

DRAFT

AGREEMENT

between

**THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND**

and

THE GOVERNMENT OF IRELAND

establishing

THE INDEPENDENT MONITORING COMMISSION

DRAFT

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing the Independent Monitoring Commission

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

DRAFT

Article 4

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 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:

DRAFT

- (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.

DRAFT

Article 9

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 the United Kingdom or of Ireland;
 - 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.

Article 14

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

DRAFT

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 [] in two originals on the [] 2003.