



Number 40 of 2003

INDEPENDENT MONITORING COMMISSION ACT 2003

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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 MONITORING COMMISSION,
DONE AT DUBLIN ON 25 NOVEMBER 2003

[No. 40.]

*Independent Monitoring
Commission Act 2003.*

[2003.]

ACTS REFERRED TO

Criminal Justice (Location of Victims' Remains) Act 1999	1999, No. 9
Freedom of Information Act 1997	1997, No. 13
Freedom of Information (Amendment) Act 2003	2003, No. 9



Number 40 of 2003

INDEPENDENT MONITORING COMMISSION ACT 2003

AN ACT TO MAKE PROVISION IN RELATION TO THE INDEPENDENT MONITORING 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 25 NOVEMBER 2003 AND TO PROVIDE FOR RELATED MATTERS. [19th December, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Agreement” means the Agreement between the Government and the Government of the United Kingdom establishing the Independent Monitoring Commission, done at Dublin on 25 November 2003;

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

“functions” includes powers and duties, and references to performing functions include references to exercising powers and carrying out duties;

“the Minister” means the Minister for Justice, Equality and Law Reform;

“Secretary of State” means a 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) The text of the Agreement is set out in the Schedule to this Act.

[No. 40.] *Independent Monitoring Commission Act 2003.* [2003.]

Status of Commission.

2.—(1) The Commission is independent in the performance of its functions.

(2) It has the legal capacity of a body corporate.

Objective and functions of Commission.

3.—(1) The objective and functions of the Commission are as set out in Articles 3 to 7.

(2) The arrangements specified in Articles 10 and 14 apply in relation to the Commission.

Provision of services to Commission.

4.—In accordance with and to the extent provided for in Article 12, 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) (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 official functions.

(b) Unless they are Irish citizens or permanently resident in the State—

(i) their salaries and emoluments as such members and staff are exempt from payment of income tax, but may be taken into account in assessing the amount of taxation to be applied to their income from other sources, and

(ii) they are exempt from payment of social welfare or health contributions or any other tax, contribution or levy in respect of those salaries or emoluments.

(3) Agents or persons performing functions assigned to them by the Commission have while doing so—

(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.

6.—In performing its functions the Commission shall not do anything that could reasonably be expected to— Duty to avoid
prejudicial effects.

- (a) prejudice the national security interests of the State or the United Kingdom,
- (b) endanger the safety of any person, or
- (c) have a prejudicial effect on any proceedings which have been, or are likely to be, instituted before a court or tribunal.

7.—(1) The Commissioner of the Garda Síochána or any member of the Garda Síochána designated by him 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. Information.

(2) Nothing in any other enactment prohibits disclosure of relevant factual information either to or by the Commission.

(3) Members of the Commission, members of its staff, any persons carrying out work for or giving advice to it and any of its agents shall not disclose any information obtained in their capacity as such members, persons or agents unless the disclosure is authorised by or on behalf of the Commission.

8.—(1) On the termination of the Agreement the Commission shall stand dissolved on such day as the Minister may, after consultation with the Secretary of State, by order appoint. Dissolution of
Commission.

(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 16.

9.—(1) Section 24 of the Freedom of Information Act 1997 is amended in subsection (2)(a)(ii) by inserting— Amendment of
section 24 of
Freedom of
Information Act
1997.

(a) “or” after “subsection (1)(e),” in clause (III), and

(b) the following clause after clause (III)—

“(IV) the functioning of the Independent Monitoring Commission (within the meaning of the *Independent Monitoring Commission Act 2003*),”.

(2) The reference in *subsection (1)* to section 24 is to that section as amended by section 9 of the Criminal Justice (Location of Victims’ Remains) Act 1999 and section 19 of the Freedom of Information (Amendment) Act 2003.

10.—The Minister shall cause a copy of each report submitted to the Government by the Commission or its members under Articles 4 to 6 to be laid before each House of the Oireachtas. Laying of reports
before Houses of
Oireachtas.

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 Finance, be paid out of moneys provided by the Oireachtas. Expenses.

Short title and commencement.

12.—(1) This Act may be cited as the Independent Monitoring Commission Act 2003.

(2) It comes into operation on such day as the Minister, after consultation with the Secretary of State, may by order appoint.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ESTABLISHING THE INDEPENDENT MONITORING COMMISSION, DONE AT DUBLIN ON 25 NOVEMBER 2003

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 (herein referred to as the multi-party agreement) 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);

Reiterating their shared commitment to the transition to a peaceful society in Northern Ireland and the establishment of the institutions of the multi-party agreement on a stable and inclusive basis;

Having decided, recalling the text of the Agreement on Monitoring and Compliance published by the two Governments on 1 May 2003, to establish an independent body to monitor certain matters and to advise the two Governments, with a view to building the necessary trust and confidence among the Northern Ireland parties;

Have agreed as follows:

Article 1

The Independent Monitoring 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 two Governments”) 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 Articles 4, 5, 6 and 7 of this Agreement with a view to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland.

Article 4

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In relation to the remaining threat from paramilitary groups, the Commission shall:

- (a) monitor any continuing activity by paramilitary groups including:
 - i. attacks on the security forces, murders, sectarian attacks, involvement in riots, and other criminal offences;
 - ii. training, targeting, intelligence gathering, acquisition or development of arms or weapons and other preparations for terrorist campaigns;
 - iii. punishment beatings and attacks and exiling;
- (b) assess:
 - i. whether the leaderships of such organisations are directing such incidents or seeking to prevent them; and
 - ii. trends in security incidents.
- (c) report its findings in respect of paragraphs (a) and (b) of this Article to the two Governments at six-monthly intervals; and, at the joint request of the two Governments, or if the Commission sees fit to do so, produce further reports on paramilitary activity on an ad hoc basis.

Article 5

(1) In relation to a commitment by the British Government to a package of security normalisation measures, the Commission shall:

- (a) monitor whether commitments made are being fully implemented within the agreed timescales, in the light of its assessment of the paramilitary threat and the British Government's obligation to ensure the safety and security of the community as a whole. The activities it shall monitor in this regard shall include:
 - i. demolition of towers and observation posts in Northern Ireland;
 - ii. withdrawal of troops from police stations in Northern Ireland;
 - iii. closure and dismantling of military bases and installations in Northern Ireland;
 - iv. troop deployments and withdrawals from Northern Ireland and levels of British Army helicopter use;
 - v. the repeal of counter-terrorist legislation particular to Northern Ireland;
- (b) report its findings in respect of paragraph (a) of this Article to the two Governments at six-monthly intervals.

(2) The Commission shall, at the request of the British Government, prepare a report giving an account of security normalisation

SCH.

activity undertaken by the British Government over a specified period. The period to be covered by such a report, and the activities it shall monitor in this regard, shall be notified to the Commission by the British Government.

Article 6

(1) The Commission may consider a claim by any party represented in the Northern Ireland Assembly:

- (a) that a Minister, or another party in the Assembly, is not committed to non-violence and exclusively peaceful and democratic means; or
- (b) that a Minister has failed to observe any other terms of the pledge of office; or that a party is not committed to such of its members as are or might become Ministers observing the other terms of the pledge of office.

(2) Insofar as a claim under paragraph 1(b) relates to the operation of the institutional arrangements under Strand One of the multi-party Agreement, the claim shall be considered only by those members of the Commission appointed by the British Government under Article 10(1)(a) of this Agreement.

(3) The Commission members appointed under Article 10(1)(a) of this Agreement shall report their findings in respect of any claim falling within paragraph (2) of this Article solely to the British Government. The Commission shall report its findings on any other claim under this Article to the two Governments.

(4) In this Article—

- (a) references to the pledge of office are to the pledge of office set out in Annex A to Strand One of the multi-party agreement;
- (b) references to a Minister are to the First Minister, the Deputy First Minister, a Minister or a junior Minister in the devolved administration in Northern Ireland.

Article 7

When reporting under Articles 4 or 6 of this Agreement, the Commission, or in the case of Article 6(2), the relevant members thereof shall recommend any remedial action considered necessary. The Commission may also recommend what measures, if any, it considers might appropriately be taken by the Northern Ireland Assembly, such measures being limited to those which the Northern Ireland Assembly has power to take under relevant United Kingdom legislation.

Article 8

In preparing its reports and making recommendations as described in Article 7 of this Agreement, the Commission shall be accessible to all interested parties and shall consult as necessary on the issues mentioned in Articles 4 to 6 of this Agreement.

Article 9

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Where the Commission reports to either or both of the two Governments under Articles 4, 5 and 6 of this Agreement, the Government or Governments to whom the report is submitted shall take steps to make those reports public.

Article 10

(1) The Commission shall consist of four members, who shall be appointed as follows—

- (a) two members, one of whom shall be from Northern Ireland, shall be appointed by the Government of the United Kingdom of Great Britain and Northern Ireland;
- (b) one member shall be appointed by the Government of Ireland;
- (c) one member appointed jointly by the two Governments, who shall be a nominee of the Government of the United States of America.

(2) The members of the Commission shall serve on terms and conditions decided by the two Governments.

Article 11

The Commission, its staff, property and premises, and any agents of persons carrying out work for or giving advice to the Commission shall have such privileges, immunities and inviolabilities as may be conferred or provided for in accordance with the relevant legislation of Ireland and of the United Kingdom.

Article 12

Such monies, premises, facilities and services as may be necessary for the proper functioning of the Commission shall be provided by the two Governments on a basis to be determined by them.

Article 13

(1) 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 be bound not to disclose any information obtained in the course of the performance of their functions as such members or persons unless such disclosure is authorised by or on behalf of the Commission.

(2) The Commission shall not do anything in carrying out its functions which might—

- i. prejudice the national security interests of Ireland or of the United Kingdom;
- ii. put at risk the safety or life of any person;
- iii. have a prejudicial effect on any proceedings which have, or are likely to be, commenced in a court of law.

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Article 14

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 two Governments, appoint auditors who shall audit the accounts of the Commission. The reports of the auditors shall be submitted to both Governments.

Article 15

(1) This Agreement shall enter into force on the date on which the two Governments exchange notifications of their acceptance of it;

(2) The obligation imposed on the Commission in Article 5(1) of this Agreement to monitor and report on any programme of security normalisation undertaken by the British Government shall commence from the date on which the British Government formally notifies the Government of Ireland and the Commission of the commencement of such a programme. Such notification shall be given once the British Government, after consulting the Irish Government, is satisfied with commitments that have been given on an end to paramilitary activity.

(3) Once notification as set out in paragraph (2) of this Article is given by the British Government, Article 5(2) of this Agreement shall cease to have effect.

Article 16

The Agreement shall continue in force until terminated by mutual agreement 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 in accordance with the spirit of the Agreement.

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 25th November 2003.

Michael McDowell T.D.
**Minister for Justice, Equality
and Law Reform**

Stewart Eldon
**Ambassador of the United
Kingdom of Great Britain
and Northern Ireland**