

Paper by: TARA CAUL
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**Subject: Independent Financial Review Panel: Appointment and
Legislative Reform**

Date for discussion: Commission meeting on 5th September 2019

Recommendation

It is recommended that the Commission:

(1) Considers the options for reform of the Independent Financial Review Panel (“IFRP”) outlined in this paper and answers the questions set out below;

Underlying Principles

- The Commission is asked to confirm its previously agreed position that it does not wish to abolish the IFRP or create an IPSA style body.
- The Commission is asked to confirm that it wishes to maintain section 3(1) of the 2011 Act, which makes provision in relation to the independent status of the IFRP and if it does not wish to maintain this section, confirm what changes should be made.
- The Commission is asked to confirm that it is content with the functions of the IFRP and if not what changes should be made. Pursuant to section 3 of the 2011 Act, the functions of the IFRP are to make determinations as to (a) the salaries and allowances payable to Members of the Assembly under section 47 of the 1998 Act; and (b) the pensions, gratuities and allowances payable under section 48 of that Act.

Amending disqualifications for membership of the IFRP

- The Commission is asked to confirm which disqualifications outlined at Table 1 should be removed.

Amending composition or size of the IFRP

- The Commission is asked to confirm whether the 2011 Act should be amended so as to *require* that the IFRP include certain classes of persons, e.g. a former Member and specify which class of person should be specified.
- The Commission is asked to confirm whether the 2011 Act should be amended to change the composition of the IFRP namely the number of Panel members and if so how.

- The Commission is asked to confirm whether the 2011 Act should be amended to change the length of the term of office of the IFRP members and if so what should the length of this term of office be and should appointments be staggered to maintain continuity.

Amending restriction to one determination per Assembly

- The Commission is asked to confirm whether the existing restriction of one determination per mandate (bar exceptional circumstances) in the 2011 Act should be removed.
- The Commission is asked to confirm whether the 2011 Act should be amended to require another party (e.g. the Commission or a Committee of the Assembly) to agree with the IFRP that exceptional circumstances exist before it is empowered to act.

Additional Suggestions for Legislative Reform

- The Commission is asked to consider whether it wishes to amend the 2011 Act to include a requirement in the legislation for the IFRP to follow certain consultation processes in reaching their Determination and if so, what consultation processes would be required.
- The Commission is asked to consider whether it wishes to amend the 2011 Act to include a legislative requirement that a determination should be made no later than, for example, six or nine months before an Assembly election.
- The Commission is asked to consider whether it wishes to amend the 2011 Act to include a legislative requirement that the IFRP should review the implementation/outworkings of a Determination after a set period and if so after what period.
- The Commission is asked to consider whether it wishes to amend the 2011 Act to provide a mechanism for review/appeal of a provision within a Determination (this will require further legal consideration) and if so how.
- The Commission is asked to consider whether it wishes to amend the 2011 Act to provide a definition of the role and support needs of a Member. As this is without precedent, further legal consideration would be required in relation to this suggestion. An alternative may be to place a requirement on IFRP to have regard to guidance on Members' roles and support needs published by the Commission.
- The Commission is asked to consider whether it wishes to amend the 2011 Act to specify the defined aspects of financial support for Members that the IFRP must determine and/or limit the aspects of financial support that the IFRP can determine. Further legal consideration would be required in relation to this suggestion to ensure compatibility with section 47 of the 1998 Act.

Short-term arrangements pending legislative reform

- The Commission is asked to confirm which of the short-term arrangements outlined it wishes to instruct officials 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 and thereafter the Commission appoints the IFRP once the changes have been made.

(2) The Commission is asked to consider whether it wishes the above questions to be incorporated into a new draft consultation document so that they can be discussed with their Parties.

(3) Considers whether the IFRP should be appointed at this time, pending legislative reform.

Preceding Papers:

A previous Commission considered similar matters in 2009-11, leading to enactment of new legislation, the Assembly Members (Independent Financial Review and Standards) Act (NI) 2011 ("the 2011 Act") at that time. Previous papers are set out below.

21st January 2015, Submissions AC4207.1 and AC4207.2;
17th June 2015, Submission AC4805.2;
2nd December 2015, Submission AC5609;
27th January 2016, Submission AC575.1;
23rd June 2016, Submission AC0109;
28th October 2016, consultation document issues; and
24th June 2019 Submission AC1615.

Timescale:

Routine.

FoI Implications:

The contents of this paper may be disclosed. The exemption at section 42 of the Freedom of Information Act 2000 may be applied to paragraph 75 of this submission.

Legal Implications:	New legislation may be required.
Financial Implications:	Costs would be incurred in developing and implementing any legislative proposal. There is currently no provision in the Commission budget for resourcing the delivery of any legislative change.
Staffing Implications:	Staff resources will be required to develop any proposal, and to deliver any legislation.
Equality / Section 75 Implications:	Not at this stage.
Equality Screening:	Any new policy will be subject to screening at a later stage.
Data Protection Impact Assessment (DPIA):	Not required at this stage.
Consultation:	A consultation document on IFRP Reform was issued to Commission Members on 28 th October 2016.
Attachments:	None.

Introduction and Background

1. The Commission (and previous Commissions) has been considering options for models for determining and administering salaries, pensions and allowances.
2. At its meeting on 25th November 2014, the Commission asked that papers be prepared on issues arising from recent television programmes, and options for the future.
3. The Stormont House Agreement (published on 23rd December 2014) states that the participants agreed that “a new process will be brought forward for a more transparent and robust system for Members’ salaries and expenses”.
4. Section F of “A Fresh Start: The Stormont Agreement and Implementation Plan” (published 17th November 2015), paragraph 64 provides:

“Responsibility for the system of Members’ salaries and expenses rests with the Assembly. The Assembly Commission has concluded that the fundamental architecture is sound and is an independent and affordable mechanism for setting Members’ pay and allowances. Assembly officials are also considering mechanisms to ensure that the IFRP has all the necessary information to enhance the robustness and transparency of decision making.”
5. At its meeting on 21st January 2015, Submission AC4207.2 was considered by the Commission. It addressed the issue of “models for the most robust, effective and efficient means to determine and administer financial support for Members”,

including details on comparative models with each of the other UK legislatures and the Oireachtas. A series of high-level models were put to the Commission, the three most obvious of which are summarised here for ease of reference:

- The Assembly resumes both the determinative and the administrative roles: i.e. abolishes the IFRP and returns to a system whereby the Assembly or the Commission makes decisions on the levels of salaries and expenses payable (“the determinative role”) and pays those salaries and allowances (“the administrative role”);
 - The Assembly delegates the determinative but retains the administrative role: i.e., status quo; and
 - The Assembly delegates both the determinative and administrative roles: i.e., increases the IFRP’s responsibilities so as to establish an IPSA-type body for Northern Ireland.
6. At its meeting on 18th March 2015, the Commission asked for further information on the costs of establishing an IPSA-type body for the Assembly, and for other options to make the system more robust and transparent. At its meeting on 17th June, Submission AC4805.2 was considered by the Commission. It provided the required information and options. The Commission favoured the second option referred to above (status quo).
7. At its meeting on 17th June 2015, the Commission agreed neither to abolish the IFRP nor expand it into a body analogous to the Independent Parliamentary Standards Authority (“IPSA”).
8. The Commission also considered seven less major reforms that might result in, per the Stormont House Agreement, “a new process [being] brought forward for a more transparent and robust system for Members’ salaries and expenses”. It asked that officials explore reform to specified aspects of the current arrangements and report back to the Commission.
9. Those aspects were:
- *Amending disqualifications for membership of the IFRP;*
 - *Amending composition of or size of the IFRP; and*
 - *Amending restriction to one determination per Assembly.*
10. At its meeting on 2nd December 2015, the Commission explored reform to specified aspects of the current arrangements and requested further information in relation to timescales for each option.
11. At its meeting on 27th January 2016, the Commission considered Submission AC0196 which set out the potential options for reform and the timescales associated with each in detail and agreed that reforms should be made to the three categories outlined above. The Commission, however, did not agree the exact nature of these reforms regarding these three categories but rather agreed that the necessary legislation should be progressed at the start of the new mandate. It was also agreed that a further paper should be brought to the new

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Commission regarding the reforms and the timeframes associated with implementing these decisions.

12. On the 17th February 2016, the Commission confirmed the January 2016 decision that officials should develop legislative proposals to strengthen the effectiveness of the IFRP for consideration by the Assembly Commission following the election.
13. The purpose of Submission AC0109 for the meeting on 23rd June 2016 was to set out those legislative proposals in detail.
14. At the Commission meeting on 23rd June 2016, the Commission Members agreed that they would take the proposals outlined in Submission AC0109 back to their parties for consideration during the Summer Recess before revisiting the topic in September 2016.
15. During the 2016 Summer Recess the Clerk/Chief Executive and Director of Corporate Services engaged with Commission Members in order to consider the recommendations further.
16. Submission AC0215 (Independent Financial Review Panel: Reform) was presented to the Commission at its meeting on 29th September 2016 by the Director of Legal, Governance and Research Services, accompanied by submission AC0216 (Review of Implementation of IFRP Determination) which was presented by the Director of Corporate Services.
17. A consultation document entitled "Independent Financial Review Panel: Reform" was issued to Commission Members on 28th October 2016, requesting an outline of their Party's views on the matters outlined by 13th January 2017.
18. As noted in the Commission minutes of 30th May 2017, this work has been overshadowed by the political hiatus, which has arisen as a result of the failure to appoint an Executive and the fact that the Assembly has not been sitting since March 2017. Furthermore, it has not yet been possible to appoint a new Commission. It was anticipated in May 2017 that the work would be recommenced urgently once normal Assembly business resumed.
19. At the Commission meeting on 11th April 2019, Mr. Dickson MLA asked about future arrangements for the appointment of the IFRP.
20. Following discussion, it was agreed that previous relevant papers would be circulated to Members of the Commission. Submissions AC0215 and AC0216 were circulated to Members on 28th May 2019 together with a copy of the consultation document on IFRP Reform (originally issued on 28th October 2016).
21. Submission AC1615 (which drew together Submissions AC0215 and AC0216 and the consultation document) was presented to the Commission on 24th June

2019 together with an updated version of submission AC0216 (Review of Implementation of IFRP Determination).

- 22.** It was agreed at the Commission meeting on 24th June 2019 that a single agenda item meeting should be arranged for September 2019 to discuss these matters in detail.

Discussion/Recommendations:

- 23.** As the Assembly has not yet returned to normal business, it is not possible at this time to proceed with any of the legislative reforms (by way of Assembly legislation) outlined in Submission AC0215. The Commission could, however, proceed to attempt to narrow the issues and prepare recommendations for consideration by a successor Commission when the Assembly returns to normal business.
- 24.** The terms of office of persons appointed to the IFRP expired in July 2016. No successor appointments have been made.
- 25.** It was noted at paragraph 39 of Submission AC0215 that the Commission could amend the list of persons who are disqualified from being appointed to the IFRP by order. However, pursuant to section 5(3) of the Assembly Members (Independent Financial Review and Standards) Act (NI) 2011 (“the 2011 Act”) an order of this nature cannot be made unless a draft of the order has been laid before and approved by resolution of the Assembly. It is therefore not possible to proceed with such an order until the Assembly resumes normal business. However, the Commission could proceed to draft an order in readiness for consideration by a successor Commission when the Assembly returns to normal business,
- 26.** Currently available short-term arrangements pending legislative reform are outlined at paragraphs 74-75 of this submission.
- 27.** It remains the case that it would be possible to appoint the IFRP now and explain clearly in the specification that legislative reform may be pending which could affect, for example, the number of appointments made or the length of the term of office.
- 28.** It may be that the Commission wishes officials to recommence consideration of legislative reform and to make preparations for such reform to be implemented upon resumption of normal Assembly business.
- 29.** In this section of the paper, the questions are set out which require a response from the Commission to enable officials to proceed. These questions are grouped under the following headings:
- Clarification of the Commission’s position regarding underlying assumptions and principles;
 - Amending disqualifications for membership of the IFRP;

- Amending composition or size of the IFRP;
- Amending restriction to one determination per Assembly;
- Additional suggestions for legislative reform; and
- Short-term arrangements pending legislative reform.

Clarification of the Commission's position regarding underlying assumptions and principles

30. It would be useful at this stage to rehearse the legislative background to the creation of the IFRP.
31. The Northern Ireland Assembly Members Act 2010 ("the 2010 Act") amended the Northern Ireland Act 1998 ("the 1998 Act") enabling the Assembly to delegate in its entirety the function of determining salaries, pensions and allowances to an office or body.
32. Pursuant to amended section 47 of the 1998 Act, the Assembly retained the duty to pay to Members of the Assembly such salaries as may from time to time be determined and the discretion to pay to Members of the Assembly such allowances as may from time to time be determined. As was the position before the 2010 Act, the salaries and allowances may be determined by the Assembly. Pursuant to section 47(2A) the Assembly may, however, also make provision (a) determining the salaries or allowances payable to Members of the Assembly under this section or (b) providing for those salaries or allowances to be determined by a person other than the Assembly in accordance with the provision.
33. The Assembly then passed the 2011 Act, which established the IFRP. The IFRP is independent and is not, in the exercise of its functions, subject to the direction or control of the Assembly or the Commission.
34. The Assembly and, on its behalf, the Commission remains responsible under the 1998 Act for the payment of salaries and allowances. There is also a duty on the Commission pursuant to Schedule 2 of 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.
35. 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. Pursuant to section 11(1) of the 2011 Act, and subject to subsection (3) thereof the Panel 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.

36. The IFRP made its first determination in March 2012, namely the Northern Ireland Assembly (Members' Salaries, Allowances and Pensions) Determination 2012 ("the March 2012 Determination"). A further determination was then issued in December 2012 namely the Northern Ireland Assembly (Members' Allowances) Determination 2013 that amended the March 2012 Determination with effect from 1st January 2013. This was followed by the Northern Ireland Assembly (Members' Salaries and Allowances) Determination 2014, the Northern Ireland Assembly (Members' Allowances) Determination (No.1) 2015, the Northern Ireland Assembly (Members' Allowances) Determination (No.2) 2015, the Assembly Members' (Salaries and Expenses) Determination (NI) 2016 ("the 2016 Determination") and the Assembly Members (Pensions) Determination (NI) 2016.
37. Last year, due to the continuing political hiatus, the UK Parliament passed the Northern Ireland Assembly Members (Pay) Act 2018 ("the 2018 Act"), which conferred on the Secretary of State power to make determinations similar to that of the Panel. Section 1(1) of the 2018 Act provides that:
- "The Secretary of State may make a determination as to the salaries or allowances payable under section 47 of the Northern Ireland Act 1998 for a period when there is no Executive."*
38. To date, three determinations have been made by the Secretary of State, namely the Assembly Members (Inflationary increase to salary) (Period when there is no Executive) Determination (Northern Ireland) 2018 in March 2018 ('the March 2018 Determination'), the Assembly Members (Salaries and Expenses) (Present period when there is no Executive) Determination (Northern Ireland) 2018 in October 2018 ('the October 2018 Determination') and the Assembly Members (Salaries and Expenses) (Period when there is no Executive)(EU Exit) Determination (Northern Ireland) 2019 ("the 2019 Determination").

Nature of the determinative/administrative process

39. In Submission AC4805.2, Hugh Widdis asked the previous Commission to decide which of three high level options they wished to pursue namely (i) abolition of the IFRP and return to a system of decision by the Assembly or the Commission, (ii) status quo or (iii) increase the IFRP's responsibilities to establish an IPSA style body.¹
40. The previous Commission ruled out abolishing the IFRP or establishing an IPSA style body and opted instead for maintaining the status quo and considering the minor reforms set out in Submission AC0109.
41. The Commission is asked to confirm its position with regard to the abolition of the IFRP or the creation of an IPSA style body.

¹ It should be noted that establishing an IPSA style body, which had an administrative, as well as a determinative function would, in my view, require an Act of Parliament to amend section 47 of the Northern Ireland Act 1998.

Independence

42. There is specific provision made in the 2011 Act in relation to the independence and openness of the IFRP. Pursuant to section 3(1) of the 2011 Act, the Panel shall not, in the exercise of its functions, be subject to the direction or control of (a) the Assembly or (b) the Commission.
43. The Commission is asked to confirm whether it wishes to maintain section 3(1) of the 2011 Act in its current form.

Functions

44. Pursuant to section 2 of the 2011 Act, the functions of the IFRP are to make determinations as to (a) the salaries and allowances payable to Members of the Assembly under section 47 of the 1998 Act; and (b) the pensions, gratuities and allowances payable under section 48 of that Act. The Commission is asked to confirm that it is content with the functions of the Panel.

Amending disqualifications for membership of the IFRP

45. Provision is made in the 2011 Act for the Commission to amend the list of persons who are disqualified from being appointed to the IFRP. When designing the 2011 Act, the Commission decided that Members or former Members should not be appointable to the IFRP.
46. It was, nonetheless, thought prudent for the 2011 Act to give a delegated power to the Commission to amend the list of disqualifications. The Commission may do this by order, subject to affirmative resolution. The 2011 Act provides at section 5:

“(1) Schedule 1 makes provision as to the persons who are disqualified from being appointed or serving as Panel Members.

(2) The Commission may by order amend Schedule 1.

(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.”

47. However, pursuant to section 5(3) of the 2011 Act an order of this nature cannot be made unless a draft of the order has been laid before and approved by resolution of the Assembly. It is therefore not possible to proceed with such an order until the Assembly resumes normal business.
48. The Commission may wish to instruct officials to prepare such an order in draft pending a return to normal Assembly business. Costs would be minimal: a draft order could be prepared within existing resources.
49. Firstly, the Commission would have to consider the length of the consultation period and whether the consultation would run before or consecutively with the drafting process. The Cabinet Office has issued guidance on consultation principles (last revised on 19th March 2018). This guidance replaces a previous

requirement under the Cabinet Office Code of Practice on Consultation to allow 12 weeks for consultation processes and simply states that the length of the consultation process should be judged on the basis of legal advice taking into account the nature and impact of the proposal i.e. that it should be proportionate and realistic. It is my view that a targeted consultation over a four-week period would be sufficient given the nature of the content of this draft order.

50. Time for taking instructions, drafting and approving a final draft with the Commission would be approximately four weeks. However, pursuant to section 5(3) of the 2011 Act an order of this nature shall not be made unless a draft of the order has been laid before and approved by resolution of the Assembly and an additional period of at least four weeks (non-inclusive of days during Recess or dissolution) would therefore have to be allowed to enable the order to be laid in the Business Office, sent to an appropriate Committee (originally an Ad Hoc Committee was established to consider the 2011 Act), tabled at Business Committee, put on the relevant Provisional and then Final Order Paper and approved by the Assembly.
51. The timescale for drafting and implementation would therefore be approximately eight weeks from the date of taking drafting instructions (non-inclusive of days during Recess). Any consultation period would also have to be factored into this timescale.
52. The current list of disqualifications is laid out in Table 1, together with comment on the impact of removing the disqualification.
53. **The Commission is asked to consider whether any of those disqualifications could be removed in the interests of improving governance, information flows, transparency or robustness.**

TABLE 1

IFRP disqualification	Does NAWRB have similar disqualification	Does IPSA have similar disqualification	Impact of amending	Risk of amending
(a) Members	Y	Y	Could give first-rate knowledge of the working needs of a Member	Perception of bias
(b) Family member of Members	N	N	Could give close knowledge of the working needs of a Member	Perception of bias

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IFRP disqualification	Does NAWRB have similar disqualification	Does IPSA have similar disqualification	Impact of amending	Risk of amending
(c) Candidate for Member	Y	N	None	
(d) Former Members	N	N One of the Members of IPSA is required to be a person who has been (but is no longer) a Member of the House of Commons (“the Parliamentary Member”). Apart from the Parliamentary Member, a person who has been a Member of the House of Commons at any time within the last 5 years may not be a Member of IPSA	Could give first-rate knowledge of the working needs of a Member	Limited perception of bias
(e) MEP, MP, peer, MSP, AM, TD, Senator	Y (MEP, MP, MSP, NIA only)	N	Could give first-rate knowledge of the working needs of an elected representative	Limited perception of bias
(f) District councillor	N	N	Could give first-rate knowledge of the working needs of an elected representative	Limited perception of bias

IFRP disqualification	Does NAWRB have similar disqualification	Does IPSA have similar disqualification	Impact of amending	Risk of amending
(g) A person employed by a political party	N ²	N	Might give close knowledge of the working needs of a Member	Perception of bias
(h) A person employed by a Member	Y	N	Might give close knowledge of the working needs of a Member	Perception of bias
(i) A member of the staff of the Assembly	Y	N	Might give close knowledge of the working needs of a Member	Probable conflict of interest
(j) A former member of the staff of the Assembly	N	N	Might give close knowledge of the working needs of a Member	None
(k) A person employed by a Northern Ireland Department	Y	N	Might give some knowledge of the working needs of a Member; might give some knowledge of NIA/ Departmental interface	None

² Although there is a disqualification for person employed by an Assembly member or by a group of Assembly members for the purpose of assisting that member or the members of that group to perform the functions of an Assembly member

IFRP disqualification	Does NAWRB have similar disqualification	Does IPSA have similar disqualification	Impact of amending	Risk of amending
(l) A person who has been employed by a Northern Ireland Department in last two years	N	N	Might give some knowledge of the working needs of a Member; might give some knowledge of NIA/ Departmental interface	None
(m) A person employed by a district council.	N	N	Might give some knowledge of the working needs of an elected representative	None
(n) A person who has been employed by a district council in last two years	N	N	Might give some knowledge of the working needs of an elected representative	None
(o) The Northern Ireland Assembly Commissioner for Standards	Y	N	Might give close knowledge of some aspects of the work of Members	Probable conflict of interest: Officer of the Assembly
(p) The Comptroller and Auditor General for Northern Ireland	Y	N	Might give some knowledge of the working needs of a Member; considerable knowledge of NIA/ Departmental interface	Probable Conflict of interest: Officer of the Assembly

IFRP disqualification	Does NAWRB have similar disqualification	Does IPSA have similar disqualification	Impact of amending	Risk of amending
(q) The Attorney General for Northern Ireland	Y	N	None	None
(r) A person who has been the Attorney General for Northern Ireland in last five years	N	N	None	None

Amending composition or size of the IFRP

54. The Commission could amend the 2011 Act so as to *require* that the Panel include certain classes of persons, e.g. a former Member. For comparison, IPSA is required to have as a Member a former senior judge, a person eligible to be appointed as a statutory auditor, and a former MP.³
55. The Commission could seek other changes to composition. For example, the duration of the term of appointment is currently five years from the date of appointment and this term could be shortened which might balance independence with accountability or appointments could be staggered, having the effect that membership would be balanced but fluid. Pursuant to Section 1(2) of the 2011 Act, the members of the IFRP are the chair and two other members. The number of members could be changed, so as to provide more balance and improve the mix of skills and experience.
56. The costs of amending the 2011 Act by Act of the Assembly would be higher than for amending disqualifications for membership of the IFRP by order.
57. A Bill would have to be prepared and progressed through the Assembly. However, its scale and complexity would be lower than for a Bill to establish a new body (such a bill was costed at approximately £122,000 at para 14 AC 4805.2). An approximate costing for staff costs and external drafting costs would not be possible until instructions were confirmed by the Commission.
58. If the number of members of the IFRP was increased, expenditure on fees might increase.
59. Comparative information from other institutions is laid out in Table 2.

³ Parliamentary Standards Act 2009, section 3 and Schedule 1 para 1

60. The Commission is asked to consider whether any of those amendments to composition could be made in the interests of improving governance, information flows, transparency or robustness.

TABLE 2

Institution	Must contain			May not contain
IPSA	A person who has held (but no longer holds) high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005 (c. 4))	Must be a person who is eligible for appointment as a statutory auditor by virtue of Chapter 2 of Part 42 of the Companies Act 2006	One of the Members of the IPSA ("the Parliamentary Member") must be a person who has been (but is no longer) a Member of the House of Commons	Apart from the Parliamentary Member, a person who has been a Member of the House of Commons at any time within the last five years may not be a Member of the IPSA
NAWRB	No special requirements			
SP	n/a: functions performed by SPCB			

61. Comparative information from other institutions about size is laid out in Table 3, together with comment on impact and risk.
62. The Commission is asked to consider whether any increase in size would be in the interests of improving governance, information flows, transparency or robustness.

TABLE 3

Institution	Members
IPSA	5
NAWRB	5
NIA	3

63. The average cost of an IFRP Member's fees and expenses over the five years was £6,370 per annum. Administration and support costs are likely to remain similar to those of the previous IFRP.

Amending restriction to one determination per Assembly

64. The IFRP may make salaries and allowances determinations only once per Assembly, barring exceptional circumstances. The Commission could seek to amend the 2011 Act by Act of the Assembly and remove that restriction, thus

providing flexibility and freeing the IFRP to act as it sees fit, subject to the usual public law constraints.

- 65. On a contrary note, pursuant to section 11(3) of the 2011 Act, the current legal position is that if at any time the IFRP is of the opinion that it is reasonable and appropriate, due to the existence of exceptional circumstances, that the restriction at subsection (1) (namely that the IFRP shall only make the determinations once in respect of each Assembly) should not apply, the IFRP may make determinations more than once in respect of each Assembly. If the Commission wished to restrict the IFRP’s ability to make such exceptional determinations, it could amend the 2011 Act to require that some other party (e.g. the Commission or a Committee of the Assembly) agree with the IFRP that exceptional circumstances exist before it is empowered to act.
- 66. Costs would be similar to amending the composition or size of the IFRP. A Bill would have to be prepared and progressed through the House. However, its scale and complexity would be lower than for a Bill to establish a new body.
- 67. Comparative information from other institutions is laid out in Table 4.
- 68. The Commission is asked to consider whether this “exceptional circumstances” rule should be removed or amended in the interests of improving governance, information flows, transparency or robustness.

TABLE 4

Institution	Pension	Pay	Allowances
IPSA	No restriction	No restriction	No restriction
SP	No restriction	No restriction	No restriction
NAWRB	No restriction	Only once per Assembly, unless the Board is of the opinion that exceptional circumstances apply	No restriction (except in relation to support staff salaries, in which case it cannot be changed within one financial year)
IFRP	No restriction	Only once per Assembly, unless the Panel is of the opinion that exceptional circumstances apply	Only once per Assembly, unless exceptional circumstances

Additional Suggestions for Legislative Reform

- 69. Some further suggestions for legislative reform were made by Members in the

meetings with the Clerk/Chief Executive and Director of Corporate Services over the 2016 Summer Recess. These are set out in the paper by the Director of Corporate Services and include the following:

- Amending the 2011 Act to include a requirement in the legislation for the IFRP to follow certain consultation processes in reaching their Determination;
- Amending the 2011 Act to include a legislative requirement that a determination should be made no later than six or nine months before an Assembly election;
- Amending the 2011 Act to include a legislative requirement that the IFRP should review the implementation/outworkings of a Determination after a set period e.g. one year;
- Amending the 2011 Act to provide a mechanism for review/appeal of a provision within a Determination (further legal consideration would be necessary in relation to this suggestion in terms of the compatibility of a review mechanism with independent status);
- Amending the 2011 Act to provide a definition of the role and support needs of a Member. As this is without legislative precedent, further legal consideration would be required in relation to this suggestion. An alternative may be to place a requirement on IFRP to have regard to guidance on Members' roles and support needs published by the Commission⁴; and
- Amending the 2011 Act to specify the defined aspects of financial support for Members that the IFRP must determine. Further legal consideration would be required in relation to this suggestion to ensure compatibility with section 47 of the 1998 Act.

Timescale for a Bill (necessary for amending composition or size of the IFRP and/or amending restriction to one determination per Assembly and other suggestions for legislative reform outlined at para 69)

70. In submission AC 575.1, it was suggested that an initial consultation period of at least four weeks would be required to enable the Commission to consult on the proposals. Time would, however, be required to be built into this consultation process for the Bill team to analyse the results of the consultation, prepare a paper summarising the results and present the paper to the Commission which would then be required to take a decision as to whether to proceed with the original proposals outlined in the consultation document or amend the proposals in light of consultation responses. It would also be good practice for the Commission to publish its response to the consultation process and outline its rationale for deciding on the approach taken. It is likely, therefore that the consultation process as a whole could take up to 16 weeks.
71. The timescale for the preparation of instructions for the drafts person and approval of these instructions by the Commission would be approximately four weeks.

⁴ See, for example, the guidance on the Financial Assistance for Political Parties Scheme 2016, which defines "Assembly duties" in the context of authorised purposes.

- 72. The timescale for the preparation of a draft Bill and Explanatory and Financial Memorandum (EFM) by the drafts person is likely to be approximately eight weeks from the finalisation of written instructions by the Commission. This timescale could be affected by the extent of the policy changes proposed.
- 73. Once the draft Bill is approved by the Commission and submitted to the Speaker, it is likely to take approximately five/six months until the Bill receives Royal Assent. This timescale largely depends on the speed of the passage of the Bill through the Assembly. It should also be noted that under section 11 of the 1998 Act, any Bill passed by the Assembly may be referred to the Supreme Court by the Advocate General or the Attorney General for Northern Ireland.

Short-term options in relation to the appointment of the IFRP pending Legislative Reform

- 74. Pursuant to section 4(1) of the 2011 Act, the Chair and other Panel Members shall be appointed by the Commission and pursuant to section 4(2) each appointment shall be for a term of five years from the date of appointment.

- 75. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Risk/Corporate Governance Issues:

- 76. It should be noted that the terms of office for the current IFRP members and chair ended on 1st July 2016. It was indicated in Submission AC109 and Submission AC0215 that whilst a short delay in the recruitment of a new IFRP pending implementation of legislative change would be reasonable, a longer delay was clearly not desirable from a governance perspective. No steps have yet been taken to recruit a new IFRP.
- 77. Since previous consideration of this matter in September 2016, further issues have arisen in relation to the implementation of the 2016 Determination as outlined in the updated submission at Appendix 4 of Submission AC1615 by the Director of Corporate Services.
- 78. Furthermore, a particular technical issue has arisen in relation to paragraph 10 of the 2016 Determination, which specifies that *“A Member is not entitled to recover an expense in respect of a payment to a person resident or registered at a place outside the European Union.”*
- 79. The intended departure date for the United Kingdom to leave the EU was 29th March 2019 (“exit day”). In advance of that date, the Secretary of State issued the Assembly Members (Salaries and Expenses) (Period when there is no Executive) (EU Exit) Determination (Northern Ireland) 2019. This 2019 Determination amends paragraph 10 of the 2016 Determination to permit the recovery of expenditure incurred by a Member with a UK-based supplier after exit day. However, the 2019 Determination will cease to have effect once an Executive is appointed and the position will revert to that set out in the 2016 Determination as originally enacted.
- 80. The UK Government currently intends to leave the EU on 31st October 2019 and clearly a solution will have to be found to address the technical issue in relation to paragraph 10 of the 2016 Determination. The options were set out in Submission AC1614 presented to the Commission on 24th June 2019 entitled “Post EU Exit Implications for IFRP 2016 Determination.” These options included the appointment of a new IFRP to enable a Determination to be issued

under section 11(3) (b) of the 2011 Act. However, following discussion, Members agreed that correspondence should be sent to the Secretary of State asking for the Secretary of State to issue a further Determination to amend paragraph 10 of the 2016 Determination, to specifically include a provision that the amendment should stay in place after the date on which the Executive is formed.

Corporate Governance

81. The provision of support to Members in the exercise of their duties constitutes an integral part of the development of a confident legislature with a strong parliamentary culture.

Conclusion and recommendations

82. It is recommended that the Commission:
- Considers the options for reform of the IFRP outlined in this paper;
 - Considers whether to instruct officials to recommence consideration of legislative reform and to make preparations for such reform to be implemented upon resumption of normal Assembly business;
 - If recommending legislative reform preparations, to consider whether a new consultation document should be issued to Commission Members for circulation to their Parties on the basis of the questions outlined at paragraphs 84-99 of this submission; and
 - Considers whether the IFRP should be appointed now, on the basis of the current legislation, pending legislative reform.
83. If the Commission wishes to recommence consideration of legislative reform, the Commission is asked to confirm the following matters:

Underlying Principles

84. The Commission is asked to confirm its previously agreed position that it does not wish to abolish the IFRP or create an IPSA style body.
85. The Commission is asked to confirm that it wishes to maintain section 3(1) of the 2011 Act, which makes provision in relation to the independent status of the IFRP and if it does not wish to retain this section, what changes should be made.
86. The Commission is asked to confirm that it is content with the functions of the IFRP and if not what changes should be made. Pursuant to section 3 of the 2011 Act the functions of the IFRP are to make determinations as to (a) the salaries and allowances payable to Members of the Assembly under section 47 of the 1998 Act; and (b) the pensions, gratuities and allowances payable under section 48 of that Act.

Amending disqualifications for membership of the IFRP

87. The Commission is asked to confirm which disqualifications outlined at Table 1 should be removed.

Amending composition or size of the IFRP

88. The Commission is asked to confirm whether the 2011 Act should be amended so as to *require* that the IFRP include certain classes of persons, e.g. a former Member and specify which class of person should be specified.
89. The Commission is asked to confirm whether the 2011 Act should be amended to change the composition of the IFRP namely the number of IFRP members and if so how.
90. The Commission is asked to confirm whether the 2011 Act should be amended to change the length of the term of office of the IFRP members and if so what should the length of this term of office be and should appointments be staggered to maintain continuity.

Amending restriction to one determination per Assembly

91. The Commission is asked to confirm whether the existing restriction of one determination per mandate (bar exceptional circumstances) in the 2011 Act should be removed.
92. The Commission is asked to confirm whether the 2011 Act should be amended to require another party (e.g. the Commission or a Committee of the Assembly) to agree with the IFRP that exceptional circumstances exist before it is empowered to act.

Additional Suggestions for Legislative Reform

93. The Commission is asked to consider whether it wishes to amend the 2011 Act to include a requirement in the legislation for the IFRP to follow certain consultation processes in reaching their Determination and if so, what consultation processes would be required.
94. The Commission is asked to consider whether it wishes to amend the 2011 Act to include a legislative requirement that a determination should be made no later than, for example, six or nine months before an Assembly election and if so how.
95. The Commission is asked to consider whether it wishes to amend the 2011 Act to include a legislative requirement that the IFRP should review the implementation/outworkings of a Determination after a set period and if so after what period.

96. The Commission is asked to consider whether it wishes to amend the 2011 Act to provide a mechanism for review/appeal of a provision within a Determination (this will require further legal consideration) and if so how.
97. The Commission is asked to consider whether it wishes to amend the 2011 Act to provide a definition of the role and support needs of a Member. As this is without legislative precedent, further legal consideration would be required in relation to this suggestion. An alternative may be to place a requirement on IFRP to have regard to guidance on Members' roles and support needs published by the Commission.
98. The Commission is asked to consider whether it wishes to amend the 2011 Act to specify the defined aspects of financial support for Members that the IFRP must determine and/or limit the aspects of financial support that the IFRP can determine. Further legal consideration would be required in relation to this suggestion to ensure compatibility with section 47 of the 1998 Act.

Short-term arrangements pending legislative reform

99. The Commission is asked to confirm which of the short-term arrangements outlined at paragraph 75 above it wishes to instruct officials to proceed with namely:

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 in any of the ways outlined in this submission and thereafter the Commission appoints an IFRP once the changes have been made.

100. The Commission is asked to consider whether it wishes the above questions outlined in paragraphs 84-99 of this submission to be incorporated into a new draft consultation document so that they can be discussed with their Parties.

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