

*These notes refer to the Commissioner for Older People Act (Northern Ireland) 2011 (c.1) which received Royal Assent on 25 January 2011*

# Commissioner for Older People Act (Northern Ireland) 2011

---

## **EXPLANATORY NOTES**

### **SCHEDULES TO ACT**

#### **SCHEDULE 1**

#### ***THE COMMISSIONER FOR OLDER PEOPLE FOR NORTHERN IRELAND***

This schedule provides for the status, general powers, tenure of office and general staffing and procedural arrangements. It provides for a tenure of 4 years with eligibility for one further term of 4 years and provides for accountability to the Office of the First and deputy First Minister and the Assembly in relation to Accounts and to the Office of the First and deputy First Minister, the Assembly and the Secretary of State in relation to an Annual Report.

#### ***1. Status***

This ensures that the Commissioner has an independent legal status distinct from the sponsoring Department of OFMDFM, permits the post to pass from one Commissioner to the next successor-in-office and allows the delegation of the role of Commissioner and any or all of his/her accompanying functions by the Commissioner to a member of staff within the Commission.

The Commissioner would not be regarded as a servant or agent of the Crown and would not enjoy any status, immunity or privilege of the Crown. This status would ensure that the Commissioner enjoys equal status with other statutory bodies and Commissions.

#### ***2. General powers***

This would provide the Commissioner with a 'General Power' which allows the Commissioner to do anything related to the Commissioner's functions, unless it is specifically prohibited within this or other legislation. Importantly, the Commissioner will be enabled to co-operate with other bodies in the UK and elsewhere. This will enable the Commissioner to build relationships, avoid duplication and cooperate well with other bodies in order to provide a strategic approach to addressing those issues of interest to or affecting older people. OFMDFM will draw to the Commissioner's attention the

importance of the Commissioner making every effort to agree memoranda of understanding with relevant and appropriate organisations. A joined-up approach will ultimately better protect the rights and interests of older people as well as ensuring efficient use of resources.

### ***3. Tenure of office***

The term of office for the Commissioner will be for 4 years with the opportunity for reappointment for one further term only. The Commissioner can be removed from office by the First Minister and the deputy First Minister on the grounds of misconduct or incapacity including specifically if the Commissioner has been convicted of a criminal offence, become bankrupt, failed to discharge his/her functions for a continuous period of 3 months, or become unable or unfit to carry out his/her functions.

### ***4. Salary, etc.***

The Commissioner is a full-time salaried appointment funded by OFMDFM. Importantly, there is no compulsory retirement age for the Commissioner. This paragraph also makes provision for the payment of compensation, under special circumstances, to a person who no longer holds office as Commissioner.

### ***5. Staff***

The Commissioner has the power to employ staff as he/she considers necessary.

### ***6. Exercise of functions of Commissioner***

The Commissioner has the power to delegate his/her role of Commissioner and any or all of his/her accompanying functions to a member of staff within the Commission.

### ***7. Seal***

The Commissioner's signature or that of his/her authorised staff authenticates or forms the 'Seal' of the Commissioner's office on any documentation.

### ***8. Evidence***

Any document signed by the Commissioner or that of his/her staff (i.e. with the 'Seal' of the Commissioner's office) will be permissible as documentary evidence in a court of Law/Judicial or administrative proceedings

### ***9. Property***

This allows property, for example the offices of the Commissioner to be transferred to his/her successor.

## ***10. Funding***

The Commissioner's office is to receive funds through the standard procedures for all non-Departmental public bodies and office holders in Northern Ireland. Annual grants to the Commissioner will form part of the OFMDFM budget and the Commissioner would be invited to submit a budget bid to the Department for each financial year.

## ***11. Accounts***

This paragraph sets out the arrangements for the financial accountability and audit requirements for the Commissioner's office. The Commissioner is required to keep proper accounting records and to prepare an annual financial statement of accounts in accordance with directions given by OFMDFM and in keeping with DFP guidance. The Commissioner's office is required to submit the annual statement of accounts, by financial year, to both OFMDFM and to the Comptroller and Auditor General for examination, who will then report back on the statement of accounts to OFMDFM. OFMDFM would then be responsible for laying a copy of the annual statement of accounts and the Comptroller and Auditor General's report on these before the Assembly.

## ***12. Annual report***

To ensure accountability, the Commissioner is required to report back annually to the appointing authority, that is to the First Minister and the deputy First Minister, on how he/she is carrying out the role of Commissioner and on the use of the financial resources at his/her disposal. This report should contain details of the steps taken by the Commissioner that year to comply with his or her duties, to make older people aware of his/her functions, the location of the office and how older people can communicate with the Commissioner. OFMDFM is required to lay a copy of the annual report before the Assembly and to send a copy of the annual report to the Secretary of State for NI.

## ***13. The Northern Ireland Assembly Disqualification Act 1975 (c. 25)***

This paragraph adds the Older People's Commissioner to The Northern Ireland Assembly Disqualification Act (1975), so ensuring that the Commissioner and any member of his/her staff (once in post) cannot also hold membership of the Northern Ireland Assembly.

## ***14. The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)***

This paragraph ensures the Older People's Commissioner is subject to investigation by the Commissioner for Complaints in Northern Ireland. As a result of this, the Commissioner for Older People would be automatically bound by the statutory equality duty set out in section 75 of the Northern Ireland Act 1998, which requires public authorities to have due regard to the need to promote equality of opportunity and good relations. Inclusion in the Commissioner for Complaints Order also brings the Commissioner for Older People under the

Commissioner for Public Appointments who will then regulate, monitor and report on the appointment process of the Older People's Commissioner.

### ***15. The Freedom of Information Act 2000***

The Older People's Commissioner is added to Schedule 1 of the Freedom of Information Act (2000) and in so is bound by its requirements including the obligation to provide information through a **publication scheme** and in response to requests made under the general right of access.

#### **SCHEDULE 2**

#### ***INVESTIGATION UNDER SECTION 4(4)***

This schedule sets out the procedures to be followed when a formal investigation is being carried out in relation to the Commissioner's duties under Section 3(2) or 3(3) of the Commissioner for Older People Act (Northern Ireland) 2011. Terms of reference of the investigation must be written and sent to the relevant authority involved. Also the Commissioner must give the relevant authority the opportunity to give its opinion on the investigation and to offer evidence for this. All formal investigations must be carried out in private.

Apart from the procedures set down in Schedule 2, the Commissioner has the flexibility to carry out the investigation in the way that he/she believes is best. The Commissioner is not required to arrange formal meetings at which people can speak and provide evidence.

Because attendance at meetings with the Commissioner can be expensive, the Commissioner is given the power to pay expenses or allowances for the loss of time of a person involved in a formal investigation.

This section also states the Commissioner must prepare a report on the investigation and it states what persons or organisations the Commissioner must send a copy of the report to. The report must not name individual people unless the Commissioner believes that it is necessary to do so. The Commissioner must give reasons for the recommendations in the report. The relevant authority involved in the case must consider the report and decide what action to take on the Commissioner's recommendations.

In cases where the Commissioner has made a report which recommends that a relevant authority take a particular action, the Commissioner is given the power in this section to issue a formal Notice to the organisation involved. This section requires the organisation to write back to the Commissioner within three months explaining either what it has done to follow the Commissioner's recommendation or if it has decided not to follow the recommendation, to explain the reasons why.

If the organisation has not followed the Commissioner's recommendation and the Commissioner considers that the reason given is inadequate, the Commissioner can issue a further Notice to the organisation setting out the

inadequacy and requiring the authority to reconsider the matter and reply within one month.

- The Commissioner is also given the power in this section to publish information on:
- the recommendations he/she has made;
- how the Commissioner may have followed them up with letters to the organisations involved;
- what the organisation did or did not do in response to the Commissioner's letters and/or recommendation(s).

This information will be kept in a register and the Commissioner can arrange for copies of the register to be made available for people's inspection in any way he/she believes is appropriate.

### SCHEDULE 3

#### ***RELEVANT AUTHORITIES***

Please see the notes on Section 26. This Annex to the Commissioner for Older People Act (Northern Ireland) 2011 provides a list of organisations which carry out work directly relevant to the lives of older people and so are included as relevant authorities. It includes a number of bodies working in the area of health care.