

**PROTOCOL FOR THE MEASURES TO BE ADOPTED BY THE SECURITY
AND INTELLIGENCE SERVICES IN THE CONSIDERATION OF
MATERIAL FOR DISCLOSURE IN CRIMINAL TRIALS IN NORTHERN
IRELAND**

Introduction

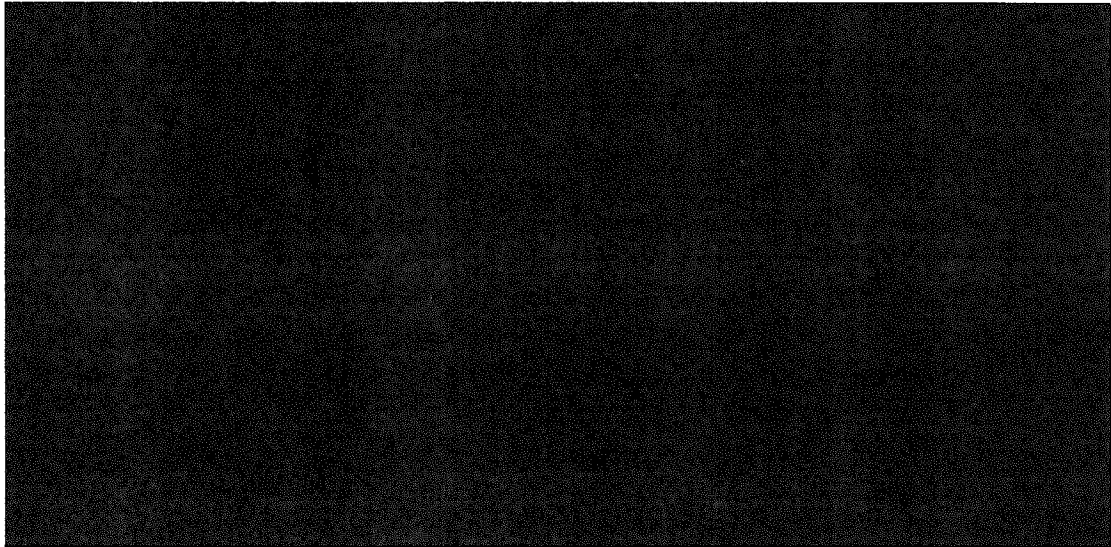
1. This Protocol is agreed between the Security and Intelligence Services ("the Services"), the Public Prosecution Service and the Police Service for Northern Ireland ("PSNI"). It has been produced to record the arrangements in place between the Services and the Public Prosecution Service to comply with the provisions of the Criminal Procedure and Investigations Act 1996 ("CPIA"). It has been agreed that the Services are not persons charged with a duty of conducting criminal investigations within the meaning of sections 22 or 26 of CPIA but are third parties. It follows that the particular requirements of CPIA and the Code of Practice for Northern Ireland made under it are not applicable to the Services.

2. The Services and the Public Prosecution Service believe that it is important that there exists a clear and well-understood procedure within which they will operate in relation to the revelation of material for the criminal trial process. Specifically, the purpose of this Protocol is twofold:

- 2.1. to ensure that in any case where a Service becomes aware that it holds material which may be relevant to a prosecution, it will bring it to the attention of the prosecutor and, as appropriate, the officer in charge of the investigation to enable the prosecutor to decide upon disclosability; and
- 2.2. to regulate the relationship between the Services and those conducting investigations and prosecutors so that the prosecutor, the officer in charge of the investigation and the disclosure officer may properly discharge their statutory obligations under CPIA.

3. In respect of the first purpose at paragraph 2.1 it is recognised that:

- 3.1 the officer in charge of the investigation should be informed of transactions between the Service and the prosecutor but there may be circumstances where it will not be appropriate to reveal to him the nature of the material discussed in those transactions; and
- 3.2 the officer in charge of the investigation will have the right to be present (or represented) during any consultation on evidential matters between the prosecutor and the Services.



5. This Protocol specifically allows for detailed arrangements to be made under it to ensure that the Services are informed of cases where their material has been disseminated in sanitised form but where criminal investigators are unaware of its provenance. Although the responsibility for establishing and maintaining such systems is, by its very nature, clearly that of the investigator, the Services anticipate that they will be consulted about and informed of the nature of such systems.

6. For the purposes of this Protocol the "Services" are the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.

The Arrangements

7. The Services will continue to deal directly with the prosecutor in relation to the revelation and disclosure of their material or material relating to them, whether or not that material has previously been listed on a schedule or otherwise made known to the prosecutor by investigators (section 3(2)(a) and (b) CPIA). The officer in charge of the investigation should be informed of such transactions. This reflects the position that the Services are responsible for the revelation and disclosure of their material but they acknowledge the importance that the officer in charge of the investigation remains sighted in respect of all matters affecting the conduct of the case.

8. The Services, where acting specifically in support of a criminal investigation as defined by section 22 CPIA, will take reasonable and appropriate action to preserve and retain material relevant to that investigation at the time of its collection or creation to enable it to be revealed to the prosecutor.

9. It is recognised that material originating from or relating to the Services may be subject to Public Interest Immunity ("PII") considerations (Code of Practice for Northern Ireland paragraph 6.12-6.14) and will be handled in a manner consistent with them.

10. Where an investigator (whether a disclosure officer, an investigator, or an officer in charge of an investigation) is aware that potentially relevant material obtained from or relating to any of the Services is contained within the material relating to a prosecution, he will, before drawing up a schedule under the Code of Practice for Northern Ireland listing material which has been retained, consult the Service in question to assist him in determining whether the material is to be included on the "sensitive schedule" or be revealed to the prosecutor separately. This requirement continues to apply until the conclusion of the criminal process.

11. Where material originating from the Services has been disseminated in sanitised form to investigators unaware of its provenance, there must be arrangements in place to ensure that the investigators who are aware of its provenance inform the relevant point of contact for the Services, usually [REDACTED] or in cases where the Security Service has been tasked in accordance with section 1(4) of the Security Service Act 1989, the lead police officer, before material relevant to a prosecution is dealt with for disclosure purposes. "the relevant official for dealing with sensitive material"

12. Where an investigator has reason to believe that a Service holds relevant material relating to a prosecution, he will inform the Service in question in parallel to informing the prosecutor. He is not required to make purely speculative enquiries of the Services (Code of Practice for Northern Ireland paragraph 3.5); there must be some reason to believe the Services may have relevant material.

13. The prosecutor and the Services will be mindful of the disclosure time limits then in force and endeavour to take such steps as are necessary to comply with them. In particular, the prosecutor will be mindful of the requirement for the relevant Secretary of State to have adequate time to consider PII issues before material originating from or relating to the Services is disclosed.

14. In a prosecution where a Service becomes aware that it holds material which may be relevant to that prosecution, it will bring it to the attention of the prosecutor and, as appropriate, the officer in charge of the investigation, to enable the prosecutor to decide upon disclosability.

15. No application under section 3(6), 7(5), 8(5) or 9(8) CPIA will be made in relation to material revealed by or relating to a Service without consultation with that Service which will, when necessary, seek a PII certificate from the Secretary of State.

16. This Protocol is effective from 1ST October 2006. It will be kept under review by all parties and may be amended by agreement as necessary. In any event it will be reviewed 12 months after it has come into effect.

Notes

1. References to "CPIA" are to the *Criminal Procedure and Investigations Act 1996*. References to "Code of Practice" are to the *Code of Practice for Northern Ireland made under CPIA*.

2. The terms used in the Protocol are to be defined by reference to CPIA and the *Code of Practice for Northern Ireland*.

3. *This Protocol is to be read in accordance with and subject to the arrangements for coordinating the activities of the Security Service with those of police forces and other law enforcement agencies as required by section 2(2)(c) of the Security Service Act 1989* [REDACTED]