**Appendix**

**The Stormont House Agreement (December 2014)**

**The Fresh Start Agreement (November 2015)**

**The Independent Commission on Information Retrieval (January 2016)**

**The Stormont House Agreement (Legacy) Bill (n.d.)**

**Editorial Note on Legacy Documentation**

***The Stormont House Agreement (SHA)***

It is described by UK Government Publications (www.gov.uk/government/publications/the-stormont-house-agreement), as an “agreement reached with Northern Ireland’s political leaders” after 11 weeks of talks at Stormont. (In fact, the Ulster Unionist Party, although a participant in the talks, withheld its agreement.) The Agreement was published on 23 December 2014.

The provisions dealing with ‘The Past’ in paragraphs 21 to 55 of the SHA are below.

The SHA also altered the structure of the Northern Ireland institutions. The number of representatives in the Northern Ireland Assembly was agreed to be reduced, from six MLAs per Westminster constituency to five in time for the 2021 Assembly election. However this was actually implemented in May 2017 due to the calling of an early election. It also envisaged reforms being put in place to allow parties to decline from joining the Northern Ireland Executive, and instead receive funding as an official opposition. By the 2016 election the number of Stormont departments were also reduced from twelve to nine.

***The Fresh Start Agreement***

This was published on 17 November 2015. It is entitled ‘The Stormont Agreement and Implementation Plan’. A strap line on the face of the document declares: “An agreement to consolidate the peace, secure stability, enable progress and offer hope.”

It contains a Ministerial introduction signed by the First Minister (then Peter Robinson MLA) and the deputy First Minister (then Martin McGuiness MLA) and forewords from the Secretary of State for Northern Ireland (then Theresa Villiers MP) and the Irish Minister of Foreign Affairs and Trade (then Charles Flanagan TD).

It was preceded by 10 weeks of discussions involving the two governments and the five main Northern Ireland parties entitled to participate in the Executive.

The main focus of the Agreement was on addressing “the legacy and impact of paramilitary activity”, on the necessary financial reforms and on “Welfare and Tax Credits Top-Ups”.

It was also an implementation review of the Stormont House Agreement. Below are the (few) legacy related provisions.

***The Independent Commission on Information Retrieval (ICIR)***

Paragraphs 41 to 50 of the SHA provide for the ICIR. On 21 January 2016 the Secretary of State announced in the House of Commons that the two governments had signed an international agreement “to enable the establishment of the ICIR and set out its functions”. However, the treaty has not yet been published because the Secretary of State proposes to do this only when the legislation on the other bodies is being debated in Parliament. Below is the text of her statement which gives some (limited) information.

***Stormont House Agreement Legacy Bill – Proposed Bodies***

It appears that a draft Bill has been prepared to establish the various bodies proposed by the SHA. A draft text was released to the parties involved in the recent talks but no version has been made publicly available.

It is understood that the Northern Ireland Office intends to release a consultation paper on ‘implementation’ but this appears to await agreement by the two main parties. Presumably, the consultation paper will include a copy of the text of the draft Bill.

**Text of paragraphs 21 to 55 of the Stormont House Agreement: The Past**

The participants agree:

21. As part of the transition to long-term peace and stability the participants agree that an approach to dealing with the past is necessary which respects the following principles:

promoting reconciliation;

upholding the rule of law;

acknowledging and addressing the suffering of victims and survivors;

facilitating the pursuit of justice and information recovery;

is human rights compliant; and

is balanced, proportionate, transparent, fair and equitable.

Consistent with those principles, the participants have agreed as follows:

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.

25. A research project will be established as part of the Archive, led by academics to produce a factual historical timeline and statistical analysis of the Troubles, to report within 12 months.

26. The Executive will take steps to ensure that *Victims and Survivors* have access to high quality services, respecting the principles of choice and need. The needs of victims who do not live in Northern Ireland should also be recognised.

27. The Commission for Victims and Survivors’ recommendation for a comprehensive Mental Trauma Service will be implemented. This will operate within the NHS but will work closely with the Victims and Survivors Service (VSS), and other organisations and groups who work directly with victims and survivors.

28. Further work will be undertaken to seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland.

29. Victims and survivors will be given access to advocate-counsellor assistance if they wish.

*Historical Investigations Unit*

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 cooperation 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.

*Independent Commission on Information Retrieval (ICIR)*

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.

*Implementation and Reconciliation*

51. An Implementation and Reconciliation Group (IRG) will be established to oversee themes, archives and information recovery. 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 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. This process should be conducted with sensitivity and rigorous intellectual integrity, devoid of any political interference.

52. 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.

53. In the context of the work of the IRG, the UK and Irish Governments will consider statements of acknowledgement and would expect others to do the same.

54. The Body will be eleven strong. Publicly elected representatives will not be eligible for appointment. The chair shall be a person of independent and international standing and will be nominated by the First Minister and deputy First Minister. The other appointments will be nominated as follows: DUP - 3 nominees, Sinn Fein – 2 nominees, SDLP – 1 nominee, UUP – 1 nominee, and Alliance Party – 1 nominee and one nominee each from the UK and Irish Governments.

55. The UK and Irish Governments recognise that there are outstanding investigations and allegations into Troubles-related incidents, including a number of cross-border incidents. They commit to co-operation with all bodies involved to enable their effective operation, recognising their distinctive functions, and to bring forward legislation where necessary.

**The Fresh Start Agreement Provisions**

In her foreword to the document the Secretary of State included the following reference to the legacy institutions: “Despite some significant progress we were not able at this stage to reach a final agreement on the establishment of new bodies to deal with the past. The Government continues to support these provisions of the Stormont House Agreement and to providing better outcomes for victims and survivors. We will now reflect with the other participants on how we can move forward and achieve broad consensus for legislation.”

In Section ‘D’ (UK Government Financial Support), paragraph 7.2 states that the Government ‘will provide a number of further flexibilities’ including that: “any underspend on new legacy funding in 2015-16 may be carried forward to 2020-21 (but funding for bodies to deal with the past is subject to agreement on their establishment).”

Section ‘F’ (Implementation of the Stormont House Agreement) states in regard to ‘The Past’: “The parties to this Agreement reaffirm their commitment to the full and fair implementation of the SHA provisions on the past.

Alarge measure of agreement has been found on the detail of many of the issues addressed by the SHA. Some of these remain a work in progress.

While progress has been made on most aspects of the legacy of the past, we have been unable to agree a way forward on some of the key issues.

There remains a need to resolve the outstanding issues and the UK Government and Irish Government will reflect on the options for a process to enable this.”

**The Independent Commission on Information Retrieval**

**Statement in Parliament given by the Secretary of State on 21 January 2016**

The cross-party talks that ran from 8 September to 17 November last year, which culminated in the Fresh Start agreement, brought us closer than ever before to consensus on the best way to deal with Northern Ireland’s past. While we established much common ground, it was not possible to reach agreement on all issues. I am committed to working with the Northern Ireland parties, with the Irish Government as appropriate, and with representatives of victims and survivors, to build on the progress made during the talks. The UK Government is determined to resolve the outstanding issues that are preventing the establishment of the legacy institutions set out in the Stormont House Agreement.

One of these institutions is the Independent Commission on Information Retrieval (ICIR). This will be an independent body designed to enable victims and survivors privately to receive information about the Troubles-related deaths of their next of kin. As set out in the Stormont House Agreement, and building on the precedent of the Independent Commission on the Location of Victims’ Remains, the ICIR will be an international body. To that end, the UK and Irish Governments have signed an international agreement to enable the establishment of the ICIR and to set out its functions. Today I have placed a copy of this treaty in the libraries of both Houses.

The ICIR will be an important institution which will help victims and survivors to seek information which it has not been possible to obtain by other means. Engagement by families with the ICIR will be entirely voluntary. Information provided to the ICIR about deaths within its remit will not be admissible in court, something which families will always be told in advance. The ICIR will not, however, provide any form of amnesty or immunity from prosecution. This Government believes in the rule of law and would not countenance such a step. As the Stormont House Agreement set out, information provided to the ICIR will be protected but no individual will be protected from prosecution if evidence is obtained by other means. It is the Government’s intention that the legislation needed to implement the ICIR will contain provisions clearly setting this out.

It had been our aim to lay the treaty before Parliament at the same time as introducing the legislation required to establish the legacy bodies. However, as agreement has not yet been reached on this legislation, this is not possible. Once any treaty is formally laid, Parliament has a period of 21 sitting days, in which it can resolve that the treaty should not be ratified, in accordance with the Constitutional Reform and Governance Act 2010. I believe that it would be best if this consideration took place alongside the legislation, which will contain more detail about how the ICIR will function. I propose therefore formally to lay the treaty once we are able also to introduce legislation. These particular circumstances mean that placing a copy of the treaty in the libraries of both Houses is an appropriate way to ensure that Parliament is aware of the text of the treaty, without instigating the formal process of consideration.

In addition to the ICIR, the Stormont House Agreement envisaged the establishment of the Historical Investigations Unit, the Oral History Archive and the Implementation and Reconciliation Group. Together, this set of institutions provides the best opportunity to help Northern Ireland deal with its past and provide better outcomes for victims and survivors, the people who we must never forget suffered more than anyone else as a result of the Troubles. The Government is committed to implementing the Stormont House Agreement and to establishing the legacy bodies it contains. I will continue to meet victims’ representatives and others over the coming days and weeks to discuss these matters and to build support for the new institutions.