



2011 CHAPTER 17

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
- 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.

#### *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.

### **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 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.

#### **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.

#### **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.

### *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

- (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.

#### **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, 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.

**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.

**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.

(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.

**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).

**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.