

Status: Point in time view as at 17/09/2012.

Changes to legislation: *There are currently no known outstanding effects for the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011. (See end of Document for details)*



2011 CHAPTER 17

PART 1

THE INDEPENDENT FINANCIAL REVIEW PANEL

Establishment and functions

Establishment and membership of the Panel

1.—(1) There shall be a body known as the Independent Financial Review Panel.

(2) The members of the Panel are the Chair and two other members.

Functions of the Panel

2.—(1) The functions of the Panel are to make determinations as to—

- (a) the salaries and allowances payable to members of the Assembly under section 47 of the 1998 Act; and
- (b) the pensions, gratuities and allowances payable under section 48 of that Act.

(2) The Panel shall exercise its functions with a view to achieving the objectives of—

- (a) ensuring probity, accountability and value for money with respect to the expenditure of public funds;
- (b) securing for members of the Assembly a level of remuneration which—
 - (i) fairly reflects the complexity and importance of their functions as members of the Assembly; and

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- (ii) does not, on financial grounds, deter people with the necessary commitment and ability from seeking election to the Assembly; and
 - (c) securing for members of the Assembly adequate resources to enable them to exercise their functions as members of the Assembly.
- (3) The Panel shall keep under review the extent to which, having regard to—
- (a) experience gained from the operation of its determinations,
 - (b) changes in the functions of members of the Assembly, and
 - (c) any other relevant circumstances,
- its determinations appear to be achieving the objectives in subsection (2).
- (4) The Panel may consider any other matter which is relevant to the discharge of its functions, either on its own initiative or at the written request of the Commission.

Independent status

Independence and openness

- 3.—**(1) The Panel shall not, in the exercise of its functions, be subject to the direction or control of—
- (a) the Assembly; or
 - (b) the Commission.
- (2) A Panel member is not a member of the staff of the Assembly.
- (3) The Panel shall—
- (a) act in such a manner that its decisions and its reasons for those decisions are readily ascertainable;
 - (b) publish such information as will enable the public to be kept informed about its activities.
- (4) Subsection (3) does not prevent the Panel from—
- (a) considering a matter in private,
 - (b) maintaining the privacy of its consideration of that matter, or
 - (c) refraining from publishing material relating to that matter,
- if, in the opinion of the Panel, the nature of that matter makes it appropriate to do so.

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Appointments, etc.

Appointments to the Panel

4.—(1) The Chair and other Panel members shall be appointed by the Commission.

(2) Each appointment shall be for a term of 5 years from the date of the appointment.

(3) A person may not be appointed to be a Panel member if that person has already been appointed to be a Panel member on two occasions.

Disqualification from membership of the Panel

5.—(1) Schedule 1 makes provision as to the persons who are disqualified from being appointed or serving as Panel members.

(2) The Commission may by order amend Schedule 1.

(3) An order under this section shall not be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

Termination of membership of the Panel

6.—(1) The appointment of a person as a Panel member ceases—

- (a) on the expiry of the term for which that person was appointed;
- (b) if that person resigns by giving notice in writing to the Commission;
- (c) if that person becomes disqualified from being a Panel member; or
- (d) if the Commission dismisses that person under subsection (2).

(2) The Commission may dismiss a person from office as a Panel member if it is satisfied that—

- (a) the person has been convicted of a criminal offence;
- (b) the person has become bankrupt or made an arrangement or composition with the person's creditors;
- (c) the person has without reasonable excuse failed to discharge the functions of a Panel member for a continuous period of 3 months beginning not earlier than 6 months before the day of dismissal;
- (d) the person is unfit or unable to carry out those functions.

Code of conduct for Panel members

7.—(1) The Panel shall issue a code of conduct for its members.

(2) The code of conduct shall in particular—

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- (a) incorporate the Nolan principles or such other similar principles as may be adopted by the Panel from time to time; and
 - (b) include provision about the disclosure of interests by Panel members.
- (3) The Panel shall keep the code of conduct under review.
- (4) In this section “the Nolan principles” means the 7 general principles of public life set out in the First Report of the Committee on Standards in Public Life (Cm 2850).

Administration and finance

8 Schedule 2 makes administrative and financial provision about the Panel.

Annual report

9 The Panel shall, as soon as practicable after the end of each financial year, provide to the Commission a report on the performance of its functions, including the use of resources, during that financial year.

Procedure

Meetings of the Panel

10.—(1) Subject to section 11, the Panel shall determine its own procedure and when it is to meet.

(2) The validity of the Panel's proceedings and determinations shall not be affected by—

- (a) a vacancy among the Panel members; or
- (b) a defect in the appointment of any Panel member.

Determinations

Exercise of functions

11.—(1) Subject to subsection (3), the Panel shall make the determinations referred to in section 2(1) only once in respect of each Assembly.

(2) Subject to subsection (3), the Panel shall not make the determinations referred to in section 2(1) in respect of an Assembly if the date of the poll for the election of that Assembly—

- (a) was directed under section 32(4) of the 1998 Act; and
- (b) occurs within one year of the date of the poll for the election of the immediately preceding Assembly.

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(3) If at any time the Panel is of the opinion that it is reasonable and appropriate—

- (a) for a determination relating to pensions to be made, the Panel may make such a determination;
- (b) that due to exceptional circumstances the restriction in subsection (1) or (2) should not apply, the Panel may make determinations—
 - (i) more than once in respect of each Assembly,
 - (ii) in respect of such an Assembly as is described in subsection (2),

as the case may be.

(4) Subject to subsection (6), the Panel shall, so far as reasonably practicable, make the determinations referred to in section 2(1) before the date of the poll for the election of the Assembly in respect of which the determination is made.

(5) The Panel shall, as soon as reasonably practicable after its establishment, make the determinations referred to in section 2(1) in respect of the Assembly existing at that time.

(6) Any determination made under section 2(1) shall have the effect (whether or not expressly so provided) of revoking any determination or provision—

- (a) made under section 47 or 48 of the 1998 Act before the coming into operation of this Part; and
- (b) relating to the same subject-matter as the determination made under section 2(1).

(7) Every determination made by the Panel shall state the date from which it is to have effect (which may be a date before the date of the determination) and shall continue in effect until revoked by a subsequent determination relating to the same subject-matter.

(8) For the purposes of subsection (3)(b), the occurrence of an election for which the poll is directed under section 32(4) of the 1998 Act does not in itself give rise to exceptional circumstances.

(9) If the Panel forms such an opinion as is referred to in subsection (3), it shall—

- (a) state in writing its reasons for having done so, and
- (b) communicate that statement to the Commission,

at the same time as it communicates to the Commission the determination to which the statement relates.

(10) The Commission shall publish any statement made under subsection (9) as if it were a determination.

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Contents of determinations: salaries and allowances

12.—(1) This section applies to any determination made under section 2(1) (a).

(2) A determination to which this section applies may make different provision for different cases (for example, provision for higher salaries to be payable to Ministers or other office holders).

(3) A determination to which this section applies shall ensure that, if a salary is payable to a member of the Assembly (“M”) as a member of either House of Parliament or as a member of the European Parliament—

- (a) if M does not hold an office within subsection (6), no salary is payable to M under section 47 of the 1998 Act;
- (b) if M holds an office within subsection (6), the salary which would otherwise be payable to M under section 47 of the 1998 Act is reduced by the appropriate amount.

(4) For the purposes of subsection (3), the appropriate amount is the amount of the salary payable under section 47 of the 1998 Act to members of the Assembly generally.

(5) For the purposes of this section—

- (a) a person's membership of the Assembly begins on the day on which the person takes his or her seat in accordance with standing orders; and
- (b) a person's holding of an office within subsection (6) begins on the day on which the person takes up office.

(6) An office is within this subsection if the salary payable under section 47 of the 1998 Act to a member of the Assembly holding the office is higher than the salary payable under that section to members of the Assembly generally.

(7) For the purposes of this section, a person who is a member of the Assembly immediately before the Assembly is dissolved shall be treated—

- (a) if the person continues to hold office as a Minister or junior Minister, as Presiding Officer or deputy or as a member of the Commission, as if the person were a member of the Assembly until the end of the day on which he or she ceases to hold the office; and
- (b) if the person does not fall within paragraph (a) but is nominated as a candidate at the subsequent general election, as if the person were a member of the Assembly until the end of the day of the poll for that election.

(8) In this section—

“deputy”, in relation to the Presiding Officer, means any deputy Presiding Officer elected under section 39 of the 1998 Act;

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“junior Minister” means a person appointed as a junior Minister under section 19 of the 1998 Act;

“Minister” has the meaning given by section 7(3) of the 1998 Act.

Contents of determinations: pensions, gratuities and allowances

13.—(1) This section applies to any determination made under section 2(1) (b).

(2) A determination to which this section applies may include provision for—

(a) contributions or payments towards provision for pensions, gratuities or allowances;

(b) the establishment and administration (whether by the Commission or otherwise) of one or more pension schemes.

(3) Where any salary payable to a person under section 47 of the 1998 Act is not payable because of either or both of sections 47A and 47B of that Act, any provision made under this section for the payment of pensions which has effect in relation to that person shall apply as if the salary were payable.

Availability of determinations

14.—(1) Every determination made by the Panel under this Part shall be in writing.

(2) As soon as reasonably practicable after any determination has been made—

(a) the Panel shall communicate the determination to the Commission; and

(b) the Commission shall publish the determination in full.

Miscellaneous

Meaning of “the Panel”

15 In this Part “the Panel” means the Independent Financial Review Panel established by section 1(1).

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PART 2

THE NORTHERN IRELAND ASSEMBLY COMMISSIONER FOR STANDARDS

Establishment and functions

Establishment of the Commissioner

16.—(1) There shall be a Northern Ireland Assembly Commissioner for Standards.

(2) The person for the time being holding office as Northern Ireland Assembly Commissioner for Standards shall be, by the name of that office, a corporation sole.

Functions of the Commissioner

17.—(1) The functions of the Commissioner are—

- (a) where a person has made a complaint or referral to which subsection (2) applies, to investigate the complaint or referral in accordance with the provisions of this Part;
- (b) to initiate an investigation in accordance with the provisions of this Part if the Commissioner believes that, at a relevant time, a breach of the Code of Conduct may have occurred;
- (c) to report to the Assembly on the outcome of any investigation under this section; and
- (d) on the Commissioner's own initiative, or if requested by the Assembly, to give advice on any matter of general principle relating to standards of conduct of members of the Assembly.

(2) This subsection applies to—

- (a) a complaint to the Commissioner that, at a relevant time, a breach of the Code of Conduct has occurred;
- (b) a referral to the Commissioner made by any person specified in the standing orders as being a person who may make referrals in relation to any matter specified in the standing orders as being a matter in respect of which the Commissioner must carry out an investigation.

(3) In this section—

“the Code of Conduct” means—

- (a) any code of conduct for members of the Assembly, and
- (b) any guide to the rules relating to the conduct of members of the Assembly, which has been agreed to by the Assembly; and

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a “relevant time” means a time (whether before or after this section comes into operation) when a requirement to comply with the Code of Conduct was in force.

Commencement Information

II S. 17 in operation at 17.9.2012 by S.R. 2012/334, art. 2(a)

Independent status

Independence of the Commissioner

18.—(1) Subject to section 24, the Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly.

(2) The Commissioner is not a member of the staff of the Assembly.

Appointment, etc.

Appointment of the Commissioner

19.—(1) The Commissioner shall be appointed by resolution of the Assembly.

(2) The Commissioner shall be appointed for a term of 5 years.

(3) A person may not be appointed as the Commissioner if that person has already held office as the Commissioner.

(4) The Assembly shall make arrangements for—

(a) ensuring that any person to be appointed as Commissioner has been identified by fair and open competition;

(b) determining any criteria for appointment; and

(c) determining the terms and conditions on which such appointment, when made, is to have effect.

(5) The Assembly may delegate to the Commission any of the functions referred to in subsection (4).

Disqualification from being appointed or serving as the Commissioner

20.—(1) Schedule 3 makes provision as to the persons who are disqualified from being appointed or serving as the Commissioner.

(2) The Commission may by order amend Schedule 3.

(3) An order under this section shall not be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

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Termination of the Commissioner's appointment

21.—(1) The appointment of a person as Commissioner ceases—

- (a) on the expiry of the term for which that person was appointed;
- (b) if that person resigns by giving notice in writing to the Presiding Officer;
- (c) if that person becomes disqualified from serving as the Commissioner; or
- (d) if the Assembly dismisses that person under subsection (2).

(2) The Assembly may by resolution dismiss a person from office as the Commissioner.

(3) A resolution under subsection (2) shall not be passed without the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of members voting on the resolution.

Further provision about the Commissioner

22 Schedule 4 makes further provision about the Commissioner.

Appointment of an Acting Commissioner

23.—(1) When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Assembly may appoint a person to discharge any function of that office until such time as may be specified by the terms and conditions of such appointment; and a person so appointed is referred to in this section as an “Acting Commissioner”.

(2) There may be more than one Acting Commissioner at any one time.

(3) The Assembly may delegate to the Commission any matter connected with the appointment of an Acting Commissioner, including the terms of such appointment (but not the appointment itself).

(4) The Commissioner and an Acting Commissioner may each discharge the functions of the Commissioner at the same time in relation to different investigations or requests for advice.

(5) A person who is disqualified from being appointed or serving as the Commissioner is disqualified from being appointed or serving as an Acting Commissioner.

(6) The appointment of a person as an Acting Commissioner ceases in any of the circumstances specified (in relation to the Commissioner) in section 21.

(7) Anything done by an Acting Commissioner in accordance with the provisions of this Act and an appointment made under subsection (1) shall be valid as if it had been done by the Commissioner.

(8) Sections 18, 22 and 24 to 34 shall apply to the discharge by an Acting Commissioner of the function which that Acting Commissioner was appointed

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to discharge as if references in those sections to the Commissioner were references to an Acting Commissioner.

Procedure, etc.

Directions to the Commissioner

24.—(1) The Commissioner shall comply with any directions given by the Assembly under this section.

(2) Directions given under this section may include provision—

- (a) as to the general procedure to be followed by the Commissioner in the exercise of the Commissioner's functions; and
- (b) requiring the Commissioner—
 - (i) to comply with such principles, codes of conduct and other statements of standards or ethics as the Assembly may specify; and
 - (ii) to register such financial and other interests on such occasions and in such manner as the Assembly may require.

(3) A direction under this section may not—

- (a) prevent the Commissioner from carrying out any specific investigation in accordance with this Part;
- (b) limit the scope of any such investigation;
- (c) direct the Commissioner as to how any such investigation is to be carried out or reported to the Assembly;
- (d) interfere with the exercise of the Commissioner's discretion in relation to any specific investigation; or
- (e) otherwise interfere with the exercise of the Commissioner's functions under this Part in respect of any specific investigation.

Investigations

Investigations by the Commissioner

25 The Commissioner shall determine the procedure for and timing of—

- (a) any specific investigation; and
- (b) the report to the Assembly on the outcome of that investigation.

Commencement Information

I2 S. 25 in operation at 17.9.2012 by S.R. 2012/334, art. 2(b)

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Further investigations

26 Following receipt of a report from the Commissioner the Assembly may request the Commissioner to carry out such further investigation as may be specified in the request, and the Commissioner shall report to the Assembly—

- (a) on the outcome of the further investigation; or
- (b) that on considering the request the Commissioner has concluded that the further investigation would be unnecessary and the reasons for that conclusion.

Commencement Information

I3 S. 26 in operation at 17.9.2012 by S.R. 2012/334, art. 2(b)

Reports

27.—(1) A report made by the Commissioner under this Part may not include any specific recommendation for the imposition of a sanction on a member of the Assembly but may otherwise make such recommendations as the Commissioner thinks fit.

(2) A report made by the Commissioner under this Part shall be in writing.

(3) The Assembly shall publish a report made by the Commissioner under this Part as soon as reasonably practicable after—

- (a) receipt of the report; or
- (b) if later, receipt of a report under section 26 which relates to the same matter under investigation and which is not followed by a further request under that section.

(4) The Assembly is not bound by the facts found, nor the conclusions reached, by the Commissioner in any report.

Commencement Information

I4 S. 27 in operation at 17.9.2012 by S.R. 2012/334, art. 2(b)

Investigatory powers of the Commissioner

Power to call for witnesses and documents

28.—(1) In carrying out any investigation under this Part the Commissioner may require any person—

- (a) to attend before the Commissioner for the purpose of giving evidence, or

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- (b) to produce to the Commissioner documents in the custody or under the control of that person,

relating to the investigation.

(2) The Commissioner may not impose such a requirement upon any person whom the Assembly could not require, under section 44 of the 1998 Act, to attend its proceedings for the purpose of giving evidence or to produce any document for the same purpose.

(3) A person is not obliged under this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in proceedings in a court in Northern Ireland.

(4) For the purposes of this section—

- (a) a person shall be taken to comply with a requirement to produce a document if that person produces a copy of the document or an extract of the relevant part of the document;
- (b) “document” means anything in which information is recorded in any form; and
- (c) references to producing a document are to producing the information recorded in it in a visible and legible form.

(5) The Commissioner may agree the payment to persons giving evidence, or producing documents relating to an investigation (whether or not as the result of a requirement imposed under this section), of such reasonable allowances and expenses as the Commissioner may determine.

Commencement Information

I5 S. 28 in operation at 17.9.2012 by S.R. 2012/334, art. 2(c)

Witnesses and documents: notice

29.—(1) The Commissioner shall impose any requirement under section 28 on a person by giving that person notice in writing specifying—

- (a) the time and place at which the person is to attend and the particular matters relating to which the person is required to give evidence;
- (b) the documents, or types of documents, which the person is to produce, the date by which they are to be produced and the particular matters to which they are to relate.

(2) Notice under subsection (1) shall be given—

- (a) in the case of an individual, by sending it in accordance with subsection (3) addressed to the person at the person's usual or last known address or,

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where the person has given an address for service of the notice, at that address;

(b) in any other case, by sending it in accordance with subsection (3) addressed to the person at the person's registered or principal office.

(3) A notice is sent in accordance with this subsection if it is sent—

(a) by a registered post service (within the meaning of the Postal Services Act 2000 (c. 26)); or

(b) by a postal service which provides for its delivery by post to be recorded.

Commencement Information

I6 S. 29 in operation at 17.9.2012 by S.R. 2012/334, art. 2(c)

Witnesses: oaths

30 The Commissioner may—

(a) administer an oath to any person giving evidence to the Commissioner; and

(b) require that person to take an oath.

Commencement Information

I7 S. 30 in operation at 17.9.2012 by S.R. 2012/334, art. 2(c)

Offences

31.—(1) Subject to section 28(3), a person to whom a notice has been given under section 29(1) who—

(a) refuses or fails to attend before the Commissioner as required by the notice,

(b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning any matter specified in the notice,

(c) intentionally alters, suppresses, conceals or destroys any document required to be produced by the notice, or

(d) refuses or fails to produce any such document,

is guilty of an offence.

(2) Any person who refuses to take an oath when required to do so under section 30 is guilty of an offence.

(3) It is a defence for a person charged with an offence under subsection (1) (a), (b) or (d) or subsection (2) to prove that the person had a reasonable excuse for the refusal or failure.

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(4) A person guilty of an offence under this section is liable on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; or
- (b) to imprisonment for a period not exceeding 3 months.

Commencement Information

I8 S. 31 in operation at 17.9.2012 by S.R. 2012/334, art. 2(c)

Protection from defamation actions

32.—(1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Part—

- (a) by the Commissioner shall have absolute privilege; and
- (b) to the Commissioner shall have qualified privilege.

(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

Commencement Information

I9 S. 32 in operation at 17.9.2012 by S.R. 2012/334, art. 2(c)

Restriction on disclosure of information

33.—(1) Subject to subsection (2), the Commissioner, or any person who has (at any time and in any capacity) assisted the Commissioner in the discharge of functions under this Act, shall not disclose any information contained in any complaint or referral, or any information which is furnished to or obtained by the Commissioner or such person in the course of, or for the purposes of, an investigation under this Part.

- (2) Such information may be disclosed for the purpose of—
- (a) enabling or assisting the Commissioner to discharge any function imposed or conferred on the Commissioner by virtue of any provision of—
 - (i) this Part;
 - (ii) any other statutory provision;
 - (iii) the standing orders of the Assembly; or
 - (iv) any direction or other requirement imposed by the Assembly; or
 - (b) the investigation or prosecution of any offence or suspected offence.

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Commencement Information

I10 S. 33 in operation at 17.9.2012 by S.R. 2012/334, art. 2(c)

PART 3

SUPPLEMENTARY PROVISIONS

Miscellaneous

Transitional provisions

34.—(1) This section applies to any complaint or matter which on the day on which section 17 comes into operation—

- (a) has been referred to the Assembly Commissioner for Standards; and
- (b) is, or but for the provisions of this Part would be, the subject of an investigation by that Commissioner under Standing Order 69A.

(2) On the day on which section 17 comes into operation, any complaint or matter to which this section applies shall be transferred to the Commissioner and—

- (a) shall be deemed to have been referred to the Commissioner under section 17; and
- (b) Part 2 shall apply to any such matter.

(3) All information which has been obtained by or made available to the Assembly Commissioner for Standards in connection with a complaint or matter to which this section applies shall be transferred or made available to the Commissioner and shall be treated as if it had been received by the Commissioner on a referral under section 17.

(4) In this section “Assembly Commissioner for Standards” means the Assembly Commissioner for Standards established under Standing Order 69A(1).

Orders

35 The Commission shall be a rule-making authority for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (NI 12).

Consequential amendments

36 The amendments in Schedule 5 (being amendments consequential on the provisions of this Act) shall have effect.

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Interpretation: general

37.—(1) In this Act—

“the 1998 Act” means the Northern Ireland Act 1998 (c. 47);

“the Commission” means the Northern Ireland Assembly Commission;

“the Commissioner” means the Northern Ireland Assembly Commissioner for Standards established by section 16;

“the Presiding Officer” means the Presiding Officer of the Assembly elected under section 39 of the 1998 Act; and

“staff of the Assembly” means staff appointed by the Commission under paragraph 2(1) of Schedule 5 to the 1998 Act.

(2) “Standing Order 69A” means Standing Order 69A of the standing orders of the Assembly as amended on 29 June 2010 and includes any provision in the standing orders of the Assembly amending or replacing Standing Order 69A.

Commencement

38.—(1) The following provisions come into operation on the day on which this Act receives Royal Assent—

(a) Part 1 and Schedules 1 and 2;

(b) in Part 2, sections 16, 18 to 24 and Schedules 3 and 4;

(c) this Part and Schedule 5.

(2) The other provisions of this Act come into operation on such day or days as the Commission may by order appoint.

Short title

39 This Act may be cited as the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011.

Status:

Point in time view as at 17/09/2012.

Changes to legislation:

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