

These notes refer to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (c.17) which received Royal Assent on 29 March 2011

Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: The Independent Financial Review Panel

Section 1: Establishment and membership of the Panel

This section establishes the Independent Financial Review Panel, which will consist of a Chair and two other members.

Section 2: Functions of the Panel

This section sets out the functions of the Panel. The Panel is to determine the salaries and allowances payable to Members of the Assembly under section 47 of the 1998 Act and the pensions, gratuities and allowances payable to former Members and office holders under section 48. The Panel will be subject to specific objectives in terms of probity, accountability, value for money and securing an appropriate level of remuneration for Members of the Assembly.

The Panel may also consider any other matter relevant to its functions either on its own initiative or at the Commission's request.

Section 3: Independence and openness

This section provides that the exercise of the Panel's functions is not subject to the direction or control of the Assembly or the Commission. The section also makes provision concerning the public availability of material.

Section 4: Appointments to the Panel

This section provides for the Chair and other Panel members to be appointed by the Commission for terms of five years from the date of the appointment. A person may only be appointed to serve on the Panel on two occasions i.e. for a total of no more than ten years.

Section 5: Panel: disqualifications

This section applies Schedule 1, which lists the persons who are disqualified from being appointed or serving as Panel members. In order to ensure that the Panel is independent of Members, and is seen to be independent, a very broad range of connections to the Assembly or individual Members will result in disqualification.

Section 6: Termination of membership of the Panel

This section provides for the circumstances in which a Panel member will cease to hold office or may be dismissed. Under certain circumstances, a Panel member will automatically cease to hold office. In other circumstances, the Commission may dismiss a person from the Panel.

Section 7: Code of conduct for Panel members

This section requires the Panel to issue a code of conduct for its members and makes provision for the contents of the code. This code will require members of the Panel to adhere to the seven principles of public life (often referred to as “the Nolan principles”) and will make provision in respect of the disclosure of interests by Panel members.

Section 8: Administration and finance

This section applies Schedule 2, which makes administrative and financial provision in respect of the Panel.

Section 9: Annual report

This section requires the Panel to make an annual report to the Commission on its activities during the year.

Section 10: Meetings of the Panel

Under this section the Panel will determine its own procedure. The section also provides that the Panel’s proceedings and determinations remain valid notwithstanding a vacancy or a defect in the appointment of a Panel member.

Section 11: Exercise of functions

This section makes detailed provision concerning the timing and frequency of determinations. The general rule will be that a determination will be made only once in respect of each Assembly. Further determinations may be made as necessary to take account of changes in the law and practice relating to pensions or exceptional circumstances. Unless there are changes in the law and practice relating to pensions or exceptional circumstances, there will not be a determination where there is less than a year between an ordinary general Assembly election and an extraordinary Assembly election.

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The Panel is required, so far as is reasonably practicable, to make its determination before the election to the Assembly in relation to which the determination relates, although a determination will survive until a new determination is made replacing it. This will allow candidates and the electorate to know, in advance of an election, what financial support will be available to an elected candidate.

The section also provides for the duration of determinations and the reporting and publication of statements concerning the existence of exceptional circumstances.

Section 12: Contents of determinations: salaries and allowances

Section 47 of the 1998 Act includes provisions which must apply to salaries and allowances payable under that section, for example, providing that if a Member is also a member of the House of Commons, his or her salary is to be reduced. This section applies those same provisions to the Panel's determinations on salaries and allowances.

Section 13: Contents of determinations: pensions, gratuities and allowances

Section 48 of the 1998 Act includes provisions regarding pension contributions, pension schemes and the calculation of pensions. This section applies those same provisions to the Panel's determinations on pensions, gratuities and allowances.

Section 14: Availability of determinations

This section makes provision for determinations to be reported to the Commission and published. This is consistent with section 47 (8A) of the 1998 Act which requires that provision made under section 47 (2A) (b) of the 1998 Act includes provision for the publication of every determination of salaries and allowances under that provision. This section is to ensure that the content of the determination is open and transparent.

Section 15: Meaning of "the Panel"

This section defines "the Panel".

Part 2: The Northern Ireland Assembly Commissioner for Standards

Section 16: Establishment of the Commissioner

This section provides for there to be a Northern Ireland Assembly Commissioner for Standards ("the Commissioner").

Section 17: Functions of the Commissioner

This section sets out the Commissioner's functions as being to receive and investigate complaints and other issues concerning Members, to initiate investigations and to report the outcome to the Assembly. The Commissioner may also be asked to give advice on matters of general principle.

Section 18: Independence of the Commissioner

This section provides that the exercise of the Commissioner's functions is not subject to direction or control by the Assembly. That is subject only to procedural and administrative directions given under section 24.

Section 19: Appointment of the Commissioner

This section provides for the Commissioner to be appointed by the Assembly for a term of five years. A person may only be appointed to serve as Commissioner once. The Assembly will be responsible for ensuring that the Commissioner is appointed by way of fair and open competition and for determining appointment criteria and the terms of appointment.

Section 20: Commissioner: disqualifications

This section applies Schedule 3, which lists the persons who are disqualified from being appointed or serving as the Commissioner.

Section 21: Termination of the Commissioner's appointment

This section provides for the circumstances in which the Commissioner will cease to hold appointment or may be dismissed. Under certain circumstances, the Commissioner will automatically cease to hold office. The Assembly may also by resolution dismiss the Commissioner.

Section 22: Further provision about the Commissioner

This section applies Schedule 4, which makes administrative provision about the Commissioner.

Section 23: Appointment of an Acting Commissioner

This section enables the Assembly to appoint an Acting Commissioner to discharge any or all of the Commissioner's functions if for some reason the Commissioner is unable to act. The section will allow for the Commissioner and the Acting Commissioner to operate at the same time, but handling different cases. The disqualifications applicable to the Commissioner will apply also to the Acting Commissioner and the section also provides for the Acting Commissioner's resignation and removal.

Section 24: Directions to the Commissioner

This section enables the Assembly to give the Commissioner directions regarding general procedures and compliance with standards, codes of conduct and registration of interests. There is an overriding restriction to prevent directions from interfering with any specific investigation.

Section 25: Investigations by the Commissioner

This section provides for the Commissioner to determine the procedure and timing for any specific investigation and reporting its outcome to the Assembly.

Section 26: Further investigations

The Assembly will be able to request the Commissioner to carry out further investigations.

Section 27: Reports

This section provides that a report by the Commissioner may make recommendations, but will not be able to recommend the imposition of a specific sanction on any Member. The section also provides for reports to be published.

Section 28: Power to call for witnesses and documents

This section enables the Commissioner to require witnesses to attend and give evidence or to provide documents. This section is subject to the same limitations as apply to the Assembly's power to call for witnesses and documents under section 44 of the 1998 Act. A prospective witness will not be obliged to answer a question or produce a document which would not have to be answered or produced in court.

Section 29: Witnesses and documents: notice

This section sets out the procedure by which the requirements in section 28 are communicated to witnesses.

Section 30: Witnesses: oaths

This section provides for the taking of oaths or affirmations by witnesses.

Section 31: Offences

This section creates a number of offences in relation to refusals to provide or otherwise failing to give evidence in accordance with a request under section 28. It would also be an offence to refuse to take an oath or make an affirmation under section 30. In the case of refusals to attend, give evidence or produce documents, the section provides for a defence of reasonable excuse. Maximum penalties for an offence under this section will be a fine up to level 5 (£5,000) on the standard scale or three months' imprisonment.

Section 32: Protection from defamation actions

This section provides that, for the purposes of the law of defamation, statements by the Commissioner will attract absolute privilege and statements to the Commissioner will have qualified privilege.

Section 33: Restriction on disclosure of information

This section provides that information disclosed to the Commissioner in the course of an investigation will not be disclosed by or on behalf of the Commissioner except for the purpose of enabling the Commissioner to discharge functions or in connection with the investigation or prosecution of an offence.

Part 3: Supplementary provisions

Section 34: Transitional provisions

This section makes necessary provision allowing for the move from the current system for dealing with the investigation of complaints to the system introduced by the legislation.

Section 35: Orders

This section gives the Commission authority to make statutory rules, which will enable it to amend the lists of persons who are disqualified from being a member of the Panel or being Commissioner.

Section 36: Consequential amendments

This section applies Schedule 5, which contains amendments consequential on the legislation. In particular, the Panel will be subject to the Freedom of Information Act and the jurisdiction of the Ombudsman.

Section 37: Interpretation: general

This section contains definitions of terms used in the Act.

Section 38: Commencement

This section provides for the commencement of the legislation. Certain sections will come into force on the day on which this Bill receives Royal Assent and the remaining sections will come into operation on such day or days as the Commission may by order appoint.

Section 39: Short title

This section contains the short title of the legislation.