

Northern Ireland and the EU Key issues in the justice system

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The disclaimer

- All views expressed are presenter's own
- The NI Civil Service does not take a position on UK membership of the EU



Sources of law* in Northern Ireland



*and sources of inspiration for law



The justice system and the EU

- National courts have territorial jurisdiction
- The world is increasingly transnational
- The Four EU Freedoms
 - Free movement of goods.
 - Free movement of services and freedom of establishment.
 - Free movement of persons (and citizenship), including free movement of workers.
 - Free movement of capital.
- Even outside the EU, people require access to justice across borders



Key issues

- Extradition
- Deportation
- Smuggling
- People smuggling and human trafficking
- Mutual recognition and enforcement of judgments



Extradition(1) European Arrest Warrants

- UK (non-devolved) government is responsible
- 20 years work to replace 1957 European Convention on Extradition for extradition between EU Member States
- Council Framework Decision of 13 June 2002
- Extradition Act 2003, Part I:
 - For offences with maximum sentence of more than 1 year, or sentenced to at least 4 months
 - Arrest warrant issued through SISII system
 - certificate is issued after a proportionality test is applied
 - arrest
 - initial hearing
 - extradition hearing

Extradition (2) Category 2 countries

- Extradition Act 2003, Part II – countries with a bilateral agreement
- Requests from these territories need decisions by both the Secretary of State and the courts.
- The extradition process to these territories follows these steps:
 - extradition request is made to the Secretary of State
 - Secretary of State decides whether to certify the request
 - judge decides whether to issue a warrant for arrest
 - the person wanted is arrested and brought before the court
 - preliminary hearing
 - extradition hearing
 - Secretary of State decides whether to order extradition
- Extradition also possible from countries with no extradition agreement by a special extradition request.

Advantages and disadvantages of the EAW procedure



- Faster, simpler surrender processes
- “Double criminality” rules simplified
- Judicial, not diplomatic channels
- No ability to refuse to surrender own nationals (but can impose conditions)
- Average time for extradition reduced dramatically
- But – is it overused by some countries?
- Common databases, but problems in keeping the data current.

How widely is extradition used between UK and Ireland?

- Between 2009 and 2014
- UK requested extradition of 103 Irish nationals, resulting in 94 arrests. Ireland arrested 166 individuals in total for extradition to the UK
 - Ireland made 247 requests for extradition of individuals in the UK
 - PSNI requests (from all countries) –



Deportation

Immigration Act 1971 and UK Borders Act 2007
Additional consideration for EU Citizens
Citizens' Directive (Directive 2004/38/EC, Art 27.2)
Flaneur and Flaneur's application [2011] NICA 72,
Morgan LCJ

- Dutch nationals, drug smuggling, deportation order
 - Previous criminal convictions alone do not justify deportation.
 - The personal conduct of the individual must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society...
- Third country nationals with children born in UK
– awaiting decision in ECJ case of CS v UK

Smuggling

What are the necessary conditions?

- Geographic convenience
- Disparity in supply
- Disparity in quality
- Disparity in price
- Disparity in duty
- Disparity in currency



The traditional view The Transit Van

I was on the dole I was broke and
bored
Says I'll take her at her word
Got a loan from the credit union man
And I bought myself a Transit Van
The next step up the ladder now
I bought myself an old fat sow
I crossed over the border quite legally
And collected the common market
subsidy
Signed all the forms handed back the
pen
Then smuggled me pig back home
again
Ten times a day we'd work this plan
Myself the sow and the Transit Van
(extract) Seamus Moore



The modern problem

- Large scale
- Cyber-enabled
- Dangerous/illegal goods and services
- People trafficking
- Backed by paramilitaries/organised crime
- Funds other criminality



People smuggling and asylum

- People smuggling - the organised illegal movement of groups or individuals from one country to another
- Does not necessarily involve human rights abuses
- “The great crisis of our time”



People smuggling The EU dimension

- Dublin III Regulation (reg 604/2013) – process for determining which EU/EEA State deals with asylum application
- ‘Facilitators’ Package’ 2002 on unauthorised entry, transit and residence. Directive sets out offences and Framework Decision minimum penalties.
- European Agenda on Migration (13 May 2015), including Action Plan against migrant smuggling with four priorities:
 - (1) Enhanced police and judicial response
 - (2) Improved gathering and sharing of information
 - (3) Enhanced prevention of smuggling and assistance to vulnerable migrants
 - (4) Stronger cooperation with third countries

Human trafficking

- The illegal movement of people, typically for the purposes of forced labour or commercial sexual exploitation.
- Always involves human rights abuses
- Northern Ireland - 53 victims in 2015 including 13 children
- Ireland – 46 victims in 2014 including 13 children
- Use of Ireland as a transit destination?



The legislative response

- Ireland - Criminal Justice (Human Trafficking) Act 2008
- Northern Ireland – Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015
- Council of Europe Convention on Action Against Trafficking in Human Beings (the Warsaw Convention 2005)
- EU – Directive on Trafficking 2011/36/EU
- EU Strategy towards Eradication of Trafficking in Human Beings 2012
- EU priorities – prevention, prosecution and protection of victims

Civil justice

- European Small Claims Procedure
- Mutual recognition and enforcement of civil judgments
- Cross border mediation
- Child contact and residence – Brussels IIA vs Hague Conventions
- Child maintenance – Maintenance Regulation and Hague Convention



Conclusions

- Justice sector regulates legal relationships across borders and global modern problems
- Sources of law are multiple and diverse
- EU law one (significant) part of the picture
- Evidence to inform your consideration of the issues.


