

Northern Ireland (Stormont House Agreement) Bill 2015

Summary of measures

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Contents:

- Executive summary
- Introduction
- Background to the Stormont House Agreement
- Devolution
- Historical Investigations Unit
- Independent Commission on Information Retrieval
- Oral History Archive
- Appointments to the Northern Ireland Executive

Executive Summary

This policy paper sets out what will be included in the Northern Ireland (Stormont House Agreement) Bill announced in the Queen's Speech 2015.

The Bill will deliver commitments made in the Stormont House Agreement relating to the legacy of the Troubles. It will create the legislative framework for:

- **The Historical Investigations Unit (HIU)** – an independent organisation that will take forward outstanding investigations into Troubles-related deaths;
- **The Independent Commission on Information Retrieval (ICIR)** – an independent body established by international agreement between the UK and Irish Governments that will enable victims and survivors to seek and privately receive information about the Troubles-related deaths of their next of kin;
- **An Oral History Archive (OHA)** – a central place for people from all backgrounds to share experiences and narratives related to the Troubles and to draw together existing oral history projects.

These new institutions will place the needs of victims and their families at their heart. They will operate in a way that is balanced, proportionate, transparent, fair and equitable. As the Government stated in its Northern Ireland manifesto at the General Election, we will not be party to a re-write of history. We are confident that the proposals in this document are consistent with that position.

The detailed measures build on the framework established by the Agreement and have been developed following work carried out by the Northern Ireland Office and the five largest parties in the Northern Ireland Assembly. Once established, these institutions will represent significant progress towards dealing with the legacy of Northern Ireland's past.

None of these proposals amount to any form of amnesty. This Government believes fundamentally in the rule of law and amnesties are not something that we would

contemplate. Where evidence exists for a prosecution of any crime in relation to the troubles, the law will take its course. That is one of the reasons why we are establishing the HIU to examine Troubles-related deaths and which will have powers to refer cases to the Northern Ireland DPP for a decision on prosecution.

In order to encourage co-operation with the ICIR, it was agreed that information provided to it would be inadmissible in court. This position will be explained to people who seek information through the ICIR. The Stormont House Agreement made clear, however, that no individual who provides information would be immune from prosecution if the required evidential test is satisfied.

If the Northern Ireland Executive is able to proceed with implementation of the Stormont House Agreement it is expected that the three bodies established by the Bill - the HIU, the ICIR and the OHA - will receive support from the financial package provided by the UK Government to support the Agreement.

The Bill will also make one **institutional reform** to the workings of the Northern Ireland Assembly. It contains a provision to extend the time available to allocate Ministerial positions from 7 days to 14 days after the Assembly first meets following an election.

Introduction

This policy paper is designed to provide information on the measures to be included in the Northern Ireland (Stormont House Agreement) Bill (the Bill), announced in the Queen's Speech 2015. The measures deliver on the various commitments contained in paragraphs 22-25, 30-55 and 61 of the Stormont House Agreement (the Agreement).

Within the framework established by the Agreement, the measures in the Bill have been developed following work carried out by the Northern Ireland Office, the Department of Justice, the Department of Culture, Arts and Leisure, and the Stormont House Implementation Group (SHIG). The SHIG has been established by the five main parties of the Northern Ireland Assembly to monitor and have oversight of all parts of the Stormont House Agreement that fall to the Northern Ireland Executive to implement.

At the request of the SHIG, the Bill will cover areas which are devolved as well as matters that are reserved or excepted. Using a single legislative vehicle was felt to be the most effective way to deliver commitments in the Stormont House Agreement in the very demanding schedule which needs to be followed if new structures on the past have any chance of coming into operation by the end of 2016. A Legislative Consent Motion will, therefore, be sought in the Northern Ireland Assembly in relation to devolved matters.

Inevitably, the Agreement does not expressly cover all the detail needed to deliver legislation. It is acknowledged that on some detailed questions covered in the Bill, there is not yet a clear consensus between the five main Northern Ireland parties. Work will continue to build consensus on remaining points of difference.

This paper outlines the key measures and explains how these relate to the Agreement itself. The Bill is intended to be introduced to Parliament in autumn 2015.

This paper is not designed to replace the explanatory notes which will accompany the Bill. On introduction of the Bill, the explanatory notes will be published on the www.parliament.uk website.

If you have any queries about the information provided in this pack or about the Bill, please contact the Bill Team at: SHAbill@nio.x.gsi.gov.uk.

Background to the Stormont House Agreement

The Stormont House Agreement¹ was reached on 23 December 2014, following 11 weeks of talks between the UK Government, the five largest parties in the Northern Ireland Assembly, and the Irish Government on matters for which they have responsibility, in accordance with the three-stranded approach confirmed in the 1998 Belfast Agreement.

The Agreement addresses a number of challenges facing Northern Ireland, including welfare reform, fiscal sustainability, measures to deal with the legacy of the Troubles, arrangements to examine issues such as flags, parades, cultural identity and tradition, and improvements to the working of devolution.

The measures related to the legacy of the Troubles represent significant progress towards recognising the needs of victims and their families, and putting in place new institutions to help Northern Ireland deal with its past. As set out in the Agreement, these new institutions need to operate in a way that is “balanced, proportionate, transparent, fair and equitable.” Upholding these principles has been a key consideration in the design of the operating models for each of the new institutions, which must not seek to re-write history but rather support the transition to long-term peace and stability in Northern Ireland.

These new institutions build on previous initiatives that sought to resolve complex issues from Northern Ireland’s past.

The Northern Ireland (Stormont House Agreement) Bill will deliver a number of commitments made by the UK Government in the Agreement. These are:

- **The Historical Investigations Unit (HIU)** – the Bill will establish a new independent body to take forward outstanding investigations into Troubles-related deaths. These include those deaths previously identified as requiring

¹ Full text of the Agreement is available here: <https://www.gov.uk/government/publications/the-stormont-house-agreement>

re-examination. The body will take on investigations and functions that had previously been the responsibility of the Police Service of Northern Ireland's (PSNI) Historical Enquiries Team and the Office of the Police Ombudsman for Northern Ireland (OPONI).

- **The Independent Commission on Information Retrieval (ICIR)** – an independent body established by international agreement between the UK Government and Irish Government that will enable victims and survivors to seek and privately receive information about the Troubles-related deaths of their next-of-kin. The ICIR will be separate to the criminal justice system and information provided to it will not be admissible in court. The ICIR will not provide an amnesty: it is the information *as provided to the ICIR* which is protected, not the individual (or the information if it is obtained by another means). No individual who provides information would be immune from prosecution if the required evidential test is satisfied.
- **An Oral History Archive (OHA)** – a central place for people from all backgrounds to share experiences and narratives related to the Troubles and to draw together existing oral history projects. The OHA will be located within the Public Records Office of NI (PRONI) but will have operational independence from the Department of Culture Arts and Leisure, which is PRONI's parent department.
- **Institutional reform** – the Bill will contain a provision to extend the time available to allocate Ministerial positions from 7 days to 14 days after the Assembly first meets following an election.

These measures are outlined in more detail, with the relevant excerpts from the Agreement, below.

One of the key commitments in the Agreement is the establishment of the Implementation and Reconciliation Group (IRG). As outlined in the Agreement, "Promoting reconciliation will underlie all of the work of the IRG. It will encourage and support other initiatives that contribute to reconciliation, better understanding of the past and reducing sectarianism..... After 5 years a report on themes will be

commissioned by the IRG from independent academic experts. Any potential evidence base for patterns and themes will be referred to the IRG from any of the legacy mechanisms [outlined in this paper]”.

It is not currently envisaged that the IRG will be included in the Northern Ireland (Stormont House Agreement) Bill. However, the UK Government stands ready to assist on matters related to the IRG if requested to do so by the Northern Ireland parties.

Devolution

The Northern Ireland devolution settlement² gives legislative competence in respect of certain matters (known as ‘transferred matters’) to the Northern Ireland Assembly. These include justice and policing, culture and sport, and many areas in the economic and social fields, such as health and social services, education, and employment and skills.

The UK Government remains responsible for excepted and reserved matters, including the constitution, general taxation, international relations and protection of national security. The Northern Ireland Assembly has competence to legislate for reserved matters, where it has the consent of the Secretary of State for Northern Ireland.

The Northern Ireland Act 1998 (which has been amended a number of times) sets out the full list of excepted and reserved matters³.

Devolution and the Northern Ireland (Stormont House Agreement) Bill

The majority of the commitments in the Agreement, including some of those related to the past, deal with matters within the legislative competence of the Northern Ireland Assembly, and are the responsibility of the Northern Ireland Executive. However, in order to expedite the establishment of the legacy institutions, the Government has agreed to include the provisions outlined above in a single Bill before Parliament.

The measures in the Bill will primarily be operative in Northern Ireland but the majority of the provisions, including inadmissibility of information provided to the Independent Commission on Information Retrieval, will extend to the whole of the UK. This will ensure that the new institutions can operate as intended. In the case of the ICIR, which will be an independent international body, corresponding legislation

² For more information on devolution and how it affects the way governments work, see: <https://www.gov.uk/guidance-on-devolution> and <https://www.gov.uk/devolution-of-powers-to-scotland-wales-and-northern-ireland>

³ Those matters which are not specifically excepted or reserved are deemed to be transferred.

will need to be enacted by the Houses of the Oireachtas to ensure it can operate in Ireland.

In line with the convention that the UK Parliament will not normally legislate on a devolved matter without the consent of the devolved legislature, the UK Government is seeking a Legislative Consent Motion in respect of transferred matters.

Historical Investigations Unit

Extract from the Stormont House Agreement:

30. Legislation will establish a new independent body to take forward investigations into outstanding Troubles-related deaths; the Historical Investigations Unit (HIU). The body will take forward outstanding cases from the HET process and the legacy work of the Police Ombudsman for Northern Ireland (PONI). A report will be produced in each case.

31. Processes dealing with the past should be victim-centred. Legacy inquests will continue as a separate process to the HIU. Recent domestic and European judgments have demonstrated that the legacy inquest process is not providing access to a sufficiently effective investigation within an acceptable timeframe. In light of this, the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.

32. Appropriate governance arrangements will be put in place to ensure the operational independence of the two different elements of the work of the HIU.

33. The HIU will have dedicated family support staff who will involve the next of kin from the beginning and provide them with expert advice and other necessary support throughout the process.

34. The HIU will consider all cases in respect of which HET and PONI have not completed their work, including HET cases which have already been identified as requiring re-examination. Families may apply to have other cases considered for criminal investigation by the HIU if there is new evidence, which was not previously before the HET, which is relevant to the identification and eventual prosecution of the perpetrator.

35. As with existing criminal investigations, the decision to prosecute is a matter for the DPP and the HIU may consult his office on evidentiary issues in advance of submitting a file.

36. When cases are transferred from HET and PONI, all relevant case files held by those existing bodies will be passed to the new body. In respect of its criminal investigations, the HIU will have full policing powers. In respect of the cases from PONI, the HIU will have equivalent powers to that body.

37. The UK Government makes clear that it will make full disclosure to the HIU. In order to ensure that no individuals are put at risk, and that the Government's duty to keep people safe and secure is upheld, Westminster legislation will provide for equivalent measures to those that currently apply to existing bodies so as to prevent any damaging onward disclosure of information by the HIU.

38. HIU will be overseen by the Northern Ireland Policing Board.

39. The necessary arrangements will be put in place to ensure the HIU has the full co-operation of all relevant Irish authorities, including disclosure of information and documentation. This will include arrangements for co-operation between criminal investigation agencies in both jurisdictions and arrangements for obtaining evidence for use in court proceedings. Where additional legislation is required, it will be brought forward by the Irish Government.

40. In order to ensure expeditious investigations, the HIU should aim to complete its work within five years of its establishment.

Overview

The Historical Investigations Unit will be an independent, investigative body responsible for completing outstanding investigations into Troubles-related deaths. These include cases that had previously been the responsibility of the PSNI's Historical Enquiries Team (HET⁴), and the legacy cases relating to a Troubles-related death from the Office of the Police Ombudsman for Northern Ireland (OPONI).

The HIU will consider all cases in a manner compliant with the requirements of the European Convention on Human Rights (ECHR) Article 2 and will produce a report in each case. Its investigations will be victim-centred and the HIU will have dedicated family support staff. In order to ensure expeditious investigations, the HIU will aim to complete its work within five years of its establishment.

Further information on the following areas is included below: HIU's status, remit and functions; powers of the HIU; governance and oversight; recruitment; and disclosure of information.

HIU status, remit and functions

The HIU will be an independent, investigative organisation. It will be established as a body corporate, sponsored by the Department of Justice, with duties to exercise its

⁴ The HET has been replaced by the PSNI's Legacy Investigations Branch

functions in a manner which is independent, fair and impartial, efficient and effective and secures public confidence.

Reflecting different aspects of the functions it will inherit from PSNI and OPONI, the HIU will have both a criminal investigation function and a non-criminal misconduct investigation function. The two different elements of the work of the HIU will be operationally independent. For a case which requires investigation by the criminal and non-criminal misconduct functions of the HIU, the functions will be carried out sequentially, beginning with a criminal investigation. Cases and information will be able to be transferred across the two functions (except for information provided under mutual legal assistance from other countries, which can only be used for the purpose for which it was provided).

In accordance with paragraphs 30 and 34 of the Stormont House Agreement the HIU will take forward outstanding investigations previously under the remit of the PSNI. It will also re-examine HET cases where the review is complete but is one of those previously identified as requiring re-examination. It will take on the legacy work of OPONI – that is outstanding investigations regarding alleged misconduct by the police where a complaint has previously been made to OPONI – as well as cases where new evidence of misconduct is uncovered during the course of an investigation. The HIU's remit will be to investigate outstanding Troubles-related deaths occurring between 1 January 1966 and 10 April 1998.

In order to facilitate this, the PSNI and OPONI will certify their existing caseloads as complete or incomplete in advance of the establishment of the HIU. All incomplete cases (and cases requiring re-examination) will then be passed to the HIU.

The HIU will be victim-centred and cases can be referred to the HIU, including by a member of the family of the deceased, where there is a new fact. The HIU will also have dedicated family support staff that will involve the next of kin from the beginning and provide them with such support and other assistance as the HIU considers necessary throughout the process.

Transitional provisions will allow for the Director of HIU and the OPONI to agree between them if and when a case should remain with OPONI for completion instead of transferring to the HIU, if the case is already substantially completed.

The HIU will prepare a report for the family in each case within its remit and it will have the power to publish these reports. It is expected that a number of reports will be prepared by the HIU, for different purposes:

- For the family of the deceased, once all investigations are concluded – this will be an important element of the HIU's work and will provide families with information on the circumstances surrounding the death of a loved one, if they wish to receive it;
- For the Director of Public Prosecutions (DPP) to consider whether to take forward a prosecution in every case where there has been a criminal investigation. As with existing criminal investigations, the decision to prosecute is a matter solely for the DPP and the HIU may consult his office on evidentiary issues in advance of submitting a file;
- For the PSNI and / or the Northern Ireland Policing Board (NIPB), if there is evidence of misconduct by a serving officer, so that appropriate action may be taken;

Powers of the HIU

The HIU will be established to carry out effective and independent investigations into Troubles-related deaths. As such, it will require the policing powers necessary to advance criminal investigations.

In considering a case, the HIU will first determine the nature of the investigation, for example a criminal investigation into a death connected to the Troubles, or an investigation into alleged non-criminal misconduct on the part of a police officer.

In line with the Agreement, the HIU will have a power to designate HIU officers conducting criminal investigations as having the powers and privileges of a constable throughout Northern Ireland. The powers to be conferred on the designated officer for conducting its criminal investigations are similar to those available to the PSNI and OPONI in the conduct of their respective criminal investigations. The powers will not be available when it is investigating allegations of non-criminal police misconduct. The HIU will also have specific powers to obtain information, which are outlined further below.

As above, where an investigation included the investigation of any criminal offence, the HIU will be required to report the matter to the DPP, who would make a decision whether to prosecute, as with existing criminal investigations.

Governance and oversight of the HIU

The HIU as a corporate entity will consist of both Executive and Non-Executive members within its management board, including the HIU Director, who will have operational control over the HIU and the exercise of its investigatory functions.

The HIU will put in place and publish a code of ethics for HIU officers and will be required to establish and publish procedures for dealing with complaints and disciplinary matters. The HIU will be subject to independent inspection, as are other criminal justice bodies.

The HIU will produce and publish a Statement which will set out the manner and standards by which the HIU will conduct its investigations, including how it will ensure that its investigations are compliant with Article 2 of the ECHR.

The HIU will be overseen by the Northern Ireland Policing Board in respect of transferred matters. The Policing Board's oversight powers will be similar to those it has in respect of holding to account the PSNI. The Secretary of State will have oversight of the HIU regarding reserved and excepted matters.

The Policing Board will also be responsible for monitoring the performance of the HIU, including its compliance with human rights obligations. It will report annually on the HIU and hold public meetings in respect of the HIU. To facilitate this, the HIU will be required to send reports to the Policing Board which will have the option to cause an inquiry to be held where it considers one necessary.

As a Non-Departmental Public Body, the funding of the HIU will be granted through the Department of Justice and the Policing Board. If the Stormont House Agreement is implemented, it is expected that the HIU will receive support from the financial package provided by the UK Government to support the Agreement. The HIU will be required to compile an annual statement of accounts.

Recruitment

The HIU will be led by a Director, who will determine the size of the membership of the corporate body and will appoint the remaining members. The Director will be appointed by the First Minister and deputy First Minister, acting jointly, in consultation with the Department of Justice. The appointment will be made following a merit-based appointment process after a fair and open competition. As with all appointments by the First Minister and deputy First Minister, the Commissioner for Public Appointments Northern Ireland will oversee the appointment process for the Director.

It is envisaged that around 150-200 investigators will be required and the HIU will be empowered to recruit such employees as appear to it to be appropriate, with the approval of the Department of Justice as to numbers, remuneration and other terms and conditions of service. The Bill does not prohibit the HIU from recruiting persons who have previously served in policing or security roles in Northern Ireland. The Director, in developing the HIU's recruitment strategy, will be expected take appropriate account of how other bodies have recruited staff in compliance with Article 2 requirements.

The HIU may need to make arrangements to recruit by way of secondments from UK police forces and other public and private bodies. The HIU's recruitment will be conducted in line with employment law.

Co-operation with the HIU and access to, and the handling and disclosure of, information by the HIU

As set out in the Agreement, the UK Government will make full disclosure to the HIU. Because the HIU will therefore hold information which could endanger lives and security, legislation will also put in place appropriate controls regarding the storage, management and onward disclosure of sensitive information by the HIU to other persons or bodies, so as to comply with the UK Government's duties not to put safety, security or life at risk.

Setting these controls out transparently in both this paper, and in legislation, is intended to make it clear that the HIU:

- will receive full disclosure of information from the UK Government; and
- will have consequential duties to ensure it does not put safety, security or life at risk in how it handles the sensitive information it will receive.

To enable the UK Government to deliver on its disclosure commitment, the Bill will include a duty on UK Government bodies to provide the HIU with such information, documents or other material, information and documentation as it may reasonably require for the purposes of, or in connection with, the exercise of its functions.

The Bill will also impose similar disclosure duties on devolved bodies, including the PSNI and OPONI. It will enable the HIU to designate officers who are investigating criminal offences with the powers of a constable. This will mean that, when investigating potential criminality HIU officers will have, for example, powers to stop and search persons and vehicles, powers of entry, search and seizure (with or without a warrant), powers of arrest and detention, powers to obtain and retain certain evidence (e.g. biometric data) and specific powers in respect of certain investigations (e.g. terrorism, firearms, explosives). When carrying out criminal

investigations, HIU officers, like PSNI or OPONI officers, will be able to use these powers to obtain information from individuals, bodies, UK Government departments and agencies.

The HIU will, from time to time, also need access to relevant files and material held by An Garda Síochána and other relevant Irish authorities. Arrangements are being put in place to ensure the HIU has the full co-operation of all relevant Irish authorities, including disclosure of material, information and documentation. Where new legislation is required to allow Irish authorities to co-operate with the HIU, the Irish Government is committed to bringing it forward in a timeframe in line with the Westminster legislative process. Should an international agreement be necessary to allow the full investigation of a cross-border incident, the Irish Government will negotiate the necessary instrument.

These measures will ensure that the HIU has access to the information needed to carry out thorough, effective investigations. It will also mean that the HIU will have access to sensitive information which, if published, could potentially put the life and safety of individuals at risk, or compromise national security. In order to enable full disclosure to the HIU, equivalent measures will be put in place to those that currently apply to existing bodies to prevent damaging onward disclosure of such information.

We have identified the measures currently in place in respect of bodies such as the PSNI, OPONI, the Criminal Cases Review Commission (CCRC) and the Independent Police Complaints Commission (IPCC), which ensure they are sufficiently secure to receive disclosure of sensitive information.

The HIU will therefore operate within the following parameters:

- To keep people safe and secure, the HIU must protect information that, if disclosed, would or would be likely to put an individual in danger. All public authorities in the UK are under an obligation to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual. This includes avoiding the disclosure of information which would be likely to put an individual in danger. Where the HIU proposes to

disclose information of this nature, it will be required to refer the matter to the Department of Justice, which may prevent disclosure, if necessary.

- To avoid putting potential or actual prosecutions at risk, the HIU must protect information which, if disclosed, would or would be likely to prejudice outstanding criminal proceedings. The PSNI and OPONI have equivalent obligations. It is essential that the disclosure of information by the HIU does not result in criminal proceedings being prejudiced.
- The HIU must protect information that, if disclosed, would or would be likely to prejudice national security (including information from the intelligence services). The bodies mentioned earlier (including the CCRC and IPCC), as well as Her Majesty's Inspectorate of Constabulary and the Criminal Justice Inspectorate Northern Ireland have equivalent obligations not to disclose such information without the consent of the Secretary of State. Where the HIU proposes to disclose information of this nature, it will be required to refer the matter to the UK Government, which may prevent disclosure, if necessary.
- During the course of its investigations, the HIU may obtain information from outside the UK, either through mutual legal assistance or mutual administrative assistance. In order for the HIU to be in a position to receive full cooperation, the UK Government will need to be able to prevent onward disclosure of sensitive material received from other jurisdictions, where appropriate.

As outlined above, the HIU will refer any decision for prosecution to the Northern Ireland DPP. In order for the DPP to proceed with a prosecution they will need all information and evidence which could be relevant to a prosecution. The HIU will therefore make full onward disclosure to the DPP. This will also apply in respect of the courts, and criminal justice inspectorates such as Her Majesty's Inspectorate of Constabulary and the Chief Inspector of Criminal Justice in Northern Ireland.

In order to assist the HIU in putting in place the necessary information security arrangements, the UK Government will issue guidance about how to identify

information that would be likely to put individuals at risk or prejudice the UK Government's duty to keep people safe and secure. The HIU Director should ensure that HIU staff have appropriate training in confidentiality and onward disclosure. Moreover, the PSNI, OPONI and UK Government departments will be required to notify the HIU if they are of the opinion that any of the information they provide to the HIU would prejudice the UK Government's duty to keep people safe and secure, or prejudice safety or life.

Independent Commission on Information Retrieval

Extract from the Stormont House Agreement:

41. A new body, which will respect the sovereign integrity of each jurisdiction, will be established by the UK and Irish Governments, called the Independent Commission on Information Retrieval (ICIR), building on the precedent provided by the Independent Commission on the Location of Victims' Remains. The objective of the ICIR will be to enable victims and survivors to seek and privately receive information about the (Troubles-related) deaths of their next of kin.

42. Individuals from both the UK and Ireland will be able to seek information from the ICIR.

43. Once established, the body will run for no longer than 5 years.

44. The ICIR will be led by five members: an independent chairperson who may be of international standing and will be appointed by the UK and Irish Governments, in consultation with OFMDFM, together with two nominees appointed by the First and deputy First Minister, one each appointed by the UK Government and the Irish Government.

45. The ICIR's remit will cover both jurisdictions and will have the same functions in each. It will be entirely separate from the justice system. The ICIR will also be free to seek information from other jurisdictions, and both governments undertake to support such requests.

46. The ICIR will not disclose information provided to it to law enforcement or intelligence agencies and this information will be inadmissible in criminal and civil proceedings. These facts will be made clear to those seeking to access information through the body.

47. The ICIR will be given the immunities and privileges of an international body and would not be subject to judicial review, Freedom of Information, Data Protection and National Archives legislation, in either jurisdiction.

48. Legislation will be taken forward by the UK Government, the Irish Government and the Assembly to implement the above decision on inadmissibility.

49. The ICIR will not disclose the identities of people who provide information. No individual who provides information to the body will be immune from prosecution for any crime committed should the required evidential test be satisfied by other means.

50. The ICIR will be held accountable to the principles of independence, rigour, fairness and balance, transparency and proportionality.

Overview

The Independent Commission on Information Retrieval will be an independent, international body established via an international treaty between the UK Government and Irish Government.

For many of the families whose loved ones were killed during the Troubles, the need to know more about the circumstances surrounding the death is profoundly important. Affording these individuals the opportunity to seek further information could provide a measure of comfort. The objective of the ICIR is therefore to enable victims and survivors to seek and privately receive information about the Troubles-related deaths of their next-of-kin.

The ICIR draws on the precedent provided by the Independent Commission on the Location of Victims' Remains^[1] (the ICLVR). The ICLVR is an international body, established in a treaty between the UK Government and Irish Government, in order to obtain information which may lead to the location of the remains of a number of people referred to as "the Disappeared", who went missing in Northern Ireland during the Troubles. To facilitate this, both UK and Irish Governments made legislative provision to ensure that information provided to the ICLVR pursuant to this aim of locating the remains cannot be used in criminal proceedings. As per the Agreement, similar provision will be made in the Bill in respect of the ICIR. An analogous provision will be made by the Irish Government in its implementing legislation.

In line with the Independent Commission on the Location of Victims' Remains, legislation will be needed in both the UK and Ireland to give effect to elements of the ICIR's operating model.

Status and establishment of the ICIR

The ICIR will be an international body with the capacity of a body corporate, established via a treaty between the UK Government and the Irish Government.

^[1] See the Northern Ireland (Location of Victims' Remains) Act 1999

The ICIR will be independent in the exercise of its functions and will be led by five commissioners: one independent Chair appointed by the UK Government and the Irish Government (in consultation with the Office of the First Minister and Deputy First Minister); one commissioner appointed by each Government; and two commissioners appointed by the First Minister and deputy First Minister.

The Commissioners will have responsibility for carrying out the Commission's functions in order to best fulfil its information retrieval role on behalf of families.

To allow the Commission to operate effectively (including, for example, in the case of the sickness absence or resignation of commissioner(s)), a minimum of three commissioners including the Chair will be needed to discharge the Commission's functions, including the release of reports to families. In the event that the Chair is unable to carry out his or her duties due, for example, to illness, the UK Government and the Irish Government will be able to appoint a replacement or acting Chair.

To ensure a breadth of relevant experience and the rigour of ICIR reports, it will be important to ensure that, collectively, the commissioners have experience of: working with victims and survivors; legal and judicial proceedings; and security and policing.

As set out in the Agreement, the ICIR will enjoy the immunities and privileges of an international body, including immunity from suit and legal process and inviolability of its archive. To achieve this, the Bill will confer immunities and privileges set out in the International Organisations Act 1968 and similar provision will be made in the equivalent Irish Bill. The Agreement also sets out that the ICIR will not be subject to judicial review, Freedom of Information, Data Protection and National Archives legislation in the UK or Ireland.

The Agreement makes clear that the ICIR is intended to operate for a period of 5 years.

As the ICIR is intended to be independent of its sponsoring Governments, the commissioners will make operational decisions such as the location of ICIR

premises. However, it is intended that the ICIR would have offices in both the UK and Ireland.

Requests for information from families

The ICIR's work will be family-led. It may explore the circumstances of a particular death only where approached by a close family member with questions about the death of their next of kin. Close family members will include the parents, spouse or partner, siblings and offspring of the deceased. In line with the Agreement, these relatives will be able to use the ICIR's services where they were either resident in Ireland or the UK at the time of the death, or are currently resident in either jurisdiction. The ICIR commissioners will have discretion to dis-apply this residency requirement where no close family member of the deceased objects to the request and they are satisfied that it would be appropriate to accept the request, in light of the relationship between the deceased and the requestor and whether the person meets the residency requirement.

In recognition of the fact that other relatives may have a close connection to the deceased, for instance where the grandparent had been the primary carer for the deceased when he or she was a child, the commissioners will also have discretion to accept requests from more distant relatives.

In some cases family members may have specific questions to which they are seeking answers. In others, they may not have previously identified particular questions and may have a wider need for information to give a degree of comfort. It will be up to the staff and commissioners of the ICIR to support the family to identify the information they are seeking.

The ICIR will need to deal sensitively with families' requests, including explaining the particular role of the ICIR and the outcome and support they may expect. This might include a 'cooling off' period, to allow families to consider whether to pursue engagement with the ICIR.

The ICIR will not proactively seek information about any death without the initiation of the family, but will accept unsolicited information and hold it securely in case the relevant family subsequently come forward to request it. With the permission of the family, the ICIR may publicise cases on which it is seeking information.

Information retrieval

The ICIR will provide a mechanism to retrieve and convey information which could not be obtained by other means. This is information which may not have been available via the legal process, and which people are only likely to volunteer with the assurance of the ICIR's inadmissibility and non-disclosure provisions (which are explained further below).

The primary source of this information will be individual contributors and it will be open to anyone with information to approach the Commission directly or through an intermediary. It is envisaged that the contributors may include those directly involved in a particular death, bystanders who witnessed events, and those with second-hand information about Troubles-related deaths.

It is anticipated that the ICIR will develop a network of intermediaries to facilitate this. For instance, it might make enquiries of individuals believed to have been linked to the relevant paramilitary organisation in the past.

As set out in the Agreement, the ICIR will be entirely separate from the criminal justice system. It will not therefore have investigative powers, or powers to compel witnesses or disclosure of information. All engagement with the ICIR, including by families, individual contributors and public authorities, will therefore be voluntary. It is vital therefore that the ICIR is able to build the trust of potential contributors and intermediary organisations, in order that they engage with and participate in the information retrieval process. The confidentiality and inadmissibility provisions outlined below will be important in this regard.

Reports to families

Where the ICIR seeks information on the circumstances of a particular death on behalf of a family member, it will need to make arrangements to disclose to the family such information as it judges credible and appropriate. This would take the form of a private, written report.

Given that the ICIR will not have investigative powers, it cannot be expected to verify information to the same standard of testing that would be expected in the criminal justice system. It will, however, need to establish procedures to check the information it receives before reporting to families, in order to be satisfied that it is reasonable to rely on it. This may include use of a variety of information sources, interview and analytical techniques.

Akin to the Independent Monitoring Commission, the ICIR will be placed under a duty not to prejudice safety in, and the security of, the UK or Ireland. This is intended to ensure that it operates in a way that does not put safety or life at risk. In addition, the ICIR must not prejudice on-going criminal investigations or court cases. In light of this duty and in recognition of the fact that the ICIR will not test information to an evidential standard, ICIR reports will not identify alleged perpetrators, or contributors.

Reports to the Implementation and Reconciliation Group

In addition to the ICIR, HIU and Oral History Archive, the Agreement (paragraphs 51-55) provides for the establishment of an Implementation and Reconciliation Group (IRG) to oversee themes, archives and information recovery. As set out in the Agreement, “promoting reconciliation will underlie all of the work of the IRG. It will encourage and support other initiatives that contribute to reconciliation, better understanding of the past and reducing sectarianism.”

After five years, the IRG will commission a report on themes from independent academic experts and “any potential evidence base for patterns and themes should be referred to the IRG from any of the legacy mechanisms, who may comment on

the level of co-operation received for the IRG's analysis and assessment"⁵. The ICIR will have a statutory function to report to the IRG on these matters.

Reports to the sponsoring Governments

In line with the Independent Commission on the Location of Victims' Remains, the ICIR will report to the UK Government and Irish Government annually on its business activities. The report will deal with use of public funds and quantitative data on the ICIR's operations, including on:

- ICIR finances and administration
- the number of requests for information made to the Commission and the number of reports to families
- the volume of information received by the Commission
- the number of reports to the IRG

The reports will not contain substantive information regarding the exercise of the Commission's functions; in particular they would not provide details of any information received.

Confidentiality, inadmissibility and onward disclosure of information provided to the ICIR

In line with the Agreement, information provided to the ICIR will not be admissible in civil, criminal or coronial proceedings. As indicated above, this is aimed at encouraging contributors to give information to the ICIR, which may then be shared with families.

The inadmissibility provisions, however, will not confer any immunity from prosecution or suit for contributors. In line with the Agreement, no individual who provides information will be immune from prosecution for any crime committed, should the required evidential test be satisfied by other means. This means that the

⁵ *Stormont House Agreement*, paragraph 51.

same information as provided to the ICIR, obtained by another means, could still be used in legal processes against the individual. There is no amnesty.

In line with the ICLVR, the ICIR will be under a statutory duty to avoid having a prejudicial effect on legal proceedings. This will govern all of the ICIR's operations and may impact on, for instance, the timing of the release of reports to families (for instance where a case is sub judice).

Furthermore, the ICIR will confidentially receive information from any potential contributor and will not disclose raw information provided to it to law enforcement or intelligence agencies. The ICIR may receive sensitive information from a variety of sources. The Bill and the equivalent Irish legislation will provide a mechanism to ensure that the ICIR is able to report to families without undermining its duty not to prejudice safety in, and the security of, the UK or Ireland. This mechanism will allow the ICIR to consult with the UK Government and Irish Government on whether reports that it proposes to disclose would pose such a risk in their respective jurisdictions.

Given the need for contributors to have confidence in the ICIR as a 'safe space' and the sensitivity of the information it will hold, Commissioners and staff will be placed under a statutory non-disclosure duty, breach of which will be punishable by law. This will mitigate the risk of unauthorised disclosure of information received, including the identities of contributors. Similar provisions are envisaged in both the UK and Ireland.

To reinforce the ICIR's commitment to confidentiality and to encourage engagement, the raw material and operating files that it holds will be destroyed on completion of its work. This will not include its reports to families.

Oral History Archive

Extract from the Stormont House Agreement:

22. The Executive will, by 2016, establish an Oral History Archive to provide a central place for people from all backgrounds (and from throughout the UK and Ireland) to share experiences and narratives related to the Troubles. As well as collecting new material, this archive will attempt to draw together and work with existing oral history projects.

23. The sharing of experiences will be entirely voluntary and consideration will be given to protecting contributors, and the body itself, from defamation claims. The Archive will bring forward proposals on the circumstances and timing of contributions being made public.

24. The Archive will be independent and free from political interference.

The Oral History Archive will be set up to work with existing oral history projects as a central place for individuals from all backgrounds in Northern Ireland and elsewhere to voluntarily share experiences and narratives related to the Troubles.

Creation of the archive and independence

The OHA will be established as a new part of the Public Record Office of Northern Ireland (PRONI). PRONI is currently a division of the Department for Culture, Arts and Leisure – after the May 2016 Assembly elections, PRONI will become a part of the new Department for Communities.

In order to ensure the independence of the OHA and that it is protected from political control or interference, in line with the Agreement, the OHA will be under the direction and control of the Deputy Keeper of the Records, who is a senior civil servant. Moreover, the Deputy Keeper, rather than an Executive Minister, will make decisions about the procedures, conduct and content of the archive. Ministers will not have access to oral history records until they have been published by the Deputy Keeper.

The Deputy Keeper of Records will provide an Annual Report relating to the OHA to the First Minister and deputy First Minister and the Minister of the Department with responsibility for PRONI, and the Minister will lay it before the Northern Ireland Assembly.

Collecting and recording oral histories

The OHA will have two functions: first, to receive and preserve oral histories collected by others and, second, to collect and preserve new oral histories from individual contributors.

Oral histories are recordings of people's memories, life experiences and commentaries on events; they are personal and reveal information about people's feelings, attitudes and ways of life. They are necessarily subjective and the person collecting the oral history will not test the veracity of the content but allow the contributor to record their perspective. It differs therefore from investigative or journalistic interviewing.

Oral history can provide a means of recording alternative narratives, adding layers of meaning to existing accounts, or challenging preconceptions. Oral history can provide opportunities for ordinary people, who are normally hidden from history, to record their own perspectives.

There will be a provision for the production of a factual historical timeline and statistical analysis of the Troubles, led by academics.

Contributing an oral history to the archive and publication

All engagement with the OHA will be voluntary. Before agreeing to contribute an oral history, prospective contributors will have the opportunity to discuss their participation with archive staff. They will be made aware of:

- the public nature of the archive and, in particular, that interviews will normally be made accessible to the public;
- the processes involved in recording, reviewing and finalising their oral histories and how they will be supported through this process;

- the potential risks associated with breaching others' privacy, defamation claims or self-incrimination;
- support arrangements available for victims/survivors and be signposted to appropriate support bodies.

Contributors will need to confirm in writing they give their informed consent and are content to proceed with their interview. Interviews will be conducted under the direction of the Deputy Keeper by expert practitioners with the appropriate experience and training. Provided they are content to proceed, contributors will provide records, normally in the form of an audio-visual interview.

OHA will maintain a catalogue of closed interviews which will be preserved by PRONI but only available by signposting to relevant organisations. This allows existing voluntary / community projects to preserve their interviews at PRONI but can continue to have exclusive publications rights.

Once the contribution has been reviewed and, if necessary, edited by the contributor with support from archive staff, it will be finalised by the contributor who will then confirm in writing that they are happy for their finalised interview to be placed in the archive. It will then be made accessible to the public as soon as practicable; likely in the form of an online record. In some cases it is envisaged that this information may remain private for an extended period.

Disclosure by and protection for the archive

The OHA will be subject to existing laws on disclosure, including the Data Protection Act 1998 and Freedom of Information Act 2000. In some cases final contributions may contain information, for example personal information, which is fundamental to the oral history and its historical value but which, for legislative reasons, or at the request of the contributor should not be made public immediately. It is envisaged that this information may be kept private for an extended period, if necessary.

The OHA will not be exempt from any court order served for the release of information in an oral history held by the archive, including requests for disclosure in

relation to criminal investigations. Nor will it be exempt from any statutory duty to report crimes.

These disclosure requirements to which the archive is subject will be made clear to potential contributors before they record an oral history.

The Bill will confer new rule-making powers on the responsible Northern Ireland Executive Department in respect of the procedures, conduct and content of the OHA, including, for example, the process for the disposal of documents which it holds but do not form part of the archive.

Appointments to the Northern Ireland Executive

Stormont House Agreement:

61. After the Assembly meets following an election and before the FM/DFM are selected and the d'Hondt process runs, representatives of the parties who are entitled to take up places in the Executive and who confirm their intention to do so will meet to resolve the draft Programme for Government. Changes to Westminster legislation (as soon as time permits) could extend the time available from seven days to fourteen days. The draft Programme would, once the Executive was formed be passed to the Assembly for approval.

The majority of the commitments in the Agreement relating to institutional reform fall to the Northern Ireland Executive to implement. However, the structure for the appointment of Executive Ministers is an excepted matter. Legislation is therefore needed in the UK Parliament to extend the time available to allocate Northern Ireland Executive Ministerial positions from 7 days to 14 days after the Northern Ireland Assembly first meets following an election.

The aim of this provision is to grant the Northern Ireland parties more time to agree a Programme for Government prior to the allocation of Ministerial positions.