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## SCHEDULES

### [<sup>F1</sup>SCHEDULE 3A

#### THE NORTHERN IRELAND JUDICIAL APPOINTMENTS OMBUDSMAN

##### Textual Amendments

**F1** Sch. 3A inserted (25.9.2006) by Constitutional Reform Act 2005 (c. 4), ss. 124, 148, Sch. 15; S.I. 2006/1537, art. 3

#### *The Ombudsman*

- 1 (1) A person must not be appointed as the Ombudsman if any of these sub-paragraphs applies—
  - (a) he is employed in the civil service of the State;
  - (b) he is a member of the House of Commons;
  - (c) he is a member of the Northern Ireland Assembly;
  - (d) he is engaged in political activity as a member of a political party;
  - (e) he has ever been any of these—
    - (i) a practising barrister in England and Wales;
    - (ii) a practising solicitor of the Supreme Court of England and Wales;
    - (iii) a practising advocate in Scotland;
    - (iv) a practising solicitor in Scotland;
    - (v) a practising member of the Bar of Northern Ireland;
    - (vi) a practising solicitor of the Supreme Court of Judicature of Northern Ireland;
    - (vii) the holder of a listed judicial office.
- (2) Before recommending a person for appointment as the Ombudsman the Lord Chancellor must consider—
  - (a) whether the person has exercised functions that appear to the Lord Chancellor to be of a judicial nature and such as to make the person inappropriate for the appointment;
  - (b) whether any past service in a capacity mentioned in sub-paragraph (3) appears to the Lord Chancellor to make the person inappropriate for the appointment.
- (3) The service referred to in subsection (2)(b) is service as any of these—
  - (a) a Commissioner;
  - (b) a member of staff of the Commission;
  - (c) a person employed in the civil service of the State.

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- 2 (1) In this Schedule “practising” is to be read in accordance with sub-paragraphs (2) and (3).
- (2) A barrister in England and Wales, an advocate in Scotland or a member of the Bar of Northern Ireland is practising if he is—
- (a) practising as such,
  - (b) employed to give legal advice, or
  - (c) providing legal advice under a contract for services.
- (3) A solicitor of the Supreme Court, a solicitor in Scotland or a solicitor of the Supreme Court of Judicature of Northern Ireland is practising if he is—
- (a) acting as such,
  - (b) employed to give legal advice, or
  - (c) providing legal advice under a contract for services.

*Term of office etc. of Ombudsman*

- 3 (1) The Ombudsman must be appointed for a fixed period.
- (2) But an appointment is subject to paragraphs 4 and 5.
- 4 A person—
- (a) may not be appointed as the Ombudsman for more than 5 years at a time, and
  - (b) may not hold office as the Ombudsman for periods (whether or not consecutive) totalling more than 10 years.
- 5 (1) The Ombudsman may at any time—
- (a) resign his office by notice in writing addressed to Her Majesty;
  - (b) be removed from office by the Lord Chancellor.
- (2) The Lord Chancellor may not remove the Ombudsman from office unless he is satisfied that the Ombudsman—
- (a) has become disqualified for appointment under paragraph 1(1),
  - (b) has ceased to be appropriate for the appointment because of considerations listed in paragraph 1(2),
  - (c) has, within the preceding nine months, failed to discharge the functions of his office for a continuous period of at least six months,
  - (d) has been convicted of an offence,
  - (e) is an undischarged bankrupt, or
  - (f) is otherwise unfit to hold his office or unable to discharge its functions.

*Salary, allowances and expenses*

- 6 (1) The Lord Chancellor may—
- (a) pay to the Ombudsman such remuneration, fees or expenses as the Lord Chancellor may determine;
  - (b) pay, or make provision for the payment of, such pension, allowance or gratuity as the Lord Chancellor may determine to or in respect of a person who is or has been the Ombudsman.
- (2) If—

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- (a) the Ombudsman ceases to hold office other than on the expiry of his term of appointment, and
  - (b) it appears to the Lord Chancellor that there are special circumstances that would warrant the payment of compensation to him,
- the Lord Chancellor may make to or in respect of him a payment of such amount as the Lord Chancellor may determine.

#### *Acting Ombudsman*

- 7 (1) The Lord Chancellor may appoint a person to exercise the functions of the Ombudsman if—
- (a) the Ombudsman's office becomes vacant,
  - (b) the Lord Chancellor determines that the Ombudsman is incapable of exercising his functions, or
  - (c) the Ombudsman notifies the Lord Chancellor that it would be inappropriate for him to exercise any of his functions in connection with a particular matter because of a possible conflict of interests or for any other reason.
- (2) But a person may be appointed under this paragraph only if he is eligible under paragraph 1 to be appointed as Ombudsman.
- (3) The Lord Chancellor may—
- (a) pay to a person appointed under this paragraph such remuneration, fees or expenses as the Lord Chancellor may determine;
  - (b) pay, or make provision for the payment of, such pension, allowance or gratuity as the Lord Chancellor may determine to or in respect of a person who is or has been a person appointed under this paragraph.
- (4) A person appointed under this paragraph is to exercise the functions of the Ombudsman in accordance with the terms of his appointment.
- (5) The Lord Chancellor may end an appointment under this paragraph at any time.
- (6) Otherwise any appointment of a person under this paragraph ends on the earliest of—
- (a) that person's ceasing to be eligible to be appointed as Ombudsman;
  - (b) the expiry of the appointment in accordance with its terms and conditions;
  - (c) the date on which with the agreement of the Lord Chancellor the Ombudsman resumes the exercise of his functions;
  - (d) the appointment of a new Ombudsman;
  - (e) the end of twelve months beginning with the relevant date.
- (7) The relevant date is—
- (a) if the appointment was under sub-paragraph (1)(a), the date when the vacancy arose;
  - (b) if the appointment was under sub-paragraph (1)(b), the date of the Lord Chancellor's determination;
  - (c) if the appointment was under sub-paragraph (1)(c), the date of the notification.

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### *Status of the Ombudsman*

- 8 The person for the time being holding the office of the Ombudsman is by the name of that office a corporation sole.

### *Powers of the Ombudsman*

- 9 (1) The Ombudsman does not have power to do any of the following—
- (a) to borrow money;
  - (b) to hold real property;
  - (c) to appoint staff (except by way of arrangements under paragraph 10).
- (2) Subject to sub-paragraph (1), the Ombudsman may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of his functions.
- (3) Nothing in this Schedule is to be read as limiting the generality of sub-paragraph (2).

### *Arrangements for assistance*

- 10 (1) The Ombudsman may make arrangements with such persons as he considers appropriate for assistance to be provided to him.
- (2) Arrangements may include the paying of fees to such persons.
- (3) No arrangements may be made under this paragraph unless approved by the Lord Chancellor.

### *Arrangements by the Lord Chancellor*

- 11 Unless the Ombudsman has made arrangements under paragraph 10, the Lord Chancellor may make arrangements for assistance to be provided to the Ombudsman.

### *Delegation of functions*

- 12 (1) The Ombudsman may delegate any functions to—
- (a) any person with whom arrangements are made under paragraph 10 or 11, or
  - (b) any person providing assistance to the Ombudsman in pursuance of such arrangements.
- (2) But all recommendations and reports prepared by or on behalf of the Ombudsman must be signed by him.

### *Financial provisions and directions*

- 13 (1) Expenditure incurred by the Ombudsman in the discharge of his functions is to be met by the Lord Chancellor.
- (2) The Lord Chancellor may by direction require the Ombudsman—
- (a) not to incur costs and expenditure in excess of a specified amount without his consent;
  - (b) to follow specified procedures in relation to his costs and expenditure.

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- (3) A direction under sub-paragraph (2) may relate to all of the Ombudsman's costs and expenditure, or to costs and expenditure of a specified description.

#### *Code of conduct*

- 14 The Lord Chancellor may issue and from time to time revise a code of conduct to be observed by the Ombudsman and any person appointed under paragraph 7 to exercise his functions.

#### *Reports*

- 15 (1) The Ombudsman must, as soon as practicable after the end of each financial year, provide to the Lord Chancellor a report about the performance of his functions during that year.
- (2) The Lord Chancellor may by direction require the Ombudsman to deal, in reports or a particular report under sub-paragraph (1), with matters specified in the direction.
- (3) The Ombudsman must, as soon as practicable after a direction by the Lord Chancellor under this sub-paragraph, provide to the Lord Chancellor a report about any matter or matters specified in the direction.
- (4) The Lord Chancellor must lay before each House of Parliament a copy of any report provided to him under sub-paragraph (1).
- (5) The Ombudsman must publish any report once copies of it have been laid under sub-paragraph (4).

#### *Documentary evidence*

- 16 A document purporting to be an instrument issued by the Ombudsman and to be signed by or on behalf of the Ombudsman is to be received in evidence and, unless the contrary is proved, taken to be such an instrument and signed in that way.

#### *General*

- 17 (1) Financial year in this Schedule, means—
- (a) the period beginning with the date on which section 9A comes into force and ending with the following 31 March, and
  - (b) each successive period of twelve months.
- (2) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices) at the appropriate place insert— The Northern Ireland Judicial Appointments Ombudsman.
- (3) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices which are public authorities) at the appropriate place insert— The Northern Ireland Judicial Appointments Ombudsman.]

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