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Assembly

## Research and Library Service Briefing Note

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# The Proposed SBNI and links to the DHSSPS.

Reviewing how other established Public  
Bodies in Northern Ireland are linked to the  
relevant Departments in legislation

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## 1. Background

With regard to the proposed Safeguarding Board for Northern Ireland (SBNI), The Committee for Health, Social Services and Public Safety wished to consider further the potential independence of the SBNI and how the Clauses of the Bill currently describe the influence or potential control the DHSSPS will have over the SBNI. Issues around the matter of independence were included in the published Bill Research Paper prepared by Assembly Research Services. However, this research briefing focuses more specifically on the matter of independence from the Department and highlights the various sections of the SBNI Bill where particular links are made between the SBNI and the DHSSPS which may indicate a perceived or real lack of independence from the DHSSPS. Although the functions of the SBNI will be prescribed in the primary legislation, how much independence the SBNI will have from the Department in carrying out these functions is the issue under consideration.

To take the issue further, this briefing also looks at other Public Bodies in Northern Ireland highlighting examples of how such links with the Department were made in the applicable legislation. It may be useful to read this briefing alongside sections of the Assembly Bill Research Paper (HSSPS Committee version provided in Committee packs for the meeting of 1<sup>st</sup> July, 2010) as they are referenced.

## 2. Clauses of the SBNI Bill which establish links between the SBNI and DHSSPS.

All Clause references refer to the Safeguarding Board Bill [As Introduced].

### Clause 1 – Safeguarding Board for Northern Ireland

Clause 1(2) specifies that the SBNI must include a Chair appointed by the Department and Clause 1(4) specifies that in addition to the list of bodies in 1(3), the SBNI may include representatives of other persons or bodies as the Board thinks should be represented on it “*Subject to the approval of the Department*”.

Regulations made by the Department may make provision as to “*the appointment, tenure and vacation of office of a Chair and members of the Safeguarding Board*”; “*the procedure of the Safeguarding Board*”; and “*the staff, premises and expenses of the Safeguarding Board*” (Clause 1(5)).

Clause 1(6) states that the Department may pay the Chair and members of the SBNI such remuneration and allowances as it determines, with the approval of the Department of Finance and Personnel (DFP).

Paragraph 3.2 of the Assembly Bill Research Paper explored the issues around the independence of the Chair in further detail, including experience of the Independent Chairs of the Local Safeguarding Children Boards in England. The paper noted that there is no specific statutory requirement for the independence of the Chair in the Bill but that it is the policy intention of the Department that the Chair of the SBNI will be independent of any of the agencies represented on the SBNI and will be appointed by the Public Appointments Process to serve a maximum of two terms (each term lasting four years).

Section 3.3 of the Assembly Bill Research paper discussed the proposed initial core membership of the SBNI, identifying potential gaps in the membership, issues of accountability and suggesting that the Committee may wish to consider the membership further in terms of delivery of an independent SBNI.

### Clause 3 – Functions of the Safeguarding Board

Clause 3(9) stipulates that the SBNI may publish any matter concerning safeguarding and promoting the welfare of children “*subject to the approval of the Department*”.

Section 5.7 of the Assembly Bill Research Paper highlighted the Department’s interpretation of this Clause as not intending to be a censoring mechanism and suggested that the Committee may wish to consider this provision further in terms of the intention of the Clause and the possible perception of undermining of independence of the SBNI.

### Clause 4 – Directions to the Safeguarding Board

Clause 4(1) specifies that the Department may give directions to the SBNI as to the exercise “*of any of its functions*” and that the SBNI must comply with these directions (Clause 4(4)). Before giving these directions “*the Department must consult the Board*” (Clause 4(2)); except if the urgency of the matter means the Department is of the opinion that it is necessary to give the directions “*without consulting the Safeguarding Board*” (Clause 4(3)). In these urgent cases the Department “*must as soon as is reasonably practicable give notice to the Board of the grounds on which the Department formed that opinion*” (Clause 4(3)).

Section 6 of the Assembly Bill Research Paper, highlighted the Department’s policy intention behind this Clause as covering exceptional circumstances rather than directing day to day work of the SBNI. However, the research paper suggested that the Committee may wish to consider this Clause further in connection with the independence of the SBNI.

## Clause 5 – Functions of the Safeguarding Board – general

5(1) states that regulations, made by the Department, may “*make provision as to the manner in which the Safeguarding Board is to exercise its functions*” and in exercising these functions the SBNI must have “*due regard to any guidance given to it for the purpose by the Department*” (Clause 5(2)).

## Clause 6 – Annual Report of the Safeguarding Board

The Bill stipulates in Clause 6(1) that at least once in every 12 month period the SBNI must “*prepare and send a report about the exercise of its functions to the Department*” and the Department must then lay a copy of this report before the Assembly (Clause 6(2)).

## Clause 7 – Committees and sub-committees

With regard to the committees and subcommittees of the SBNI, Clause 7(5) states that the Department “*may pay the Chairs of Committees and sub-committees such remuneration and allowances as the Department may, with the approval of the Department of Finance and Personnel, determine*”.

## Clause 8 – Functions of committees and sub-committees

Clause 8(3) states that each committee and sub-committee must have “*due regard to any guidance given to it for the purpose by the Department or the Safeguarding Board*”.

## Clause 12 – Arrangements to safeguard and promote the welfare of children

Clause 12 places a duty on the persons and bodies listed in Clause 1(3), as the proposed core membership of the SBNI, to exercise their functions having “*due regard to the need to safeguard and promote the welfare of children*”. Clause 12(3) specifies that these persons and bodies, in exercising this duty must have “*due regard to any guidance given to them for the purpose by the Department*”.

Section 11 of the Assembly Bill Research Paper suggested that the Committee may wish to investigate further the policy intention of this Clause in connection with the independence of the named persons and bodies in conducting their existing duties and in their duty of safeguarding and promoting the welfare of children.

## Clause 14 – Regulations

Clause 14 explains that except for the regulations made under Clause 2(2), which will be made by affirmative resolution, all other regulations in this Bill are subject to

negative resolution<sup>1</sup>. These regulations are made by the Department and as stated in Clause 14(3) “*may contain such incidental, consequential, supplementary, transitional or saving provisions as appear to the Department to be necessary or expedient*”.

Paragraph 12 of the Assembly Bill Research Paper highlighted the possibility that the Committee may wish to further consider if it seems appropriate that so many of the regulations within the Bill are to be subject to negative resolution, given that the Bill is very much a legislative framework with much of the detail to be worked out in the subsequent regulations.

### 3. Other Public Bodies in Northern Ireland – how the relevant primary legislation establishes links with the related Department

#### 3.1 Public Bodies in Northern Ireland

A public body carries out its function to a greater or lesser extent at arm’s length from central government. Departments are responsible for funding and ensuring good governance of their public bodies. The term ‘public bodies’ covers Non-departmental public bodies (NDPBs); Public Corporations and Health and Personal Social Services Bodies. There are three types of NDPB in operation in Northern Ireland<sup>2</sup>:

- Executive NDPBs – established in statute and carrying out administrative, regulatory and commercial functions. They employ their own staff and are allocated their own budgets;
- Advisory NDPBs – provide independent and expert advice to Ministers. They do not usually have staff but are generally supported by staff from their sponsoring department and costs are covered by departmental expenditure; and
- Tribunal NDPBs – have jurisdiction in a specialised field of law and are usually supported by staff from their sponsoring department and do not have their own budgets.

However, due to the small size of the proposed SBNI, the Department plans to establish it, not as an NDPB but, as a Statutory Unincorporated Public Body housed within the Public Health Agency. Such a body is established by law and its members are supported by another body, in this case the Public Health Agency. The closest example for comparison purposes is the establishment in 1991 of the former Health and Social Care Councils (HSSCs). These were replaced by the Patient and Client Council on 1<sup>st</sup> April 2009 by The Health and Personal Social Services (Northern Ireland) Order.<sup>3</sup>

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<sup>1</sup> Found in Clauses 1(5), 3(4), 3(5), 5(1), 7(1), 7(4) and 8(2)

<sup>2</sup> Northern Ireland Public Bodies 2009, Reform Delivery Unit, Dept. of Finance and Personnel, page 5

<sup>3</sup> Personal Communication with DHSSPS SBNI Bill Team, 12/08/2010

For the purposes of this paper in terms of potential Departmental influence on the proposed SBNI, and in addition to considering the closest comparison, the HSSCs, there is merit in reviewing a selection of NDPBs and how links with the relevant Department are established in the appropriate primary legislation. The following executive NDPBs are included:

**The Patient and Client Council** – established by the Health and Social Care Reform Act (Northern Ireland) 2009

**The Regulation and Quality Improvement Authority (RQIA)** – established by the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003

**Northern Ireland Social Care Council (NISCC)** – the regulatory body for the social care workforce in NI, established in 2001 by the Health and Personal Social Services Act (NI) 2001

**Northern Ireland Guardian ad Litem Agency (NIGALA)** – established by the Northern Ireland Guardian ad Litem (Establishment and Constitution) Order (NI) 1995

**The Office of Commissioner for Children and Young People (NICCY)** – was established by The Commissioner for Children and Young People (Northern Ireland) Order 2003

**General Consumer Council for Northern Ireland** – established by The General Consumer Council (Northern Ireland) Order 1984

### 3.2 Health and Social Services Councils

Health and Social Services Councils were established by the Department in the Health and Personal Social Services (Northern Ireland) Order 1991. Schedule 1(2) specified that all the detail concerning the membership and operation of the councils would be prescribed in regulations, including “*such other matters in Council proceedings as the Department thinks fit*”.

The subsequent Regulations, made by the Department, The Health and Social Services Councils Regulations (Northern Ireland) 1991<sup>4</sup> covered in detail the membership, constitution and proceedings, and performance and functions of the Councils. On a positive note, it can immediately be seen that although much of the detail of the operation of the SBNI remains to be detailed in Regulations, there does appear to be substantially more detail available in the primary legislation for the SBNI Bill than there was for the Health and Social Care Councils, i.e. details of Chair, membership, functions, committees etc. The following examples from the HSSC Regulations highlight the influence of the Department over the Councils:

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<sup>4</sup> [http://www.opsi.gov.uk/si/si1991/uksi\\_19910194\\_en\\_1](http://www.opsi.gov.uk/si/si1991/uksi_19910194_en_1)

PART II of the regulations detailed:

- Size and composition of Councils; 2(1) states that the “*Department may vary the total membership and composition of a Council*”
- Term of office of members;
- Appointment of District Council representatives; Part II (4(1)) states that district council members will be selected by the Department from nominations from the District Councils “*after such consultation as the Department may consider appropriate*”;
- Appointment of members representative of voluntary organisations; Part II (5) states that these members will be appointed by the Department from nominations from interested voluntary organisations in the Council area “*after such consultation as the Department may consider appropriate*”;
- Eligibility of members for re-appointment;
- Disqualification for membership; and
- Termination of membership.

PART III of the regulations detailed:

- Election of Chairman; Part III (9) states that the Chairman was to be elected by the members of the Council from one of their number (i.e. not an external public appointment as is proposed for the SBNI);
- Appointment of committees and joint committees;
- Meetings and proceedings;
- Officers;
- Premises and other facilities; and
- Expenses.

PART IV of the regulations detailed:

- Advising on operation of the Health and Personal Social Services;
- Reports; Part IV (16) the Council was to make an annual report to the Department and provide copies to the relevant Board;
- Consultation of Councils by relevant Board; Part IV (17) notes that it was the duty of each relevant Board to consult its Council on any proposals which the Board may have under consideration for any substantial development or variation of the Health and Personal Social Services in the Council’s area. If the Council was not satisfied that consultation was adequate, the Department had the power to require that the Board carried out further consultation with the Council as the Department considered appropriate.
- Information to be furnished by relevant Board;

- Inspection of premises by Councils; Part IV (19) provided that a Council had the right to enter and inspect premises controlled by its relevant Board or HSS Trust with agreement of the Board or Trust or “*in default of such agreement, as may be determined by the Department*”; and
- Meeting between Council and Relevant Board.

### 3.3 The Patient and Client Council

The Patient and Client Council was established by the Health and Social Care Reform Act (Northern Ireland) 2009<sup>5</sup>, as part of the reform of health and social care, and replaced the Health and Social Service Councils. Its overarching objective is to provide a “*powerful, independent voice for patients, clients, carers and communities on health and social care issues*”.<sup>6</sup>

With regard to links to the Department, in exercising its functions under Article 17, the Patient and Client Council must consult the public to gain views about matters relating to health and social care (17(2)(a)) and report these views to the Department where it appears to the Council appropriate to do so (17 (2)(b)). Any report by the Council under 17 (2)(b) must be published “*in such a manner as the Department may direct*” (17 (6)).

In terms of the independence of the body, the legislation contains a duty to co-operate with the Patient and Client Care Council and the bodies to which this duty applies must co-operate with the Patient and Client Council in the exercise of its functions (18 (1)). Regulations made by the Department authorise members of the Council to enter premises controlled by a body to which the section applies for the purposes of its functions. Under this duty, Section 6 specifies that a “*body to which this section applies shall have due regard to any views expressed by the Patient and Client Council regarding health and social care for which that body is responsible.*”

### 3.4 The Regulation and Quality Improvement Authority (RQIA)

The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003<sup>7</sup>, created the enabling legal framework for raising the quality of health and social care services in Northern Ireland, and extended regulation and quality improvement to a wider range of services. In April 2005, the Regulation and Quality Improvement Authority (RQIA) was established as a NDPB of the DHSSPS.<sup>8</sup>

<sup>5</sup> [http://www.opsi.gov.uk/legislation/northernireland/acts/acts2009/pdf/nia\\_20090001\\_en.pdf](http://www.opsi.gov.uk/legislation/northernireland/acts/acts2009/pdf/nia_20090001_en.pdf)

<sup>6</sup> The Patient and Client Council, Who We Are and What we Do, [www.patientclientcouncil.hscni.net/about-us/who-we-are-what-we-do](http://www.patientclientcouncil.hscni.net/about-us/who-we-are-what-we-do)

<sup>7</sup> <http://www.opsi.gov.uk/si/si2003/20030431.htm#6>

<sup>8</sup> RQIA, Why was the RQIA established? [www.rqia.org.uk/about\\_us/who\\_we\\_are/why\\_was\\_rqia\\_set\\_up\\_cfm](http://www.rqia.org.uk/about_us/who_we_are/why_was_rqia_set_up_cfm)

The RQIA has the general duty of keeping the Department informed about the “*provision of services and in particular about their availability and their quality*” (Part II, Article 4(2)(a)) and “*encouraging improvement in the quality of services*” (4(2)(b)). A fuller list of its functions is attached at Appendix 1.

With regard to links with the Department in the area of advice and information about services, the RQIA “*when asked to do so by the Department...shall give the Department advice, reports and information on such matters relating to the provision of services or the exercise of its functions as may be specified in the Department’s request*” (Part II, 5(1)). However, 5(2) specifies that the RQIA “*may at any time give advice to the Department*” on (a) any changes which the RQIA thinks should be made to the standards “*set out in statements under Article 38*” and (b) “*any other matter connected with the provision of services*”.

With regard to direct Departmental influence as to how the RQIA operates in exercising its functions, the primary legislation clearly sets out in Part II Article 6 (1) (a-g) that “*the Department may by regulations make provision*”:

“(a) *as to the times at which, the cases in which, the manner in which, the persons in relation to whom or the matters with respect to which, any functions of the Regulation and Improvement Authority are to be exercised;*

*(b) as to the matters to be considered or taken into account in connection with the exercise of any functions of the Regulation and Improvement Authority;*

*(c) as to the persons to whom any advice, information or reports are to be given or made;*

*(d) as to the publication of reports and summaries of reports;*

*(e) as to the recovery from prescribed persons of amounts in respect of the expenditure incurred by the Regulation and Improvement Authority in the exercise of its functions;*

*(f) for or in connection with the exercise of functions of the Regulation and Improvement Authority in conjunction with the exercise of functions of other persons; and*

*(g) conferring additional functions on the Regulation and Improvement Authority”.*

In addition, Part II Article 6 (2) specifies that “*the Department may give directions to the Regulation and Improvement Authority with respect to the exercise of its functions and the Regulation and Improvement Authority must comply with them*”.

### 3.5 Northern Ireland Social Care Council (NISCC)

The Northern Ireland Social Care Council (NISCC) is the regulatory body for the social care workforce in Northern Ireland and it was legally established on 1<sup>st</sup> October, 2001 by the Health and Personal Social Services Act (Northern Ireland) 2001.<sup>9</sup> Article 1 clearly sets out the influence of the Department as 1(3) specifies that the Council, in the exercise of its functions, shall act “*in accordance with any directions given to it by the Department*”; and “*under the general guidance of the Department*”.

Schedule 1 specifies further detail about the NISCC with clear indication as to the role of the Department, for example:

- General powers – 2(1) “*subject to any directions given by the Department, the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions*”;
- Membership – 2(5) Regulations made by the Department provide for the appointment and tenure of the Chairman and other members of the council, the appointment of and exercise of functions of committees and sub-committees;
- 2(6) specifies such remuneration and allowances for the Chair, members and committee members may be paid by the Council “*as the Department may determine*” and subject to the approval of DFP;
- The first chief officer of the council was appointed by the Department (2(7)) with any subsequent one appointed by the Council but “*requires the approval of the Department*”;
- 2(8) specifies that the Council may appoint other such staff as it considers appropriate, subject to directions given to it by the Department (2(8)(3)); and
- 2(11) states that “*the Department may make payments to the Council of such amounts, at such times and on such conditions (if any) as it considers appropriate*”;

### 3.6 Northern Ireland Guardian ad Litem Agency (NIGALA)

Article 60 of the Children (Northern Ireland) Order 1995 provides that in any case involving specified proceedings the Court shall appoint a Guardian Ad Litem (GAL) for the child concerned unless satisfied that that it is not necessary to do so in order to safeguard his or her interest.<sup>10, 11</sup> GALs are qualified social workers with considerable experience of child care matters and an understanding of family law and their role is to represent the child before the Court on his or her best interests and to ensure the child’s feelings are made clear.<sup>12</sup>

<sup>9</sup> [http://www.opsi.gov.uk/legislation/northernireland/acts/acts2001/nia\\_20010003\\_en\\_1](http://www.opsi.gov.uk/legislation/northernireland/acts/acts2001/nia_20010003_en_1)

<sup>10</sup> NIGALA, About Us, General Background, [www.nigala.hscni.net/about/general\\_background.htm](http://www.nigala.hscni.net/about/general_background.htm)

<sup>11</sup> Similar provisions in relation to adoption cases are contained in Article 66 of the Adoption (Northern Ireland) Order 1987

<sup>12</sup> NIGALA, About Us, Role and Functions of GAL, [www.nigala.hscni.net/about/rf\\_agency.htm](http://www.nigala.hscni.net/about/rf_agency.htm)

NIGALA was established by The Northern Ireland Guardian Ad Litem Agency (Establishment and Constitution) Order (Northern Ireland) 1995. This Order provided for the establishment and constitution of NIGALA as a 'special health and social services agency' "*for the purposes of carrying out such functions as the Department of Health and Social Services may direct in accordance with Article 4(1) of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990*". Appendix 2 outlines the directions that the Department may give to a 'special agency'.

The 1995 Order established the NIGALA and specified that it consists of a number of members as determined by the Department, all appointed by the Department for a four year tenure<sup>13</sup> and of whom one is appointed Chairman. A member may resign in writing to the Department and where the Department "*is satisfied that it is not in the interests of the Agency of the Health and Personal Social Services that a person ... should continue to hold that office, it may forthwith terminate that member's tenure of office*" (Article 5(2)).

The main detail of the establishment of NIGALA is found in The Guardians Ad Litem (Panel) Regulations (Northern Ireland) 1996 made by the Department. The Regulations appear to indicate that the NIGALA has considerable independence without Departmental influence, for example:

- To establish the panel, deciding whether the qualifications and experience of any person are suitable for the purposes of appointment as a Guardian Ad Litem (Article 4(2); and having regard to the number of children who may become the subject of proceedings when determining the size of the panel (Article 4(6));
- Article 5 states that the Agency may, with certain stipulations, terminate a person's membership of the Panel at any time "*where it considers that he is unable or unfit to carry out the functions of a guardian ad litem*";
- Establish and operate a procedure for investigating complaints about the operation of or any member of the panel (Article 6);
- Article 7 permits the Agency to appoint a person "as it considers appropriate" to assist with administering the panel; and
- Article 10 sets out how the Agency will monitor the work of the Guardians Ad Litem on the panel.

### 3.7 The Office of Commissioner for Children and Young People (NICCY)

The Office of the Commissioner for Children and Young People (NICCY) was created in accordance with The Commissioner and Young People (Northern Ireland) Order 2003.<sup>14</sup> The principle aim of the Commissioner, Article 6(1), "*in exercising his functions under this Order is to safeguard and promote the rights and best interests of children*

<sup>13</sup> Or other such tenure as determined by the Department

<sup>14</sup> <http://www.opsi.gov.uk/si/si2003/20030439.htm>

*and young persons*", with 6(2)(a) stating the Commissioner's paramount consideration being the rights of the child or young person.

The Commissioner is appointed by the First Minister and Deputy First Minister (Article 5(2)) and shall advise "*the Secretary for State, the Executive Committee of the Assembly and a relevant authority on matters concerning the rights or best interests of children and young persons – (a) as soon as reasonably practicable after receipt of a request for advice; and (b) on such other occasions as the Commissioner thinks appropriate*" Article 7(4).

The independence of the Commissioner from the OFMDFM is outlined through examples of the powers of the Commissioner in the following sample extracts from the legislation:

### **General Powers of the Commissioner**

8. - (1) *The Commissioner may undertake, commission or provide financial or other assistance for research or educational activities concerning the rights or best interests of children and young persons or the exercise of his functions.*

(2) *The Commissioner may, after consultation with such bodies or persons as he thinks appropriate, issue guidance on best practice in relation to any matter concerning the rights or best interests of children and young persons.*

(3) *The Commissioner may, for the purposes of any of his functions, conduct such investigations as he considers necessary or expedient.*

(5) *The Commissioner may -*

(a) *compile information concerning the rights or best interests of children and young persons;*

(b) *provide advice or information on any matter concerning the rights or best interests of children and young persons;*

(c) *publish any matter concerning the rights or best interests of children and young persons*

(6) *The Commissioner may make representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons.*

### **General review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities**

9. - (2) *Subject to paragraphs (3) and (4), the Commissioner may review the operation of any arrangements to which this Article applies for*

*the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the rights and best interests of children and young persons.*

**Investigation of complaints against relevant authorities**

**12.** - (1) *Subject to paragraph (2) and Article 13, the Commissioner may conduct an investigation into a complaint made by a child or young person -*

*(a) that his rights have been infringed by any action taken by a relevant authority; or*

*(b) that his interests have been adversely affected by any such action.*

**Power to bring, intervene in or assist in legal proceedings**

**14.** - (1) *Subject to the following provisions of this Article, the Commissioner may in any court or tribunal -*

*(a) bring proceedings (other than criminal proceedings) involving law or practice concerning the rights or welfare of children or young persons;*

*(b) intervene in any proceedings involving law or practice concerning the rights or welfare of children or young persons;*

*(c) act as amicus curiae in any such proceedings.*

*(2) An intervention under paragraph (1)(b) shall not be made except -*

*(a) with the leave of the court or tribunal; and*

*(b) in accordance with any such provision as may be made by the rules regulating the practice and procedure of the court or tribunal.*

**Formal investigations**

**16.** - (1) *Subject to Article 17, the Commissioner may determine to conduct an investigation under this Article ("a formal investigation")*

**Report on formal investigation**

**18.** - (1) *Where the Commissioner conducts a formal investigation for the purposes of his functions under Article 9 or 10, he shall prepare a report on the outcome of that investigation and send it to -*

*(a) the relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; and*

*(b) such other bodies or persons as the Commissioner thinks appropriate.*

**Powers of entry and inspection for purposes of formal investigation**

**21.** - (1) *Where the Commissioner considers it necessary to do so for*

*the proper conduct of a formal investigation, he may, at any reasonable time, enter any premises managed by a relevant authority in which -*

- (a) a child or young person is living or being looked after;*
- (b) a child or young person is being detained under any statutory provision;*
- or*
- (c) education, health, welfare or other services are provided for children or young persons.*

## SCHEDULE 2

### **General powers**

**2.** - (1) *The Commissioner may do anything, apart from borrowing money, which he considers is -*

- (a) appropriate for facilitating, or*
- (b) incidental or conducive to, the exercise of his functions.*

*(2) That includes in particular -*

- (a) co-operating with other bodies exercising functions relating to children and young persons or their rights (whether in the United Kingdom or elsewhere);*
- (b) acquiring, holding and disposing of real or personal property;*
- (c) entering into contracts.*

### **Staff**

**5.** - (1) *The Commissioner may appoint such number of officers as he may determine.*

*(2) The remuneration and other conditions of service of the officers appointed under this paragraph shall be determined by the Commissioner.*

*(5) A determination of the Commissioner under this paragraph requires the approval of the Office and the Department of Finance and Personnel.*

## 3.8 General Consumer Council for Northern Ireland

The Consumer Council for Northern Ireland was established by The General Consumer Council (Northern Ireland) Order 1984<sup>15</sup> and is funded by the Department of Enterprise, Trade and Investment (DETI). Its job is to “*speak up for consumers and give them a*

<sup>15</sup>[http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1984/cnisi\\_19841822\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1984/cnisi_19841822_en_1)

*voice...by running information and education campaigns, influencing the public and private sectors, undertaking research and producing publications*". They also help individual consumers with complaints about travel, energy and water supplies.<sup>16</sup>

The general functions of the Council are outlined in Article 4 and include promoting and safeguarding the interests of consumers in Northern Ireland; considering complaints made to it and if appropriate investigate such complaints; and report to a Northern Ireland department on any matter relating to consumer affairs which is referred to the Council by that department.

Schedule 1 deals with the detail of the establishment and operation of the Council and how this is determined by the Department<sup>17</sup> as follows:

- Incorporation and status: *"1.—(1) The Council shall be a body corporate with perpetual succession to which, subject to the provisions of this Schedule, section 19 of the M1 Interpretation Act (Northern Ireland) 1954 shall apply"*;
- Appointment and tenure of office of members – Schedule 1, Article 2 specifies that the Department appoints the Council consisting of Chair, Deputy Chair and not more than 16 other members. And to do so the Department shall consult with other bodies as it considers appropriate;
- Article 2(3) specifies that the Department may by order subject to negative resolution amend the order to alter the number of Council members;
- A member of the Council holds and vacates office in accordance with the terms of his appointment and may resign by giving the Department a signed notice in writing and the Department *"may by notice in writing remove a member from office"* (Article 3(3));
- Article 4 allows the Department to appoint a person in relation to the Council and any group established by the Council and such a person is entitled to receive notice of, and to attend and speak at, meetings of the Council and of such groups, but is not entitled to vote;
- The Council may pay the chairman and deputy chairman remuneration, allowances and expenses; and to the other members of the Council and the members of groups appointed under paragraph 10(4) allowances and expenses, such as determined by the Department with the consent of DFP (Article 5);
- The Council may employ staff on terms and conditions as the Council may, with the approval of the Department and the Department of Finance and Personnel, determine (Article 7); and
- The Council, under Article 10, is able to establish groups in connection specifically with the exercise of its functions on transport, food and energy and other groups as *"appear to it to be appropriate"*. Article 10(8) states that *"The Department may, after*

<sup>16</sup> The Consumer Council for Northern Ireland, Who We Are, [www.consumerCouncil.org.uk/what-we-do/](http://www.consumerCouncil.org.uk/what-we-do/)

<sup>17</sup> At the time of publication of the Order in 1984, the relevant Department was the Department of Economic Development. The relevant Department is now Department of Enterprise, Trade and Investment

*consultation with the Council, by order subject to negative resolution amend or repeal any of the foregoing provisions of this paragraph to such extent as appears to the Department to be necessary or desirable so as to reduce the number of groups which the Council is required to establish”.*

#### 4. Concluding Summary of Comparisons

Comparing the legislative provisions in the SBNI Bill with those for other public bodies is, with respect to the oversight role that the Department will have, unfortunately, not a straight comparison of like with like. The comparator bodies covered in this briefing are all public bodies but they are not all the same. For example, The Northern Ireland Guardian Ad Litem Agency is a ‘special agency’ of the DHSSPS; the proposed SBNI (as were the former Health and Social Services Councils) is proposed as a Statutory Unincorporated Public Body; and the General Consumer Council is an Executive NDPB.

Despite this caveat, it would seem that there is merit in some comparison as there are examples of similarities in the extent of oversight in relation to the SBNI but also examples of an apparently ‘lighter touch’ in other bodies in with regard to Departmental control in relation to certain aspects. The SBNI will be accountable to the DHSSPS through its Chair and although the functions of the SBNI will be prescribed in the legislation, how much independence the SBNI will have from the Department in carrying out these functions is the issue under consideration.

The extent of oversight of the Department is covered throughout the briefing for each of the bodies reviewed, whether or not that oversight role is detailed in the primary legislation or subsequent Regulations, and the main points of comparison with the bodies reviewed are drawn together here.

It is apparent that, although much of the detail of the operation of the SBNI remains to be detailed in Regulations, there does appear to be substantially more detail available in the primary legislation (i.e. details of Chair, membership, functions, committees etc.) than for some other public bodies. For example, for the Health and Social Care Councils (HSSCs), the subsequent Regulations, rather than the primary legislation, covered the membership, constitution and proceedings, and performance and functions of the Councils. This is also the case for the NI Guardian Ad Litem Agency (NIGALA) where the main detail for its operation was covered in Regulations.

The bodies and persons making up the core membership of the SBNI are included in the Bill, with the Chair being appointed by the Department via the Public Appointments Process. It is proposed that Departmental Regulations will provide for the appointment, tenure and vacation of office of a Chair and members of the SBNI (Clause 1(5)).

Similarly with the appointment of the members of the Board for the HSSCs the Department could vary the size and composition of a Council; for the NI Social Care

Council (NISCC) the Departmental Regulations provide for the appointment of members; and with the General Consumer Council, the Department appoints the Council, consulting with other bodies. With regard to NIGALA, the primary legislation established that it consists of a number of members appointed by the Department for a four-year tenure.

Reasons for dismissal of the Chair/members of the SBNI will presumably be covered in the above mentioned Regulations and could have an impact on the independence of the Board, depending on what reasons the Department prescribes for dismissal. The Committee may wish to clarify the dismissal process with the Department.

In terms of overall independence in carrying out prescribed functions it is proposed that the Department may give directions to the SBNI as to the exercising of any of its functions, with or without consulting first with the Board, depending on the urgency of the matter (Clause 4). Similarly, with the RQIA, the Department, via Regulations, sets out how the RQIA operates and also may give directions which the RQIA must comply with in respect to the exercise of its functions. The Department may also give directions to the NISCC in the exercise of its functions.

The Office of the Commissioner for Children and Young People (NICCY) appears to have considerable independence, with regard to safeguarding the rights and best interests of children. This independence is detailed more fully in the body of the briefing, through its general powers; investigation of complaints; the power to bring, intervene or assist in legal proceedings; carry out formal investigations; and with powers of entry and inspection relating to its investigations, all, it seems, without further direction or intervention from the OFMDFM.

With regard to freedom to publish, the Bill specifies that the SBNI may only publish matters regarding safeguarding and the welfare of children, subject to the approval of the Department. Similarly the Patient and Client Council must publish any report “*in such a manner as the Department may direct*” (Article 17(2)) and the Departmental Regulations governing the operation of the RQIA covers the publication of reports (Article 6(1)(d)). NICCY, however, in its General Powers, has the independence to publish any matter concerning the rights or best interests of children and young people.

Remuneration for the Chair and members of the SBNI is proposed to be covered in Departmental Regulations and will be as the Department determines, with approval of DFP (Clause 1(6)). Similar Departmental control over remuneration exists, for example, for the NISCC (Article 2(6) and the General Consumer Council (Schedule 1).

Independence in the employment of staff seems to vary considerably between the bodies reviewed. For the SBNI, it will be the subsequent Regulations that detail the “*staff, premises and expenses*” (Clause 1(5)) and similarly for the staff of the HSSCs (Part III of the regulations). The NIGALA, once established by the Department, appears to have considerable independence to establish the panel of Guardian ad Litem, without further Departmental influence and this is detailed in the body of the

briefing, for example, to establish the panel, its size and the suitability for appointment of individuals. NICCY appears to have independence from the OFMDFM to appoint the number of officers as it requires, their remuneration and conditions of service, with the approval of DFP.

## Appendix 1 – Functions of the RQIA

The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 outlines the functions of the RQIA in Part IV, Article 35 as follows:

*“35. - (1) The Regulation and Improvement Authority shall have the following functions -*

*(a) the function of conducting reviews of, and making reports on, arrangements by statutory bodies for the purpose of monitoring and improving the quality of the health and personal social services for which they have responsibility;*

*(b) the function of carrying out investigations into, and making reports on, the management, provision or quality of the health and personal social services for which statutory bodies have responsibility;*

*(c) the function of conducting reviews of, and making reports on, the management, provision or quality of, or access to or availability of, particular types of health and personal social services for which statutory bodies or service providers have responsibility;*

*(d) the function of carrying out inspections of statutory bodies and service providers, and persons who provide or are to provide services for which such bodies or providers have responsibility, and making reports on the inspections; and*

*(e) such functions as may be prescribed relating to the management, provision or quality of, or access to or availability of, services for which prescribed statutory bodies or prescribed service providers have responsibility.*

*(2) The inspections referred to in paragraph (1)(d) are to be carried out only in connection with the function referred to in paragraph (1)(c).”*

## Appendix 2 – The Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990

If the DHSSPS considers that a special body should be established for the purpose of performing any functions which the Department may under Article 4(1) of the Order direct the body to perform on behalf of the Department, the Department may establish a body for that purpose under the Order (Article 3(1)). The body is called a special health and social services agency (Article 3(3)) and the Department may, “*subject to the provisions of the Schedule, by order make such further provision relating to that body as it thinks fit*” (Article 3(2)).

Article 3 (5) states “*Before the Department makes an order under this Article, it shall consult with respect to the order such bodies as it may recognise as representing officers who in its opinion are likely to be transferred or affected by transfers in pursuance of the order*”.

Article 4 outlines the directions that the Department may give to a ‘special agency’. It may direct (in writing) a special agency to exercise functions on its behalf with respect to the administration of certain health and personal social services and may give directions to a special agency with respect to the exercise of these functions. It is the duty of a special agency to comply with any directions given to it under this Article.