

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.