional formalities.

## **MUTUAL RECOGNITION**

**17.12** Mutual recognition of decisions and enforcement of judgments is a more far-reaching proposal, and is a principle that has been endorsed as the cornerstone for judicial co-operation within the European Union:

“Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.”<sup>3</sup>

**17.13** Mutual recognition could be applied in a variety of areas. For example it could allow evidence gathered in one Member State to be admissible before the courts of other member states, the freezing of proceeds of crime which have been removed to another country or the return of fugitives.

**17.14** The backing of warrants is a practical example of mutual recognition between the United Kingdom and Ireland. Both countries have legislated so that warrants for arrest in one state will be backed in the other to simplify the process of bringing fugitives, who have crossed the border, back to the jurisdiction in which they have been accused or have been sentenced.<sup>4</sup> This provides a more flexible procedure than traditional forms of extradition.

## **OPPORTUNITIES FOR STRUCTURED CO-OPERATION UNDER THE BELFAST AGREEMENT**

**17.15** The Belfast Agreement establishes a new set of relationships within the island of Ireland and provides a framework for the development of structured co-operation between the criminal

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3 Presidency Conclusions, Tampere European Council, 15 and 16 October 1999, paragraph 33.

4 Backing of Warrants (Republic of Ireland) Act 1965.

justice agencies on an all-island and cross-border basis. In addition, there are numerous possibilities for co-operation between criminal justice agencies on both parts of the island through agreed European structures.

**17.16** The British-Irish Intergovernmental Conference brings together the British and Irish Governments to promote bilateral co-operation at all levels on all matters of mutual interest within the competence of both Governments. The Belfast Agreement sets out the role of the British-Irish Intergovernmental Conference, as follows:

- The Conference will bring together the British and Irish Governments to promote bilateral co-operation at all levels on all matters of mutual interest within the competence of both Governments.
- In recognition of the Irish Government's special interest in Northern Ireland and of the extent to which issues of mutual concern arise in relation to Northern Ireland, there will be regular and frequent meetings of the Conference concerned with non-devolved Northern Ireland matters, on which the Irish Government may put forward views and proposals. These meetings, to be co-chaired by the Minister for Foreign Affairs and the Secretary of State for Northern Ireland, would also deal with all-island and cross-border co-operation on non-devolved issues.
- Co-operation within the framework of the Conference will include facilitation of co-operation in security matters. The Conference will also address, in particular, the areas of rights, justice, prisons and policing in Northern Ireland (unless and until responsibility is devolved to a Northern Ireland administration) and will intensify co-operation between the two Governments on the all-island and cross-border aspects of these matters.<sup>5</sup>

**17.17** The North/South Ministerial Council has also been established under the Belfast Agreement to develop consultation, co-ordination and action within the island of Ireland on matters of mutual interest within the competence of the Administrations, North and South. Following devolution of criminal justice issues, sectoral or cross-sectoral meetings of the North/South Ministerial Council might be convened on criminal justice matters. The Agreement sets out the role of the North/South Ministerial Council which is:

- (i) to exchange information, discuss and consult with a view to co-operating on matters of mutual interest within the competence of both Administrations, North and South;
- (ii) to use best endeavours to reach agreement on the adoption of common policies, in areas where there is mutual cross-border and all-island benefit, and which are within the competence of both Administrations, North and South, making determined efforts to overcome any disagreements;

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<sup>5</sup> *The Belfast Agreement*, Strand Three, British-Irish Intergovernmental Conference, paragraphs 2, 5 and 6.

- (iii) to take decisions by agreement on policies for implementation separately in each jurisdiction, in relevant meaningful areas within the competence of both Administrations, North and South;
- (iv) to take decisions by agreement on policies and actions at an all-island and cross-border level to be implemented by the bodies to be established as set out in paragraphs 8 and 9 below [of the Strand Two section of the Belfast Agreement].<sup>6</sup>

**17.18** The Agreement states that consideration is to be given to the establishment of an independent consultative forum appointed by the two Administrations (Dublin and Belfast), representative of civil society, comprising the social partners and other members with expertise in social, cultural, economic and other issues. This forum might have a role to play in discussing all-island and cross-border co-operation after criminal justice issues are devolved to the Northern Ireland administration.

**17.19** In addition to the North/South relationship the Belfast Agreement recognised the importance of East/West relationships. The British-Irish Council, consisting initially of the two Governments, devolved institutions in Northern Ireland, Scotland and Wales, with the Isle of Man and Channel Islands, will exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest. As with the North/South Ministerial Council, specific sectoral or cross-sectoral meetings of the British-Irish Council are envisaged. Criminal justice issues, such as crime reduction or anti-drug strategies, might be addressed in such meetings.

## Views Expressed during the Consultation Process

**17.20** Although cross-border and all-island co-operation to tackle crime did not feature prominently in formal, written submissions to the Group, this issue received widespread support at our consultation seminars, where it was discussed in some detail. There was a recognition that issues such as registration of sex offenders, combating drugs, motoring offences and post-release supervision all had cross-border or all-island aspects. Joint inspectorates, interchanges between court staff North and South and joint training were also suggested with a view to exchanging best practice. Some of those attending seminars also argued for a harmonisation of criminal justice policy and law between the two jurisdictions, possibly through an all-Ireland law commission. In general terms there was a concern that offenders should not be able to escape across the border and thereby frustrate justice.

**17.21** Some of the agencies and groups that came to talk to us noted that links between the two jurisdictions could be fruitful, particularly in the area of staff training or exchanges. For

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<sup>6</sup> *The Belfast Agreement*, Strand Two, paragraph 5.

example the Probation Board for Northern Ireland engages in joint training events and the Social Service Inspectorate in Northern Ireland has provided advice on setting up a similar body in the Republic of Ireland. However, it was pointed out that opportunities for such activity were limited by the differing qualifications and legislative regimes on either side of the border.

**17.22** We were also made aware of the informal contacts that take place where ideas on tackling common problems are shared. One example was the contact between the Northern Ireland Court Service and their Irish counterparts on issues such as court design and information systems. Similar contact exists between the Judicial Studies Board in Northern Ireland and the Judicial Studies Institute in Dublin.

**17.23** There was a suggestion from one group that co-operation across boundaries needed to be set in the context of the work towards eventual harmonisation at European Union level. They argued for harmonisation of jurisprudence with the aim of ensuring similar rights and safeguards, as well as offences and punishments, North and South.

**17.24** From the political parties support for co-operation was expressed from a number of different perspectives. For example some focused on operational co-operation and co-ordination in order to improve the effectiveness of the fight against crime; this was addressed both from a North/South perspective, given the existence of the land border, and on an East/West basis as a means of improving co-operation throughout these islands. Others argued for a harmonisation of law and all Ireland structures, including the possibility of an all Ireland Constitutional Court and a joint inter-departmental committee of criminal justice officials. There was a general welcome for the attention being paid to co-operation on justice and home affairs issues within the European Union.

## Evaluation and Recommendations

### PRINCIPLES

**17.25** The land border between Northern Ireland and its neighbour, the Republic of Ireland, in one sense creates a challenge to be met, for example in the area of effective communication. It also presents an opportunity to be grasped in the interests of developing effective criminal justice strategies and responses. It is essential that there is consultation and co-operation to prevent criminals from taking advantage of the existence of two adjacent jurisdictions, and in furtherance of the joint interest of all of us on these islands in securing justice.

- 17.26** In formulating the recommendations that follow we have therefore been guided by the principle that co-operation across boundaries should occur wherever it is necessary or useful. We foresee a strengthening of such co-operation between Northern Ireland and the Republic of Ireland taking account of the European Union framework.
- 17.27** As well as co-operation and co-ordination in combating criminal behaviour, there is also scope for working together in the prevention of crime and on community safety issues and in dealing with offenders after conviction. In some cases there may be a case for seeking harmonisation of procedures between North and South in order to facilitate effective co-operation. However, there is also a need to take account of and facilitate effective joint working with the other jurisdictions of the United Kingdom. In some areas we should be prepared to welcome diversity of practice in different jurisdictions and be prepared to learn from best practice in each.

## **STRUCTURES FOR CO-OPERATION**

- 17.28** As already pointed out, the Belfast Agreement provides for political institutions within which bilateral co-operation can be developed further. Whether criminal justice co-operation is best dealt with in the British-Irish Intergovernmental Conference, the North/South Ministerial Council or the British-Irish Council will depend on whether criminal justice functions have been devolved and on the nature of the issues being addressed by these institutions.
- 17.29** There is also the new dynamic behind increasing co-operation between States within the European Union in the field of justice and home affairs with the aim of creating a single area of freedom, security and justice. These developments present a major opportunity for Northern Ireland, the only part of the United Kingdom with a land border with another State, to tackle crime and its causes more effectively through co-operation across the border.
- 17.30** **We suggest that a group of criminal justice policymakers from the two jurisdictions be established. The purpose of such a group would be to identify and advise on the opportunities for co-operation at government level and between the criminal justice agencies North and South, taking account also of the need for effective co-operation with other parts of these islands. It would also take forward consideration of the recommendations of this review on structured co-operation. In its work, the group would take account of the impact of developments at the European Union level and the opportunities these afford for enhancing bilateral co-ordination and co-operation.** This group should report to the British-Irish Intergovernmental Conference on matters that are not devolved and, on relevant matters, to the British-Irish Council. To the extent that criminal justice matters are devolved to the Northern Ireland Executive, it would also report to the North/South Ministerial Council.

- 17.31** In addition to co-operation between the governments and their respective agencies, it is important to note the opportunities for co-operation between other parts of the criminal justice system. For example many community groups addressing the causes of crime, members of the legal profession and academics and researchers, already have cross-border or all-island links. These might be developed further and new opportunities sought.
- 17.32** Given the complexity and importance of the issues involved, we did not have the time to develop firm proposals for cross-border co-operation. However, we have sought to identify those areas where the two jurisdictions might benefit from enhanced co-operation and the machinery for considering these matters further.

## EXCHANGE AND INTERCHANGE

- 17.33** At one level of co-operation, there is the sharing of best practice, staff exchanges and the pooling of resources in specific areas. We believe that such exchange should occur between the two jurisdictions on this island and is beneficial in creating an outward looking criminal justice system.
- 17.34** Several criminal justice agencies commented to us that developing some aspects of joint training, including conferences and the sharing of good practice, would be useful. We also note the recommendations of the Independent Commission on Policing for structured co-operation between the two police services in training, and for a programme of long term personnel exchange. **We recommend that the scope for the joint delivery of training, education (including continuing professional development) and the exchange of good practice on criminal justice issues should be examined.**
- 17.35** Consultations on this would involve agencies, the voluntary sector and academic institutions in producing creative ways to facilitate joint working. We believe that joint training is justified, because two small jurisdictions would benefit from pooling resources, and in order to foster greater understanding of the law and procedures in the two jurisdictions. For this latter reason **we also recommend that consideration be given to the scope for regular personnel exchange between agencies such as probation, prosecution, prisons, courts and criminal justice policymakers.** Equally it will be important to foster and develop such opportunities between criminal justice agencies in Northern Ireland and those in the rest of the United Kingdom.
- 17.36** It was pointed out to us that differences in the standards applied and qualifications required in the two jurisdictions act as a barrier to joint training (such as courses leading to initial professional qualifications) and personnel exchange. **We recommend that consideration be given to recognition of qualifications and the possibility of harmonising standards between the two jurisdictions, while recognising the importance of compatibility between Northern Ireland and other parts of the United Kingdom.**

- 17.37** As we note in Chapter 16, there is scope for a more developed approach to research on criminal justice issues in both jurisdictions. We believe that co-operation in this field is important because there are similar features in the criminal trends in the two jurisdictions as well as some notable differences and much could be learned through comparative study. Recorded crime levels in both Northern Ireland and the Republic of Ireland have historically been much lower than in other European countries.
- 17.38** It is not possible for a jurisdiction the size of Northern Ireland to sustain a large enough pool of expertise to conduct the wide variety of research and evaluation that we believe should be carried out on a regular basis. There is therefore a strong case for drawing on expertise available in other jurisdictions. **We recommend fostering co-operation between researchers through joint conferences and seminars, and suggest that specific research projects might be undertaken on an all-island basis.** For such co-operation to occur research funds must be made available for joint projects and money should be allocated for joint conferences and seminars.
- 17.39** We note the formation of the National Crime Council (in Ireland) and have recommended in Chapter 11 the creation of a Community Safety Unit. The arguments for co-operation in training and research also point to the need to share good practice and work towards developing a common approach to tackling the causes of crime. According to the Tampere European Council, “the exchange of best practices should be developed, the network of competent national authorities for crime prevention and co-operation between national crime prevention organisations should be strengthened”.<sup>7</sup> **We recommend that the central Community Safety Unit should develop close links with its counterparts in the Republic of Ireland, Scotland, England and Wales, and more widely.**
- 17.40** We would like to make a special mention of drug related crime in the context of cross-border co-operation. We heard a concern expressed in several towns we visited at the possibility of an increase in drug related crime. In this area cross-border co-operation is especially important and we note that criminal justice agencies have developed a particular expertise in dealing with drugs problems. The drug problem is significantly different in the two jurisdictions but much can be learnt by working together to tackle drug related criminal activity. **We endorse close liaison between the two jurisdictions in sharing information about trends and what works in education and prevention in relation to the misuse of drugs.**

## **OPERATIONAL CO-OPERATION**

- 17.41** A number of issues arise from the fact that Northern Ireland and the Republic of Ireland are separate jurisdictions sharing a land border which is crossed and re-crossed regularly as part of people’s normal lives. Economic, social and family ties straddle the border. So too does

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<sup>7</sup> Presidency Conclusions, Tampere European Council, 15 and 16 October 1999, paragraph 42.

criminal activity. This poses particular problems for the criminal justice agencies. As we have noted above, there is already considerable co-operation between agencies on both sides of the border, but there are some specific areas where we suggest that further work might be undertaken.

- 17.42** In Chapter 13 we make a number of recommendations aimed at ensuring that victims and witnesses are properly supported by the criminal justice system. However, we are conscious that the victim of, or the witness to, a crime in Northern Ireland may live in the neighbouring jurisdiction (and *vice versa*). This raises issues about how victims and witnesses are to be kept informed about and consulted on the progress of cases, and about arrangements for providing protection, support and counselling. **We recommend that both jurisdictions consider the cross-border dimension with a view to developing reciprocal arrangements for victim and witness support, particularly in relation to providing information, protection, and counselling.**
- 17.43** A number of issues may arise where a person from one jurisdiction is prosecuted and sentenced in the other. Similar problems may arise where offenders wish to change domicile.
- 17.44** Mechanisms enabling prisoners released from custody in one United Kingdom jurisdiction to be supervised in another were introduced in the Crime (Sentences) Act 1997. However there are currently no mechanisms that allow the continued supervision of released prisoners outside the United Kingdom. Nor are there mechanisms to allow the supervision of individuals given non-custodial disposals. Although people subject to supervision or serving non-custodial sentences in Northern Ireland may be allowed to travel to the Republic of Ireland and might even undertake programmes in the other jurisdiction, there is no ready mechanism for enforcement unless the offender is in Northern Ireland.
- 17.45** Where an offender subject to a community sentence in Northern Ireland is normally resident in the Republic of Ireland or has good reason for moving there, it would be preferable to facilitate him or her. But equally it is unsatisfactory if as a result he or she would avoid serving part of the sentence or lose the opportunity for support aimed at rehabilitation and the prevention of further offences. Moreover, there may be circumstances where the most satisfactory programme for an offender is one that operates in the other jurisdiction.
- 17.46** Remedying the situation will not be easy. Not only are there issues around the continued enforcement of sentences imposed in one jurisdiction but carried out in another, but there is also the fact that different disposals are available, with different arrangements for enforcement, North and South. However, similar problems were encountered in the three United Kingdom jurisdictions in relation to supervision, which were eventually overcome. **We recommend that the issue of developing mutual arrangements for continued enforcement of non-custodial sentences and post-custodial supervision should be addressed. Arrangements for accessing programmes available in the other jurisdiction should also be considered.**

- 17.47** Specifically in the context of the new juvenile justice arrangements (see Chapters 9 and 10) we suggest that there should be flexibility to allow the use of cross-border facilities for youth conference orders. We note that, at a local level, projects already exist which take referrals from both sides of the border. For example the voluntary group Extern West and the North Western Health Board (Donegal, Leitrim and Sligo) have developed a range of services for young people at risk, including a youth support programme which receives referrals from the Garda Síochána as well as from social services in Northern Ireland.
- 17.48** Under the *Convention for the Transfer of Sentenced Persons*, which was ratified by the Republic of Ireland in 1995, it is possible for prisoners to be repatriated from the United Kingdom to the Republic of Ireland and *vice versa*. There have been a number of transfers in both directions. In general the arrangements work well, although there remain problems, not unique to movements between the Republic of Ireland and the United Kingdom, when because of different remission or release rules, the repatriation of a prisoner might result in a reduction in the period of time served.
- 17.49** The Convention arrangements are applicable where a prisoner intends to reside permanently in the receiving jurisdiction. However, it has been suggested to us that there may be other circumstances where movement between the Irish jurisdictions might be appropriate. This could be to facilitate visits by relatives, particularly in cases where the nearest prison to a person's home was in the other jurisdiction. Temporary transfers are commonplace between the United Kingdom jurisdictions and are regularly used to allow prisoners to be visited by relatives. They may also be used to allow prisoners to visit close relatives who are ill. A similar mechanism to allow temporary movement between Northern Ireland and the Republic of Ireland would be a practical response to a humanitarian concern. **We recommend that consideration be given to facilitating the temporary transfer of prisoners between Northern Ireland and the Republic of Ireland.**
- 17.50** The collection and application of information lies at the heart of the investigation and prosecution of criminals. Access to information, under particular circumstances, is already governed by the Criminal Justice (International Co-operation) Act 1990.
- 17.51** The field of forensic science provides two examples of areas that might benefit from greater links North and South. At present an offenders' DNA database operates in Northern Ireland as in the rest of the United Kingdom. This proves valuable in identifying suspects for crimes. However, there is no comparable system in the Republic of Ireland. **We suggest that discussion of the development of relevant forensic science databases and the scope for exchanges of information should take place under the structures for co-operation.**
- 17.52** Co-operation across the border could also enable criminal justice agencies to access services in the other jurisdiction. For example, the forensic science laboratory in Dublin has developed particular expertise in techniques for sampling automobile paint types for the benefit of criminal investigations. In two small jurisdictions it might be beneficial to develop

centres of expertise which would be made available either side of the border. Encouragement is being given to such a strategy on a Europe wide basis. This is an area where there is potential benefit from links between criminal justice services throughout these islands. **We recommend that the possibility of widening access to services such as forensic science and pathology across jurisdictional boundaries be investigated.**

- 17.53** Registers of sex offenders and for child protection purposes have been set up under recent Northern Ireland legislation. During the consultation process we heard public concern that the effectiveness of such registers could be undermined by the ability of individuals who have committed offences in the Republic of Ireland to move to Northern Ireland without any notification of their offences. The Government of Ireland has recently published a Bill providing for a notification procedure or tracking system for convicted sex offenders. This will provide the opportunity for greater protection of the public in both jurisdictions from such offenders, for co-ordinating an approach to sex offender registers, and for sharing information between the authorities in the two jurisdictions. **With a view to sharing information between the authorities in the two jurisdictions, we recommend that the possibility of co-ordinating an approach to dangerous offender registers be given consideration.** Clear protocols would need to be drawn up on the use and contents of these registers, so that they do not contravene data protection and privacy legislation.

## MUTUAL RECOGNITION AND HARMONISATION

- 17.54** We have set out the principles that we believe should govern the harmonisation of law and practice between Northern Ireland and the Republic of Ireland. It is with this in mind that we make the following suggestions.
- 17.55** There is a range of arguments in favour of a harmonisation of law between jurisdictions. From the point of view of law enforcement a more uniform system would reduce the possibility of criminal activity, at whatever level, benefiting from differences in the law. Similarly, the accused, victims and witnesses would be assured of rights and safeguards irrespective of which side of the border a crime occurred.
- 17.56** The development of criminal law in both jurisdictions has been largely incremental. The variety of statutes and common law principles that apply can make it difficult to be certain of the precise content and meaning of the law.<sup>8</sup> In Chapter 14 we look at law reform in more detail. The problem of a lack of clarity in law is especially difficult for criminal justice practitioners dealing with cases with a cross-border aspect. Furthermore disparities and lack of clarity in law and practice between jurisdictions can lead to delays in the criminal justice process.

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<sup>8</sup> See McCutcheon and Quinn, (1998), *Codifying Criminal Law in Ireland*, Statute Law Review, 131, 143.

- 17.57** We recommend that consideration be given to inviting the Law Commission, which we have recommended for Northern Ireland, to co-operate closely with the Commissions in the other three jurisdictions in these islands with a view to promoting the harmonisation of aspects of criminal law and procedure in all four jurisdictions.
- 17.58** We recognise that this will be a long-term project. More immediately, we recommend that consideration be given to producing, for use by practitioners, a simple, clear and concise comparative guide to criminal law and procedure, North and South.
- 17.59** We wish to comment on the specific issue of reporting restrictions where we feel there is a particularly strong case for reaching agreement between the two jurisdictions on a joint approach. We have in mind situations where a judge makes an order restricting reporting in order to prevent the prejudicing of a trial. Similarly reporting restrictions can be important to protect the rights of third parties, witnesses, victims and defendants. For example the report *Speaking up for Justice* noted that reporting restrictions were not enforceable consistently throughout the United Kingdom.<sup>9</sup> When witness intimidation might be an issue, any restrictions on the reporting of proceedings in England and Wales would need to apply equally in Scotland and Northern Ireland if they were to be effective. Provisions to achieve this were incorporated into the Youth Justice and Criminal Evidence Act 1999.
- 17.60** The issue of reporting restrictions in Northern Ireland being made ineffective due to its proximity to the Republic of Ireland is a serious concern. The circulation of newspapers on both sides of the border is commonplace and broadcasts of television and radio from the other side of the border can easily be received. **We recommend that there should be discussion within the structures for co-operation on how reciprocal arrangements might be developed to ensure the effectiveness of reporting restrictions.**

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<sup>9</sup> *Speaking up for Justice, Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System* (1998) Home Office, London: HMSO, chapter 11 and paragraph 8.22.