



Northern
Ireland
Office

Secretary of State's
First Report under
Section 11(1) of the
Northern Ireland
(Monitoring
Commission etc.)
Act 2003

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Foreword

This is the first report to Parliament under section 11(1) of the Northern Ireland (Monitoring Commission etc.) Act 2003 and covers the twelve month period from 18 September 2003.

Section 11 requires me to lay before Parliament and publish an annual report on the operation of the Agreement between the British and Irish Governments which established the Independent Monitoring Commission (IMC). The report must also cover the operation of amendments made by the 2003 Act to the Northern Ireland Act 1998.



This report focuses on the requirements set out in section 11 and does not attempt to summarise in any detail the two reports by the IMC made during this reporting period. Those reports, on ongoing paramilitary activity and security normalisation, are available publicly. The attached sets out the background to the IMC, the Agreement which established it and the legislation which underpins it. I hope that this material will set the section 11 reporting requirements in context. All of the documents referred to in this report are publicly available for reference.

I would like to take this opportunity to thank the IMC Commissioners for their valuable contribution to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland.

A handwritten signature in black ink, appearing to read 'Paul Murphy', written in a cursive style.

PAUL MURPHY
SECRETARY OF STATE FOR NORTHERN IRELAND

FIRST REPORT UNDER SECTION 11(1) OF THE NORTHERN IRELAND (MONITORING COMMISSION ETC.) ACT 2003

INTRODUCTION AND BACKGROUND

Introduction

- 1.1** The Northern Ireland (Monitoring Commission etc.) Act 2003¹ (the 2003 Act) received Royal Assent on 18 September 2003. It makes provision associated with the Independent Monitoring Commission (IMC), established by an Agreement between the British and Irish Governments².
- 1.2** Section 11 of the 2003 Act requires an annual report on two matters. The first is the operation of the Agreement that established the IMC. The second is the operation of new provisions in the Northern Ireland Act 1998³ inserted by the 2003 Act.

Background

- 1.3** On 1 May 2003, the British and Irish Governments published a paper entitled 'Agreement between the British and Irish Governments: Monitoring and Compliance'⁴. It supplemented a Joint Declaration between the Governments⁵ on steps necessary to build trust and confidence amongst the Northern Ireland political parties with a view to early restoration of the Belfast Agreement institutions.
- 1.4** The Monitoring and Compliance Agreement explained that the two Governments would create a new body – the IMC. It would monitor and report on ongoing paramilitary activity, the British Government's programme of security normalisation set out in the Joint Declaration, and consider claims that an Assembly party was in breach of its commitments under the Belfast Agreement.
- 1.5** The Monitoring and Compliance paper summarised the procedures the Governments envisaged would apply and described the terms of reference for the IMC.

The IMC Agreement

- 1.6** As with the International Independent Commission on Decommissioning and the Location of Victims' Remains Commission, the British and Irish Governments decided that the IMC should be established through an

1 c25
2 The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing the Independent Monitoring Commission
3 c47
4 NIO website
5 NIO website

International Agreement with supplementary legislation as necessary in both jurisdictions. This would establish the IMC as an independent body in international law and would allow it to operate in the United Kingdom and Ireland. On 4 September 2003, the British and Irish Governments published a draft Agreement on establishing the IMC. The draft set out in more detail the purpose, functions, operation of the IMC and ancillary matters. On the same day, the Governments announced the names of the four individuals appointed as Commissioners and confirmed that they would meet before the IMC was established formally to discuss working methods and plan for their first report.

- 1.7** The IMC Agreement was signed on 25 November 2003. It took effect on 7 January 2004 and the IMC was established formally on that date.

The Northern Ireland (Monitoring Commission etc.) Act 2003

- 1.8** While the IMC Agreement established the IMC and set out the functions of the Commission, primary legislation was needed to make supplementary provision for the IMC in domestic law. It was also needed to amend the Northern Ireland Act 1998 to enable the Assembly and the Secretary of State to take appropriate action in the light of IMC reports.
- 1.9** The Northern Ireland (Monitoring Commission etc.) Bill was introduced in the Lords on 8 September 2003 and passed all Commons' stages on 17 September 2003. Royal Assent was granted the following day. Legislation making similar provision for the IMC was passed in Ireland.
- 1.10** The 2003 Act ensured that remedial action could be taken by the Northern Ireland Assembly in the light of an adverse report by the IMC. In line with the Monitoring and Compliance Agreement, it amended the Northern Ireland Act 1998 to enable the Assembly to take a number of measures against parties and Ministers on the basis of a cross-community vote. The 1998 Act already provided for the Assembly to vote to exclude a party or Minister, the 2003 Act added the ability to reduce MLA salaries and party funding and to vote on a motion of censure.
- 1.11** The Monitoring and Compliance paper also made clear that where the Assembly failed to give effect to an IMC recommendation, it would be for the British Government in consultation with the Irish Government and the parties to resolve the matter in a manner consistent with the IMC report. The 2003 Act therefore amended the 1998 Act to enable the Secretary of State to exclude a party or Minister in circumstances where the IMC had recommended that and where the first Assembly motion for an exclusion resolution failed to attract cross-community support

OPERATION OF THE IMC AGREEMENT AND THE AMENDMENTS TO THE NORTHERN IRELAND ACT 1998

Establishing the IMC

- 2.1** This part of the report covers the establishment of the IMC through the Agreement between the British and Irish Governments and refers as necessary to the 2003 Act. The main heads of the Agreement, and actions taken in accordance with it in the reporting period, are set out below.
- 2.2** Articles 1 and 2 of the Agreement established the IMC as an independent body with legal capacity as a body corporate. **The IMC was established formally on 7 January 2004 when the Governments exchanged letters in accordance with Article 15(1) of the Agreement.**
- 2.3** Article 3 of the Agreement provides that the objective of the IMC is to carry out its functions with a view to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland. **On 9 March⁶, the IMC issued a statement to explain how it intended to go about its work. The IMC made clear in that statement that Article 3 of the Agreement was its starting point and would guide all that it did.**
- 2.4** Article 8 requires the IMC to be accessible to all interested parties in preparing its reports and recommendations and that it must consult as necessary when fulfilling its functions under the Agreement. **The IMC's statement of 9 March set out the importance of seeking the views of the community as a whole and provided contact details for their offices in Belfast and Dublin. The IMC has since issued a further invitation for interested parties to make representations to it, and the IMC's first report on paramilitary activity stressed again its willingness to hear from interested parties.**
- 2.5** Article 10 of the IMC Agreement provides that the Commission will have four members. Two must be appointed by the British Government, one of whom must be from Northern Ireland. One must be appointed by the Irish Government. One must be appointed by the two Governments and must be a nominee of the Government of the United States of America.

- 2.6 The names of the Commissioners were announced by the two Governments in September 2003 and they began work immediately on their working practices to pave the way for their first report.** The Commissioners are John Grieve, formerly a senior officer of the Metropolitan Police; Lord Alderdice, the first Presiding Officer of the Northern Ireland Assembly; Joseph Brosnan, former Secretary General of the Department of Justice in Ireland and Richard Kerr, a former Deputy Director of the CIA in America. Their appointments took formal effect on 7 January 2004.
- 2.7** Article 12 of the Agreement provides that the two Governments must fund properly the IMC and arrangements are in place for costs sharing with the Irish Government. **Article 14 requires the IMC to keep proper accounts and it is envisaged that these will be published at the end of the financial year 2004/5.**

Status of the Independent Monitoring Commission and its Duties

- 2.8** The IMC is independent of the two Governments. Its functions are defined by the IMC Agreement. Article 13 of the Agreement and section 2(1) of the 2003 Act make it clear that the IMC is under a duty not to do anything which might prejudice national security, put at risk the life or safety of any person or prejudice present or future legal proceedings.
- 2.9** The Agreement and the 2003 Act enable the Governments to confer immunity from suit and legal challenge on the IMC. In the United Kingdom, the Northern Ireland (Monitoring Commission etc.) Act 2003 (Immunities and Privileges) Order 2003⁷ was made to confer such immunities and it came into effect on 7 January 2004.

ARTICLE 4 REPORT ON PARAMILITARY ACTIVITY AND REMOVAL OF BLOCK FINANCIAL ASSISTANCE FROM SINN FEIN AND THE PROGRESSIVE UNIONIST PARTY

- 3.1** This part of the report covers the IMC's first report on paramilitary activity under Article 4 of the Agreement, and the action taken subsequently by the Secretary of State.

Requirements for Reports on Paramilitary Activity

- 3.2** Article 4 of the Agreement requires the IMC to monitor any continuing activity by paramilitary groups and it sets out the activities to be covered in reports. Article 4 also requires the IMC to assess whether the leaderships of paramilitary groups are directing or seeking to prevent continuing activities and it requires the IMC to assess trends in security incidents. The IMC must report to the two Governments at six-monthly intervals and can produce further ad hoc reports if it sees fit to do so or at the request of the Governments. Under Article 9 of the Agreement, the Governments must take steps to publish Article 4 reports and the 2003 Act further requires that reports must be laid in Parliament.
- 3.3** Article 7 of the IMC Agreement requires the IMC to recommend any remedial action considered necessary when reporting on paramilitary activity under Article 4. The Commission may also recommend what measures, if any, the Northern Ireland Assembly should take but is limited in this respect to recommending measures provided for in the Northern Ireland Act 1998 as amended by the 2003 Act (exclusion, reduction of salaries, reduction of financial assistance to parties and censure).

The First Report on Paramilitary Activity - Background

- 3.4** **The first report under Articles 4 and 7 of the Agreement was laid in Parliament on 20 April 2004** and should be set in context.
- 3.5** On the evening of 20 February in Belfast, four individuals were arrested in relation to an incident at Kelly's Cellars. On 24 February⁸, the two Governments issued a statement in which they explained the serious impact of this incident on the ongoing discussions with the Northern Ireland political parties. In the light of the concerns expressed by the parties, the Governments asked the IMC

to bring forward its first report from July to May to cover all incidents from its establishment in January.

- 3.6** Subsequently, the IMC issued a statement on 15 March⁹ to the effect that, in the light of ongoing concerns, its first report would be brought forward to mid April.
- 3.7** On 15 April¹⁰, the Secretary of State issued a statement to confirm that he had received the IMC's first report and that it would be laid in Parliament and published on 20 April.

Judicial Review Against Publication of First Report: In the Matter of an Application by Thomas John Paul Tolan for Judicial Review

- 3.8** In advance of the publication of the first report, Thomas John Paul Tolan, one of those arrested in connection with the incident on 20 February, sought a declaration that it would be unlawful for the Secretary of State to lay the report before Parliament before his trial on the offences took place. The application was dismissed. Subsequently, a Notice of Incompatibility has been lodged with the court, which challenges the compatibility of section 2(2) of the Northern Ireland (Monitoring Commission etc.) Act 2003 with Articles 2, 5 & 6 of the European Convention on Human Rights. A hearing on this matter is awaited.

First Report, Content and Action by the Secretary of State

- 3.9** **The IMC's first report was laid before Parliament on 20 April** and the Secretary of State and Baroness Amos made statements in the Commons and Lords that day¹¹. The report set out the scale and scope of paramilitary and relevant criminal activity since 1 January 2003 and the Commissioners noted this with concern. They concluded that two parties represented in the Assembly, Sinn Féin and the Progressive Unionist Party, have links with paramilitary groups. The Commissioners also expressed their belief that the incident in Belfast on 20 February was the responsibility of the Provisional IRA.
- 3.10** The Commissioners noted that had the Assembly been functioning, they would have recommended in respect of Sinn Féin and the Progressive Unionist Party measures up to and possibly including exclusion from office. They recommended that the Secretary of State should consider taking action in respect of the salary of Assembly members and/or the funding of Assembly parties so as to impose an appropriate financial measure against Sinn Féin and the Progressive Unionist Party.

⁹ www.independentmonitoringcommission.org
¹⁰ NIO website
¹¹ Hansard HC col 172; HL col 171

3.11 In his statement to the Commons on 20 April, **the Secretary of State said that both Governments accepted the Commission's conclusions and recommendations.** He explained that he was minded to remove for a period the entitlement to the financial assistance paid to Assembly parties in respect of both Sinn Féin and the Progressive Unionist Party and that this would take effect on 28 April.

3.12 The Secretary of State also explained that he had made the Northern Ireland Act 1998 and Northern Ireland Act 2000 (Modification) Order 2004¹² under the urgency procedure to amend the Northern Ireland Act 1998 to allow him to take that step in the absence of a sitting Assembly. He made clear that in line with the legal requirement to act fairly, he would take account of any representations received from Sinn Féin or the Progressive Unionist Party before reaching a final decision.

3.13 **On 28 April, the Secretary of State announced that he had acted to remove the entitlement to financial assistance from Sinn Féin and the Progressive Unionist Party for a period of one year** and that he would review that situation in the light of the IMC's second report on paramilitary activity in the Autumn. The Order to amend the 1998 Act, and the direction given by the Secretary of State under section 51B(2) of the Northern Ireland Act 1998 which removed financial assistance were debated subsequently in both Houses of Parliament.

Sinn Féin's Judicial Review of Decision of the Secretary of State's Decision

3.14 Sinn Féin applied for leave to bring a judicial review of the Secretary of State's decision to remove block financial assistance and leave was granted on 29 June. The substantive hearing is awaited.

ARTICLE 5(2) REPORT ON SECURITY NORMALISATION

- 4.1** This part of the report details the IMC's first report on security normalisation under Article 5(2) of the Agreement.

Arrangements for IMC Reports on Security Normalisation

- 4.2** The IMC Agreement makes two distinct provisions for the IMC to report on security normalisation activities undertaken by the British Government. As in paragraph 1.4 above, the Joint Declaration issued by the two Governments on 1 May 2003 included a programme of security normalisation to be undertaken by the British Government on the basis of an historic leap forward by the IRA. In that enabling environment, the profile of the police and army in Northern Ireland would alter considerably. The Monitoring and Compliance paper envisaged that the IMC would monitor and report on the Joint Declaration normalisation programme and the IMC Agreement made provision for this.
- 4.3** Article 5(1) of the IMC Agreement requires the IMC to monitor whether security normalisation commitments made by the British Government are being delivered within agreed timescales, in the light of the Commission's assessment of the paramilitary threat and the Government's obligations to ensure the safety and security of Northern Ireland. The security normalisation activities to be included in these reports, to be delivered to the two Governments at six-monthly intervals, are set out in the IMC Agreement.
- 4.4** In the absence of the enabling environment essential for the Joint Declaration security normalisation programme to begin, the Agreement includes provision for the IMC's Article 5(1) duties to be commenced by the British Government under Article 15(2). In the reporting period, the security situation in Northern Ireland has not made it possible for the British Government to take this step and no reports have been made by the IMC under Article 5(1).
- 4.5** The Agreement also enables the British Government to commission the IMC, under Article 5(2), to prepare a report on such normalisation activities over such a specified period as are notified by the British Government. **The Secretary of State commissioned the IMC to prepare an Article 5(2) report on 20 April and he placed a copy of that letter in the libraries of both Houses of Parliament.** The Secretary of State asked the IMC to report on normalisation activities as set out in Article 5(1) of the Agreement, undertaken since

December 1999. The IMC report would therefore provide a detailed account of normalisation activities already undertaken which would act as a benchmark for when the IMC was commissioned to monitor and report on a security normalisation programme.

The IMC's First Normalisation Report, Under Article 5(2) of the Agreement

- 4.6** The IMC's Article 5(2) report¹³ was laid in Parliament on 20 July by way of written Ministerial Statement. **The report set out in full the normalisation steps undertaken since December 1999, including reductions in the use of the military in support of the Police Service of Northern Ireland and the steps taken to repeal counter-terrorist legislation particular to Northern Ireland.**
- 4.7** In line with the Joint Declaration commitment, the Secretary of State will commission a report under Article 5(1) of the IMC Agreement when the enabling environment is in place.

ARTICLE 6 OF THE AGREEMENT

Arrangements for Article 6 Reports

- 5.1** Article 6 of the IMC Agreement enables the Commission to consider a claim by a party represented in the Northern Ireland Assembly that another party or Minister was, broadly speaking, in breach of their commitments under the Belfast Agreement.
- 5.2** Article 6(1) defines the claims the Commission may consider. These are claims that a Minister or party is not committed to non-violence and exclusively peaceful and democratic means; or that a Minister has failed to observe any other terms of the pledge of office¹⁴; or that a party is not committed to such of its members as are or might become Ministers observing the other terms of the pledge of office.
- 5.3** Article 6(2) makes clear that any claims that relate to the operation of the institutional arrangements under Strand 1 of the Belfast Agreement¹⁵ can only be considered by the Commissioners appointed by the British Government (Lord Alderdice and John Grieve). Article 6(3) provides that such reports shall be made to the British Government only. Other reports under Article 6 are to be made to both Governments.
- 5.4** Otherwise, the arrangements that apply to reports on paramilitary activity apply to Article 6 reports: the IMC can make recommendations as to remedial action and measures to be taken by the Assembly, and its Article 6 reports will be made public.

Position to Date

- 5.5** The Article 6 reporting arrangements are intended to operate in the context of a sitting Assembly. As such, no reports have been made by the IMC under Article 6 during this reporting period.



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