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*Status: Point in time view as at 30/08/2014.*

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## STATUTORY INSTRUMENTS

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# 1996 No. 1298 (N.I. 8)

## The Ombudsman (Northern Ireland) Order 1996 <sup>F1</sup>

- - - - - 15th May 1996

<b>F1</b> functions transf. by SR 1999/481
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### *Introductory*

#### **Title and commencement**

1.—(1) This Order may be cited as the Ombudsman (Northern Ireland) Order 1996.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“action” includes failure to act and other expressions connoting action shall be construed accordingly;

“the Crown” (except in the expression “Minister of the Crown”) means the Crown in right of Her Majesty’s Government in Northern Ireland;

“department” means a department of the Government of Northern Ireland;

“the Department” means the Department of Finance and Personnel;

“officer” includes employee;

“the Ombudsman” means the Assembly Ombudsman for Northern Ireland;

“person aggrieved” has the meaning assigned by Article 9(3);

“statutory provision” has the meaning assigned by section 1 of the Interpretation Act (Northern Ireland) 1954;

“tribunal” includes any authority, body or person having power to determine any matter.

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## *The Assembly Ombudsman for Northern Ireland*

### **The Assembly Ombudsman for Northern Ireland**

**3.—(1)** The Northern Ireland Parliamentary Commissioner for Administration shall hereafter be known as the Assembly Ombudsman for Northern Ireland.

(2) For any reference in any statutory provision to the Northern Ireland Parliamentary Commissioner for Administration there shall be substituted a reference to the Assembly Ombudsman for Northern Ireland.

*Para. (3) rep. by 1998 c. 47*

### **Appointment and tenure of office**

**4.—(1)** A person appointed under section 36(1) of the Northern Ireland Constitution Act 1973 to be the Ombudsman shall, subject to paragraphs (2) and (3), hold office during good behaviour.

(2) A person appointed to be the Ombudsman—

- (a) may, at his own request, be relieved of office by Her Majesty;
- (b) may be removed from office by Her Majesty in consequence of an Address from the Assembly; and
- (c) shall in any case vacate office on completing the year of service in which he attains the age of 65 years.

(3) Her Majesty may declare the office of Ombudsman to have been vacated if she is satisfied that the person appointed to be the Ombudsman is incapable for medical reasons—

- (a) of performing the duties of his office; and
- (b) of requesting to be relieved of it.

### **Salary and pension**

**5.—(1)** There shall be paid to the holder of the office of Ombudsman such salary as the Department may by order determine.

(2) An order under paragraph (1) may provide for the salary determined by the order to be payable from such date, whether before or after the making of the order, as may be specified in the order.

(3) The salary payable to a holder of the office of Ombudsman shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he had previously been appointed or elected.

(4) Schedule 1 shall have effect with respect to the pensions and other benefits to be paid to or in respect of persons who have held office as Ombudsman.

(5) Any abatement under paragraph (3) shall be disregarded in computing the salary of any person for the purposes of any pension or other benefit payable by virtue of Schedule 1.

(6) Except in so far as Schedule 1 otherwise provides, any salary, pension or other benefit payable under this Article shall be charged on and issued out of the Consolidated Fund.

### **Appointment of acting Ombudsman**

**6.—(1)** Where the office of Ombudsman becomes vacant, Her Majesty may, pending the appointment of a new Ombudsman, appoint a person under this Article to act as the Ombudsman at any time during the period of 12 months beginning with the date on which the vacancy arose.

(2) A person appointed under this Article shall hold office during Her Majesty's pleasure and, subject to that, shall hold office—

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- (a) until the appointment of a new Ombudsman or the expiry of the period of [<sup>F2</sup>24 months] beginning with the date on which the vacancy arose, whichever occurs first; and
  - (b) in other respects, in accordance with the terms and conditions of his appointment which shall be such as the Department may determine.
- (3) A person appointed under this Article shall, while he holds office, be treated for all purposes, except those of Articles 4 and 5, as the Ombudsman.
- (4) Any salary, pension or other benefit payable by virtue of this Article shall be charged on and issued out of the Consolidated Fund.

**F2** Words in art. 6(2)(a) substituted (retrospective to 30.8.2014) by [Ombudsman and Commissioner for Complaints \(Amendment\) Act \(Northern Ireland\) 2015 \(c. 6\), ss. 1\(1\), 2](#)

### **Staff and expenses**

7.—(1) The Ombudsman may appoint such officers as he may determine with the approval of the Department as to numbers and conditions of service.

(2) The Northern Ireland Commissioner for Complaints may authorise any of his officers to assist the Ombudsman in the exercise of the functions of the Ombudsman under this Order.

(3) Any function of the Ombudsman under this Order may be performed by any officer of the Ombudsman or of the Northern Ireland Commissioner for Complaints authorised for the purpose by the Ombudsman.

(4) References in this Order to officers of the Ombudsman include references to officers of the Northern Ireland Commissioner for Complaints acting under this Article.

(5) The expenses of the Ombudsman under this Order shall, to such amount as the Department may approve, be defrayed out of money appropriated by Measure.

### *Investigations by the Ombudsman*

#### **Authorities subject to investigation**

8.—(1) Subject to the provisions of this Article and to the notes contained in Schedule 2, this Order applies to the departments and other authorities listed in Schedule 2.

(2) The Department may by order amend Schedule 2 by the alteration of any entry or note, the removal of any entry or note or the insertion of any additional entry or note.

(3) Nothing in paragraph (2) authorises the inclusion in Schedule 2 of any authority unless it is—

- (a) a department; or
- (b) an authority whose functions are exercised on behalf of the Crown.

(4) In this Order—

- (a) any reference to a department to which this Order applies includes a reference to the head of that department and the officers of that department;
- (b) any reference to any other authority to which this Order applies includes a reference to the members and officers of that authority.

#### **Matters subject to investigation**

9.—(1) Subject to the provisions of this Order, the Ombudsman may investigate any action taken—

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- (a) by or on behalf of a department or other authority to which this Order applies; and
  - (b) in the exercise of administrative functions of that department or authority.
- (2) The Ombudsman may investigate any action taken as mentioned in paragraph (1) only if—
- (a) a written complaint is duly made to a member of the Assembly by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
  - (b) the complaint is referred to the Ombudsman, with the consent of the person who made it, by a member of the Assembly with a request to conduct an investigation into it.
- (3) In this Order “person aggrieved” means the person who claims or is alleged to have sustained such injustice as is mentioned in paragraph (2)(a).

[<sup>F3</sup>(3A) For the purposes of this Article, administrative functions exercisable by any person appointed or assigned by the Department of Justice to serve as a member of the administrative staff of any court or tribunal shall be taken to be administrative functions of that Department.]

- (4) For the purposes of this Article, administrative functions exercisable by any person appointed or assigned to serve as a member of the administrative staff of a tribunal listed in Schedule 3 —
- (a) by a department or authority to which this Order applies; or
  - (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such a department or authority,

shall be taken to be administrative functions of that department or authority.

- (5) The Department may by order amend Schedule 3 by the alteration or removal of any entry or the insertion of any additional entry.

**F3** Art. 9(3A) inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### **Matters not subject to investigation**

**10.**—(1) The Ombudsman shall not conduct an investigation under this Order in respect of any such actions or matters as are described in Schedule 4.

(2) The Department may by order amend Schedule 4 so as to exclude from the provisions of that Schedule any such action or matter as is described in that order.

(3) Subject to paragraph (4) and to<sup>F4</sup> section 78 of the Northern Ireland Act 1998], the Ombudsman shall not conduct an investigation under this Order in respect of—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or otherwise;
  - (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.
- (4) The Ombudsman may conduct an investigation—
- (a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in paragraph (3), if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect him to resort to or have resorted to it; or
  - (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in paragraph (3)(a), if he complains that the injustice sustained by him remains unremedied

thereby and the Ombudsman is satisfied that there are reasonable grounds for that complaint.

(5) Nothing in this Order authorises or requires the Ombudsman to question the merits of a decision taken without maladministration by a department or authority to which this Order applies in the exercise of a discretion vested in that department or authority.

**F4** 1998 c. 47

### Provisions relating to complaints

11.—(1) A complaint under this Order may be made by—

- (a) any individual; or
- (b) any body (whether incorporated or not), other than a body to which paragraph (2) applies.

(2) This paragraph applies to—

- (a) a district council or other body constituted for the purposes of local government;
- (b) a body constituted for the purposes of—
  - (i) the public service; or
  - (ii) carrying on under national or public ownership any industry or undertaking or part thereof;
- (c) any other body—
  - (i) whose members are appointed by Her Majesty, a Minister of the Crown, a department of the Government of the United Kingdom, the head of a department or a department; or
  - (ii) whose revenues consist wholly or mainly of moneys appropriated by Measure or provided by the Parliament of the United Kingdom.

(3) Except as provided by paragraph (4), a complaint shall not be entertained under this Order unless made by the person aggrieved himself.

(4) Where the person by whom a complaint might have been made under this Order—

- (a) has died; or
- (b) is for any reason unable to act for himself,

the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him.

(5) Except as provided by paragraph (6) a complaint shall not be entertained under this Order unless it is made to a member of the Assembly not later than 12 months from the day on which the person aggrieved first had knowledge of the matters alleged in the complaint.

(6) The Ombudsman may conduct an investigation pursuant to a complaint not made within the period mentioned in paragraph (5) if he considers that there are special circumstances which make it proper to do so.

(7) A complaint shall not be entertained under this Order unless—

- (a) the person aggrieved is resident in Northern Ireland or (if he is dead) was so resident at his death; or
- (b) the complaint relates to action taken in relation to the person aggrieved while he was present in Northern Ireland or in relation to rights or obligations which accrued or arose in Northern Ireland.

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(8) Any question whether a complaint is duly made under this Order shall be determined by the Ombudsman.

### **Purposes of investigation**

**12.** The purposes of the investigation by the Ombudsman shall be—

- (a) to ascertain if the matters alleged in the complaint—
  - (i) may properly warrant investigation by him under this Order;
  - (ii) are, in substance, true; and
  - (iii) disclose any maladministration by or on behalf of the department or authority concerned; and
- (b) where it appears to the Ombudsman to be desirable—
  - (i) to effect a settlement of the matter complained of; or
  - (ii) if that is not possible, to state what action should in his opinion be taken by the department or authority concerned to effect a fair settlement of that matter or by that department or authority or by the person aggrieved to remove, or have removed, the cause of complaint.

### **Procedure in respect of investigations**

**13.—(1)** In determining whether to initiate, continue or discontinue an investigation under this Order, the Ombudsman shall, subject to the foregoing provisions, act in accordance with his own discretion.

(2) Where the Ombudsman proposes to conduct an investigation pursuant to a complaint under this Order, he shall afford to—

- (a) the principal officer of the department or authority concerned; and
- (b) any other person who is alleged in the complaint to have taken or authorised the action complained of,

an opportunity to comment on any allegations contained in the complaint.

(3) Every investigation under this Order shall be conducted in private.

(4) Except as otherwise provided by this Order, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case.

(5) The Ombudsman may—

- (a) obtain information from such persons and in such manner, and make such enquiries, as he thinks fit;
- (b) determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

(6) The Ombudsman may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation under this Order—

- (a) sums in respect of expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time,

in accordance with such scales and subject to such conditions as the Department may determine.

(7) An investigation under this Order shall not affect—

- (a) any action taken by the department or authority concerned;

- (b) any power or duty of that department or authority to take further action with respect to any matters subject to the investigation.

## Evidence

14.—(1) For the purposes of an investigation under this Order the Ombudsman may require—

- (a) the head of any department concerned or an officer of any such department;
- (b) any officer or member of any other authority concerned; or
- (c) any other person who in his opinion is able to furnish such information or produce such documents,

to furnish information or produce documents relevant to the investigation.

(2) For the purposes of an investigation under this Order the Ombudsman shall have the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad; and
- (b) the production of documents.

(3) Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to persons in the service of the Crown, whether imposed by any statutory provision or by any rule of law, shall not apply to the disclosure of information for the purposes of an investigation under this Order.

(4) The Crown shall not be entitled in relation to any investigation under this Order to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) A person shall not be required or authorised by virtue of this Order to furnish any information or answer any question relating to any proceedings of the<sup>F5</sup> Executive Committee of the Assembly or of a sub#committee of that Committee] or to produce so much of any document as relates to such proceedings.

(6) For the purpose of paragraph (5) a certificate issued by the secretary of the<sup>F5</sup> Executive Committee of the Assembly] with the approval of the<sup>F5</sup> First Minister and deputy First Minister acting jointly] and certifying that any information, question, document or part of a document relates to any proceedings mentioned in that paragraph shall be conclusive.

(7) Subject to paragraphs (3) and (4), a person shall not be compelled for the purposes of any investigation under this Order to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings in the High Court.

F5 SI 1999/663

## Obstruction and contempt

15.—(1) If any person without lawful excuse—

- (a) obstructs the Ombudsman or any officer of the Ombudsman in the performance of his functions under this Order; or
- (b) is guilty of any act in relation to an investigation under this Order which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Ombudsman may certify the offence to the High Court.

(2) Where an offence is certified under this Article, the High Court may inquire into the matter and, after hearing—

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- (a) any witnesses who may be produced against or on behalf of the person charged with the offence; and
  - (b) any statement that may be offered in defence,
- may deal with the person charged with the offence in any manner in which the court could deal with him if he had committed the like offence in relation to the court.
- (3) This Article does not apply to the taking of any action mentioned in Article 13(7).

### **Reports on investigations**

**16.**—(1) In any case where the Ombudsman—

- (a) conducts an investigation under this Order; or
- (b) decides not to conduct an investigation,

he shall send a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation to the member of the Assembly by whom the request for an investigation was made, or if he is no longer a member of the Assembly to such member of the Assembly as the Ombudsman thinks appropriate.

(2) In any case where the Ombudsman conducts an investigation under this Order, he shall also send a report of the results of the investigation to—

- (a) the principal officer of the department or authority concerned;
- (b) any other person who is alleged in the relevant complaint to have taken or authorised the action complained of.

### **Reports to the Assembly**

**17.**—(1) The Ombudsman shall annually lay before the Assembly a general report on the performance of his functions under this Order and may from time to time lay before the Assembly such other reports with respect to those functions as he thinks fit.

(2) If, after conducting an investigation under this Order, it appears to the Ombudsman that—

- (a) injustice has been sustained by the person aggrieved consequence of maladministration; and
- (b) the injustice has not been, or will not be, remedied,

he may, if he thinks fit, lay before the Assembly a special report upon the case.

### **Privilege for certain publications**

**18.**—(1) For the purposes of the law of defamation, any publication to which this Article applies shall be absolutely privileged.

(2) This Article applies to—

- (a) the publication of any matter by the Ombudsman in making a report to the Assembly for the purposes of this Order;
- (b) the publication of any matter by a member of the Assembly in communicating with the Ombudsman or his officers for those purposes or by the Ombudsman or his officers in communicating with such a member for those purposes;
- (c) the publication by a member of the Assembly to the person by whom a complaint was made under this Order of a report or statement sent to the member in respect of the complaint in pursuance of Article 16(1);



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- (d) the publication by the Ombudsman to such a person as is mentioned in paragraph (2) of Article 16 of a report sent to that person in pursuance of that paragraph.

### **Disclosure of information by Ombudsman**

**19.**—(1) Information obtained by the Ombudsman or his officers in the course of, or for the purposes of, an investigation under this Order shall not be disclosed except for the purposes of—

- (a) the investigation and any report to be made thereon under this Order;
- (b) any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman or any of his officers by virtue of this Order;
- (c) any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Order;
- (d) an inquiry with a view to the taking of proceedings of the kind mentioned in subparagraphs (b) and (c); or
- (e) any proceedings under Article 15.

(2) The Ombudsman and his officers shall not be called upon to give evidence in any proceedings (other than the proceedings mentioned in paragraph (1)(b) and (c)) of matters coming to his or their knowledge in the course of an investigation under this Order.

(3) The Secretary of State or the head of a department may give notice in writing to the Ombudsman with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of Northern Ireland or the United Kingdom or otherwise contrary to the public interest.

(4) Where a notice is given under paragraph (3) nothing in this Order shall authorise or require the Ombudsman or any officer of the Ombudsman to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

[<sup>F6</sup>(5) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 shall be treated for the purposes of paragraph (1) as obtained for the purposes of an investigation under this Order and, in relation to such information, the reference in paragraph (1)(a) to the investigation shall have effect as a reference to any investigation.]

**F6** 2000 c. 36

### **[<sup>F7</sup>Disclosure of information to Information Commissioner**

**19A.**—(1) The Ombudsman may disclose to the Information Commissioner any information obtained by, or furnished to, the Ombudsman under or for the purposes of this Order if the information appears to the Ombudsman to relate to—

- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
  - (i) Part V of the Data Protection Act 1998 (enforcement),
  - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
  - (iii) Part IV of that Act (enforcement), or
- (b) the commission of an offence under—

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- (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
  - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (2) Nothing in Article 19(1) applies in relation to the disclosure of information in accordance with this Article.]

**F7** 2000 c. 36

### *Supplementary provisions*

#### **Orders**

**20.**—(1) The Department may make provision by order for any matter appearing to it to be necessary or desirable for carrying out effectively the intent or purpose of this Order.

(2) Orders made by the Department under this Order shall be subject to negative resolution.

#### **Amendments, repeals and transitional and saving provisions**

*Para. (1)—Amendments*

*Para. (2)—Repeals*

(3) A complaint may be made under this Order in respect of matters which arose before as well as after the coming into operation of this Order.

(4) Any order made by the Secretary of State under the Salaries (Comptroller and Auditor-General and Others) (Northern Ireland) Order 1973 and in operation immediately before the coming into operation of this Order shall, in so far as it relates to the Northern Ireland Parliamentary Commissioner for Administration, have effect as if made by the Department under Article 5(1) in relation to the Ombudsman.

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## SCHEDULES

### SCHEDULE 1

Article 5(4).

#### PENSIONS AND OTHER BENEFITS

##### *Interpretation*

**1.** In this Schedule—

“the 1993 Act” means the Judicial Pensions and Retirement Act 1993;

“the 1993 scheme” means the scheme of pensions and other benefits constituted by Part I of the 1993 Act;

“the civil service scheme” means the scheme of pensions and other benefits applicable under Article 3 of the Superannuation (Northern Ireland) Order 1972 to the civil service of Northern Ireland;

“judicial pension scheme” means any public service pension scheme, as defined in—

(a) section 1 of the Pensions Schemes Act 1993; or

(b) section 1 of the Pension Schemes (Northern Ireland) Act 1993,

under which pensions and other benefits are payable in respect of service in one or more qualifying judicial offices, within the meaning of the 1993 Act, but does not include the civil service scheme;

##### *Persons holding office before 31 March 1995*

**2.** Notwithstanding any provision in this Order, the Parliamentary Commissioner for Administration and Commissioner for Complaints (Pension) Order (Northern Ireland) 1973 shall continue to apply in relation to a person who held office as Northern Ireland Parliamentary Commissioner for Administration at any time before 31 March 1995.

##### *Persons taking office on or after 31 March 1995*

**3.** A person who first holds office as Ombudsman on or after 31 March 1995 shall be entitled, if he was a member of a judicial pension scheme immediately before he first holds that office, to elect between—

(a) the scheme of pensions and other benefits under that judicial pension scheme (his “former scheme”);

(b) (if different from his former scheme) the 1993 scheme; and

(c) the civil service scheme,

and, if he is not entitled to make an election under this paragraph, or if he is so entitled but fails to make such an election, he shall be treated as if he had been so entitled and had elected for the civil service scheme.

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*Effect of election to continue in former scheme*

4. Where a person elects under this Schedule for his former scheme, that scheme shall, subject to regulations made under this Schedule, apply as if his service as Ombudsman were service which was subject, in his case, to that scheme.

*Effect of election for the civil service scheme*

5. Where a person elects under this Schedule for the civil service scheme, the principal civil service pension scheme within the meaning of Article 4 of the Superannuation (Northern Ireland) Order 1972 and for the time being in force shall apply as if his service as Ombudsman were service in employment in the civil service of Northern Ireland.

*Effect of election for the 1993 scheme*

6.—(1) A person who elects under paragraph 3(b) for the 1993 scheme, shall be entitled, when he ceases to hold office as Ombudsman, to a pension under Part I of the 1993 Act at the appropriate annual rate (within the meaning of that Act) if he has held that office for at least 5 years and either—

- (a) he has attained the age of 65; or
- (b) he is disabled by permanent infirmity for the performance of the duties of the office.

(2) Subject to the following provisions of, and regulations made under, this Schedule, the provisions of Part I of the 1993 Act (other than sections 1(1) to (4) and 2) and of sections 19, 20 and 23 of, and Schedule 2 to, that Act (which provide for benefits in respect of earnings in excess of pension-capped salary, appeals and transfer of accrued rights) shall apply in relation to him and his service in the office of Ombudsman as they apply in relation to a person to whom Part I of that Act applies.

(3) Subject to regulations made under this Schedule, in the application of provisions of the 1993 Act by virtue of sub-paragraph (2) a person who elects for the 1993 scheme shall be treated—

- (a) as if the office of Ombudsman were a qualifying judicial office (within the meaning of that Act) by virtue of inclusion among the offices specified in Part I of Schedule 1 to that Act;
- (b) as if his election under this Schedule were an election such as is mentioned in paragraph (d) of section 1(1) of that Act (so that, in particular, section 12 of that Act, which provides for the transfer of accrued rights into the scheme, applies);
- (c) as if his pension by virtue of this Schedule were a pension under section 2 of that Act (and, accordingly, a judicial pension, within the meaning of that Act); and
- (d) for the purpose of determining, in the event of his death, the rate of any surviving spouse's or children's pension payable under sections 5 to 8 of that Act in respect of his service as Ombudsman, as if references in those sections to the annual rate of the deceased's judicial pension were references—
  - (i) where a pension had commenced to be paid to him by virtue of sub-paragraph (1), to the appropriate annual rate of that pension; or
  - (ii) where no such pension had commenced to be paid to him, to the rate that would have been the appropriate annual rate of the pension payable to him by virtue of sub-paragraph (1)(b), had he not died, but been disabled by permanent infirmity for the performance of the duties of his office on and after the date of death.

(4) In the application of the 1993 Act to the Ombudsman (whether by virtue of paragraph 3(a) or (b)) the references to the appropriate Minister in sections 13 (election for personal pension), 19 (benefits in respect of earnings in excess of pension-capped salary) and 20 (appeals) of, and Schedule 2 (transfer of accrued rights) to, that Act shall be taken as references to the Minister for

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the Civil Service and the power conferred by paragraph 2 of that Schedule to make regulations shall be exercisable by the Minister for the Civil Service.

*Time for, and manner of, election*

7. Any power to make an election under this Schedule shall be exercisable within such time and in such manner as may be prescribed in regulations under this Schedule.

*Regulations*

8.—(1) The Minister for the Civil Service may make regulations for purposes supplementary to the other provisions of this Schedule.

(2) Any such regulations may, without prejudice to section 38 of the Superannuation Act (Northern Ireland) 1967 or section 39A of the Superannuation Act 1965 (employment in more than one public office), make special provision with respect to the pensions and other benefits payable to or in respect of a person to whom—

- (a) his former scheme,
- (b) the 1993 scheme, or
- (c) the civil service scheme,

applies, or has applied, in respect of any service other than service as Ombudsman.

(3) The provision that may be made by virtue of sub-paragraph (2) includes provision—

- (a) for aggregating—
  - (i) other service falling within his former scheme or the 1993 scheme with service as Ombudsman, or
  - (ii) service as Ombudsman with such other service,for the purpose of determining qualification for, or entitlement to, or the amount of, benefit under the scheme in question;
- (b) for increasing the amount of the benefit payable under any of the schemes mentioned in head (a)(i), in the case of a person to whom that scheme applied in respect of an office held by him before appointment as Ombudsman, up to the amount that would have been payable under that scheme if he had retired from that office on the ground of permanent infirmity immediately before his appointment.

(4) Regulations made under this Schedule shall be subject to annulment in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

*Pensions and benefits to be charged on the Consolidated Fund of the United Kingdom*

9. Any pension or other benefit granted by virtue of this Schedule (except a pension or other benefit under the civil service scheme) shall be charged on, and issued out of, the Consolidated Fund of the United Kingdom.

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SCHEDULE 2

Article 8(1).

DEPARTMENTS AND OTHER AUTHORITIES SUBJECT TO INVESTIGATION

[<sup>F8</sup>An implementation body to which the North/South Co#operation (Implementation Bodies) (Northern Ireland) Order 1999 applies]

**F8** SI 1999/859

**F8** SI 1999/859

Civil Service Commissioners for Northern Ireland

<sup>F9</sup> . . .

**F9** 1999 NI 1

**F9** 1999 NI 1

[<sup>F10</sup>Department of Agriculture and Rural Development]

**F10** 1999 NI 1

**F10** 1999 NI 1

[<sup>F11</sup>Department of Culture, Arts and Leisure]

**F11** 1999 NI 1

**F11** 1999 NI 1

<sup>F12</sup> . . .

**F12** 1999 NI 1

**F12** 1999 NI 1

Department of Education

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Department of the Environment

[<sup>F13</sup>Department of Enterprise, Trade and Investment]

**F13** 1999 NI 1

**F13** 1999 NI 1

Department of Finance and Personnel

[<sup>F14</sup>Department of Health, Social Services and Public Safety]

**F14** 1999 NI 1

**F14** 1999 NI 1

<sup>F15</sup>  
...

**F15** 1999 NI 1

**F15** 1999 NI 1

[<sup>F16</sup>Department of Higher and Further Education, Training and Employment]

**F16** 1999 NI 1

**F16** 1999 NI 1

[<sup>F17</sup>The Department of Justice]

**F17** Words in Sch. 2 inserted (10.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(4), 3(2); S.R. 2010/147, art. 2(1)

**F17** Words in Sch. 2 inserted (10.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(4), 3(2); S.R. 2010/147, art. 2(1)

[<sup>F18</sup>Department for Regional Development]

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**F18** 1999 NI 1

**F18** 1999 NI 1

[<sup>F19</sup>Department for Social Development]

**F19** 1999 NI 1

**F19** 1999 NI 1

[<sup>F20</sup>The Northern Ireland Authority for [<sup>F21</sup>Utility] Regulation]

**F20** 2003 NI 6  
**F21** Sch. 2: word in entry relating to the Northern Ireland Authority for Energy Regulation substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 37(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

**F20** 2003 NI 6  
**F21** Sch. 2: word in entry relating to the Northern Ireland Authority for Energy Regulation substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 37(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

<sup>F22</sup> . . .

**F22** 2003 NI 6

**F22** 2003 NI 6

<sup>F23</sup> . . .

**F23** 2003 NI 6

**F23** 2003 NI 6

[<sup>F24</sup>Office of the First Minister and deputy First Minister]

**F24** 1999 NI 1



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**F24** 1999 NI 1

#### NOTES:

<sup>F25</sup>1. The reference to the Department of Culture, Arts and Leisure includes the Public Record Office.

**F25** 1999 NI 1

2. The reference to the Department of Enterprise, Trade and Investment includes the Registry of Credit Unions.

**F25** 1999 NI 1

3. The reference to the Department of Finance and Personnel includes the General Register Office, the Land Registry, the Registry of Deeds and the Commissioner of Valuation.

**F25** 1999 NI 1

4. In relation to any function exercisable by a department or authority for the time being listed in this Schedule which was previously exercisable on behalf of the Crown by a department or authority not so listed, the reference to the department or authority so listed includes a reference to the other department or authority.]

**F25** 1999 NI 1

#### SCHEDULE 3

Article 9(4).

#### TRIBUNALS REFERRED TO IN ARTICLE 9(4)

The Lands Tribunal for Northern Ireland established under section 1 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964.

A tribunal constituted under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972.

The Water Appeals Commission<sup>F26</sup> constituted under Article 292 of the Water and Sewerage Services (Northern Ireland) Order 2006].

**F26** Sch. 3: words in the entry relating to the Water Appeals Commission substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), [Sch. 12 para. 37\(2\)](#) (with arts. 8(8), 121(3), 307); S.R. 2007/194, [art. 2\(2\)](#), Sch. 1 Pt. II (with art. 3, Sch. 2)

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**F26** Sch. 3: words in the entry relating to the Water Appeals Commission substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 37(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

[<sup>F27</sup>The Northern Ireland Valuation Tribunal established under Article 36A of the Rates (Northern Ireland) Order 1977 <sup>F28</sup>.]

**F27** Sch. 3: entry relating to Rates (Northern Ireland) Order 1977 inserted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F28** S.I. 1977/2157 (N.I. 28).

**F27** Sch. 3: entry relating to Rates (Northern Ireland) Order 1977 inserted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F28** S.I. 1977/2157 (N.I. 28).

[<sup>F29</sup>Rent assessment committees constituted under Schedule 1 to the Private Tenancies (Northern Ireland) Order 2006.]

**F29** Sch. 3: entry relating to rent assessment committees substituted (1.4.2007) by [Private Tenancies \(Northern Ireland\) Order 2006 \(S.I. 2006/1459 \(N.I. 10\)\)](#), arts. 1(3), 74, **Sch. 4 para. 12**; S.R. 2006/428, **art. 3**

**F29** Sch. 3: entry relating to rent assessment committees substituted (1.4.2007) by [Private Tenancies \(Northern Ireland\) Order 2006 \(S.I. 2006/1459 \(N.I. 10\)\)](#), arts. 1(3), 74, **Sch. 4 para. 12**; S.R. 2006/428, **art. 3**

<sup>F30</sup>Tribunals constituted in Northern Ireland under regulations made under section 4 of the Vaccine Damage Payments Act 1979.

**F30** prosp. in pt. rep. by [1998 NI 10](#)

**F30** prosp. in pt. rep. by [1998 NI 10](#)

Industrial tribunals established by regulations made under [<sup>F31</sup> Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996].

**F31** [1996 NI 18](#)

**F31** [1996 NI 18](#)

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The Mental Health Review Tribunal for Northern Ireland constituted under Article 70 of the Mental Health (Northern Ireland) Order 1986.

The Fair Employment Tribunal for Northern Ireland established under regulations under<sup>F32</sup> Article 81 of the Fair Employment and Treatment (Northern Ireland) Order 1998].

**F32** [1998 NI 21](#)

**F32** [1998 NI 21](#)

The Planning Appeals Commission constituted under Article 110 of the Planning (Northern Ireland) Order 1991.

<sup>F33</sup> . . .

**F33** [1998 NI 10](#)

**F33** [1998 NI 10](#)

The Industrial Court constituted under Article 91 of the Industrial Relations (Northern Ireland) Order 1992.

<sup>F34</sup> Social security appeal tribunals constituted under section 39 of the Social Security Administration (Northern Ireland) Act 1992.

**F34** prosp. in pt. rep. by [1998 NI 10](#)

**F34** prosp. in pt. rep. by [1998 NI 10](#)

<sup>F35</sup> Disability appeal tribunals constituted under section 41 of that Act.

**F35** prosp. in pt. rep. by [1998 NI 10](#)

**F35** prosp. in pt. rep. by [1998 NI 10](#)

<sup>F36</sup> Medical appeal tribunals constituted under section 48 of that Act.

**F36** prosp. in pt. rep. by [1998 NI 10](#)

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**F36** prosp. in pt. rep. by 1998 NI 10

Registered Homes Tribunals constituted under Part V of the Registered Homes (Northern Ireland) Order 1992.

[<sup>F37</sup>Appeal tribunals constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998.]

**F37** 1998 NI 10

**F37** 1998 NI 10

[<sup>F38</sup>Adjudicators appointed under Article 7(1)(b) of the Criminal Injuries Compensation (Northern Ireland) Order 2002 <sup>F39</sup>.]

**F38** Sch. 3: entry relating to Criminal Injuries Compensation (Northern Ireland) Order 2002 inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F39** S.I. 2002/796 (N.I. 1).

**F38** Sch. 3: entry relating to Criminal Injuries Compensation (Northern Ireland) Order 2002 inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F39** S.I. 2002/796 (N.I. 1).

[<sup>F40</sup>Adjudicators appointed under Article 29(1) of the Traffic Management (Northern Ireland) Order 2005 <sup>F41</sup>.]

**F40** Sch. 3: entry relating to Traffic Management (Northern Ireland) Order 2005 inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F41** S.I. 2005/1964 (N.I. 14).

**F40** Sch. 3: entry relating to Traffic Management (Northern Ireland) Order 2005 inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

**F41** S.I. 2005/1964 (N.I. 14).

[<sup>F42</sup>The Charity Tribunal for Northern Ireland established under section 12 of the Charities Act (Northern Ireland) 2008 <sup>F43</sup>.]

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- F42** Sch. 3: entry relating to Charities Act (Northern Ireland) 2008 inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- F43** 2008 c. 12 (N.I.).

- F42** Sch. 3: entry relating to Charities Act (Northern Ireland) 2008 inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- F43** 2008 c. 12 (N.I.).

The tribunal established to adjudicate on claims under the scheme for compensation for loss of employment through civil unrest.

#### SCHEDULE 4

Article 10(1).

#### MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the head of a department to affect relations or dealings between the Government of Northern Ireland and any other Government.
2. The commencement or conduct of any civil or criminal proceedings before any court of law in the United Kingdom, or of proceedings before any international court or tribunal.
- [<sup>F44</sup>2A. Action taken by a member of the administrative staff of any court or tribunal who was appointed or assigned to serve as a member of that staff by the Department of Justice, so far as the action is taken at the direction, or on the authority (whether express or implied), of any person acting in a judicial capacity or in his capacity as a member of the tribunal.]

- F44** Sch. 4 para. 2A inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 16, **Sch. 19 para. 6(4)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

3. Action taken by any member of the administrative staff of a tribunal listed in Schedule 3, so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in his capacity as a member of the tribunal.
4. Action taken on behalf of the Department of Health and Social Services by—
  - (a) a health and social services board;
  - (b) a special health and social services agency;
  - (c) the Northern Ireland Central Services Agency for the Health and Social Services; or
  - (d) a [<sup>F45</sup>Health and Social Care trust].

- F45** Words in Order substituted (1.4.2009) by virtue of Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(c)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

- 5.—(1) Subject to sub-paragraph (2), action taken in matters relating to contractual or other commercial transactions (whether in Northern Ireland or elsewhere) which are transactions of—

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- (a) a department or authority to which this Order applies; or
  - (b) any such body as is mentioned in Article 11(2).
- (2) This paragraph does not apply to transactions for or relating to—
- (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
  - (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could have been acquired compulsorily.
- 6.—**(1) Subject to sub-paragraph (2), action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to—
- (a) service in any office or employment under the Crown or under any authority to which this Order applies;
  - (b) service—
    - (i) in any office or employment; or
    - (ii) under any contract for services,in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in any department or other authority to which this Order applies.
- (2) This paragraph does not apply to service in the civil service of Northern Ireland in any department or other authority to which this Order applies.

#### *Schedule 5—Amendments*

#### *Schedule 6—Repeals*

**Status:**

Point in time view as at 30/08/2014.

**Changes to legislation:**

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