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*Number 25 of 2017*

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**Independent Reporting Commission Act 2017**

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## **INDEPENDENT REPORTING COMMISSION ACT 2017**

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### **SCHEDULE**

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

[No. 25.]

*Independent Reporting Commission Act 2017.*

[2017.]

ACTS REFERRED TO

Freedom of Information Act 2014 (No. 30)

Independent Monitoring Commission Act 2003 (No. 40)



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*Number 25 of 2017*

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## **INDEPENDENT REPORTING COMMISSION ACT 2017**

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An Act to make provision in relation to the Independent Reporting Commission established by the Government and the Government of the United Kingdom of Great Britain and Northern Ireland under the Agreement between those Governments done at Dublin on 13 September 2016 and to provide for related matters. [26th July, 2017.]

**Be it enacted by the Oireachtas as follows:**

### **Interpretation**

1. (1) In this Act—

“Agreement” means the Agreement between the Government and the Government of the United Kingdom establishing the Independent Reporting Commission, done at Dublin on 13 September 2016;

“Commission” means the Independent Reporting Commission established by those Governments under the Agreement;

“Minister” means the Minister for Justice and Equality;

“Secretary of State” means Secretary of State in the Government of the United Kingdom;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland.

(2) In this Act a reference to a numbered Article is a reference to the Article so numbered of the Agreement.

(3) For convenience of reference the text of the Agreement is set out in the *Schedule*.

### **Status of Commission**

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

(2) The Commission shall be recognised as, and as having all the attributes of, a body corporate, including perpetual succession, the power to acquire, hold and dispose of land or other property and the power to sue.

(3) The Commission may be sued in its corporate name.

**Objective and functions of Commission**

3. (1) The objective and functions of the Commission are as set out in Articles 3 to 5.
- (2) The arrangements specified in Articles 6 and 10 apply in relation to the Commission.

**Provision of services to Commission**

4. In accordance with and to the extent provided for in Article 8, such moneys, premises, facilities and services (including staff) as may be necessary for the proper functioning of the Commission shall be provided by the Minister.

**Immunities and privileges**

5. (1) Subject to *section 6*—
- (a) the Commission has immunity from suit and legal process,
  - (b) its official archives and premises have the same inviolability as that accorded to the official archives and premises of a diplomatic mission, and
  - (c) the importation and exportation of goods imported or exported by or on behalf of the Commission and necessary for performing its functions are exempt from any prohibitions or restrictions.
- (2) Subject to *section 6*—
- (a) members and staff of the Commission have immunity from suit and legal process in respect of things done or omitted to be done by them when performing their functions.
  - (b) unless he or she is resident in the State for income tax purposes, the emoluments of a member of the Commission shall be—
    - (i) exempt from income tax, but may be taken into account in assessing the amount of income tax to be applied to his or her income from other sources, and
    - (ii) exempt from any other tax, contribution or levy.
- (3) Subject to *section 6*, agents or other persons shall, when performing functions assigned to them by the Commission, have—
- (a) immunity from suit and legal process in respect of things done or omitted to be done by them, and
  - (b) inviolability in respect of papers, documents and other materials prepared or received by them.
- (4) The Commission may waive any privilege or immunity provided for by this section.

**Duty to avoid prejudicial effects**

6. (1) In performing its functions the Commission shall not do anything that could reasonably be expected to—

- (a) prejudice the national security interests of the State or the United Kingdom,
  - (b) endanger the safety of any person,
  - (c) have a prejudicial effect on any proceedings which have been, or are likely to be, instituted before a court or tribunal, or
  - (d) have a prejudicial effect on the prevention, investigation, detection or prosecution of crime.
- (2) The Minister may issue guidelines to the Commission for the purpose of assisting the Commission in meeting its obligations under *subsection (1)* and the Commission shall have regard to such guidelines in the performance of its functions.

### **Information**

7. (1) The Commission, members of the Commission, members of staff of the Commission, any persons carrying out work for or giving advice to the Commission and any agents of the Commission shall not disclose any information obtained for the purposes of, or in connection with, the performance of their functions as such members, persons or agents unless the disclosure is authorised by or on behalf of the Commission.
- (2) The Commissioner of the Garda Síochána or any member of the Garda Síochána designated by the Commissioner for that purpose may disclose to the Commission any information in the possession of the Garda Síochána which in the opinion of the Commission is necessary for performing its functions.

### **Dissolution of Commission**

8. (1) If the Agreement is terminated, the Commission shall, by virtue of the termination of the Agreement, be deemed to have been dissolved.
- (2) The Minister may include in the order such transitional or consequential provisions as appear to him or her to be necessary or expedient to give full effect to Article 12.

### **Amendment of Freedom of Information Act 2014**

9. Section 42 of the Freedom of Information Act 2014 is amended in paragraph (c)—
- (a) by the deletion in subparagraph (iii) of “and”,
  - (b) by the substitution in subparagraph (iv) of “(within the meaning of the Independent Monitoring Commission Act 2003), and” for “(within the meaning of the Independent Monitoring Commission Act 2003),” and
  - (c) by the insertion of the following after subparagraph (iv)—
    - “(v) the Independent Reporting Commission established by the Agreement (within the meaning of the *Independent Reporting Commission Act 2017*),”.

**Laying of reports before Houses of Oireachtas**

- 10.** The Minister shall cause a copy of each report submitted to the Government by the Commission under Article 4 to be laid before each House of the Oireachtas.

**Expenses**

- 11.** The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

**Short title and commencement**

- 12.** (1) This Act may be cited as the Independent Reporting Commission Act 2017.
- (2) This Act shall come into operation on such day or days as the Minister, after consultation with the Secretary of State, may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## SCHEDULE

## AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ESTABLISHING THE INDEPENDENT REPORTING COMMISSION

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

Recalling the agreement reached in multi-party negotiations and annexed to the Agreement signed by both Governments on 10 April 1998 (the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on 10 April 1998);

Recalling subsequent agreements, including the St. Andrews Agreement, the Hillsborough Agreement devolving policing and justice powers, the Stormont House Agreement and the agreement reached on 17 November 2015, “A Fresh Start, The Stormont Agreement and Implementation Plan”;

Reiterating their commitment to work collectively to achieve a society free of paramilitarism, including within the context of the Strategy to End Paramilitarism published by the Northern Ireland Executive on 19 July 2016 (hereafter referred to as “the Executive’s Strategy”), by tackling all paramilitary activity and associated criminality and supporting the rule of law, the PSNI and the criminal justice system;

Having decided to establish an independent international commission to report on progress towards ending paramilitary activity connected with Northern Ireland and to report on and inform the implementation of the Executive’s Strategy;

HAVE AGREED as follows:

## ARTICLE 1

The Independent Reporting Commission (hereafter referred to as “the Commission”) is hereby established by the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland (hereafter “the Government of Ireland and the Government of the United Kingdom”) in accordance with this Agreement.

## ARTICLE 2

- (1) The Commission shall be independent in the performance of its functions.
- (2) The Commission shall have the legal capacity of a body corporate.

## ARTICLE 3

The objective of the Commission is to carry out the functions as described in Article 4 of this Agreement with a view to promoting progress towards ending paramilitary activity connected with Northern Ireland, and supporting long term peace and stability in society and stable and inclusive devolved Government in Northern Ireland.

## ARTICLE 4

- (1) In relation to the remaining threat of paramilitary activity, in particular from those paramilitary groups declared to be on ceasefire, the Commission shall:
  - (a) report on progress towards ending continuing paramilitary activity connected with Northern Ireland; and

(b) report on the implementation of the relevant measures of the Government of Ireland, the Government of the United Kingdom, and the Northern Ireland Executive, including the Executive's Strategy.

(2) The Commission shall report annually to the Government of Ireland, the Government of the United Kingdom and the Northern Ireland Executive. The Government of Ireland and the Government of the United Kingdom may also jointly request reports on such further occasions as required. The Governments shall publish the reports of the Commission.

(3) The Commission, in its reports, may make recommendations to the Northern Ireland Executive in order to inform future Programme for Government priorities and commitments through to 2021.

#### ARTICLE 5

In carrying out its functions as described in Article 4 of this Agreement the Commission shall consult:

- (a) the Government of Ireland and relevant law enforcement agencies;
- (b) the Government of the United Kingdom and relevant law enforcement agencies; and
- (c) in Northern Ireland, the Northern Ireland Executive, the Police Service of Northern Ireland, statutory agencies, local councils, communities and civic society organisations.

#### ARTICLE 6

The members of the Commission, who shall include in their number persons of international standing, shall be appointed and serve on terms and conditions decided by the Government of Ireland and the Government of the United Kingdom, as follows:

- (a) one member shall be nominated by the Government of Ireland;
- (b) one member shall be nominated by the Government of the United Kingdom;
- (c) two members shall be nominated by the Northern Ireland Executive.

#### ARTICLE 7

(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 Commission archive, but may provide for the Commission to waive such immunities.

#### ARTICLE 8

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 9

- (1) No information shall be disclosed by, or on behalf of, the Commission in fulfilment of its functions under Article 4 except by decision of the Commission.
- (2) Members of the Commission, staff of the Commission, persons carrying out work for or giving advice to the Commission and agents of the Commission shall, in accordance with the relevant legislation of Ireland and of the United Kingdom, be bound not to disclose any information obtained in the course of the performance of their functions under Article 4 as such members, persons or agents unless such disclosure is authorised by or on behalf of the Commission. Communication of such information to each other shall not be considered disclosure for the purposes of this Article.
- (3) The Commission shall not do anything in carrying out its functions which might;
  - (a) put at risk the safety or life of any person;
  - (b) prejudice the national security interests of Ireland or of the United Kingdom;
  - (c) have a prejudicial effect on any proceedings which have, or are likely to be, commenced in a court of law; or
  - (d) have a prejudicial effect on the prevention, investigation, detection or prosecution of crime.
- (4) Legislation in Ireland and in the United Kingdom may set out arrangements under which the Government of Ireland or the Government of the United Kingdom, respectively, may assist the Commission in meeting its obligations set out in Article 9(3).

#### ARTICLE 10

The Commission shall keep proper accounts and proper records of all moneys received or expended by it and 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 11

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 entry into force of the Agreement.

## ARTICLE 12

This Agreement shall continue in force until terminated by mutual agreement of the Government of Ireland and the Government of the United Kingdom and thereafter shall cease to have effect save in so far as and to the extent necessary for meeting any liabilities or disposing in an orderly manner of any remaining assets of the Commission and for the destruction by the Commission of all information received by it in connection with the performance of its functions under Article 4 of this Agreement and any records it holds relating to such information.

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

DONE at Dublin in two originals on the thirteenth day of September 2016.

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

**JAMES BROKESHIRE**

**For the Government of Ireland:**

**CHARLES FLANAGAN**