

**PROPOSED AGREEMENT
31 DECEMBER 2013**

**AN AGREEMENT AMONG THE PARTIES OF THE
NORTHERN IRELAND EXECUTIVE**

on

**PARADES, SELECT COMMEMORATIONS, and
RELATED PROTESTS;
FLAGS AND EMBLEMS;
and
CONTENDING WITH THE PAST**

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Introduction

We in Northern Ireland have come a long way. From the depths of violence, we have built an impressive, albeit incomplete, peace. More than fifteen years have now passed since the Belfast/Good Friday Agreement. In those years Northern Ireland has reached several milestones, including the decommissioning of arms, the St. Andrews Agreement of 2006, and the Hillsborough Castle Agreement of 2010, which paved the way for policing and justice powers to be devolved. Political structures are in place and structures of cooperation are established. Power-sharing has encouraged and enabled individuals once at odds to work together as partners in governance.

Despite these positive steps, we have further distance to travel. Many continue to await the end of sectarianism and the peace dividend that should be all citizens' due. The division of our society runs through our schools and our neighbourhoods. Efforts envisaged as part of the outworkings of the peace process remain unfinished and 'parity of esteem' remains a work in progress. Despite the admirable efforts of individuals and organisations across the public and non-governmental sectors, many in our society struggle with needs stemming from decades of conflict. These trends jeopardise both the progress we have made to date and our ability to extend it into the future.

The past year has been particularly challenging. We have witnessed friction and civil disorder. We have also seen continued acts of violence committed by those who wish to thwart Northern Ireland's progress toward a shared and peaceful future.

Last spring saw the publication of the 'Together: Building a United Community' strategy by the Office of the First Minister and deputy First Minister (OFMDFM). This was the latest in a series of efforts, including 'A Shared Future,' published under direct rule in 2005, and a public consultation on the Programme for Cohesion, Sharing, and Integration of 2010. This Agreement Among the Parties of the Northern Ireland Executive stems from the work of a panel established pursuant to 'Together: Building a United Community.' As this document stated:

We recognise that there remain difficult and contentious issues in our society. In order to take forward work on these issues, we will establish an All Party Group which will have an independent Chair from outside the political parties. The All Party Group will consider and make recommendations on matters including parades and protests; flags, symbols, emblems and related matters; and the Past. The Group will report to the First Minister and deputy First Minister. The Group will establish mechanisms to hear from the various stakeholders across our community as to how best to address these difficult and contentious issues.

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In accordance with this, the Panel of Parties in the Northern Ireland Executive was constituted under a chair, Richard Haass, and a vice chair, Meghan O’Sullivan. The panel included two members from each of the five parties in the Executive, with the addition of the two Junior Ministers.

The Chair and Vice Chair prioritised from the start engagement with civic society and the public. They established a website with a public submissions channel that attracted over six hundred submissions. During several visits to Northern Ireland, the Chair and Vice Chair held more than one hundred meetings with a broad range of groups, panel members, and officials from across Northern Ireland. Panel members, too, conducted their own intensive outreach and engagement in connection with their work on the panel.

It was in this context that the members of the Panel of Parties in the Northern Ireland Executive conducted the negotiations leading to this agreement. We carried out this work in support of the vision, expressed in ‘Together: Building a United Community,’ of a future based on equality before the law, equality of opportunity, good relations, and reconciliation. Our discussions have been designed to bring forward a set of recommendations that will provide long-term, sustainable solutions that are in the best interests of the society and that will make the peace more resilient. This agreement is part of our commitment to contending with the legacy of the past and to creating a modern, compassionate society. We firmly believe that the steps outlined here will help build a more united community where the needs of those who have suffered as a result of violence are addressed; where everyone has the ability to peacefully celebrate his or her culture; where the rule of law is upheld; and where public space is shared, open, and accessible to all.

Although we believe this agreement constitutes a significant step forward, it does not resolve all difficulties around the issues addressed. We could not reach an accord on initiatives to manage the issue of flags and emblems. Moreover, while we agreed a number of steps to contend with the past, other steps proved beyond consensus. This document is a contribution to addressing these difficult issues, not a solution.

Just as the construction of this agreement required consultation with a variety of stakeholders, it will require the work of many to implement. It is not self-enacting, even though it represents a consensus among the five parties. We will do our part and are committed to working with others to give effect to what is agreed here.

We are standing at a crossroads in Northern Ireland. This is a remarkable opportunity to make bold choices to address the issues that hold us back from meeting our society’s full potential. Further delay will risk an increase in levels of public disengagement. The passage of time—and the passing of those with information to

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share and wounds to salve—will also deprive Northern Ireland of the chance to learn as much as possible about its history while there is still time to do so. This loss would compound the social and emotional costs of our prolonged conflict.

We recognise that many of the initiatives outlined in this agreement will demand a substantial investment of financial and other resources. At a time of continuing economic challenges, some may wonder why attention should be given to these issues, potentially at the expense of others. But we believe the measures we have agreed to here constitute important investments in Northern Ireland's future. Progress on the issues we face would reduce the costs of policing our society and promote tourism, investment, commerce, and other durable economic gains.

We recognise that the issues we are addressing are in many ways reflections as much as causes of our society's challenges. Difficulties surrounding parades and protests, flags and emblems, and the past are symptoms of much deeper divisions. But those problems could well be far less daunting, far lighter a weight, were we able to face them with this agreement as a backdrop. As this work goes forward, rigorous equality of opportunity and equality before the law, mutual respect, and application of the rule of law must be the governing principles for Northern Ireland, not just now but permanently.

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Parades, Select Commemorations, and Related Protests

Introduction

We agree that parading and marching are an important part of the culture of many of Northern Ireland's citizens. The practice of parading, and many of the organisations that lead and participate in it, dates back centuries. This tradition is protected under the rights to freedom of expression and freedom of assembly and association guaranteed by Articles 10 and 11 of the European Convention on Human Rights (ECHR).

We also recognise that this issue involves not only rights but also responsibilities and relationships. As stated in the Hillsborough Castle Agreement of 2010, 'that at times there are competing rights.' The Belfast/Good Friday Agreement laid out the 'right to freedom from sectarian harassment,' which was reaffirmed in the Hillsborough Castle Agreement as the 'right for everyone to be free from sectarian harassment.' More broadly, 'Parades and Protests in Northern Ireland,' published by the Northern Ireland Human Rights Commission in November 2013, lists a wide variety of 'human rights of individuals engaged in or affected by a parade or protest.' These are guaranteed by various provisions of the ECHR and other international conventions, including, fundamentally, Article 8 of the ECHR. We also note in this context the obligation on public authorities under Section 75 of the Northern Ireland Act 1998 to 'have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.'

Those conducting parades, protests, and other events need to exercise their rights and uphold their responsibilities in two contexts. The first is the context of other rights and considerations. These include societal interests, such as public order, commerce, the expenditure of public funds, and access to public spaces and facilities.

The second context is Northern Ireland's unique history and characteristics. This requires that the tradition of parading, protesting, and assembling be conducted in a way that contributes to the goal of building a shared and open society. Those who parade, commemorate, and protest have just as strong an interest as those who do not in building a peaceful and prosperous Northern Ireland where reconciliation takes hold and all space is shared. Restraint and generosity in the exercise of the freedom of expression, assembly, and association, as well as fulfilment of the associated responsibilities, can advance this goal.

We also accept that there is a particular responsibility for elected representatives to uphold decisions made by any body that has the lawful authority to make determinations in relation to parades, select commemorations, and related protests. We therefore commit to acquiescing to and upholding any such determinations,

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regardless of whether they reflect our own personal preferences or the wishes of the communities we represent, and to supporting the police and the criminal justice system in enforcing such determinations. We agree that this includes the responsibility to call on others to act in the same way. We recognise that the only legitimate means to challenge such determinations are those set out below.

In order to build public confidence regarding our individual and collective commitment to this agreement, and recognising that it will take time for the new structures set out below to be established in legislation, the commitments we expressed above will also apply to the existing and any other interim arrangements for the regulation of parades, select commemorations, and protests. Parades, commemorations, and protests must be conducted in full adherence to the rule of law.

It is our expectation that the vast majority of parades and commemorations will continue to occur without contention or violence. We recognise, as the Northern Ireland Human Rights Commission has explained, that ‘where the state proposes to interfere with a parade or protest it must identify a lawful basis for the interference.’ We adopt this agreement with the aim of prioritising local solutions and facilitating the peaceful exercise of the freedoms of expression, assembly, and association, as considered in the context of other rights and societal needs. Equally, we aim to ensure that the few remaining contentious events that take place are resolved fairly, transparently, and in a manner that respects the rights of all.

New arrangements

Recent years have seen the vesting of greater responsibility for governance in Northern Ireland’s devolved institutions. Given the salience of parades, protests, and other events for many in Northern Ireland’s unique culture, the management of this area of life should move into the devolved sphere. Accordingly, we agree to establish via legislation in the Northern Ireland Assembly a new set of arrangements for this purpose. In preparation for this step, we agree to request that the Secretary of State for Northern Ireland take the necessary actions to devolve authorities and responsibilities for parades, protests, and events to the new institutions called for in this agreement.

The Office for Parades, Select Commemorations, and Related Protests

A new institution to be established via legislation in the Northern Ireland Assembly is the Office for Parades, Select Commemorations, and Related Protests (‘the Office’). The Office shall serve a strictly administrative function intended to efficiently facilitate the vast majority of parades and other events that are non-contentious and to promote the resolution of any related disputes through community dialogue or mediation.

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The Office shall be constituted as a non-departmental public body sponsored by the Office of the First Minister and deputy First Minister. Its director shall be appointed by the First Minister and deputy First Minister, acting jointly, in a public appointments process consistent with the Code of Practice of the Commissioner for Public Appointments in Northern Ireland.

The Office shall be an administrative, non-partisan, and non-judicial body with authority for accepting event notifications, facilitating community dialogue, and referring parties to outside mediators, as described below. It shall have no authority to make adjudications.

Notification of events

Any individual or organisation wishing to organise a parade or select commemoration, as explained below, shall be required to notify the Office no less than twenty-five working days before the planned event, with the exceptions noted below. Working days means all days except Saturdays, Sundays, and public or bank holidays. (All timeframes mentioned are notional, to be further delineated in legislation, and are not to exceed a total of thirty working days.)

Select commemorations are events:

- That are intended to commemorate or mark in any way any event of public significance that has occurred in Northern Ireland, or that occurred in another jurisdiction but holds a clear connection with events in Northern Ireland;
- That hold the potential to disrupt normal public services, including vehicle traffic, public safety services, or public access to any location; and
- In which the participants are moving or stationary.

Notification provisions for event-related protests are given separately below. They shall be treated by these new arrangements in the same fashion as parades, select commemorations, and related protests but subject to a necessarily shorter timeframe.

We agree that the legislation giving effect to these arrangements shall list events exempted from these notification requirements, including but not limited to funerals.

To best uphold the fundamental rights to freedom of expression, assembly, and association, the notification process shall be as convenient as possible, providing organisers the opportunity to submit notifications online, by registered mail, or in person directly to the Office. Notifications shall provide the information required by the Office in the procedures it establishes, including, at a minimum, the event's sponsoring organisation and desired timing and location, estimated size, and purpose. Notifications shall also include the full name and contact information, including a telephone number, of an individual or individuals (up to three) notifying the event,

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who shall be considered the organiser or organisers. Notification forms shall also provide a space for organisers to indicate any dialogue previously completed or underway with members of the community affected by the event. We wholeheartedly encourage such dialogue and emphasise that it should be undertaken on a routine and ongoing basis. Organisers shall be required to notify on the form all other groups, including bands, participating in the event. This shall require basic information, including the name and contact details of the bandmaster or other leader. This person shall take reasonable steps to ensure that the conduct of the group or band is consistent with the code of conduct and the notification, agreement, or determination concerning the event.

The Office shall accept all notifications that include all the information required by legislation or by the Office itself and that are made within the defined time period, and shall confirm its acceptance by the fastest available means to organisers. It shall return to organisers all notifications that provide insufficient information by the fastest available means in order to allow them a prompt opportunity to complete their notification. The Office shall forward to the Police Service of Northern Ireland (PSNI) the intended timing, location, size, purpose, and contact person for all notified events. The PSNI shall be able to provide comments. Elected representatives from the area will also be informed of the event.

Under unusual circumstances, principally in respect of events related to unforeseeable developments and not specified as exempt, the Office shall accept notifications less than twenty-five working days before the planned event. Such notifications shall include an explanation of the exceptional circumstances that the organiser believes justify the late notification. The Office, upon verifying the completeness of the notification, shall forward it no later than one working day after receipt to the Authority for Public Events Adjudication ('the Authority'), an adjudication body for parades, select commemorations, and related protests described in detail below. The Authority shall consider such notifications in the manner described below. Moreover, organisers shall be permitted to file amendments to previous notifications before the notified event takes place, for example to add or remove participating groups. The Office shall forward such amendments no later than one working day after receipt to the Authority, which shall consider them in the manner described below.

It shall be clarified in the legislation giving effect to these arrangements that it is the obligation of participants to ensure they are familiar with the terms of the notification, agreement, or determination concerning the event. The legislation shall also state that the event organiser or organisers (up to three) jointly bear the responsibility for taking reasonable steps:

- To limit participation in the event to the organisations and numbers of individuals listed in the notification;

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- To make all participants aware of the code of conduct (explained below) and of the terms of the notification, agreement, or determination concerning the event; and
- To discourage behaviour by any participant while the event is underway that breaches the law or any applicable provisions.

Any parade, protest, or select commemoration that is not exempt or that lacks an accepted notification shall be illegal and should not normally proceed, and those participating shall be liable to prosecution. The legislation shall specify that the Police Service of Northern Ireland shall have full authority to enforce these provisions.

Community dialogue and mediation

We believe that face-to-face dialogue and the development and maintenance of good relations are essential for the evolution of parading practices that enjoy sufficient consensus in this society. Relationships between those wishing to hold a parade, protest, or select commemoration and those who live, work, trade, or conduct other normal activities in the area traversed by those events are at the heart of this issue and have a direct bearing on the degree to which an event becomes contentious. We call on all parties involved in related disputes to engage in sustained and meaningful dialogue as a matter of priority and with due regard for the rights and responsibilities of all sides. Although there are provisions in these arrangements for dialogue in the days following a notification, we believe that dialogue and the pursuit of good relations should be an ongoing part of everyday life in Northern Ireland. This can produce the salutary outcome of informally resolving any disputes related to parades and other events before they are notified.

We further agree that while the right and ability to object to or protest against an event should be protected, not all objections should be presumed to be equally valid, depending on such factors as the actual harm to be suffered by the objector and the degree to which the objection represents the views of those who stand to be directly affected along the route or at the location notified.

No later than two working days after the receipt of a timely notification, the Office shall publish, via its website, the name (though not the contact information) of the organisation holding the event, as well as the date, time, location, purpose, and other basic information about the notified event. Starting on the day this information is published, there shall be a period of ten working days during which anyone may lodge an objection, via the Office's website, to any element of the notified event. During the first five days of this period, anyone may notify a protest against the planned event, leaving the rest of the period for community dialogue, mediation as needed, and the notification of any protests against protests. On receiving a notification for a protest against any notified event (including another protest), the

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Office shall publish the name (though not the contact information) of the organisation holding the protest, as well as the date, time, location, purpose, and other basic information about the notified protest. It shall also forward to the PSNI the intended timing, location, size, purpose, and contact person for all notified protests. Event-related protests are defined as protests that:

- Hold the potential to disrupt normal public services, as defined above;
- Are held at or near the route or place of a parade or other event for which notification is required;
- Are held at or around the time of the parade or other event; and
- Have the purpose of demonstrating opposition to the parade or other event.

During the ten-working-day period following the Office's publication of an event, we expect that organisers and those who express opposition to a notified event will engage with each other in sustained and meaningful dialogue to resolve any differences over the conduct of the event. We recognise that this already occurs in many cases and note models of good practice that have been instituted in communities throughout Northern Ireland. The Office will not proactively play a direct role in community dialogue during this period. However, upon the request of one or more parties to a dispute, and starting at the earliest stage of the process, the Office may facilitate such dialogue, including by contacting relevant individuals and organisations, arranging meetings, and providing a venue for meetings. The Office shall also forward objections filed against an event to the person who notified the event, without including the name, contact information, or any other identifying information of the person objecting. This will enable organisers to consider adjustments that address genuine community concerns and, potentially, avoid the need for adjudication.

Formal mediation can help resolve disputes unable to be resolved through community dialogue. Upon the request of one or more parties to such a dispute, the Office shall refer parties to institutions offering the services of suitable qualified mediators and to qualified individual mediators. The Office shall maintain a list of such institutions and individuals. It shall allow parties the opportunity to agree on an individual mediator. If no mediator is agreed on, each party shall have the opportunity to appoint its own mediator. If needed, the Office shall assign a mediator after a number of days to be specified in legislation.

Because of personal circumstances, an event organiser may not feel comfortable speaking directly with individuals protesting against or objecting to those events, or vice versa. Such situations can be addressed by conducting dialogue with other individuals from the same organisation. The failure of an individual to engage in dialogue shall not be used against the notified event.

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If at any time during the ten-working-day period an agreement emerges through community dialogue or mediation regarding the notified event, the parties or the mediator or mediators, if used, shall so inform the Office in a report stating the precise agreed terms. The Office shall file the terms and the event can then take place as agreed. In cases where no objections are raised to a notified event during the specified period, the Office shall file the notified terms and the event can then take place as notified. Any variation in the event materially departing from the terms of the notification shall be unlawful.

If no agreement is reached, the mediator or mediators will report to the Office on the results of the mediation. Such a report shall be factual; be agreed between the parties to the mediation; and include information regarding the participants in the process, the number and duration of meetings held, and the issues discussed during those meetings. The Office will then refer the case to the Authority.

The Authority for Public Events Adjudication

We recognise that, although the vast majority of events occur peacefully, with disputes resolved through community dialogue and mediation, an adjudication authority is necessary in order to make decisions in cases where disputes remain.

Therefore, another new institution to be established via legislation in the Northern Ireland Assembly is the Authority for Public Events Adjudication ('the Authority'). The Authority shall be an independent regulatory body sponsored by the Office of the First Minister and deputy First Minister. It shall adopt an approach compliant with the European Convention on Human Rights and other international conventions. The Authority shall conduct its work in a fair, equitable, consistent, and transparent manner. Its operations, resources, personnel, information networks, records, and premises shall be strictly separate from those of the Office for Parades, Select Commemorations, and Related Protests.

The Authority shall consist of seven members including a chair. The chair shall be a legally qualified individual of senior standing appointed on the basis of merit by the Northern Ireland Judicial Appointments Commission (NIJAC). The chair shall not be considered a judicial office. The other six members shall be broadly representative of the community in Northern Ireland and shall possess a varied set of skills and backgrounds. They shall be appointed by the First Minister and deputy First Minister, acting jointly, in a public appointments process consistent with the Code of Practice of the Commissioner for Public Appointments in Northern Ireland. No elected representatives shall be appointed to the Authority.

The chair and members shall be appointed on a rolling basis as follows. In constituting the Authority for the first time, NIJAC shall appoint a chair for a three-

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year term. The First Minister and deputy First Minister, acting jointly, shall simultaneously appoint three members for a three-year term and three members for a four-year term. Thereafter, when a term expires, NIJAC and/or the First Minister and deputy First Minister, the latter acting jointly, shall appoint a new chair and/or three members as required for a three-year term. Any members who leave the Authority through death or resignation shall be replaced through an immediate appointment by NIJAC (in the case of the chair) or the First Minister and deputy First Minister (in the case of a member) that shall last until the expiration of the term of the member who died or resigned. The chair and members of the Authority may be reappointed once for three years.

Outside the appointment of members of the Authority, NIJAC, the First Minister, and the deputy First Minister shall not have any role in the operations of the Authority.

Receipt of a case by the Authority

As described above, in cases where community dialogue and/or mediation do not produce agreement on a parade, select commemoration, and/or protest(s), the Office shall refer the case to the Authority. This shall occur no more than one working day after the end of the ten-working-day period for community dialogue and mediation.

When the Authority receives a notification that was submitted to the Office fewer than twenty-five working days before the planned event, it shall immediately consider the circumstances and any explanation offered for the late notification. Should the Authority judge that the circumstances and explanation do not justify the late notification, it shall issue a summary ruling stating that the event shall not proceed. Should the Authority judge that the late notification is justified, it shall then be processed in the normal way. This may include referring it back to the Office for dialogue and mediation. The Authority shall also consider any amendments to notifications forwarded to it by the Office. Depending on the circumstances and timeframe, this may include referring the case back to the Office for dialogue and mediation, adjudicating it, or adjusting an already-issued adjudication.

Adjudication

Immediately upon receiving a case requiring adjudication, the Authority shall publish a statement via its website. The statement shall invite the organisers of the parade or select commemoration and any protests, others who support or object to the event, the PSNI, the mediator or mediators if used, and members of the public the opportunity to provide written or oral representations concerning the conduct of the event(s). Such representations shall be due no more than three working days following the publication of the statement. The Authority shall share representations with the organiser of the event and those who have made objections, with names and all

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identifying information withheld. It will then have three working days to deliberate and issue its determination. Members shall make all determinations by majority vote.

Along with relevant human rights standards, the Authority shall consider, at a minimum, the following criteria in its determinations:

- The historical and traditional nature and purpose, if any, of the notified event(s) and the route used;
- Adherence or non-adherence to determinations, laws, and the Code of Conduct at events over the preceding 12 months or at the preceding event, if less recent, involving the same organisations or the same organisations under a different name;
- Potential disruption caused by the event(s) to normal community life, for example, freedom of movement, commerce, access to public services and facilities, and access to places of worship;
- Any potential impact on community relations and the extent thereof;
- Any potential impact on public order and the extent thereof;
- The current characteristics of the route or locations of the event(s), being sensitive to cultural realities and noting whether it is an arterial route or predominantly residential or commercial in nature, and any community views on the event(s) in the area(s) to be affected;
- The cumulative impact and/or frequency of events conducted recently in the same area;
- Any financial and economic impact of the event, including potential benefits to be engendered, disruption to normal trading, and impact on public agencies providing relevant services; and
- The participation or non-participation of any parties, on a corporate basis, in face-to-face dialogue or mediation and any explanations offered for non-participation, as outlined above.

Any other criteria specified in the legislation establishing these arrangements shall also be considered. The order in which the criteria above are listed does not indicate any relative priority or weight.

In its determinations, the Authority shall have the power to require any alteration to the conduct of a parade, select commemoration, or protest, including its timing; route; size (in terms of the number of participants); and conduct during its route, such as the use and manner of display of flags and other emblems. The Authority shall also have the power to make any stipulations regarding the conduct of any other participating groups. Each event, including for example a parade and a protest against that parade, shall be the subject of a separate determination.

In all determinations, the Authority shall give full regard to the European Convention on Human Rights and shall operate on the principle that the freedoms of expression,

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assembly, and association should be infringed only for clear and legitimate reasons. The Authority shall immediately publish all determinations. The determinations shall give full and transparent explanations for the Authority's decision, including specific justifications, citing relevant legislation and jurisprudence where applicable, for any restrictions placed on an event. Determinations shall be written in a clear and comprehensible manner.

The Authority shall, in its determinations, also have the power to order that a specific event not proceed. The use of this power should be considered only on an exceptional basis when, in the Authority's judgment, no other decision can adequately safeguard community relations and public order. Any determination to prohibit an event shall contain specific justification of a standard commensurate with the profound nature of such a decision.

Reviews

Any party, not only the organiser, affected by an event that the Authority has adjudicated shall have two mechanisms of recourse. First, should new evidence emerge, an affected party may request a review from the Authority. New evidence presented must, in the Authority's judgment, be both significant and directly relevant to the factors cited in the Authority's determination. No grounds other than such evidence may serve as the basis of a review.

Affected parties may lodge applications for review any time after the determination but a minimum of two working days before the event. Applications shall include a representation presenting the new evidence that the party wishes the Authority to consider. In considering applications for review, the Authority may find that the evidence raised is not new and/or not sufficiently relevant or significant, thereby upholding its original determination. Should it find that the evidence meets these standards, it may still uphold its original determination or alter it in any manner consistent with the criteria and considerations described above.

Second, anyone may apply under existing procedures for judicial review in respect of a determination. Legal assistance should be accessible as available and required in such situations.

A code of conduct for parades, select commemorations, and related protests

We agree that a code of conduct applying to participants in and supporters of all parades, select commemorations, and related protests is needed in order to maintain a respectful environment for all people in Northern Ireland and uphold the rule of law. We agree that a new code of conduct must be included in the legislation establishing these arrangements in order to give it the full force of law; ensure that it applies to all

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notified events, whether or not they are subject to adjudication; and allow for its enforcement by the PSNI.

The code shall apply to anyone involved in a parade, select commemoration, or protest, whether as an organiser, a participant, a band member, or a supporter. Anyone who violates any other law, such as for a breach of the peace, in the context of participating in a notified event shall continue to be liable for such violations. As stated above, organisers of all events are responsible for taking reasonable steps to make all participants aware of the code of conduct.

The legislation shall spell out principles for a code of conduct that will include but not be limited to:

- Respect for and adherence to determinations of the Authority and the rule of law, including existing legislation;
- The avoidance of threatening, provocative, abusive, sectarian, obscene, or racist words or behaviour, with due regard to the right of everyone to be free from sectarian harassment;
- Respectful behaviour by everyone involved in parades, select commemorations, and related protests, with due regard for the rights and traditions of others and with particular sensitivity at such locations as interface areas, places of worship, war memorials, and cemeteries;
- Compliance with lawful directions from event organisers and other authorities at all times from assembly to dispersal;
- A rejection of marks or music referring to proscribed organisations past or present;
- The avoidance of paramilitary-style clothing at all times during an event;
- The use of available opportunities to display each participating organisation's name; and
- Respect for the diversity of Northern Ireland and for all space as shared space.

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Flags and Emblems

Introduction

Flags are recognised around the world as powerful symbols of sovereignty and identity. When flown with respect for both the flags themselves and those who view them, flags have an appropriate and recognised role in defining official status, expressing affinity, and inspiring loyalty and goodwill, whether they represent a country, a community organisation, a sporting team, or myriad other entities. These various roles illustrate that debates surrounding the issue of flags go well beyond sovereignty to questions of identity, culture, traditions, language, and more.

In Northern Ireland, the public use of flags must be seen in the context of the 1998 Belfast/Good Friday Agreement, which acknowledged ‘our continuing, and equally legitimate, political aspirations’—that is, to keep Northern Ireland as part of the United Kingdom of Great Britain and Northern Ireland (henceforth known as the ‘United Kingdom’) or to join with Ireland. The agreement recognised ‘the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose.’ Crucially, the Agreement also set the tone for resolving all issues relating to symbolism after 1998, stating: ‘All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division.’

There are two elements to the debate over flag policy in Northern Ireland today. The first involves the flying of flags at official sites. This relates most closely to the role of flags as markers of sovereignty. There are various practices at different levels of government regarding the flying of the Union Flag and other flags at official sites. This Panel considered a full range of policy options in this area. For example, at the level of local councils, which currently exercise discretion over the flying of flags at their headquarters, the Panel considered the desirability of a uniform policy, with or without the opportunity for councils to opt out through a simple majority or a supermajority. The Panel also contemplated whether to make permanent the current designated days arrangement for the Union Flag at Belfast City Hall given its particular status in the eyes of many. Moreover, Panel members weighed the possibility of launching a process to design a new flag for Northern Ireland, which could offer an opportunity to create an emblem honouring the shared history of the people of Northern Ireland and its unique position in these islands. Finally, the Panel considered the prospect of a circumscribed role for the sovereign flag of Ireland in conjunction with the Union Flag in this jurisdiction.

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We reached no agreement on any of these proposals. Without a larger consensus on the place of Britishness and Irishness—for which there must be a special and protected place alongside other identities, national or otherwise, represented within our society—we could not reach a common position on the flying of flags and the display of other emblems, which are in fact manifestations of these identities.

The second element of this debate involves the display of flags and emblems unofficially in public space. We note the use of flags and emblems by citizens across Northern Ireland in this way to celebrate their identity and culture and to mark historic, civic, or other occasions. Nonetheless, we recognise that flags flown unofficially on public property can be used to demarcate territory or intimidate individuals. Moreover, flags are sometimes left to deteriorate in the environment, a practice markedly at odds with the respect with which these important symbols should be treated.

To address this issue, the Panel weighed two approaches: informal mechanisms agreed through community dialogue and formal regulation via legislation. In both cases the chief challenge is agreeing on specific guidelines for the display of flags and emblems that can be managed and enforced by relevant authorities. After much consideration, the Panel could not agree on any approach to unofficial flags, other than reaffirming that paramilitary flags and other paramilitary displays must be banned.

In these circumstances, some members wished to forgo this area of the Panel's work entirely. For others, abandoning one of the three pillars of the Panel's mandate was deeply unsatisfying. We therefore agreed to launch a structured discussion on this entire set of issues—not simply flags but the broad range of deeper issues that flags often come to signify. Such a conversation will take place within the existing constitutional context of Northern Ireland, where the status quo and mechanism for change are settled.

We are aware that many will consider this as little more than calling for another commission, a way of transferring the Panel's work to another body. We believe, however, that the unique circumstances surrounding these issues make this a potentially useful endeavour. There is a substantial and an inherent value in moving this conversation beyond ourselves and into Northern Ireland's diverse society, with its broad range of identities, cultures, and traditions. It will also place flags in a wider context, one that could produce a more fruitful effort to identify mutually satisfying, sustainable policy solutions. Just such a process has recently occurred on issues surrounding Northern Ireland's past, producing the climate that made the third section of this agreement possible. We recognise that there is no assurance that such a process will work as we intend; nevertheless, we are agreed that the stakes justify the attempt.

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Commission on Identity, Culture, and Tradition

We agree to the formation of a commission to launch and sustain a conversation about the role of identity, culture, and traditions in the life of the citizens of Northern Ireland. The primary function of the 'Commission on Identity, Culture, and Tradition' will be to hold structured discussions in public throughout Northern Ireland on a wide variety of issues related to identity, culture, and tradition. Discussions may have different foci; some may be held simply to highlight diversity, while others may bring academics and other experts to examine what identity, culture, and tradition mean in the context of a multi-cultural society. Yet other discussions could explore the experiences and best practices of other societies, including legislative protections and rights, or specific issues or expressions of identity, culture, and tradition raised in the context of Northern Ireland. Initial discussions will include the explicit solicitation of public input on the particular topics the Commission should address. In addition to these public discussions, the Commission will also consult with the British and Irish governments as appropriate.

The Commission will accept written submissions from interested parties, and choose from among them when deciding who would present to the Commission in person. The goal of the Commission will be to make all structured discussions open to the public and carried via television, internet, and radio. The purpose of making these structured discussions public is to foster an atmosphere in Northern Ireland in which these conversations about identity, culture, and tradition are carried to the living rooms, classrooms, churches, and public spaces of our society. The work of the Commission will increase the understanding of many citizens of the appropriate and important role of Britishness, Irishness, and other identities in Northern Ireland. In doing so, it will engender a better climate to tackle the difficult issues of flags and emblems in public spaces.

The Commission will submit a report with findings and recommendations to the Office of the First Minister and deputy First Minister and will promptly make it public. In the context of this report, the Commission will address, but will not be limited to, the issues of flags, including the unofficial flying of flags in public spaces and the role of the Union flag, recognising the sovereign status of Northern Ireland; emblems from various traditions; Irish and other languages, including Ulster Scots; a Bill of Rights; gender; public holidays, possibly including a day of remembrance or reflection for Northern Ireland; the memorabilia, symbols, emblems, and signage displayed in local and central government buildings; and other symbols of national and other identities. The Commission will also consider in this context other topics that arise through public consultation. If a sufficient and broadly based level of consensus is achieved among the members of the Commission, the First Minister and deputy First Minister pledge to bring the recommendations, including any necessary

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legislation, to the Executive. The terms of reference of the Commission will reflect the above.

The Commission will be constituted not later than three months after the signing of this agreement. It will have a mandate for one year to conduct the functions described above, and three months thereafter to write its report and issue its recommendations. The Commission will give periodic updates to the First Minister and deputy First Minister. The Commission shall consist of fifteen members, seven of which will be elected representatives appointed by the leaders of the parties in the Executive. These will comprise two members for each of the two largest parties and one for each of the three next-largest parties in the Northern Ireland Executive, all as measured by their number of seats in the Northern Ireland Assembly. The remaining eight members of the Commission will be drawn from outside of government. If at any time there are fewer than five parties in the Executive, the Commission will have correspondingly fewer members appointed by party leaders and more drawn from outside of government. The report and recommendations will be agreed by a majority of the overall Commission, including at least five of the seven members appointed by party leaders. The commission will have a chair or co-chairs of international standing, from either Northern Ireland or outside of it. The chair or co-chairs, and the members of the commission from outside of government, will be appointed by OFMDFM in a public appointments process consistent with the Code of Practice of the Commissioner for Public Appointments in Northern Ireland.

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Contending with the Past

Introduction

Northern Ireland is blessed by many advantages and virtues. We have a hard working and resilient population, world-class educational institutions, and a growing economy on the edge of Europe. Despite these attributes, Northern Ireland has been unable to fulfil the potential of its people and its position. Many hoped that the Belfast/Good Friday Agreement would usher in a period of prosperity, well-being, and dynamism that would characterise a new era. The agreement of fifteen years ago, in concert with the St. Andrews and Hillsborough Castle Agreements, helped lift our society out of the darkness of violence, creating new modes of political action and ushering in a devolved government that shares power. But the benefits of peace have not been fully realised.

Despite the desire of most citizens to look ahead and move forward, Northern Ireland remains constrained by its past. The various agreements, in taking on the huge and important work of building new political institutions, did not give society the tools or venues to fully grapple with the pain and anger that are inevitably the legacy of generations of violence and conflict. The paths made available over the ensuing years have not proven equal to that demanding task. As a result, the past continues to permeate our government, institutions, and people. It creates mistrust among leaders at all levels of society who wish to continue tackling problems of the modern world. It maintains the gulf between neighbours who pass each other in the street or in the shops. Without facing this issue, Northern Ireland and its people will find it challenging to achieve the future its people desire and deserve.

This challenge, however daunting, is not unique to Northern Ireland. Other countries and regions that have emerged from conflict and violence have also had to tackle the hard work of contending with the legacy of the past. Each has adopted methods and mechanisms suited and moulded to the particular experience, nature, and needs of that society. There is no guidebook for how a people can address the elements of its past, for each history is as distinctive as it is painful. The efforts of Northern Ireland to tend to its past may be informed by what others have done. But we must find our own way and our own means to this higher ground.

A civic vision is needed. If we are to continue to open ourselves to the emotional, social, and political vulnerabilities of engaging with the past, we will need a sense of common purpose—an agreed rationale. It is clear that the vast majority of citizens and communities wish to live free of the division and enmity that has too often defined this society. At the same time, it is also clear that people have different senses of the past's meaning and importance. This is the heart of the challenge of reconciliation—

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the transition from a divided society to one that is whole, from a wounded society to one that is healed.

The time to rise to the challenge is now. Northern Ireland does not have the luxury of putting off this difficult, but potentially transformative, task any longer. Many of those with experiences and knowledge critical to what took place have already died and, with them, the ability to unearth many facts and emotions necessary to better come to terms with the past. The passage of time will only further erode our ability to do so. Individuals and civil society have done much groundwork, but the moment to make these efforts broader and more systematic has come.

We have therefore committed ourselves to the important work of contending with the past, knowing that doing so will mean different things for different people. While this effort will be welcome by many, we understand that some will choose to contend with the past in their own ways and in their own times. We have sought to construct an architecture that honours those choices and provides many avenues to the destination of a more harmonious society, one that does not forget the past but is not held back by it as we are today.

Support for Victims and Survivors

The first requirement of any comprehensive treatment of the legacy of the past must be to provide for the social and health needs of victims and survivors; they must necessarily command a prominent place in matters related to the past. The burden of their pain and loss has been exceptional and has been borne with remarkable dignity, patience, and grace. In many cases, victims have become prominent voices in the effort to heal divisions across communities—an extraordinary example of leadership from which all in Northern Ireland could learn. We have been privileged to draw on their experiences, views, and goals. Their voices in this area deserve special consideration and we have endeavoured to honour that wherever it was in our power to do so.

Often, victims and survivors continue to suffer from physical disabilities, emotional trauma, social anxiety, and other concerns stemming from the conflict that merit support and assistance. Meeting these needs with professionalism, sensitivity, empathy, and care is the work of the whole of society, including the government of the United Kingdom, the Northern Ireland Executive, local authorities, and the non-governmental sector.

Two tasks are essential to this effort. The first is to do all that is possible to ensure that a range of high-quality services exists for those who need them. The second is to ensure that those individuals have a full understanding of the services available and can pursue those for which they are eligible. Should an individual wish, access to an

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advocate-counsellor will be provided to work in the individual's interest to provide support and to help him or her understand and request relevant services.

The principle of choice must remain central to the provision of services for victims and survivors of the conflict. So must the principle of need. Victims and survivors encounter a wide range of circumstances and bear multiple burdens. As a result, individuals must retain the choice of whether to seek any services at all, since, as the 2009 Strategy for Victims and Survivors recognized, some individuals 'do not feel that they require additional support.' It is a normal part of such a process that individuals may be required to show their need for a service. However, needs should be evaluated sensitively and with the minimum possible burden on those seeking services.

We believe it must be as easy as possible for victims and survivors to access the physical, psychological, emotional, financial, or other support for which they are eligible. A central mechanism open to all those with needs stemming from the conflict can be helpful in this regard. The Victims & Survivors Service (VSS), established in 2012, should be supported in its continuing efforts to provide assistance to those affected by the conflict. We note the many reports that have emerged about the ways in which some individuals approaching VSS were treated. These reports include burdensome documentation requirements, delays, and insufficient responsiveness.

In this vein, we also note the ongoing independent assessment of VSS being conducted by the commissioner of the Commission for Victims and Survivors. We encourage the commissioner, as part of this assessment, to propose specific guidelines and best practices for the provision of services to victims and survivors, whether via VSS, appropriate non-governmental organisations, or any other institution.

We particularly encourage the assessment to consider two areas of critical concern to victims, survivors, their families, and wider society. The first is the provision of easy-to-access, high quality mental health care. We encourage the commissioner, as part of her assessment of the VSS, to consider establishing or funding a comprehensive Mental Trauma Service to attend to the substantial unmet need of victims in this area. Second, we ask the commissioner, as part the same process, to give special consideration to those who lost years of their working life to severe physical or mental injury as a result of the conflict, as has been done in similar situations in other countries. In addition, as these victims age, their need for medical, emotional, financial, and other support may rise, and we believe it is crucial that the assessment take particular note of their circumstances and financial requirements. We would strongly encourage the commissioner to make specific recommendations for policy to the Northern Ireland Executive and OFMDFM in her assessment.

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Following the completion of the Commissioner's assessment, we agree to give prompt and serious consideration, in the Northern Ireland Executive, the Northern Ireland Assembly, or other appropriate venues, to the steps to be taken, whether through legislation, regulation, or other means, to facilitate and implement those recommendations that are agreed to. We assume that in her deliberations the Commissioner will refer to the analysis and findings contained within the Comprehensive Needs Assessment undertaken by her predecessors and presented to Government in 2012.

We wish to note that one of the most contentious issues we considered was who should be considered eligible for victims' services. We found that we were unable to settle this amongst ourselves. Our understandings of the word 'victim' in this context were closely tied to our different narratives of the conflict, which are not presently reconcilable.

Acknowledging Past Acts

What happened in the past cannot be changed. We cannot yet agree on the causes of the conflict, a mutual understanding of those events, or even at times the terminology to describe them. Indeed, the period of violence up to 1998 is variously termed a war, a conflict, or the Troubles. Some see its protagonists in stark black and white—hero or villain, freedom fighter or terrorist. Still others might reject such labels entirely. We can, however, all agree that the past has consequences for individual victims and society that continue through the present. We must meet the challenges posed by the past and work to ensure that they do not overwhelm the present or undermine the future. Our disagreements about the meanings of past events should not stand in the way of individuals and groups acknowledging those events, their role in them, and the fact that they had a profound impact on society.

Sincere acknowledgements are a foundational step in the effort to contend with Northern Ireland's past. They constitute powerful gestures by individuals involved in the conflict and send an important message to other such individuals, to the people of Northern Ireland, and to the world that those responsible for causing pain are prepared to accept their responsibility and that after conflict and division comes the difficult task of reconciliation. Such gestures, if multiplied and sustained, are apt to lighten the shadow that Northern Ireland's past casts on its present and unlock significant potential for progress toward a shared and peaceful future.

People across Northern Ireland, the rest of the United Kingdom, Ireland, and beyond experienced pain and loss during the conflict. For the vast majority of these people, there has been little in the way of closure or comfort; more than 3,000 conflict-related deaths were never solved, and many relatives have lived for decades without a responsible party acknowledging their pain and loss. Some deaths can be attributed to

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state actors; the overwhelming majority, however, were caused by paramilitary organisations. Many still live with severe injuries and many suffered the loss of their homes or businesses. There is a profound desire among many victims, survivors, and their families for acknowledgments from those individuals, paramilitary organisations, and governments responsible.

The local nature of much of the violence during the conflict means that many people know, or believe they know, who personally is responsible for the events that affected them. More often, they feel confident they can attribute an act to a particular organisation, whether paramilitary or governmental. The fact that those involved have not publicly taken responsibility for their actions is deeply frustrating not just to those directly affected but also to many in the wider society. The mistrust and resentment bred by this ongoing silence should not be underestimated. It undermines trust in society, faith in leaders, and hope for a more peaceful future.

There have been some individuals in the United Kingdom and Ireland who have taken steps toward acknowledging their role in the conflict. In some cases, their statements and actions have provided a measure of comfort and satisfaction to those directly affected by the conflict and contributed broadly towards reconciliation across wider society. Other statements have been perceived as less constructive, and have even had a negative impact on cross-community relations.

Now is a time for all citizens of Northern Ireland, and the governments of the United Kingdom and Ireland, to reflect on the previous decades. This is not to suggest that blame for the violence is equally shared across society. It is not. A minority sought to advance agendas through means outside the law, while the overwhelming majority adhered to it. The burden of the past rests most heavily on those, whether paramilitary or state actors, who acted outside the rule of law. The vast majority assiduously eschewed violence, yet some may have contributed to the environment within which it flourished. To publicly acknowledge these realities does not equate them, but all such acknowledgements will help bring about a better climate.

To advance reconciliation and healing at both the individual and societal levels, acknowledgments should be more than apologies. Saying sorry is necessary but not sufficient. Full acknowledgements would include an unqualified acceptance of responsibility, express an understanding of the human consequences for individuals and society, and include a sincere expression of remorse for pain and injury caused. Statements of regret and reconsideration are also welcome.

We encourage individuals, organisations, and national governments to work together on specific statements of acknowledgment, including by discussing language, timing, and other matters in private before public statements are made, to ensure that such acknowledgements are carried out in ways that contribute positively to healing and

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reconciliation. We commit to working among ourselves, with organisations in Northern Ireland, and with the governments of the United Kingdom and Ireland, to build an environment in which full and constructive acknowledgements, whether individual or corporate, can be expressed and can build on one another. This process should aim to be as inclusive and as complete as possible, involving all those who played roles in the conflict. We hope and anticipate that statements of acknowledgment by leaders will encourage others to make similar statements or gestures of acknowledgment, including participating in the retrieval of information as outlined below.

Justice

In any society, holding people accountable for breaking the law is a fundamental responsibility of government. Doing so consistently and even-handedly reinforces belief in the integrity of government and reassures citizens that their society is safe, fair, and just.

Major efforts have been undertaken to reform the criminal justice system, including the devolution of justice functions from Westminster and the establishment of the Police Service of Northern Ireland (PSNI). These and other reforms constitute real progress. At the time of the Belfast/Good Friday Agreement in 1998, however, there remained thousands of cases relating to the conflict that were unsolved or had been resolved by justice mechanisms that did not elicit full faith from all of society. New institutions were therefore created to address these particular incidents.

Current Institutions

The Historical Enquiries Team (HET), a unit reporting to the Chief Constable of the PSNI, is tasked specifically with reviewing the files of the more than 3,000 deaths that occurred between 1968 and 1998. Its mission is to uncover, where possible, information requested by the families of the deceased and, for unsolved murders, to determine if any evidence was missed that should be reinvestigated by the police. It has completed around 1,900 reviews to date, with approximately 600 cases, involving some 800 deaths, yet to be reviewed. The Police Ombudsman of Northern Ireland (PONI) serves as an independent and impartial investigator of complaints against the police. It is empowered to investigate 'grave and exceptional' historical offenses suspected to have been committed by police officers.

Coroner's inquests work through a process consistent with Article 2 of the European Convention on Human Rights to ascertain the circumstances of all suspicious deaths. Dozens of cases relating to the conflict are pending; some of them have never been investigated, while others are new inquests ordered by the Attorney General in light of fresh evidence. Coroner's inquests have been broadened substantially in recent

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years, especially for inquests involving the state, in response to rulings from the European Court of Human Rights regarding their adherence to Article 2 procedural requirements.

A fourth vehicle for addressing historical events, public inquiries, remains a discretionary tool for the governments of the United Kingdom and Ireland.

All four institutions have conducted enormously difficult and politically sensitive investigative work into conflict-related cases, and we commend their dedicated efforts and the information that they have been able to provide to many families. In a few cases, they have been able to uncover fresh evidence, leading to new prosecutions and convictions. In many more they have been able to provide greater insight to, if not firm conclusions on, the events in question, bringing comfort to the families involved.

The multiplicity of institutions and vehicles for justice in respect of conflict-related incidents, however, creates confusion and places enormous burdens on the police. The HET, PONI, and inquests also suffer from the perception that they have proceeded too slowly.

While we recognise the desirability of streamlining as many legal processes as possible with regard to historical cases, coroner's inquests must for now remain a separate stream. The European Court of Human Rights has established specific requirements for coroner's inquests, making it inadvisable under European law to combine or subsume them into any other process. Unless and until jurisprudence from the European Court of Human Rights changes the Article 2 procedural requirements on coroner's courts to enable them to be brought into an investigative process like HIU, we agree to preserve them as a separate institution. It is our hope and expectation, however, that the high-quality and thorough investigations that will be conducted by the HIU will in time make it the preferred option for victims' families.

Inquiries will remain the purview of governments. But there is much that we can and should improve regarding the conduct and completion of HET and PONI investigations.

Historical Investigations Unit

Despite the substantial efforts of the HET, the families of many victims believe they have not received the justice they desired or deserved. We therefore have concluded that a new body with additional powers above those currently held by the HET will provide a more effective service for those families. While it is not necessary or desirable to restart reviews or investigations into all conflict-related events, we believe it is necessary to establish through legislation a single Historical Investigative Unit (HIU) to take forward the remaining caseload of the HET and the conflict-

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related cases before the PONI. Once the HIU is fully established, the HET and the PONI will transfer all their records relating to completed cases and information relating to investigations not yet begun to the HIU. In order to avoid confusion and duplication of effort, investigations underway by the PSNI will be completed by the PSNI.

The HIU will serve the interests of justice by conducting thorough, Article 2-compliant reviews and investigations and, where appropriate based on the evidence, referring cases to the Public Prosecution Service (PPS). By taking on the burden of conducting investigations, a power not given to the HET, it will also alleviate the pressure historical cases place on the PSNI. Finally, as a new institution with additional powers and capable of commanding the confidence of the entire community, it can provide a measure of comfort to the families involved and contribute to the ongoing restoration of public faith in Northern Ireland's justice system—an essential step for securing a shared future.

What the HIU Will Examine

Because the HET has generally examined cases chronologically, many families have been waiting for years for their case to be addressed. It would be unfair to them, and would undermine acceptance of the process, to consider a fresh review of a closed case by the HIU before it completes initial reviews of all cases not yet examined. The HIU will therefore combine the outstanding HET and PONI cases into a single list, ordered chronologically, for an initial review.

Complaints about pre-1998 police behaviour transferred from the PONI to the HIU, or filed with the HIU in the future, will be treated in the same manner in which they would have been treated under the PONI. If, after a complaint has been fully considered, the HIU finds grounds for a criminal investigation, the HIU will investigate it chronologically, based on the time at which the misconduct was alleged to have occurred.

Families may request that the HIU undertake an earlier review of their case if there are serious extenuating circumstances, such as the advanced age or ill health of an immediate family member of a victim. And, after the remaining un-reviewed cases have been examined, families will have the opportunity to request a new review of any previous HET or PONI case by the HIU, which may be granted if meaningful flaws are found in the earlier investigation or if significant new information has come to light.

We are aware that there are tens of thousands of people who were injured during the conflict and we are sympathetic to the fact that they have never been eligible to receive a review of the cases that affected them. While the HIU is conducting its

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reviews and investigations into cases involving deaths, it will do so with a view to producing two types of reports. The first will be a report of the particular circumstances of individual deaths, which will be shared with the PPS if there is sufficient evidence to warrant prosecution or with the family of the deceased if there is not and if the family so chooses. The second will be a more general report that will be given to all of those injured in the same event should they desire it. This will be an important new effort, as it will open up a new avenue of information to those who lacked one in the past. Once all cases involving deaths have had a review and, where appropriate, an investigation, and if resources permit, the HIU will conduct reviews and investigations into cases involving severe injuries. All reports prepared by the HIU will be carefully prepared to ensure they are consistent with Article 2 of the European Convention on Human Rights.

How It Will Work

The HIU will begin its work on each case with a review of the case's existing file and any associated intelligence that may be held by the PSNI. Should the HIU identify deficiencies with the original investigation or new evidence that suggests the possibility of a fruitful investigation, we agree that it will have investigative powers and arrangements identical to those of the PSNI. Such powers will enable it to conduct investigations that are Article 2-compliant.

These powers will enable it to conduct its investigations and place a lesser burden on the PSNI than the HET does now. This will help ensure the appearance and reality of its independence, and it will alleviate an enormous investigatory burden on the PSNI, helping it to focus on its primary mission: policing the present. To ensure the overall integrity and quality of the HIU's reviews, the HIU will develop:

- Clear, detailed, and transparent investigative and recordkeeping procedures appropriate to sensitive historical cases, with adequate training and oversight to ensure they are implemented;
- Internal quality assurance mechanisms to ensure that its conclusions have been rigorously tested before information is provided to families and/or cases are closed; and
- Internal protections against conflicts of interest among its investigators.

Principle of Choice

While society has an overarching interest in concluding reviews and investigations into outstanding cases, we recognize that not all victims, their immediate families, or individual family members will wish to participate in the review or investigation of a death or injury. Their involvement will, as in all institutions contending with the past, therefore be guided by the fundamental principle of choice. The HIU will review all cases in the interest of fairness and justice, but individuals will not be notified of its

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progress unless they opt in to learning about or participating in reviews and investigations, either before or during the work on their case. Those who do choose to learn about the progress of a case will be offered the services of an advocate-counsellor unconnected with any work on their file who can provide logistical guidance and emotional support through each stage of the process. When the HIU's review or investigation has concluded, and if the case is not referred to the PPS for further action, the family, should they desire it, will receive a report outlining the extent of information known about the case as it affected them.

When an individual or family chooses not to hear about the progress of a case, HIU will scrupulously adhere to their wishes and will not communicate with them in any way. The sole exception to this fundamental principle of choice and respect will arise in cases that are sent to the PPS for further action. In such cases, HIU will reach out to the individuals or families involved to inform them that prosecutorial action may be taken. This step will ensure that families do not first learn about the progress of their case via the media or other publicity. HIU will further offer the services of an advocate-counsellor who can provide support and guidance through this process.

Leadership and Staffing

We believe that the HIU, as an investigative body, should be led by a trusted figure with relevant investigative or legal experience and a reputation for integrity and independence. The Policing Board will appoint the director of the HIU, and should consider candidates from both within and outside Northern Ireland. The board will also oversee the quality, responsiveness, independence, and timeliness of its operations, and it will be responsible for receiving and addressing complaints from the public and others affected by the HIU's work.

The HIU review and investigative teams should have relevant investigative experience and expertise. It is important, however, that those hired by the HIU or who work on any aspect of the cases involved can be shown to have no conflicts of interest relevant to the sensitive subject matter.

Outcomes

These steps, taken together, should increase the independence and quality of reviews and investigations and inspire confidence in the resolution of historical cases among families affected and the wider society. A robust HIU also affords the maximum possible opportunity to uncover evidence sufficient for prosecution. Where such evidence is uncovered, the file will be referred to the PPS, which will determine whether to carry the case forward to trial. Where, despite these efforts, there are not grounds for a prosecution, a report on the case will be prepared, which the family members of the victim may review if they so choose.

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The passage of time and loss of evidence through decommissioning, decay, destruction of evidence, and other means will often mean that there is too little admissible evidence for the prosecutor to proceed with a trial. And even where prosecution is undertaken, there is of course no certainty of outcome. The HIU process is intended to provide a meaningful investigation that develops new evidence for prosecution wherever possible but, in all cases, offers a sense of accountability and comfort to the families of victims.

Where families desire another vehicle through which to pursue information about their loved one, whether before, during, or after an HIU review, they will have access to the Independent Commission for Information Retrieval (ICIR), outlined below. HIU staff should make clear to those families who choose to pursue their case through ICIR in addition to HIU, however, that documents and information retrieved through ICIR cannot be used in prosecutions.

Increasing the Availability of Information

For many of the families whose loved ones were killed in the conflict, and for those who were themselves victims, the need to know more about the circumstances of their case is profoundly important. This is especially true in those many cases that are unlikely to be resolved through the criminal justice system, where the bar for the introduction of evidence for prosecution is necessarily high. Affording these individuals the opportunity to seek, on a fully voluntary basis, further information could provide, after all these decades, a measure of comfort. And any information supplied by perpetrators during this process could add significant meaning to any acknowledgments provided.

There are also likely to be some who carried out violent acts who would, under certain circumstances, be willing to provide information about actions they took during the conflict. We emphasise that these circumstances must not include an amnesty. Where sufficient evidence exists, the Public Prosecution Service cannot forfeit its right to choose to prosecute crimes. We are cognisant, however, of precedents that allow those willing to share information to do so without the information supplied in those particular circumstances being admissible in any subsequent court proceedings. The Independent International Commission on Decommissioning and the Independent Commission for the Location of Victims' Remains have both utilised similar provisions to elicit a measure of desired information without compromising the right to prosecute. We believe these bodies offer useful lessons for an Independent Commission for Information Retrieval (ICIR).

We recognise that this process is unlikely to achieve a complete and fully accurate account of every incident that occurred during the conflict. Some people with

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information may have already died, while others may not, irrespective of the protections offered, wish to bring what they know to light. These limitations are unfortunate but inevitable. But we believe that creating opportunities to retrieve as much information as possible is essential to assisting victims and their families, and to contending with the past. Only through gaining the fullest possible picture of what happened during the conflict and why can Northern Ireland begin to constructively confront its past.

To all those who may have relevant information, including individuals, members and former members of paramilitary organisations, members of political parties and other non-governmental organisations, and current and former employees of the governments of the United Kingdom and Ireland, we urge you to step forward with whatever information you have that may provide a degree of comfort to all those who lived through the conflict. While the governments of the United Kingdom and Ireland have taken important steps already towards increasing the amount of publicly available information, we encourage them to determine what more can be done. We also encourage paramilitary organisations to similarly increase access to information in their possession. This process will work best if all parties to the conflict, and all others with relevant information, participate to the fullest possible extent.

As noted above, many victims, survivors, and their families have expressed an interest in an information retrieval process within a context where justice remains an option. Because we believe that the future needs to accord a special place to victims, we have agreed to this process, which protects and maintains the opportunity for justice while affording victims the opportunity to try to seek further information. We also recognise, however, that not every victim will want to utilise this process, so the ability to choose is at the heart of these proposals.

Opting in to ICIR

ICIR will offer two ways of initiating a case. First, victims and the immediate families of victims will be able to register a request for information about any violent incident connected to the conflict. The ICIR will reach out to designated intermediaries that it maintains among organisations and governments, who will seek out individuals within their networks who may have information relevant to the request. If a person is willing to provide information, whether directly or through an intermediary, ICIR staff will ask him or her detailed questions about the events under consideration. After it judges it has learned all it reasonably can, the staff of ICIR will prepare a private report for the victim or victim's family conveying the information it has gleaned regarding that specific case. All ICIR reports will be carefully prepared to ensure they are consistent with Article 2 of the European Convention on Human Rights.

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We underscore that interaction with this commission would be fully voluntary and respectful of the wishes of victims and families. They choose whether to seek information through the ICIR. Should they not wish to receive information, ICIR will not contact them. Unless they wished to do so, they would never be asked or expected to meet with any individual who might offer information. Seeking information through ICIR would not preclude an investigation through the Historical Investigations Unit described above, which will proceed with investigations of all cases under its remit in due course.

The second means of initiating a case allows people who may wish to volunteer information about violent acts and secure the limited protections offered by the ICIR to do so, either directly or through an intermediary. We emphasize that ICIR will be available to anyone who may have information about a conflict-related act, including members or former members of paramilitary organisations and current or former employees of governments. In the event that an individual volunteers information independently, ICIR will keep that information in its files unless and until the victim or the victim's family files a request for information. To avoid re-traumatising those who may not wish to receive information, ICIR will not notify those who have not registered a request for information when information relevant to their case is provided.

In either process, participants might name others who they claim were also involved in the events being described. Consistent with its mission of information retrieval and its independence from the justice system, ICIR will never inform law enforcement of these claimed links. It will, however, through an intermediary, offer those individuals the option of participating in ICIR to deny, clarify, or confirm their involvement and to secure the limited protections offered by ICIR where possible. If they choose not to participate, they will suffer no penalty.

We are aware that in some cases the immediate family members of deceased victims may not agree on whether or when to participate in this process. In such cases, ICIR staff members would, through careful and respectful dialogue, seek to help families reach a common position. If they are unable to reach agreement, ICIR would pursue information on behalf of the family members who did wish to receive it, sharing what was learned with them and carefully guarding against releasing unwanted information to the rest of the family. It will provide or facilitate any necessary support should information become available within the public domain.

Assessments of Patterns

We recognise that there is demand for determining whether individual acts were carried out pursuant to standing policies and strategies. For many victims and their families, knowing the details of their individual case is not sufficient. They also wish

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to know the larger context of the events that affected them—the policies, strategies, and broad goals of those who committed violence—in order to better understand the reasons behind their suffering. Society, too, has an interest in learning about these overarching patterns or themes. They are what tie individual events or actions together into a comprehensible and meaningful history of those years. They also provide a vehicle for facilitating acknowledgments by perpetrators of violence, as they permit a broader level of accountability than do individual cases. For all these reasons, we agree that examining such themes is a vital step towards contending with the legacy of the past.

Therefore, in addition to its core mission of addressing individual requests for or offers of information, the ICIR will also establish an internal unit to analyse patterns or themes. It will not have the power to subpoena files or testimony, test physical evidence, or conduct any other kind of police-style investigation. Rather, it will base its analyses on evidence from extant HET files, new HIU files, public records such as inquiry files and court records, and the information provided through ICIR's other work. It will also be empowered to seek interviews with individuals or representatives of groups named in connection with particular themes. In light of the protections and assurances given to those who provide information through ICIR, we expect that it will over time become the largest and most detailed repository of information about the conflict. Its director and staff will be well placed to utilise that repository, in conjunction with other resources, to assess the policies and strategies, if any, of the participants in the conflict.

This process should be conducted with sensitivity and rigorous intellectual integrity. Its purpose is to understand context and contribute to public awareness of history, both now and for subsequent generations.

As such, the manner in which themes are identified, researched, and reported is crucial to both the perception and reality of the unit's fairness and honesty. There are two avenues through which themes can best be selected. First, the ICIR theme unit will, in the course of its study, identify themes through their assessment of the body of information before them. And second, civic society and political representatives, through the Implementation and Reconciliation Group (IRG, see below) can suggest hypotheses for the ICIR theme unit to analyse.

Themes should not be suggested to pursue or protect narrow or vested interests. Nor should they be assumed to reflect the statistical reality of patterns of violence during the conflict. Thematic studies should, rather, seek to offer context and historical insight to this difficult period in Northern Ireland's history. The topics studied should address the policies and strategies that guided individual actions during the conflict, seeking to provide clarity not just on what happened but on the overarching political and strategic frameworks that informed events. Examples of appropriate themes or

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hypotheses for consideration include: alleged collusion between governments and paramilitaries; alleged ethnic cleansing in border regions and in interface neighbourhoods; the alleged UK ‘shoot to kill’ policy; the reported targeting of off-duty UDR soldiers, prison officers, and reservist Royal Ulster Constabulary officers; the degree to which, if at all, Ireland provided a ‘safe haven’ to republican paramilitaries; intra-community violence by paramilitaries; the use of lethal force in public order situations; detention without trial; mistreatment of detainees and prisoners; any policy behind the Disappeared; or the sources of financing and arms for paramilitary groups.

Hypotheses or themes explored by ICIR or suggested by the IRG should therefore be informed by certain core principles to ensure they merit consideration in this context. Suggested themes should be issues that:

- Offer meaningful insight into the political and strategic context of events during the conflict;
- Involve serious human rights violations; or
- Have left a legacy that is particularly important for the work of reconciliation.

As themes are agreed or identified, the themes unit will analyse them rigorously, on the strict basis of the evidence in front of them, and without political influence from within or outside the unit.

The themes unit, with the oversight of the head of the ICIR, will determine when it has sufficient evidence to write a substantive report on themes under consideration. At that time, it will publish a collective report outlining its assessments on themes being addressed and describing (without breaching the protections to those providing information or any legal protections on its other information sources), the evidence being used to support those assessments.

Suggested themes are not prejudgements but questions to be asked and answered through evidence. It may be that different assessments are made with different levels of confidence; if that is the case, the report will say so. Likewise, it may be that the evidence does not support a particular hypothesis or suggested theme; if that is the case, the report will also say so. If further information is uncovered about those themes, or if additional themes are brought forward for consideration after the report is completed, the unit will issue amended or additional reports as the evidence warrants. If the ICIR is not able to issue a full report within three years, it will issue a status report on its work, explain the reasons for the delay, and provide an expected timeline for publication of its full report.

While cooperation with the themes unit of the ICIR will be voluntary, it is our strong hope that those in a position to speak with authority about the conflict will do so. The quality of the reports will depend on the quantity and quality of information and

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participation from all parties, whether government, non-governmental, or paramilitary. The report will therefore include the unit's judgment on the extent to which such individuals or organisations participated in and cooperated with the themes unit. In an extreme condition, it could decide to issue a report only stating that the level of participation was not sufficient to allow for a meaningful assessment, clearly identifying those organisations whose failure to cooperate frustrated its task.

Inadmissibility of Testimony Provided Solely within the ICIR – A Form of Limited Immunity

We recognise that those who have information regarding conflict-related events may have legitimate concerns about coming forward. They may worry about criminal prosecution after implicating themselves or others in crimes, or retribution from those they implicate. And they may be anxious that that, after decades of living quiet lives, their admission could lead their friends and families to dramatically re-evaluate their character.

Given the importance of their information to the future of Northern Ireland, the body will therefore be empowered by law to offer 'inadmissibility' or 'limited immunity' in both civil and criminal courts to those providing information in connection with the incidents described. This policy renders statements given under such conditions inadmissible in court and protects an individual from self-incrimination. It is not, as we emphasised above, an amnesty in any form. Statements given under these conditions simply cannot be admitted as evidence against the person giving them or anyone named in those statements. They do not provide protection against prosecution or the pursuit of civil damages through evidence derived from other sources, or against prosecution for other acts. The ICIR would not accept any physical evidence or provide legal protection for such evidence.

Anonymity

As noted above, ICIR will offer the opportunity for individuals to give statements via a designated intermediary, on a purely anonymous basis. For those who come forward directly in order to secure use immunity, their identity will be shielded from the public.

Relationship With Criminal Justice

There will be a strict separation, enshrined in the enabling legislation for ICIR, among the personnel, resources, premises, and records of ICIR, the HIU, and any other criminal justice institution. The legislation will ensure that the raw information provided to ICIR will not be disclosed under any circumstances. These and other provisions protecting the identity and details of those who provided information

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cannot be changed without the permission of the person affected. ICIR will, further, be excluded from Freedom of Information requests by appropriate legislation.

Leadership and Staffing

ICIR will be tasked primarily with conducting interviews with those who offer information; querying and cross-checking information against available public records; synthesizing that information into a report for the family that requested it; and, in time, assessing patterns in the policies and strategies of participants in the conflict. Therefore, ICIR staff should have backgrounds that draw on similar analytical skills, including lawyers, historians, and other academics. ICIR should avoid hiring those with previous links to any body that might be giving information to avoid the appearance or fact of conflicts of interest. Its leadership should likewise be free of links to such groups or institutions. The Northern Ireland Executive will select an international person of high calibre and good standing to lead this body.

We pledge to put in place enabling legislation and other mechanisms for this institution for matters that fall under the auspices of the Northern Ireland Assembly. We further call on the governments in London and Dublin to participate in this effort and to pass similar enabling legislation where necessary.

Sharing Experiences

No two people experienced the conflict in the same way. Each individual has a personal perspective on the conflict and its effects, and thus a different understanding of its meaning. The intensity of the conflict and the political fragility of its immediate aftermath accorded little space to address the real consequences of what had happened. People drew on the support of family, friends, and faith communities, but until relatively recently there were few opportunities to share their experiences and gain recognition of what happened to them. Much good work has already taken place to develop a methodology of storytelling about the past and to establish good practice. We affirm the continuing importance of occasions and projects that facilitate engagements between individuals and communities from different or even opposing backgrounds related to the Northern Ireland conflict. We further believe that providing a central place to share whatever experiences an individual may wish could provide a powerful catharsis and validation.

The benefits of sharing experiences or narratives, however, are not limited to individuals. The multiple narratives of those who lived through the conflict have a clear social and historical value. People's narratives—their diaries, journals, travel logs, letters—have been a cornerstone of historical research for centuries. Oral and video histories have, more recently, enriched that source material. Many of the histories of the conflict have not yet been written, as it is too recent and often too raw

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to get enough perspective. Recording and preserving people's experiences—without judgment or prejudice regarding their experiences, political views, or professional or community affiliations—are necessary steps towards building a significant and comprehensive body of historical source material for future generations. Time is of the essence in this effort. Already, memories are fading and people are passing away. There are no second chances to record their memories. Each day of delay risks further losses at considerable cost to individuals and society alike.

The Northern Ireland Executive shall therefore enable the establishment of an archive for conflict-related oral histories, documents, and other relevant materials from individuals of all backgrounds, from Northern Ireland and beyond, who wish to share their experiences connected with the conflict. The operation of this archive will be free from political interference. It will not seek to interpret people's narratives or attempt to create any single narrative of the past. It will, rather, be a collection of individual narratives—a vital primary resource for the future historians, genealogists, and writers who will interpret the myriad histories of Northern Ireland.

We underscore that the archive's staff will not attempt to validate or corroborate the experiences contributed to the archive. The purpose of this archive is to preserve first-person accounts of experiences, feelings, perceptions, and remembrances. It is not intended to be a fact-checked resource that can be relied upon for 'truth' without further research or analysis. Its contents should therefore be seen to have no legal standing or role, with no more validity in civil or criminal proceedings than hearsay. As a further level of protection, legislation will protect individuals from self-incrimination and from libel claims deriving from their submissions to the archive. However, this sharing of personal reflections should not be seen as an opportunity for admissions of responsibility. The appropriate place for such statements would be the ICIR or the HIU.

Additionally, in line with the principle of choice in connection with all institutions dealing with the past, individuals will have the right to choose whether to share their experiences and the extent of the experiences they choose to share. They will also have the right, protected by legislation, to designate when and under what circumstances their narratives may be shared publicly. For example, individuals may allow them to be shared immediately, after a given period of time, upon their death, or at a fixed point thereafter. Individuals may also choose to record their experiences utilizing the archive's facilities and expertise but retain the records themselves until their death or any other date they choose.

This archive will offer:

- A website with a structured series of questions to elicit people's narratives and a facility for uploading scans of documents, photographs, and other materials;

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- A screening process to ensure that inflammatory, irrelevant, or otherwise inappropriate material is not accepted into the archive;
- Trained facilitators for recording oral histories, conducting interviews should an individual wish, and ensuring that the process is carried out with sensitivity, professionalism, and care, with due concern to trauma and other potential emotional concerns;
- Professional recording equipment and facilities to ensure recordings are of a consistent format and quality, whether audio, video, or both;
- A repository for similar oral history archives already recorded by other institutions, if they choose to share them; and
- A repository for documents related to the conflict, including personal letters, diaries, and other records.

The archive will be initially constituted online, where scholars and members of the public will be able to access recordings that individuals have chosen to make available. The archive will be overseen by a body of professionals with training in history, library science, information services, and related disciplines. Our goal is for a physical archive of these materials to eventually exist.

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Implementation

Implementation and Reconciliation Group

The provisions regarding the past outlined in this agreement will need to be monitored and likely adjusted and augmented over time. As the needs of victims, survivors, and society change, the institutions created or strengthened here will need to change with them. New institutions or practices may need to be built to meet needs as yet unmet. Others, as society begins to heal its wounds and overcome its mistrust, may need to be wound down. We therefore pledge to establish an Implementation and Reconciliation Group (IRG). The Northern Ireland Executive will select a respected figure with relevant experience who can apply best practices and lessons learned from other post-conflict situations to lead the body as an oversight and implementation commissioner. The IRG members will include one representative (who may be—but who is not required to be—a member of the Northern Ireland Assembly) from each of the five parties in the Executive. The mechanism for selecting additional representatives from victims' groups, other civic society organisations, and other interested parties will be defined in legislation.

The IRG will fulfil three basic functions. First and most importantly, the IRG will monitor the implementation and effectiveness of all the bodies outlined in this agreement, and issue progress reports and calls for improvements where necessary.

Second, it will play a crucial advisory role, bringing together the myriad voices and experiences of its participants to consider other institutions or initiatives that could contribute to reconciliation, a better understanding of the past, and a reduction in sectarianism. One such initiative should be a Historical Timeline Group, dedicated to developing a factual chronology of the conflict. It should be composed of suitably qualified academics who would conduct a review of a broad range of historical material with a view to producing a timeline of events from 1968 to 1998. The objective would be to provide a factual resource for the work of other projects relating to the past, including but not limited to the archive of personal narratives. Its goal would be to neither condemn nor condone, but rather to offer a contextualised, evidence-based accompaniment for other work on the past.

Finally, as and when the IRG decides that an issue is appropriate for consideration by the themes unit of the ICIR, it will convey a formal request for that topic to be studied by the ICIR and reported on as evidence permits. The group should operate without duplication to and in cooperation with the structures that are being established under the 'Together: Building a United Community' strategy.

We commit to having the IRG operational within six months of the date of this Agreement.

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Resources

We recognise that the initiatives outlined in this agreement will demand a substantial investment of financial and other resources. At a time of continuing economic challenges in the United Kingdom, Ireland, Europe more broadly, and the rest of the world, some may wonder how sufficient funding will be secured.

It is our responsibility as the political leaders of Northern Ireland to devote the resources necessary to complete the tasks we have set for ourselves, and for our society, in this agreement. The commitments we have made in this agreement are of major importance to the future of Northern Ireland. So too are investments in infrastructure, education, and other basic areas of governmental responsibility. Where difficult choices are necessary, we pledge to undertake them transparently and with a sense of accountability to the commitments we made in this agreement.

It is the case, however, that this agenda may require additional support from the UK government, the European Union, the government of Ireland, and others. In some cases, that support may be financial. In other cases it might mean full and open cooperation in the establishment and, where appropriate, the operation of the institutions outlined here. And in others it might simply mean public support for and endorsement of the difficult and important work we are setting ourselves. We would encourage them to weigh the costs of concerted, strategic action such as is outlined here against the long-term costs of continuing hesitation. We hope they will work with us in implementing this agreement and in making investments in Northern Ireland's future.