

**Northern Ireland Affairs Select Committee: Cross-border co-operation on policing,
security and criminal justice after Brexit**

Submission by the Independent Reviewer
of Terrorism Legislation

Introduction

1. The Independent Reviewer of Terrorism Legislation (“the Independent Reviewer”) is appointed by the Home Secretary but is independent from government. The uniqueness of the role lies in its complete independence from government, coupled with access based on a very high degree of clearance to secret and sensitive national security information and personnel.
2. The Independent Reviewer’s role is to inform the public and political debate on anti-terrorism law in the United Kingdom. I do this in the regular reports that are prepared for the Home Secretary or Treasury and then laid before Parliament, in evidence to parliamentary committees, in articles and speeches, in media interviews and debates, and via social media. My first report (*Terrorism Acts in 2018*, March 2020) contained a 32-page chapter on the operation of the Terrorism Acts in Northern Ireland specifically.
3. I have prepared this note in response to the Northern Ireland Affairs Committee’s call for evidence on cross-border co-operation on policing, security and criminal justice after EU Exit.
4. My statutory remit only extends to how the Terrorism Acts operate in Northern Ireland and I will confine my observations to that specific issue. The observations which follow have been informed by visits I have made to Northern Ireland in the preparation of my annual reports.

5. Before turning to those questions which I feel most qualified to address, I draw attention to the relationship between cross-border criminality and terrorism in Northern Ireland.

Cross-border criminality and terrorism in Northern Ireland

6. In Northern Ireland terrorism as it is defined in the Terrorism Act 2000 and cross-border criminality are inextricably linked. There are 14 republican or loyalist groups that are proscribed as terrorist organisations under section 3 Terrorism Act 2000, many of which continue to operate in Northern Ireland today in various forms. These groups are described as engaging in paramilitary activity. The link between paramilitary activity and organised crime is recognised in the security assessment completed by MI5 and PSNI in 2015 “Paramilitary Groups in Northern Ireland”, political declarations such as the Fresh Start Agreement in 2015, and the analysis of the Independent Reporting Commission (second report, 2019).
7. Smuggling on both sides of the border plays a major role in funding Dissident Republican proscribed organisations and therefore paramilitary activity by these groups, for example through fuel laundering and tobacco smuggling. Some of this paramilitary activity is obviously terrorist in nature involving attacks using firearms and explosives against police. Sometimes activity by paramilitary groups may be simply directed at obtaining a criminal profit, cloaking criminal activity under the banner of violent political expression. These groups, loyalist and republican, continue to exercise coercive control over significant proportions of the population in Northern Ireland, engaging in activities such as punishment beatings that have no parallel in the rest of the United Kingdom.
8. The Independent Reporting Commission noted in its 2019 report that the threat from Dissident Republicanism has a particular North/South dimension.¹ Hence there is a need for effective co-operation between the PSNI and An Garda Síochána which is aimed at addressing this threat. Because of the crossover between terrorism and organised crime, co-operation requires both a security and a law enforcement aspect.

¹ Independent Reporting Commission, *Second Report*, paras 1.65-1.66.

9. The way that paramilitary groups are dealt with in Northern Ireland involves a division of responsibility. Dissident Republican groups that presently pose the most acute national security risk are most likely to be investigated as terrorists. Other paramilitary groups, mainly loyalist (but also including the INLA), are the responsibility of the the Paramilitary Crime Task Force. This is a multi-agency taskforce established in Northern Ireland to protect communities by tackling all forms of criminality linked to paramilitarism, including where there is a cross-border element (working in conjunction with An Garda Síochána). In addition, a Cross Border Joint Agency Task Force exists to bring together the relevant authorities North and South to tackle organised and cross jurisdictional crime. This has been reported to be a successful venture. For example, between April 2018 and March 2019 the Joint Agency Task Force conducted 79 searches, seized or restrained over £3,600,000 in assets, and seized 11 weapons.²
10. A further relationship between terrorism and criminality is that any paramilitary activity which is directed against the police makes the task of the law enforcement agencies in suppressing ordinary criminality more difficult in that area. It has been stated to me, plausibly, that paramilitary groups may be prepared to carry out attacks against police or police stations in the border area in order to make it harder for the PSNI to tackle criminality being carried out, to the mutual benefit of paramilitaries and organised criminals.
11. I will now turn to address some of the question posed by the Committee.

What effects will Brexit have on cross-jurisdictional criminality between Northern Ireland and the Republic of Ireland

12. As I have already discussed, and from what I have observed in Northern Ireland, cross-jurisdictional criminality already exists. To some extent the existence of the border makes this inevitable, as there will always be those who seek to take advantage of price differentials. It stands to reason that if there are greater price differentials between North and South caused by the imposition of tariffs, then this provides an even greater

² Ibid.

incentive for paramilitaries to operate in this area with the aim of generating profit (which could be used to fund terrorism).

13. Again, it stands to reason that greater opportunities to make money risks strengthening the vested interest of groups in suppressing police activity and the rule of law in the border areas. This could lead to an increase in violence either because organised criminals may “borrow” the threat from Dissident Republican groups to dissuade police from conducting patrols or operations targeting smuggling; or because proscribed organisations may become stronger as a result of higher revenues; or because violence is a necessary component of their business model. The Committee may already be aware of a study on the potential impact on communities in the border areas, which observes that those living in border areas will be tangibly impacted by any increase in criminality and any diminution in the sense of collective security.³

What effects could Brexit, and the new customs arrangements under the Northern Ireland Protocol, have on criminality between the Island of Ireland and Great Britain

14. The final form of Brexit is still unknown. However, it is widely recognised in Northern Ireland that any new infrastructure at the border (a “hard border”) may become a target for Dissident Republicans and lead to political instability. The introduction of controls could steadily escalate as a source of friction resulting in violent crime, some of which may amount to terrorist offending.
15. This is not just true of the border between the North and the South. There is a risk of violence, whether terrorist or of a public order variety, at any new facility erected to enforce controls between the Island of Ireland and Great Britain. The so-called “Brexit Day bomb plot”, whereby Dissident Republicans attempted to transport a bomb from Belfast to Cairnryan in Scotland, demonstrates that groups have both the intent and the means to carry out such attacks.⁴

³ *Brexit at the Border: Voices of Local Communities in the Central Border Region of Ireland / Northern Ireland.* Available at: <https://www.qub.ac.uk/brexit/Brexitfilestore/Fileupload,824444,en.pdf>

⁴ <https://www.bbc.co.uk/news/uk-northern-ireland-51401435>

What new barriers will be created to cross-border security co-operation between the UK and the Republic of Ireland when the transition period ends, including if no deal on the UK-EU future relationship is agreed

16. There are two points I would like to emphasise. The first is the loss of immediate access to EU information via Schengen. Examinations at ports under Schedule 7 Terrorism Act 2000 allow police officers to identify not just possible terrorist activity, but to identify individuals who are wanted for criminal prosecution in EU states. Immediate access to live information about wanted individuals is useful; relying on Interpol notices is likely to be less effective because it relies on EU Member States choosing to put information about wanted individuals on that system in a timely manner.
17. The second point concerns loss of the EAW, which has a particular resonance in Northern Ireland. The extradition of suspected Dissident Republicans from the Republic of Ireland to Northern Ireland generated intense debate and controversy as a result of a provision in the Extradition Act 1965 which prohibited extradition orders from being made where the alleged offence was political or connected to a political offence. The precise meaning of the political offence exception as it related to the Troubles was a matter of intense legal controversy in the Republic. It was not until 1984 that the first republican paramilitary was extradited to Northern Ireland from the Republic.⁵
18. As I reported in my last annual report, the existence of the EAW took the political dimension out of extradition. Exchanges of individuals via 1957 Convention (a) are no longer simply an EU mechanism but a matter of bilateral relations between states; and however unlikely it may now seem, those relations may be put under pressure (b) will require the development of new machinery for recognition of requests, and transmission of certified requests to police enabling them to arrest requested persons.

Jonathan Hall QC
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⁵ For an account see R. Mac Cormaic, *The Supreme Court* (2016), Ch 11.