



MEMORANDUM OF UNDERSTANDING

CONCERNING

THE NATIONAL CRIME AGENCY IN NORTHERN IRELAND

1. Introduction

1.1. This Memorandum of Understanding ('MoU') is between:

- The Northern Ireland Policing Board ; and
- The Director General of the National Crime Agency.

1.2. This MoU will replace the Memorandum of Understanding between the Northern Ireland Policing Board and the NCA that had effect from 3 March 2016.

1.3. The arrangements set out in this MoU will have effect in relation to an NCA officer exercising NCA functions in Northern Ireland.

1.4. In this MoU:

- a. "PNIA 2000" means the Police (Northern Ireland) Act 2000;
- b. "Board" means the Northern Ireland Policing Board established under PNIA 2000;
- c. "CCA 2013" means Part 1 of the Crime and Courts Act 2013;

- d. "code of ethics" means the code of ethics currently in force for the Police Service of Northern Ireland issued by the Board under section 52 of the PNIA 2000;
- e. "designated NCA officer" means an NCA officer who is designated by the Director General as a person having the powers and privileges of a constable;¹
- f. "Director General" means the Director General of the National Crime Agency;
- g. "NCA" means the National Crime Agency;
- h. "NCA officer" means an NCA officer appointed under paragraph 9, Schedule 1 to the CCA 2013 and a person who has been seconded to the NCA to serve as an NCA officer under paragraph 13, Schedule 1 to the CCA 2013;
- i. "2015 Order" means the Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015;²
- j. "Participants" means the Board and the Director General;
- k. "policing plan" means the Board's policing plan issued under section 26 of the PNIA;
- l. "Secretary of State" means the Secretary of State for the Home Department;
- m. "senior NCA officer" means an NCA officer who is at, or above, a grade specified for this purpose by the Secretary of State in paragraph 6.1 of the Revised NCA Framework Document;³ and
- n. "Minister of Justice" means the Minister in charge of the Department of Justice.

2. Legal Framework

2.1. The general functions of the Board in relation to the NCA are set out in sections 3(3A) and 3(3B) of the PNIA 2000. The Board will:

- (a) monitor the exercise of NCA functions in Northern Ireland; and

¹ See: section 10(1)(a), CCA 2013.

² See: SI 2015. No798.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426101/6_610_HQ_NCA_Framework_070515_2_.pdf

(b) make arrangements for obtaining the co-operation of the public with the NCA in the prevention of organised crime and serious crime in Northern Ireland.

2.2. The National Crime Agency is a non-ministerial department established by the CCA 2013. The NCA is under the direction and control of the Director General. The accountability arrangements for the NCA are set out in the NCA Framework Document, which the Director General must have regard to when exercising functions.⁴ NCA functions are set out in the CCA 2013 and are conferred on the NCA, the Director General and NCA officers.⁵ The Director General may also designate NCA officers with the powers and privileges of a constable, although a designated NCA officer may only exercise the powers and privileges of a Northern Ireland constable⁶ where the general authorisation⁷ is in force.

2.3. A designated NCA officer may only exercise the powers and privileges of a Northern Ireland constable⁸ in accordance with the general authorisation and where one or both of the following conditions are met: (1) the designated NCA officer exercises the powers and privileges with the agreement of the Chief Constable of the Police Service of Northern Ireland⁹; and/ or (2) the designated NCA officer exercises the powers and privileges in relation to the conduct of a police officer.

3. Purpose

⁴ The Secretary of State for the Home Department has a statutory obligation under paragraph 2 of Schedule 2 of the CCA 2013 to issue the framework document, keep it under review, and issue a new document where appropriate. Section 4(2)(c) requires the Director General to have regard to the framework document when exercising his functions.

The framework document deals with the ways in which the NCA is to operate, including how NCA functions are to be exercised (including arrangements for publishing information about the exercise of NCA functions and other matters relating to the NCA) and how the NCA is to be administered (including governance and finances of the NCA) (para 1, Sch 2). Paragraph 5 of Schedule 2 provides that the Secretary of State must consult with the Department of Justice before issuing the first framework document or any other framework document which is, in the Secretary of State's view, significantly different from the framework document it replaces. Paragraph 6 (4) of Schedule 2 also requires that the Department of Justice lay a copy of the framework document before the Northern Ireland Assembly.

⁵ All national police services are exploring the proposal that responsibility for 'Protected Services' will become an NCA function. This includes ownership and control of members of the public judged to be at risk of serious harm (for example, witness protection). Once finalised the Board would expect updates in quarterly reports in order to monitor the exercise of this function in Northern Ireland.

⁶ The "powers and privileges of a Northern Ireland constable" means the powers and privileges of a constable if, and to the extent that they are exercisable in Northern Ireland or the adjacent United Kingdom waters (see: paragraph 30, Schedule 5 to the CCA 2013).

⁷ Dated 19 May 2015.

⁸ See: paragraphs 11(1)(c) and 30, Schedule 5 to the CCA 2013.

⁹ The Chief Constable may arrange for a member of the Police Service of Northern Ireland at the rank of Superintendent or above to give agreement.

- 3.1. The purpose of this MoU is to set out the ways in which the Board and the Director General will exercise their respective functions conferred on them by the PNIA 2000.

4. Annual Plan

- 4.1. In preparing the NCA's Annual Plan,¹⁰ the Director General will have regard to the policing plan in so far as the NCA's annual plan will set out how the Director General intends NCA functions will be exercised in Northern Ireland during the next financial year.
- 4.2. The Director General will submit a draft of the NCA's annual plan to the Board in good time prior to the first scheduled annual meeting¹¹ for the Board to consider in so far as it relates to the NCA's activities in Northern Ireland. The Board may recommend any amendments to the NCA's draft annual plan as it relates to the NCA's activities in Northern Ireland. The Director General will consider any amendments proposed by the Board to the NCA's draft annual plan.
- 4.3. Before issuing the NCA's annual plan, the Director General will obtain the consent of the Board and the Department of Justice to the NCA's annual plan in so far as it relates to the NCA's activities in Northern Ireland.

5. Core Policing Principles

- 5.1. Section 31A of the PNIA 2000 provides NCA officers shall discharge their NCA functions in Northern Ireland with the aim of securing the support of the local community and acting in co-operation with the local community; and in carrying out their functions, NCA officers must be guided by the code of ethics issued by the Board under section 52 of the PNIA.

Code of Ethics

- 5.2. The Director General will ensure, so far as practicable, that the NCA's disciplinary policy and procedures are amended so that in respect of NCA

¹⁰ See: section 4(3)-(4) of the CCA 2013.

¹¹ As per the first annual scheduled meeting in March referred to in paragraph 6.1 in this MoU.

officers exercising NCA functions¹² in Northern Ireland these documents reflect the current version of the code of ethics.

- 5.3. The Director General will arrange for NCA officers who intend to exercise NCA functions in Northern Ireland to undertake relevant training in respect of the code of ethics. An NCA officer will be required to pass the training to ensure he or she has read and understood the code of ethics.
- 5.4. The Director General will ensure a record of the steps taken in relation to the training of each NCA officer is retained by the NCA. The Board will monitor the steps taken by the NCA to discharge the Director General's functions in relation to the code of ethics.
- 5.5. Before issuing or revising the code of ethics, the Board will consult the Director General.¹³
- 5.6. When exercising functions in Northern Ireland, NCA officers will be required to be guided by the code of ethics. In addition, NCA officers who are civil servants will be bound by the civil service code. The NCA also has its own code, which sets out the values and behaviours the Director General expects of all NCA officers.

6. The Board's Monitoring Role

Meetings

- 6.1 The Director General will attend meetings with the Board on a biannual basis to discuss the NCA's Annual Plan so far as it relates to the NCA's exercise of functions in Northern Ireland. The Board will schedule the meetings to take place on a date to be decided in March and October each year; and notify the Director General's office six months in advance. These meetings will take place in private and public sessions. In the exceptional event that the Director General is not able to attend one of these biannual meetings of the Board, a suitable representative will attend in her place; this will be the Director General of Operations who is the strategic lead for Northern Ireland.

¹² "NCA functions" means for the purpose of this MoU a power or duty conferred on the NCA, Director General or an NCA officer by an enactment.

¹³ As per section 52(5)(f) of the PNIA 2000.

- 6.2 The Board may further require the Director General to attend a meeting of the Board,¹⁴ including urgent meetings, by giving a reasonable period of notice.
- 6.3 In the exceptional event that the Director General is not able to attend a meeting of the Board (other than the scheduled biannual meetings) a suitable representative will attend in her place. This representative will normally be the Director General of Operations however in the exceptional circumstances that neither the DG or DGO can attend, the representative will not fall below the level of Director.

Duty to disclose information

- 6.4 Section 33A of the PNIA 2000¹⁵ provides the Director General shall supply the Board with such information and documents as the Board may require for the purposes of, or in connection with, the exercise of any of its functions¹⁶ in relation to the NCA.
- 6.5 Where the Board requires the Director General to provide the Board with such information and documents,¹⁷ the Board's staff will set out their requirement in a written request to the NCA's nominated point of contact.
- 6.6 The NCA will respond to the Board's request in a timely manner and provide the Board's nominated point of contact with the information within 30 days of the date of the request, or such longer period as the Board may approve. If the NCA requires clarification from the Board with regard to a request for information, that clarification will be sought by the NCA at the earliest opportunity and will not normally lead to a delay in the response. If there is to be a delay in the NCA's response, the

¹⁴ As per paragraph 19A, Schedule 1 to the PNIA 2000.

¹⁵ As amended by paragraph 4, Schedule 2 to the 2015 Order.

1.1. ¹⁶ As per the Board's statutory functions in relation to the NCA set out in section 3A of the PNIA.

¹⁷ The duty conferred on the Director General to supply information to the Board has effect subject to Schedule 7 of the CCA 2013 (see: section 12(3) of the CCA 2013).

NCA's nominated point of contact will inform the Board at the earliest possible opportunity and provide an explanation for that delay.

- 6.7 The Director General will ensure that the Board receives a full and detailed response to the Board's request for information or documents. Where the NCA is unable to provide the information requested for reasons beyond its control, for example the information is not in the NCA's possession or does not exist, the NCA will respond to the Board at the earliest possible opportunity (and no later than 30 days). The NCA will explain to the Board the reason why the information cannot be provided to the Board.
- 6.8 In relation to the quarterly Northern Ireland Performance Narrative reports as per paragraph 8.2 below, the NCA will commit to provide these reports to the Board, one week prior to the meetings.

Communications

- 6.9 The NCA will prepare a communications strategy with regard to the exercise of NCA functions in Northern Ireland which will be shared with the Board for consultation. The NCA communication strategy will be reviewed on an annual basis.
- 6.10 To reflect the expectation of transparency, the NCA will inform the Board as appropriate of operational or strategic issues which may impact on public confidence in the exercise of NCA functions in Northern Ireland.

Exemptions

- 6.11 The Director General will not be required to supply the Board with the information or documents requested by the Board,¹⁶ on the grounds that:
- a. disclosure will be likely to put an individual in danger;
 - b. it is in the interests of national security;
 - c. the information is sensitive personnel information; or

¹⁶ As per section 33A(1) and 76A of the PNIA 2000.

d. the information would, or would be likely to, prejudice proceedings which have been commenced in a court of law.

6.12 The duty conferred on the Director General to supply the Board with information or documents will also have effect subject to Schedule 7 of the CCA 2013.

6.13 Where the Director General considers the information requested by the Board falls within one of the exemptions listed in paragraph 6.11 above, the Director General may do the following:

6.1.1. The Director General may refuse to provide the Board with the information that falls within one of the prescribed categories set out in paragraph 6.11. A response from the NCA to the Board's request for information will still be issued by the NCA at the earliest possible opportunity (and no later than 30 days). The response will specify the prescribed ground(s) on which the information will not be provided by the NCA; or

6.1.2. The Director General may still provide the information to the Board. In this situation the NCA's response enclosing the information will be issued to the Board at the earliest possible opportunity (and no later than 30 days). If any of the information is of a type set out in paragraph 6.11(b) the Director General will inform the Secretary of State that the information has been supplied, and will inform both the Secretary of State and the Board that the information is of a type falling within paragraph 6.11(b). If any of the information is of a type set out in paragraph 6.11(a), (c) or (d) the Director General will inform the Minister of Justice that the information has been supplied and will inform both the Minister of Justice and the Board that the information is of a type falling within paragraph 6.11(a), (c) or (d). Any such information provided to the Board by the NCA will be treated by the members of the Board and its staff in confidence and with integrity.¹⁹

Report on relevant NCA matter

¹⁹ As per section 74A of the Police (Northern Ireland) Act 2000.

- 6.14 Under section 59 of the PNIA 2000, the Board may require, following consultation with the Secretary of State in writing, that the Director General submit a report on any "relevant NCA matter"²⁰ specified in the requirement. Where the Board requires such a report, the Board will send a written request to the NCA's point of contact. The Board will set out in its request the details of its requirements in so far as it relates to the "relevant NCA matter" which the Director General will need to address in the report.
- 6.15 On receipt of the written request, the Director General will, within one month from the date of the written request, or within such longer period as the Board may approve, submit the report to the Board.²¹ If the Director General requires further time to prepare the report, the Director General may request further time to prepare the report, and this will be considered by the Board.
- 6.16 If the Director General considers that the report about the relevant NCA matter will need to contain information which the Director General considers ought not to be disclosed on one or more of the prescribed grounds set out in paragraph 6.10 above, the Director General may refer the requirement to submit the report to:
- 6.16.1.1 the Secretary of State, if it appears to the Director General that the report would need to contain information which ought not to be disclosed on the grounds of national security; or
- 6.16.1.2 the Minister of Justice, if it appears to the Director General that the report would need to contain information which ought not to be disclosed on any of the other grounds specified in paragraph 6.10.
- 6.17 If the Director General refers the requirement to submit the report on a NCA relevant matter to the Secretary of State or the Minister of Justice, the Director General will at the same time notify the Board in writing that he or she has made such a referral and where possible provide a summary of the reasons for that referral. The Board will consider within

²⁰ 'relevant NCA matter' means a matter which relates to (a) how the Director General intends that functions of the National Crime Agency are to be exercised in Northern Ireland; or (b) whether the exercise of the functions of the National Crime Agency in Northern Ireland is, or was, in accord with their intended exercise.

²¹ See: section 59(2)(b) of the PNIA 2000 as amended by paragraph 7, Schedule 2 to the 2015 Order.

30 days of the date of the referral, or within such a longer period as may be decided between the Board and the Secretary of State or the Minister of Justice as appropriate, whether the Board may exempt the Director General from the requirement to include the information in the report, or modify the requirement or determine that the information may be provided to the special purposes committee constituted under the PNIA 2000.²²

- 6.18 Where the Director General has not referred the request for a report to the Secretary of State or the Minister of Justice, but is of the opinion that report may include information as set out in paragraph 6.10, the Director General may supply it to the special purposes committee rather than circulating it to the Board. In such circumstance, the Director General will try to obtain the agreement of the special purposes committee as to the terms of a summary of the information which may be provided to the Board.
- 6.19 Where the Director General provides the information to the special purposes committee or the Board which the Director General believes falls under paragraph 6.10(b), then the Director General will inform the Secretary of State. Both the Secretary of State and the Board will be informed that the Director General is of the opinion that information provided is of that category.
- 6.20 Where the Director General provides information to a special purposes committee or to the Board which the Director General believes is of a type outlined in paragraph 6.10(a), (c) or (d), then the Director General will inform the Minister of Justice. The Director General will also inform the Minister of Justice and the Board that he or she is of the opinion that the information falls within one or more of these categories.

²² Note that section 59 of the PNIA 2000 provides that where the Director General has referred the requirement to submit a report, the Secretary of State or the Minister of Justice may, within 30 days from the date of the referral, or within such a longer period as may be decided with the Board, exempt the Director General from the obligation of reporting to the Board, or impose a duty on the Director General to supply such information to a special purposes committee of the Board. A "special purposes committee" means a committee constituted by the Board under paragraph 24(1) or (1A) of Schedule 1 to the PNIA 2000 for the purposes mentioned in paragraph 24(1B) of that Schedule;

7. Inquiry

- 7.1 Where the Board has considered the report submitted by the Director General under section 59 of the PNIA 2000, and as a consequence is minded to convene an inquiry into the relevant NCA matter, or any related matter disclosed in the report by reason of the gravity of the matter or exceptional circumstances, the Board shall consult the Secretary of State and the Director General in writing before it convenes an inquiry under section 60 of the PNIA 2000.²³
- 7.2 The Board shall immediately inform the Director General, Minister of Justice and the Police Ombudsman for Northern Ireland and the Secretary of State (but only the latter if the matter is in respect of a function conferred or imposed on the Secretary of State by an enactment, or is an excepted or reserved matter) of the decision to convene an inquiry.²⁴ The Board will provide the Minister of Justice with a copy of the relevant report submitted by the Director General under section 59 of the PNIA 2000. The Board will also send a copy of the relevant report to the Secretary of State in respect of a function conferred on the Secretary of State by an enactment, or if the report relates to an excepted or reserved matter. The Board may also require the Director General to attend a meeting of the Board (with reasonable notice), if the meeting is being convened to consider causing an inquiry to be held under section 60 of the PNIA 2000 or appointing a person specified below to conduct the inquiry. If the Director General is absent for any reason, the Director General may arrange, with the Board's prior agreement, for an officer of at least the grade of Director to attend the meeting on behalf of the Director General.
- 7.3 The Director General may refer the Board's decision to convene an inquiry to the Secretary of State if it appears to the Director General that it ought not to be held in the interests of national security (as set out in paragraph 6.10(b) above). The Secretary of State may, within a

²³ For the purposes of section 60, PNIA 2000, the grounds on which an inquiry ought not to be held are that –
(a) It is in the interests of national security;
(b) Any matter into which inquiry is to be made is a sensitive personnel matter;
(c) The inquiry would, or would be likely to, prejudice proceedings which have commenced in a court of law.

²⁴ See: section 60(2A) of the PNIA 2000.

period of 30 days from the date of referral by the Director General of the decision of the Board, or within such longer period as may be decided with the Board, overrule the Board's decision to convene an inquiry. The Board's decision in this respect may only be overruled if, in the opinion of the Secretary of State, the inquiry ought not be convened in the interests of national security (as set out in paragraph 6.10(b) above).

- 7.4 The Director General may also refer the Board's decision to convene an inquiry to the Minister of Justice if it appears to the Director General that it ought not to be held on the other grounds specified in paragraph 6.10(c) or (d). The Minister of Justice may, within a period of 30 days from the date of the referral by the Director General of the Board's decision, or within such longer period as may be decided with the Board, overrule the Board's decision to convene the inquiry. The Minister of Justice may only overrule the Board's decision to convene the inquiry if the Minister believes the inquiry ought not to be held on one or more of the grounds stated in paragraph 6.10(c) or (d) above.
- 7.5 The Board may request the Comptroller and Auditor General for Northern Ireland, the Police Ombudsman for Northern Ireland, or Her Majesty's Inspectors of Constabulary to conduct the inquiry. Alternatively the Board may, with the agreement of the Minister of Justice, appoint another person to conduct the inquiry. The Board will be responsible for paying any reasonable expenses incurred by the person appointed to conduct the inquiry (hereinafter referred to as the chair) and any parties who are required to appear before such an inquiry.
- 7.6 An inquiry convened by the Board under section 60 of the PNIA 2000 will be held in public except where the chair conducting the inquiry decides that it is in the public interest not to do so.
- 7.7 Where the Director General decides to provide the chair with any information which, in the opinion of the Director General, is of a type stated in paragraph 6.10(b), the Director General will inform the Secretary of State and the Board that the information has been provided, and that the information is of a type which falls within this category and ought not to be disclosed.

- 7.8 Where the Director General decides to provide the chair with any information which, in the opinion of the Director General is of the type stated in paragraph 6.10(a), (c) or (d), then the Director General will inform the Minister of Justice and the Board that the information has been provided, and that the information is of a type which falls within one or more of those categories as information that ought not to be disclosed.
- 7.9 The Board will send a copy of the inquiry's report to the Director General, the Chief Constable, the Police Ombudsman for Northern Ireland and the Minister of Justice. The Board will also send a copy of the inquiry's report to the Secretary of State if it relates to a matter concerning the Secretary of State's functions or if it relates to an excepted or reserved matter. Where the inquiry's report is not published, a summary of the inquiry's findings and conclusions will be made known by the Board so far as it appears consistent with the public interest.
- 7.10 The Board may require the Director General to attend a meeting of the Board (with reasonable notice), if the meeting is being convened to consider the chair's report. If the Director General is absent for any reason, the Director General may arrange, with the Board's prior agreement, for an officer of at least the grade of Director to attend the meeting on behalf of the Director General.

8. Annual Report

- 8.1 The Board is required, not later than six months after the end of each financial year, to issue a report relating to the policing of Northern Ireland for the next financial year. The report will include an assessment of the following:
- the exercise of the functions of the NCA in Northern Ireland;
 - the level of public satisfaction with the performance of the NCA in exercising functions in Northern Ireland; and
 - the effectiveness of the arrangements made under section 3(3A)(c) of the PNIA 2000 for obtaining the cooperation of the

public with the NCA in the prevention of organised crime and serious crime.²⁵

8.2 To assist the Board, the NCA will on a quarterly basis provide performance reporting on the exercise of the NCA's functions in Northern Ireland which will be aligned to the key threat areas in the National Control Strategy, as outlined in the NCA's Annual Plan.²⁶

8.3 The Board will send a copy of the Board's annual report to the Department of Justice and the Director General. The Board will arrange for the annual report to be published in such manner as appears to be appropriate.

9. Points of contacts

9.1 The Director General may designate a senior NCA officer who will be responsible, on behalf of the Director General, for exercising the functions conferred on the Director General in the PNIA 2000 and the arrangements set out in this MoU.

9.2 The Participants will each nominate the following point of contact to deal with all matters falling within this MoU:

- The Board: Director of Performance
- The NCA: NCA Strategy.

²⁵ See: section 57(2)(k)-(m) and (2A), PNIA 2000 (as amended by paragraph 6(2) and (2), Schedule 2 to the Order 2015.

²⁶ See section 57(2)(l) of the PNIA 2000.

10. Review and termination

10.1 The arrangements set out in this MoU will be reviewed every two years.

10.2 The Participants may vary this MoU by mutual agreement in writing.

10.3 This MoU will come into effect on the date of signature and will continue in operation until terminated by either Participant on six months written notice.

Signed by:	
The Chair of the Board: <i>Aimee O'Connell</i>	Director General of the National Crime Agency: <i>Genevieve</i>
Dated: <i>26th NOV 2019</i>	<i>13th December 2019</i>