These notes refer to the Justice Act (Northern Ireland) 2016 (c.21) which received Royal Assent on 12 May 2016

Justice Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2

The Prison Ombudsman for Northern Ireland

Part 2 of the Act creates the office of Prison Ombudsman for Northern Ireland, and sets out the functions of the office

Section 33: The Prison Ombudsman for Northern Ireland

This Section creates the office of The Prison Ombudsman for Northern Ireland as a corporation sole (Section 33(1) and (2)), and states the aims and outcomes expected of the exercise of the Ombudsman's powers. In particular the Ombudsman should ensure the powers of the office are exercised so as to secure efficiency, effectiveness and independence, and the confidence of those affected by the exercise of those powers (Section 33(4)).

Section 34: Main functions of the Ombudsman

This Section lists the main functions that the Ombudsman must carry out, namely dealing with complaints, investigating deaths in custody and carrying out any other investigations as may be requested by the Department of Justice, or on the Ombudsman's own initiative.

Section 35: Complaints

This Section requires the Ombudsman to investigate a complaint (Section 35(1)) to which the Section applies. The Section defines matters about which a complaint may be made (Section 35(2)) and sets out who may bring a complaint (Section 35(3)) and allows a person to be entitled to complain on behalf of another person who has died or is unable to act.

Section 35(5) enables regulations to amend the matters about which complaints may be made or the descriptions of persons who may make complaints

This Section provides for circumstances where the Ombudsman may decide not to conduct an investigation (Section 35(6)) and allows for the deferral of investigations in certain scenarios (Section 35(7)). In particular the Ombudsman

may decide not to investigate a complaint which the Ombudsman considers frivolous, vexatious or raises no substantial issue, or one that has not been made within reasonable time from the exhaustion of the internal complaints procedures. The Ombudsman can reopen a deferred investigation at any time (Section 35(8)) and can decide the extent of that investigation (Section 35(9)).

This Section provides that where the Ombudsman decides not to investigate a complaint, defers the investigation or reopens a deferred investigation then the Ombudsman must notify the complainant with reasons as to the decision (Section 35(10)), and this notification may be made orally (Section 35(11)).

Section 35(13) enables regulations to be made about the procedures to be followed when making and investigating a complaint.

The Ombudsman will determine which procedures are applicable in dealing with complaints and their investigation (Section 35(14)).

The Ombudsman shall draw to the attention of the police any matter which is in his opinion relevant to any criminal investigation and may draw to the attention of any person or body any matter which calls for action to be taken by that body or person (Section 35(15)).

Section 36: Report of investigation of complaint

This Section specifies that the Ombudsman must report in writing on the outcome of an investigation into a complaint to the Department and the complainant (Section 36(1)), and may report to any other person as the Ombudsman sees fit (Section 36(2)).

Within a report to the Department the Ombudsman may make recommendations arising out of the investigation (Section 36(3)). The Department must respond (Section 36(4)) and the Ombudsman can report on the response (Section 36(6)). These recommendations may relate for example to the resolution of the complaint or redress for the benefit of the complainant, or any other individual affected, or suggested improvements to the administrative processes of the Department.

This Section enables regulations to be made for the procedures to be used in relation to reports of investigations into complaints including who may see a draft of the report, who may be identified within the report, and what is to happen where the complainant has died or is unable to act (Section 36(7)).

Section 37: Investigations into deaths in custody

This Section provides that the Ombudsman must investigate the death of any person at a prison or in the custody of a prison officer outside a prison, and may also investigate a death if it appears to be linked to events which occurred while the deceased was being held at a prison or in such custody (Section 37(1)). The Section requires the Ombudsman to establish the circumstances of the death and address any concerns of the family of the deceased, as well as determining

any changes which may mitigate the risk of any death in similar circumstances in future (Section 37(2)). The Ombudsman will determine the scope of the investigation (Section 37(3)) and may defer and reopen it according to the same criteria in Section 35 above (Section 37(4) and (5)).

The Ombudsman shall draw to the attention of the police any matter relevant to any criminal investigation into the death and shall draw to the attention of any person or body any matter which calls for action to be taken by that body or person (Section 37(6)).

***Section 38*: Report on investigation into death**

This Section provides that where an investigation into a death has taken place and a report has been produced, certain authorities and persons must be given that report (Section 38(1)).

This includes a personal representative of the deceased. The Section provides that the Ombudsman may report to other persons he considers should receive the report (Section 38(2)).

The Ombudsman has the power to make recommendations in that report to the Department and a health and social care trust (Section 38(3)) who must respond to the recommendations (Section 38(4)). The Ombudsman may report on that response to such persons as the Ombudsman sees fit (Section 38(6)).

Regulations may provide for procedures regarding the report, its publication in whole or in part, for individuals identified in the report to remain anonymous, and its contents (Section 38(7)). It is envisaged that prior to publishing such reports, the consent of the personal representative of the deceased should be obtained

***Section 39*: Investigations requested by the Department**

The Section provides that the Department shall request the Ombudsman to investigate any custody–related matter that is prescribed in regulations (Section 39(1)(a), and can request the Ombudsman to carry out an investigation into any custody-related matter (Section 39(1)(b)). This relates to events which have occurred in a prison or juvenile justice centre or while a person was in custody (Section 39(3)).

Under section 39(4) the Department must consult the Ombudsman and such other persons as the Department thinks appropriate before making any regulations under Section 39(1)(a). The Ombudsman must decide whether to conduct the investigation and must notify the Department of that decision (Section 39(5)). The Ombudsman will determine the procedures for the investigation (Section 39(6)) and may make recommendations to the Department (Section 39(7)).

The Ombudsman shall draw to the attention of the police any matter which is in his opinion relevant to any criminal investigation and may draw to the attention

of any person or body any matter which calls for action to be taken by that body or person (Section 39(8)).

Section 40: Report on investigation under section 39

This Section stipulates that where such an investigation has been carried out, a report must be produced and given to the Department and any other person the Department may request (Section 40(1)). The report may make recommendations (Section 40(2)). Regulations may make provision as to the procedures regarding the report, its publication and contents (Section 40(3)).

Section 41: Own-initiative investigations

The Section provides that the Ombudsman may carry out an investigation on his own initiative into matters in defined circumstances (Section 41(1)). The Ombudsman must first consult with the Department (Section 41(2)). The Ombudsman will determine the procedures for the investigation (Section 41(3)).

Section 42: Report on investigation under section 41

This Section stipulates that where such an investigation has been carried out, a report must be produced and given to the Department and any other person the Ombudsman considers should receive the report (Section 42(1)). Within a report to the Department the Ombudsman may make recommendations arising out of the investigation (Section 42(2)).

The Department must respond setting out what it proposes to do about the recommendations (Section 42(3)) and the Ombudsman can report on the response (Section 42(5)). Regulations may make provision as to the procedures regarding the report, its publication and contents (Section 42(6)).

Section 43: Powers of Ombudsman

This Section confers powers on the Ombudsman of entry into a prison, juvenile justice centre or any other premises occupied by the Department for the purposes of its functions under the Prison Act (NI) 1953 (Section 43(1) and (2)). The Ombudsman may also require the production of documents or other information (Section 43(3)). This Section creates the offence of obstruction of the Ombudsman, the penalty for which is a fine not exceeding level 3 on the standard scale (Section 43(4)).

It is expected that the Ombudsman will continue to rely on good investigative practices and the contractual obligations of staff in ensuring cooperation from witnesses, however this power will enable the Ombudsman to ensure the provision of relevant information from key witnesses in event of non-cooperation.

Section 44: Disclosure of information

This Section states that information collected by the Ombudsman during the course of an investigation is protected (Section 44(1)).

The Section prescribes the persons to whom and purposes for which protected information may be disclosed (Section 44(2)). The Section also creates an offence of disclosing such information improperly (Section 44(8)), the penalty for which is a fine not exceeding level 5 on the standard scale (Section 44(9)). The placing of restrictions on the circumstances in which information can be disclosed reflects the extensive powers of the Ombudsman in obtaining information.

The Ombudsman is given discretion to disclose information for the purposes of certain legal proceedings and in certain other limited circumstances.

The Section provides that for the purpose of defamation law, the publication of any matter by the Ombudsman for purposes connected with the Ombudsman's functions shall be absolutely privileged (Section 44(7)).

Section 45: Guidance to Ombudsman in relation to matters connected with national security

This Section requires the Ombudsman to have regard to guidance issued by the Secretary of State in relation to any matter connected with national security. The Secretary of State acknowledges that the Prison Ombudsman requires full access to material held by the Northern Ireland Prison Service in order to carry out functions in an effective manner, including information relating to national security. Guidance has been prepared which details arrangements for accessing, reviewing, disclosing, handling and reporting of national security information by the Ombudsman in the course of an investigation.

Section 46: Interpretation

This Section explains the meanings of certain words used within the Act. In particular it explains that references to "prison" include a young offender's centre.

Section 47: Transitional provision: the Prisoner Ombudsman for Northern Ireland

This Section provides that the person holding the existing non-statutory office of Prisoner Ombudsman immediately before the appointed day will continue to hold the office of Prison Ombudsman and will do so for the remainder of their term. Maximum term periods are specified. Provision is also made for the Prison Ombudsman to take on existing investigations of the Prisoner Ombudsman (Section 47(5)).