

Agreement establishing the Independent Commission on Information Retrieval (ICIR)

Cover Note

The Agreement between the Government of Ireland and the Government of the United Kingdom establishing the Independent Commission on Information Retrieval (ICIR) was signed by the Minister for Foreign Affairs and the Secretary of State for Northern Ireland on 15 October 2015. It is being laid before both Houses of the Oireachtas at this time for their information.

The Agreement has been signed in preparation for the establishment of the legacy bodies under the Stormont House Agreement. Legislation to implement the Agreement will be necessary in Ireland and the UK. The Independent Commission will only be formally established after the necessary legislation has been enacted and the two Governments have notified each other of the completion of all other domestic legal procedures required to bring the Agreement into force.

The Stormont House Agreement, a political agreement concluded by the British and Irish Governments and the five main political parties in Northern Ireland on 23 December 2014, provides for the establishment of a suite of new institutions. These are the Oral History Archive (OHA), the Historical Investigations Unit (HIU) and the Implementation and Reconciliation Group (IRG), which will be established in Northern Ireland, and the ICIR which will be a new cross-border body. These four institutions, together with improvements in provisions for victims and survivors, offer an integrated approach to dealing with the legacy of the past. The two Governments are committed to the establishment of these new institutions and the issue remains under discussion with the political parties in Northern Ireland and with groups representing victims and survivors.

Under the Stormont House Agreement, the objective of the ICIR will be to enable victims and survivors to seek and privately receive information about the Troubles-related deaths of their next of kin. Individuals from both the UK and Ireland will be able to seek information from the ICIR. Relevant authorities will cooperate with the ICIR.

In order to encourage individuals to come forward and provide information to the ICIR, it will not disclose information provided to it to law enforcement or intelligence agencies and this information will be inadmissible in criminal and civil proceedings. In addition, the ICIR will not disclose the identities of people who provide information. However, no individual who provides information to the body will be immune from prosecution for any crime committed should the required evidential test be satisfied by other means.

Department of Foreign Affairs & Trade, January 2016



**Agreement between the Government of Ireland and the
Government of the United Kingdom of Great Britain and
Northern Ireland establishing the Independent Commission on
Information Retrieval**

Done at Belfast on 15 October 2015

Not yet in force

Presented to the Oireachtas by the Minister for Foreign Affairs and Trade

**AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND ESTABLISHING THE INDEPENDENT COMMISSION
ON INFORMATION RETRIEVAL**

The Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland,

Recalling the Agreement reached in multi-party talks between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland and the Northern Ireland Executive Parties at Stormont House, Belfast on 23 December 2014 (hereinafter ‘the Stormont House Agreement’),

Reiterating their shared commitment to the transition to long-term peace and stability in Northern Ireland,

Recognising that, for many individuals, it is profoundly important to obtain information about the Troubles-related deaths of members of their families,

Undertaking to afford families the opportunity to seek, on a voluntary basis, information that could provide some measure of comfort,

Wishing to create a mechanism for this purpose that is balanced, proportionate, transparent, fair and equitable,

HAVE AGREED as follows:

Article 1

Establishment of the Commission

1. The Independent Commission on Information Retrieval (hereinafter ‘the Commission’) is hereby established.
2. The Commission shall have the legal capacity of a body corporate.

Article 2

Independence of the Commission and performance of its functions

1. The Commission shall be independent in the performance of its functions.

2. The Commission shall not do anything in carrying out its functions which might:

- (a) prejudice the national security interests of Ireland or the United Kingdom;
- (b) put at risk the life or safety of any person; or
- (c) have a prejudicial effect on any actual or prospective legal proceedings in Ireland or the United Kingdom.

3. The Commission shall act in accordance with the provisions of this Agreement, including the 'Arrangements concerning the operation of the Commission' set out in the Annex to this Agreement (of which that Annex is an integral part).

Article 3

Functions of the Commission

1. The Commission shall have the following functions:

- (a) to seek and receive information about deaths within the remit of the Commission about which eligible family requests are made, and to receive information about other deaths within its remit;
- (b) in cases where an eligible family request for information about a death is made, to keep the person who made the request informed about the progress of the request; and
- (c) subject to the provisions of Article 11 of this Agreement, to prepare and provide reports in accordance with paragraphs 2 to 4 of this Article (the 'reporting function').

2. The Commission shall provide a written report to the person who makes an eligible family request at the conclusion of its enquiries into that death (a 'family report'). Such a report shall contain only information the credibility of which has been established to the satisfaction of the Commission.

3. The Commission shall provide a written report to the Implementation and Reconciliation Group established pursuant to paragraphs 51 to 54 of the Stormont House Agreement on patterns and themes it has identified from its work and on the level of cooperation it has received in carrying out its work.

4. The Commission shall publish an annual report on:
 - (a) the finances of the Commission;
 - (b) the administration of the Commission;
 - (c) the number of requests for information made to the Commission;
 - (d) the number of family reports that have been provided to persons requesting them; and
 - (e) other data relating to the volume of information about deaths received by the Commission;

and provide copies of the report to the Government of Ireland and the Government of the United Kingdom.

Article 4

Definitions

For the purposes of this Agreement:

1. A 'death within the remit of the Commission' means a death which was wholly caused by physical injuries or physical illness that were the direct result of an act of violence or force carried out in Ireland, the United Kingdom or the rest of Europe between 1 January 1966 and 10 April 1998:
 - (a) for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between persons there; or
 - (b) in connection with preventing, investigating, or otherwise dealing with the consequences of, an act intended to be done, or done, for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between persons there.
2. An 'eligible family request' means:
 - (a) a request made by a person who:
 - (i) is a close family member of the deceased; and
 - (ii) meets the residency qualification; or
 - (b) a request made by a person who:
 - (i) is a close family member of the deceased; but
 - (ii) does not meet the residency qualification;

which the Commission is satisfied that it is nevertheless appropriate to accept; or

- (c) a request made by a person who is a relative of the deceased (other than a close family member) if the Commission is satisfied:
 - (i) that no close family member of the deceased objects to the request; and
 - (ii) that it is appropriate to accept the request (having regard, in particular, to the family and personal relationships between the person and the deceased and to whether the person meets the residency qualification).

3. A 'close family member of the deceased' means:

- (a) a parent or step-parent of the deceased;
- (b) a brother or sister, half-brother or half-sister, or step-brother or step-sister of the deceased;
- (c) a child of the deceased;
- (d) a person who was married to the deceased when he or she died; or
- (e) a person who was the co-habitee of the deceased when he or she died;

(including a case where a relationship referred to in sub-paragraph (a), (b) or (c) arises through adoption).

4. A 'co-habitee of the deceased' means a person who, for the period of two years ending with the death, lived in the same household as the deceased:

- (a) as the deceased's spouse; or
- (b) in a case where the person was of the same sex as the deceased, in a relationship with the deceased corresponding to marriage.

5. A person who requests information about a death meets the 'residency qualification' if the person:

- (a) was resident in Ireland or the United Kingdom at the time of the death; or
- (b) is resident in Ireland or the United Kingdom at the time the request is made.

Article 5

Membership of the Commission

1. The Commission shall consist of the following five members:
 - (a) a chairperson, who may be of international standing, appointed by the Government of Ireland and the Government of the United Kingdom, in consultation with the First Minister and deputy First Minister;
 - (b) one member appointed by the Government of Ireland;
 - (c) one member appointed by the Government of the United Kingdom; and
 - (d) two members appointed jointly by the First Minister and deputy First Minister.
2. The members of the Commission shall collectively have:
 - (a) experience of working with individuals who have suffered injury or bereavement as a result of the Troubles;
 - (b) experience of working in legal practice (with a particular member having to have at least 10 years' work in legal practice to count in that experience) or as a judge of the superior courts; and
 - (c) knowledge or experience of the criminal justice system and in particular of policing and security matters.
3. The members of the Commission shall each have experience of, and the skills necessary for:
 - (a) handling sensitive information;
 - (b) making judgements about the credibility of information; and
 - (c) establishing good working relationships with organisations of the kind that can assist the Commission to carry out its functions under Article 3 of this Agreement.
4. The members of the Commission shall serve on terms and conditions to be determined by the Government of Ireland and the Government of the United Kingdom.

5. The Government of Ireland and the Government of the United Kingdom may appoint a member of the Commission to act as chairperson of the Commission if the office of chairperson is vacant or the chairperson is unfit or otherwise unable to act.

Article 6

Staff of the Commission

The Commission may appoint such staff as may be required to assist it in the discharge of its functions on such terms and conditions as the Commission may, subject to the approval of both Governments, determine.

Article 7

Proceedings of the Commission

1. The quorum of the Commission shall be three members, one of whom shall be the chairperson.
2. Notwithstanding the provisions of paragraph 1 of this Article, a decision of the Commission shall not be valid unless:
 - (a) three or more members of the Commission are in favour of the decision; and
 - (b) the chairperson is one of the members in favour of the decision.
3. (a) The Commission shall establish procedures for ensuring that it complies with its obligations under this Agreement. The establishment of such procedures, and any modification thereof, shall be by decision of the Commission only.
 - (b) No information shall be disclosed by, or on behalf of, the Commission in fulfilment of its reporting function except by decision of the Commission.
4. During the preparatory period, the Commission shall make arrangements to enable the Commission to perform its functions, including the recruitment of staff and occupation of premises.
5. After the end of the preparatory period, the functions of the Commission shall continue to be exercisable for a period of five years.
6. The preparatory period:

- (a) begins when the chairperson and a minimum of two other members of the Commission have been appointed; and
- (b) ends three months after this Agreement enters into force (or on any earlier day which is agreed between the Government of Ireland and the Government of the United Kingdom).

7. At the end of the 5 year period allowed under paragraph 5 of this Article the Commission shall destroy:

- (a) all the information it holds about deaths within its remit; and
- (b) all the records it holds that relate to such information.

Article 8

Privileges, immunities and inviolabilities of the Commission

1. The Commission, its members, staff, property and premises, and any agents of, or persons carrying out work for or giving advice to, the Commission shall have such privileges, immunities and inviolabilities as may be conferred or provided by the relevant legislation of Ireland and of the United Kingdom.
2. That legislation shall, in particular, provide for immunity from suit and legal process, and the inviolability of the ICIR archive, but may provide for the Commission to waive such immunities.
3. Freedom of Information, Data Protection and National Archives legislation shall not apply to the Commission.

Article 9

Inadmissibility of information received by the Commission

1. Information received by the Commission about deaths within its remit shall not be admissible in any legal proceedings (including proceedings before a Coroner).
2. Paragraph 1 of this Article does not affect the admissibility of the same information that is otherwise in the possession of any person.
3. Paragraph 1 of this Article is without prejudice to the prosecution of a person in reliance on evidence obtained otherwise than as a result of the provision of information to the Commission.

Article 10

Premises and other facilities

1. The Commission shall have premises in Dublin, Belfast and, if the Commission considers it appropriate, other premises in Ireland or the United Kingdom.
2. Such moneys, premises, facilities and services as may be necessary for the proper functioning of the Commission shall be provided by the Government of Ireland and the Government of the United Kingdom on a basis to be determined by them.

Article 11

Safeguards on the performance of the Commission's functions

1. A person who is:
 - (a) a member of the Commission;
 - (b) a member of the staff of the Commission; or
 - (c) an agent of, or person carrying out work for or giving advice to, the Commission,

shall not disclose information about a death within the Commission's remit unless the person is authorised by the Commission to make the disclosure on the Commission's behalf.

2. The following information shall not be disclosed by or on behalf of the Commission:
 - (a) the name or identity of any individual from whom the Commission has received information about a death within the Commission's remit;
 - (b) in a case where the Commission has received information about a death within its remit, the name or identity of any individual who is identified by that information as being responsible:
 - (i) for the death; or
 - (ii) for any act from which the death resulted;

- (c) information contained in reports prepared in accordance with the Commission's reporting function referred to at paragraph (1)(c) of Article 3 of this Agreement, which either Government has advised the Commission not to disclose because the disclosure would cause the prejudice or risk referred to in paragraph (2)(a) or (b) of Article 2 of this Agreement.

3. Legislation in Ireland and in the United Kingdom shall set out arrangements ('the arrangements') under which the Government of Ireland or the Government of the United Kingdom, respectively, may assist the Commission in meeting its obligation not to disclose information contained in a report prepared in accordance with its reporting function that would cause the prejudice or risk referred to in paragraph 2(a) or (b) of Article 2 of this Agreement.

4. The arrangements referred to in paragraph 3 of this Article shall provide that, before a report prepared in accordance with its reporting function is disclosed, the Commission shall request:

- (a) notification from the Government of Ireland as to whether any information contained in the report would, if disclosed, cause in or to Ireland the prejudice or risk referred to in paragraph 2(a) or (b) of Article 2 of this Agreement; and
- (b) notification from the Government of the United Kingdom as to whether any information contained in the report would, if disclosed, cause in or to the United Kingdom the prejudice or risk referred to in paragraph 2(a) or (b) of Article 2 of this Agreement.

5. The arrangements shall prescribe the process by which the Government of Ireland and the Government of the United Kingdom shall respond to such requests by the Commission (including the time limits within which that process is to take place), and the Commission shall not disclose a report before that process has concluded.

6. If, in accordance with the arrangements:

- (a) the Government of Ireland has notified the Commission that the disclosure of information would cause in or to Ireland the prejudice or risk referred to in paragraph 2(a) or (b) of Article 2 of this Agreement; or
- (b) the Government of the United Kingdom has notified the Commission that the disclosure of information would cause in or to the United Kingdom the prejudice or risk referred to in paragraph 2(a) or (b) of Article 2 of this Agreement,

the Commission shall ensure that any reports prepared in accordance with its reporting function do not include that information.

7. The provisions of this Article are without prejudice to the duties imposed on the Commission by paragraph 2 of Article 2 of this Agreement.

8. Communication of information by any of the following persons to any of the following persons shall not be regarded as disclosure of information for the purposes of this Article:

- (a) a member of the Commission;
- (b) a member of the staff of the Commission; and
- (c) an agent of, or person carrying out work for or giving advice to, the Commission.

9. Legislation in Ireland and in the United Kingdom shall create criminal offences to punish:

- (a) any disclosure of information that is in breach of paragraph 1 of this Article; and
- (b) any act by a member of the Commission that causes the Commission to act in breach of paragraph 6 of this Article.

Article 12

Accounts and audit

1. The Commission shall keep proper accounts and proper records of all moneys received or expended by it.

2. The Commission shall, at the joint request of the Government of Ireland and the Government of the United Kingdom, appoint auditors who shall audit the accounts of the Commission. The reports of the auditors shall be submitted to both Governments.

Article 13

Entry into force

This Agreement shall enter into force on the date on which the Government of Ireland and the Government of the United Kingdom exchange notifications of

completion of any procedures required by their law for the entry into force of the Agreement.

Article 14

Termination

This Agreement shall continue in force until such time as it is terminated by mutual agreement of the Government of Ireland and the Government of the United Kingdom, and shall thereafter cease to have effect save in so far as and to the extent necessary for the disposal of the remaining assets of the Commission, the fulfilment of the obligations placed on the Commission by paragraph 7 of Article 7 of this Agreement to destroy information and records or the settlement of its liabilities.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in two originals at Belfast on the 15th day of October 2015

For the Government of Ireland

For the Government of the United
Kingdom of Great Britain and
Northern Ireland

Charles Flanagan

Theresa Villiers

Annex

Arrangements concerning the operation of the Commission

1. Following receipt of an eligible family request for information about a death within the remit of the Commission, the Commission shall seek information about the death:
 - (a) through intermediaries appointed for this purpose; and
 - (b) directly from other persons (including witnesses to, or those involved in, the events concerned).
2. Any information received by the Commission about a death within its remit (whether or not an eligible family request for information has been made) shall be received in confidence but this does not prevent the Commission from subsequently disclosing information in accordance with this Agreement.
3. If the Commission receives information about a death within its remit but no eligible family request for information about the death has been made, the Commission shall store the information in case an eligible family request is made later. In such a case the Commission shall not initiate any contact with the family concerned.
4. The Commission may seek and receive information about a death in any medium (including photographs and other such representations). The Commission shall not seek or receive any physical object except documents, or other media, which record information about a death.
5. The Commission may take such steps as it considers appropriate for evaluating the credibility of information about deaths that is received by it.
6. The Commission may seek and receive information held by authorities in jurisdictions beyond Ireland and the United Kingdom. The Government of Ireland and the Government of the United Kingdom shall support its efforts in this connection.