

*These notes refer to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (c.17) which received Royal Assent on 29 March 2011*

# Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Northern Ireland Assembly Commission (“the Commission”) and the Committee on Standards and Privileges (“the Committee”) in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. These notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. Therefore, where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

#### ***Independent Financial Review Panel***

3. On 4 May 2007, prior to the restoration of devolution, the Secretary of State wrote to the Chairman of the Review Body on Senior Salaries (“the SSRB”) seeking its agreement to conduct a review of the existing structure for salaries, expenditure and pension benefits payable to Members and office holders of the Northern Ireland Assembly (“the Assembly”). The SSRB, which completed its report in November 2008, recommended that the Assembly should commit to accepting the outcome of future independent reviews on salaries, allowances and pensions without modification, thereby respecting the impartiality of the external review process. This was proposed in response to the desire of Members of the Assembly to be distanced from deciding their own salaries and financial support arrangements. After considering the SSRB Report, the Commission supported the recommendation of the SSRB that consideration should be given to the establishment of an independent mechanism for the future determination of salaries, pensions and financial support for Members. To take this forward the Commission recommended that an amendment to the Northern Ireland Act 1998 (“the 1998 Act”) should be made to enable

the Assembly to delegate in its entirety the function of determining salaries, pensions and financial support to an independent statutory body.

4. The framework for determining and paying salaries, allowances, pensions and gratuities is governed by sections 47 and 48 of the 1998 Act. Section 48 of the 1998 Act allows for provision for the payment of pensions, gratuities or allowances to former Members or office holders to be delegated by the Assembly. However, until recently, section 47 of the 1998 Act, which governs the determination and payment of Members' salaries and allowances, explicitly prevented the Assembly from delegating the function of making a determination. The Northern Ireland Assembly Members Act 2010, which received Royal Assent on the 8 April 2010, amended sections 47 and 48 of the 1998 Act and allows the Assembly to continue to determine salaries and allowances in respect of Members or to delegate this function to an independent body. This Act establishes such an independent body, namely the Independent Financial Review Panel ("the Panel").
5. The Panel will be independent and will have the power to determine all aspects of financial support for Members. Such determinations will be binding on the Assembly. The Commission will retain the administration of the salaries and expenditure incurred by Members and will provide administrative support and accommodation to the Panel in a manner which respects the Panel's independence. The Panel will be required to exercise its functions with a view to achieving a proper balance between the objective of ensuring probity, accountability and value for money with respect to the expenditure of public funds and the objective of securing an adequate level of remuneration for Members which allows them to discharge their functions effectively.

#### ***Northern Ireland Assembly Commissioner for Standards***

6. All Members of the Assembly are required to comply with the requirements of the Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members ("the Code of Conduct"). The Assembly agreed a new Code of Conduct which came into effect in October 2009. Following this, the Committee began an inquiry into enforcing the Code of Conduct and the appointment of a Northern Ireland Assembly Commissioner for Standards ("the Commissioner"). The aim of the inquiry was to establish the most appropriate means of maintaining the Code of Conduct and handling alleged breaches in relation to it.
7. As part of this inquiry the Committee carried out a consultation and received written submissions and oral evidence from key stakeholders. These helped the Committee to conclude that, in relation to handling alleged breaches of the Code of Conduct, it was appropriate that an independent Commissioner should carry out investigations into complaints; that the Committee should determine whether a breach had occurred; and the Assembly should impose sanctions where appropriate. The Committee also concluded, inter alia, that legislation was required and that the Commissioner's role, powers (including the power to call for witnesses and documents) and independence from the Assembly in

respect of specific investigations should all be set out on a statutory basis. In addition, the Committee also agreed that the Commissioner should have the power to initiate an investigation if the Commissioner believes that a breach of the Code of Conduct may have occurred. It is this particular power, which had been recommended by the Committee on Standards and Public Life, which makes the Northern Ireland model distinct.

8. The Assembly endorsed these conclusions when it approved the Committee's report on the inquiry on 1 June 2010. This Act therefore establishes an Assembly Commissioner for Standards. The Act provides for the Commissioner to receive and investigate complaints and other issues concerning Members, to initiate investigations, and to report the outcome to the Assembly. The Act provides for the independence of the Commissioner. The Act also provides for the Commissioner to have the power to call for witnesses and documents and creates offences in relation to refusing to provide or otherwise failing to give evidence.

## **CONSULTATION**

### ***Independent Financial Review Panel***

9. A public consultation was launched by the Commission on 1 June 2010 inviting comments on the establishment of an independent body and on the establishment, functions, objectives, governance and budget arrangements of the body. Two responses were received, both of which supported the establishment of an independent body.

### ***Northern Ireland Assembly Commissioner for Standards***

10. The Committee carried out a consultation as part of the inquiry into enforcing the Code of Conduct and the appointment of a Northern Ireland Assembly Commissioner for Standards.

## **OVERVIEW**

11. The Act has 39 sections and 5 Schedules. A commentary on each of the sections and Schedules follows below. However, where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

## **COMMENTARY ON SECTIONS**

### **Part 1: The Independent Financial Review Panel**

#### ***Section 1: Establishment and membership of the Panel***

This section establishes the Independent Financial Review Panel, which will consist of a Chair and two other members.

## ***Section 2: Functions of the Panel***

This section sets out the functions of the Panel. The Panel is to determine the salaries and allowances payable to Members of the Assembly under section 47 of the 1998 Act and the pensions, gratuities and allowances payable to former Members and office holders under section 48. The Panel will be subject to specific objectives in terms of probity, accountability, value for money and securing an appropriate level of remuneration for Members of the Assembly.

The Panel may also consider any other matter relevant to its functions either on its own initiative or at the Commission's request.

## ***Section 3: Independence and openness***

This section provides that the exercise of the Panel's functions is not subject to the direction or control of the Assembly or the Commission. The section also makes provision concerning the public availability of material.

## ***Section 4: Appointments to the Panel***

This section provides for the Chair and other Panel members to be appointed by the Commission for terms of five years from the date of the appointment. A person may only be appointed to serve on the Panel on two occasions i.e. for a total of no more than ten years.

## ***Section 5: Panel: disqualifications***

This section applies Schedule 1, which lists the persons who are disqualified from being appointed or serving as Panel members. In order to ensure that the Panel is independent of Members, and is seen to be independent, a very broad range of connections to the Assembly or individual Members will result in disqualification.

## ***Section 6: Termination of membership of the Panel***

This section provides for the circumstances in which a Panel member will cease to hold office or may be dismissed. Under certain circumstances, a Panel member will automatically cease to hold office. In other circumstances, the Commission may dismiss a person from the Panel.

## ***Section 7: Code of conduct for Panel members***

This section requires the Panel to issue a code of conduct for its members and makes provision for the contents of the code. This code will require members of the Panel to adhere to the seven principles of public life (often referred to as "the Nolan principles") and will make provision in respect of the disclosure of interests by Panel members.

### ***Section 8: Administration and finance***

This section applies Schedule 2, which makes administrative and financial provision in respect of the Panel.

### ***Section 9: Annual report***

This section requires the Panel to make an annual report to the Commission on its activities during the year.

### ***Section 10: Meetings of the Panel***

Under this section the Panel will determine its own procedure. The section also provides that the Panel's proceedings and determinations remain valid notwithstanding a vacancy or a defect in the appointment of a Panel member.

### ***Section 11: Exercise of functions***

This section makes detailed provision concerning the timing and frequency of determinations. The general rule will be that a determination will be made only once in respect of each Assembly. Further determinations may be made as necessary to take account of changes in the law and practice relating to pensions or exceptional circumstances. Unless there are changes in the law and practice relating to pensions or exceptional circumstances, there will not be a determination where there is less than a year between an ordinary general Assembly election and an extraordinary Assembly election.

The Panel is required, so far as is reasonably practicable, to make its determination before the election to the Assembly in relation to which the determination relates, although a determination will survive until a new determination is made replacing it. This will allow candidates and the electorate to know, in advance of an election, what financial support will be available to an elected candidate.

The section also provides for the duration of determinations and the reporting and publication of statements concerning the existence of exceptional circumstances.

### ***Section 12: Contents of determinations: salaries and allowances***

Section 47 of the 1998 Act includes provisions which must apply to salaries and allowances payable under that section, for example, providing that if a Member is also a member of the House of Commons, his or her salary is to be reduced. This section applies those same provisions to the Panel's determinations on salaries and allowances.

### ***Section 13: Contents of determinations: pensions, gratuities and allowances***

Section 48 of the 1998 Act includes provisions regarding pension contributions, pension schemes and the calculation of pensions. This section applies those same provisions to the Panel's determinations on pensions, gratuities and allowances.

### ***Section 14: Availability of determinations***

This section makes provision for determinations to be reported to the Commission and published. This is consistent with section 47 (8A) of the 1998 Act which requires that provision made under section 47 (2A) (b) of the 1998 Act includes provision for the publication of every determination of salaries and allowances under that provision. This section is to ensure that the content of the determination is open and transparent.

### ***Section 15: Meaning of “the Panel”***

This section defines “the Panel”.

## **Part 2: The Northern Ireland Assembly Commissioner for Standards**

### ***Section 16: Establishment of the Commissioner***

This section provides for there to be a Northern Ireland Assembly Commissioner for Standards (“the Commissioner”).

### ***Section 17: Functions of the Commissioner***

This section sets out the Commissioner’s functions as being to receive and investigate complaints and other issues concerning Members, to initiate investigations and to report the outcome to the Assembly. The Commissioner may also be asked to give advice on matters of general principle.

### ***Section 18: Independence of the Commissioner***

This section provides that the exercise of the Commissioner’s functions is not subject to direction or control by the Assembly. That is subject only to procedural and administrative directions given under section 24.

### ***Section 19: Appointment of the Commissioner***

This section provides for the Commissioner to be appointed by the Assembly for a term of five years. A person may only be appointed to serve as Commissioner once. The Assembly will be responsible for ensuring that the Commissioner is appointed by way of fair and open competition and for determining appointment criteria and the terms of appointment.

### ***Section 20: Commissioner: disqualifications***

This section applies Schedule 3, which lists the persons who are disqualified from being appointed or serving as the Commissioner.

### ***Section 21: Termination of the Commissioner’s appointment***

This section provides for the circumstances in which the Commissioner will cease to hold appointment or may be dismissed. Under certain circumstances,

the Commissioner will automatically cease to hold office. The Assembly may also by resolution dismiss the Commissioner.

***Section 22: Further provision about the Commissioner***

This section applies Schedule 4, which makes administrative provision about the Commissioner.

***Section 23: Appointment of an Acting Commissioner***

This section enables the Assembly to appoint an Acting Commissioner to discharge any or all of the Commissioner's functions if for some reason the Commissioner is unable to act. The section will allow for the Commissioner and the Acting Commissioner to operate at the same time, but handling different cases. The disqualifications applicable to the Commissioner will apply also to the Acting Commissioner and the section also provides for the Acting Commissioner's resignation and removal.

***Section 24: Directions to the Commissioner***

This section enables the Assembly to give the Commissioner directions regarding general procedures and compliance with standards, codes of conduct and registration of interests. There is an overriding restriction to prevent directions from interfering with any specific investigation.

***Section 25: Investigations by the Commissioner***

This section provides for the Commissioner to determine the procedure and timing for any specific investigation and reporting its outcome to the Assembly.

***Section 26: Further investigations***

The Assembly will be able to request the Commissioner to carry out further investigations.

***Section 27: Reports***

This section provides that a report by the Commissioner may make recommendations, but will not be able to recommend the imposition of a specific sanction on any Member. The section also provides for reports to be published.

***Section 28: Power to call for witnesses and documents***

This section enables the Commissioner to require witnesses to attend and give evidence or to provide documents. This section is subject to the same limitations as apply to the Assembly's power to call for witnesses and documents under section 44 of the 1998 Act. A prospective witness will not be obliged to answer a question or produce a document which would not have to be answered or produced in court.

***Section 29: Witnesses and documents: notice***

This section sets out the procedure by which the requirements in section 28 are communicated to witnesses.

***Section 30: Witnesses: oaths***

This section provides for the taking of oaths or affirmations by witnesses.

***Section 31: Offences***

This section creates a number of offences in relation to refusals to provide or otherwise failing to give evidence in accordance with a request under section 28. It would also be an offence to refuse to take an oath or make an affirmation under section 30. In the case of refusals to attend, give evidence or produce documents, the section provides for a defence of reasonable excuse. Maximum penalties for an offence under this section will be a fine up to level 5 (£5,000) on the standard scale or three months' imprisonment.

***Section 32: Protection from defamation actions***

This section provides that, for the purposes of the law of defamation, statements by the Commissioner will attract absolute privilege and statements to the Commissioner will have qualified privilege.

***Section 33: Restriction on disclosure of information***

This section provides that information disclosed to the Commissioner in the course of an investigation will not be disclosed by or on behalf of the Commissioner except for the purpose of enabling the Commissioner to discharge functions or in connection with the investigation or prosecution of an offence.

**Part 3: Supplementary provisions**

***Section 34: Transitional provisions***

This section makes necessary provision allowing for the move from the current system for dealing with the investigation of complaints to the system introduced by the legislation.

***Section 35: Orders***

This section gives the Commission authority to make statutory rules, which will enable it to amend the lists of persons who are disqualified from being a member of the Panel or being Commissioner.



### ***Section 36: Consequential amendments***

This section applies Schedule 5, which contains amendments consequential on the legislation. In particular, the Panel will be subject to the Freedom of Information Act and the jurisdiction of the Ombudsman.

### ***Section 37: Interpretation: general***

This section contains definitions of terms used in the Act.

### ***Section 38: Commencement***

This section provides for the commencement of the legislation. Certain sections will come into force on the day on which this Bill receives Royal Assent and the remaining sections will come into operation on such day or days as the Commission may by order appoint.

### ***Section 39: Short title***

This section contains the short title of the legislation.

## **SCHEDULES**

### ***Schedule 1: Disqualification from membership of the Panel***

This Schedule lists the persons who are disqualified from being appointed or serving as Panel members. The list can be amended by subordinate legislation made by the Commission.

### ***Schedule 2: Panel: administrative and financial arrangements***

This Schedule contains provisions relating to Panel members' terms and conditions of appointment and the provision by the Commission of administrative support, accommodation, services and funding.

### ***Schedule 3: Disqualification from being appointed or serving as the Commissioner***

This Schedule lists the persons who are disqualified from being the Commissioner. The list can be amended by subordinate legislation made by the Commission.

### ***Schedule 4: Commissioner: further provision***

This Schedule contains provisions relating to the Commissioner's terms and conditions of appointment and the provision by the Commission of administrative and professional support, accommodation, goods and services and funding. It also requires the Commissioner to provide the Commission with financial information and an annual report. The Schedule gives the Commissioner a general power calculated to facilitate the discharge of the

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Commissioner's functions and provides for the validity of the Commissioner's actions.

***Schedule 5: Consequential amendments***

This Schedule makes provision for amendments consequential on the legislation.

**HANSARD REPORTS**

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

<i>STAGE</i>	<i>DATE</i>
Introduction to the Assembly	15 November 2010
Second Stage debate	23 November 2010
Referral of the Bill to the Ad Hoc Committee on the Assembly Members (Independent Financial Review and Standards) Bill	23 November 2010
Committee Stage- briefings from Assembly Bill Office officials and Research Officers from the Assembly's Research and Library Service	24 November 2010
Committee Stage- consideration of sections 1 to 39	13 December 2010
Committee Stage- briefing from the Assembly's Legal Services and the Clerk to the Committee on Standards and Privileges on amendments to Schedules 1 and 3	17 January 2011
Committee Stage- consideration of Schedules 1 to 5	17 January 2011
Committee Stage- consideration of the long title of the Act	17 January 2011
Committee's report on the Bill- Report Number NIA 24/10/11/R	19 January 2011
Consideration Stage in the Assembly	8 February 2011
Further Consideration Stage	21 February 2011
Final Stage	1 March 2011
Royal Assent	29 March 2011