

INDEPENDENT FINANCIAL REVIEW PANEL (IFRP): REFORM CONSULTATION

NOVEMBER 2019

BACKGROUND

1. The legislative framework for the determination and payment of salaries and expenses/allowances to Members of the Assembly is currently the Northern Ireland Act 1998 (“the 1998 Act”) and the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (“the 2011 Act”).
2. Pursuant to section 47 of 1998 Act, the Assembly **shall pay** to Members of the Assembly such **salaries** as may from time to time be determined. The Assembly has a discretion to **pay** to Members such **allowances** as may from time to time be determined. These obligations are distinct from the power to **determine** the salaries and allowances payable, which was altered by the Northern Ireland Assembly Members Act 2010 (“the 2010 Act”).
3. Following the changes made by the 2010 Act, the Assembly may (as previously) make provision determining the salaries or allowances payable to Members of the Assembly under section 47. Additionally, however, the Assembly may now provide for those salaries or allowances to be determined by a person or body other than the Assembly in accordance with the amendments introduced by the 2010 Act.
4. The Assembly has currently elected to provide for determinations to be made by an external body. To this end, it passed the 2011 Act, which established the Independent Financial Review Panel (“IFRP”) and set out its functions of determining salaries, allowances and pensions.
5. Under the 2011 Act, the IFRP is required to be independent and is not, in the exercise of its functions, subject to the direction or control of the Assembly or the Commission.
6. As was the position prior to the 2010 Act, the Assembly and, on its behalf, the Commission remains responsible for the payment of salaries and expenses/allowances.
7. There is also a duty on the Commission under the 2011 Act to provide the IFRP, or ensure that the IFRP is provided with such administrative support, including staff, services and accommodation, as the IFRP may reasonably require to discharge its functions.
8. Section 2 of the 2011 Act makes provision as to the IFRP’s functions and section 11 makes provision in relation to the exercise of those functions.

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9. Pursuant to section 11(1) of the 2011 Act, the IFRP shall make its determinations only once in respect of each Assembly. Subsection (3) allows for determinations in relation to pensions to be made more than once in respect of each Assembly if the IFRP is of the opinion that it is “reasonable and appropriate” to do so, and determinations in relation to salaries and allowances to be made more than once if the IFRP is of the opinion that it is “reasonable and appropriate” to do so and where “*exceptional circumstances*” apply.
10. The IFRP made its first determination in March 2012, namely the Northern Ireland Assembly (Members’ Salaries, Allowances and Pensions) Determination 2012 (“the 2012 Determination”).
11. The 2012 Determination was amended by a number of subsequent determinations.¹ The 2012 Determination was repealed and replaced in March 2016 by the Assembly Members’ (Salaries and Expenses) Determination (NI) 2016 (“the 2016 Determination”) and the Assembly Members (Pensions) Determination (NI) 2016 (“the Pensions Determination”).
12. The Determinations made in 2016 significantly altered the framework for the determination of Members’ salaries and allowances, referring in Part 2 to “expenses” and creating a number of conditions precedent for the recovery of these expenses which did not exist under the 2012 framework.
13. The terms of office of persons appointed to the IFRP expired in July 2016. No successor appointments have been made.
14. In 2018, due to the continuing political hiatus in Northern Ireland, the UK Parliament passed the Northern Ireland Assembly Members (Pay) Act 2018 (“the 2018 Act”), which conferred on the Secretary of State power, similar to that of the IFRP, to make determinations.
15. To date, three determinations have been made by the Secretary of State under the 2018 Act.² The basic framework established in 2016, however, remains unchanged, and the conditions for the recovery of salaries and expenses/ allowances established in 2016 continue to be applied by the Commission.

¹ The Northern Ireland Assembly (Members’ Allowances) Determination 2013, the Northern Ireland Assembly (Members’ Salaries and Allowances) Determination 2014, the Northern Ireland Assembly (Members’ Allowances) Determination (No.1) 2015, and the Northern Ireland Assembly (Members’ Allowances) Determination (No.2) 2015.

² The Assembly Members (Inflationary increase to salary) (Period when there is no Executive) Determination (Northern Ireland) 2018 (March 2018), the Assembly Members (Salaries and Expenses) (Present period when there is no Executive) Determination (Northern Ireland) 2018 (October 2018) and the Assembly Members (Salaries and Expenses) (Period when there is no Executive) (EU Exit) Determination (Northern Ireland) 2019.

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16. The Commission has been considering the reform of current arrangements and options for determining and administering salaries, pensions and expenses/allowances.
17. A consultation document entitled "Independent Financial Review Panel: Reform" was issued to Commission Members on 28 October 2016, requesting an outline of their Party's views on the matters outlined. This work was, however, overtaken by political events.
18. In order to enable officials to undertake some initial preparatory work in advance of a return to normal Assembly business, at its meeting on 5th September 2019, the Commission asked officials to issue a fresh consultation document in order to seek the views of the Parties represented on the Commission and identify areas for agreement for possible reform. This would enable officials to prepare more detailed information on these areas for consideration by the Commission.
19. The Commission also agreed that a wider consultation with all Members could take place once the Commission has identified areas of agreement and defined the potential options available.
20. It is likely that legislative changes will be required in order to implement reform of the current arrangements, but the nature of these reforms can only be determined once potential options have been identified.

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CONSULTATION

To date, Commission members have not expressed a desire to consider reform of the Commission's role in administering salaries and expenses/allowances, nor a desire to determine salaries and pensions. The scope of this consultation therefore assumes that an IFRP will continue to determine certain or all aspects of salaries, pensions and expenses/allowances and seeks views on the structure, scope and independence of the IFRP.

1. Are you content with the scope of this consultation?

YES NO

If you are not content with the scope of this consultation please answer the following questions:

1.1 Do you wish to return to a system whereby the Assembly or the Commission determines and pays salaries, pensions and expenses/allowances?

YES NO

1.2 Do you wish an IPSA style body to be created which would administer as well as determine salaries and expenses/allowances?

YES NO

1.3 Do you wish any other body to be created?

YES NO

If you have answered yes to question 1.3, please specify in the box below the type of body, which should be created.

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The 2011 Act states that the IFRP is not subject to the direction or control of the Assembly or the Commission, in the exercise of its functions.

2. Do you think that the IFRP should continue to be independent of the Assembly and the Commission in the exercise of all of its functions?

YES NO

It may be possible to amend the 2011 Act to enable the IFRP to retain independence in some areas, for example, in relation to the determination of Members' salaries and pensions and the determination of the overall amount payable for Members' expenses/allowances, but limit its discretion in respect of other defined areas (e.g. staff terms and conditions). This would mean that the role of the IFRP would have to be reviewed.

3. Do you think the role of the IFRP should be reviewed?

YES NO

3.1 If you have answered yes to question 3, do you think the role of the IFRP should include:

The determination of Members' salaries

YES NO

The determination of Members' expenses/allowances

YES NO

The determination of Members' Pensions

YES NO

The determination of staff costs

YES NO

The determination of terms and conditions of Members' staff

YES NO

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3.2 If you have answered no to any of these questions, please suggest options for reform in the box below. For example, the Commission or another body could set the terms and conditions for staff, or the IFRP could retain responsibility for determining the overall amount payable for staff costs, but not prescribe the detail of how this should be spent.

Views are sought from Parties on whether there should be a way to require the IFRP to review a provision within a Determination- for example, following a fixed number of Members indicating concern about a particular provision?

4. Do you think the legislation should contain such a mechanism?

YES NO

Schedule 1 of the 2011 Act makes provision as to the persons who are disqualified from being appointed or serving as members of the IFRP. Schedule 1 is attached at Appendix One to this consultation document. Views are sought from Parties about the disqualifications for membership of the IFRP.

5. Do you think that the disqualification provisions should remain the same?

YES NO

5.1 If no, parties are asked to suggest which of the disqualifications outlined at Appendix One should be removed.

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Views are sought from Parties on whether the IFRP should contain representatives of certain classes of persons, e.g. former Members or elected representatives.

6. Do you wish the 2011 Act to be amended to provide for this?

YES NO

6.1 If yes, please suggest those classes of person to be represented on the IFRP in the box below:

Views are sought from Parties on whether the number of IFRP panel members should be changed.(currently there must be a chair and two other members).

7. Do you wish to alter the number of IFRP members?

YES NO

7.1 If yes, please state in the box below how many panel members you think there should be.

Views are sought from Parties on whether the length of the term of office of IFRP chair and members should be changed or whether appointments should be staggered. The term of office is currently five years.

8. Do you wish to amend the legislation to change the term of office?

YES NO

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8.1 If yes, please suggest in the box below the proposed term of office.

8.2 Do you wish appointments to the IFRP to be staggered?

YES NO

8.3 If yes, please suggest in the box below on what basis the appointments should be staggered?

Currently the IFRP are restricted to making only one determination per Assembly unless the IFRP is of the opinion that exceptional circumstances apply.

9. Do you wish to remove this restriction?

YES NO

9.1 If you do not wish to remove the restriction entirely, do you wish to continue to enable the IFRP to rely on exceptional circumstances.

YES NO

If the Commission wished to restrict the occasions on which the IFRP could rely on exceptional circumstances, it could require that another party (e.g. the Commission or a Committee of the Assembly) agrees with the IFRP that exceptional circumstances exist before it is empowered to act.

9.2 Do you wish to restrict the IFRP's ability to make exceptional determinations in this way?

YES NO

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It may be of benefit to Members if a minimum time must elapse between the making of a Determination and the likely date for the election of the Assembly to which that Determination will apply. Views are sought from Parties on whether the 2011 Act should be amended to include a legislative requirement that a Determination must be made (for example) no less than six or nine months before the likely date for the election of the Assembly to which that Determination will apply. (At present, the 2011 Act requires that a Determination should be made "so far as reasonably practicable... before the date of the poll for the election of the Assembly in respect of which the determination is made").

10. Do you wish to amend the legislation in this regard?

YES NO

10.1 If yes, please suggest in the box below the proposed minimum period between the making of a Determination and the election of the Assembly to which that Determination will apply.

Views are sought from Parties on whether the IFRP should be required to follow certain consultation processes and/or consult certain other public bodies (for example, the Assembly Commission) in developing a Determination.

11. Do you wish the legislation to be amended to include such a requirement?

YES NO

11.1 If yes, please suggest in the box below a minimum time period which should be allowed for consultation and whether the Assembly Commission or any other public body should be consulted.

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Views are sought from Parties on whether the IFRP should be required to review the implementation and operation of a Determination after a set period.

12. Do you wish the legislation to be amended to include such a requirement?

YES NO

SHORT TERM ARRANGEMENTS PENDING LEGISLATIVE REFORM

13. The Parties are asked to confirm which of the following options they wish to instruct the Secretariat to proceed with:

Option 1 - Appoint a new IFRP for five years on the basis of the existing law and do not pursue legislative reform at this time.

Option 2 - Appoint a new IFRP on the basis of the existing law with an explanation in the specification that legislative reform is pending which may affect, for example, disqualification, the number of members required or the length of term of office. It should also be stated that when such legislative change occurs a new recruitment exercise may have to be undertaken and the IFRP may be replaced.

Option 3 - Write to the Secretary of State asking him to bring forward legislation to Parliament to amend the 2011 Act, making provision for any potential changes outlined in this consultation document and to enable the Commission to appoint an IFRP once the changes have been made.

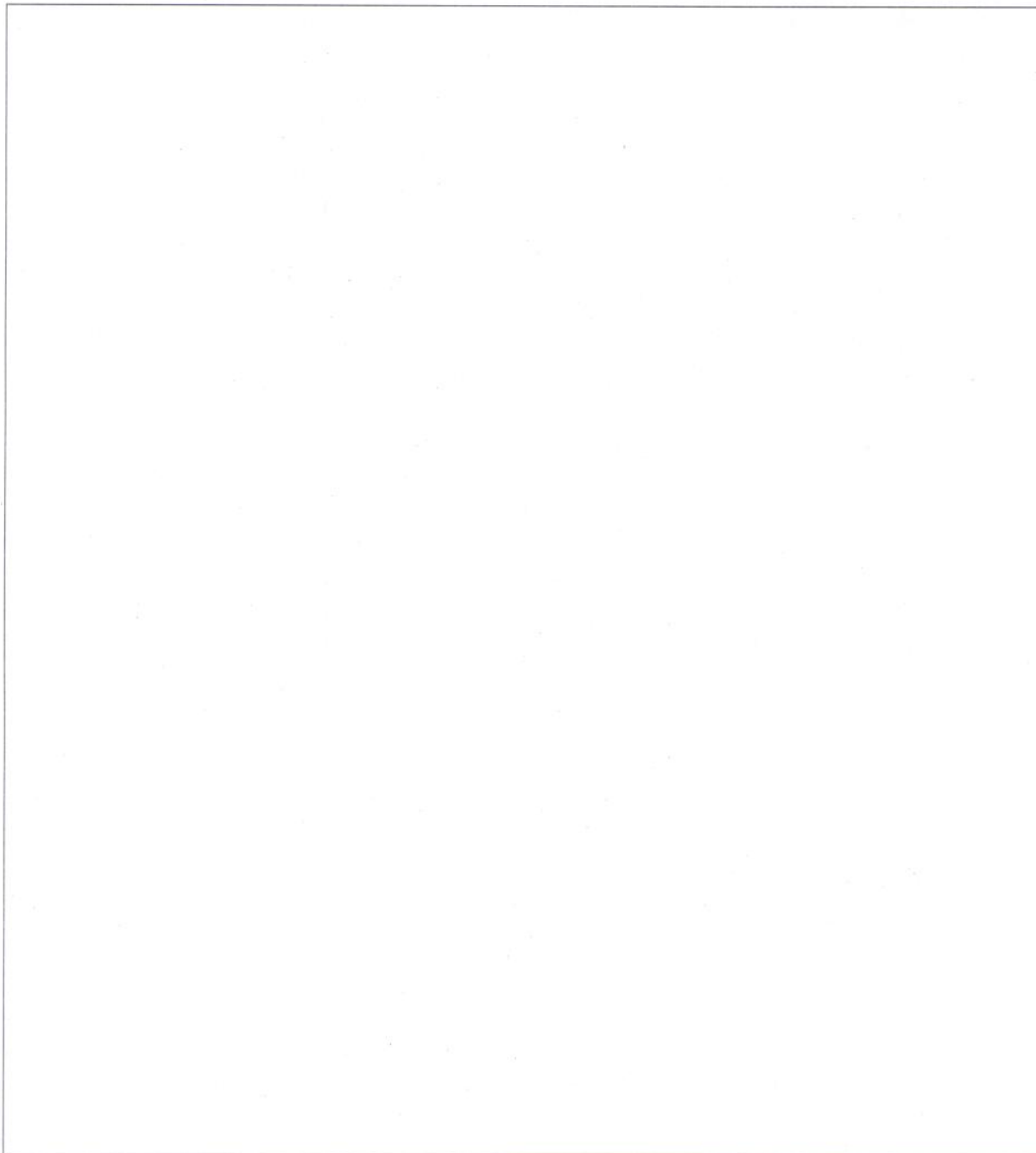
Please state your preferred option and add any comments in the box below.

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ADDITIONAL COMMENTS

14. Parties may add any additional comments in the box below

A large, empty rectangular box with a thin black border, intended for parties to provide additional comments. The box is currently blank.

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APPENDIX ONE

SCHEDULE 1

DISQUALIFICATION FROM MEMBERSHIP OF THE PANEL

1. The following persons are disqualified from being appointed or serving as Panel members—
 - (a) a member of the Assembly;
 - (b) a family member of a member of the Assembly;
 - (c) a candidate for election to the Assembly;
 - (d) a former member of the Assembly;
 - (e) a member of the European Parliament, the House of Commons, the House of Lords, the Scottish Parliament, the National Assembly for Wales, Dáil Éireann (House of Representatives of Ireland) or the Seanad Éireann (Senate of Ireland);
 - (f) a councillor;
 - (g) a person employed by a political party;
 - (h) a person employed by a member of the Assembly;
 - (i) a member of the staff of the Assembly;
 - (j) a former member of the staff of the Assembly;
 - (k) a person employed by a Northern Ireland department;
 - (l) a person who has been employed by a Northern Ireland department at any time in the two years prior to the date when the appointment is to take effect;
 - (m) a person employed by a district council;
 - (n) a person who has been employed by a district council at any time in the two years prior to the date when the appointment is to take effect;
 - (o) the Northern Ireland Assembly Commissioner for Standards;
 - (p) the Comptroller and Auditor General for Northern Ireland;
 - (q) the Attorney General for Northern Ireland; and

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(r) a person who has been the Attorney General for Northern Ireland at any time in the 5 years prior to the date when the appointment is to take effect.

2. For the purposes of paragraph 1(c), a person becomes a candidate for election to the Assembly on the day on which that person becomes a candidate within the meaning of section 118A (1) and (2) of the Representation of the People Act 1983 (c. 2) as applied to the Assembly by Article 3 of the Northern Ireland Assembly (Elections) Order 2001 (SI 2001/2599).

3. In this Schedule—

“civil partner” has the same meaning as in section 1 of the Civil Partnership Act 2004 (c. 33);

“cohabitant” means either member of a couple consisting of—

- (a) a man and a woman who are living together as if they were husband and wife; or
- (b) two persons of the same sex who are living together as if they were civil partners;

“councillor” means a member of a district council;

“family member” means—

- (a) parent, child, grandparent or grandchild;
- (b) brother, sister, uncle, aunt, nephew or niece (whether of the full or half blood);
- (c) spouse or any person related to a spouse in any of the ways set out in subparagraphs (a) or (b);
- (d) civil partner or any person related to a civil partner in any of the ways set out in sub-paragraphs (a) or (b); and

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- (e) cohabitant or any person related to a cohabitant in any of the ways set out in sub-paragraphs (a) or (b); and

“political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).