

OMBUDSMAN AND COMMISSIONER FOR COMPLAINTS (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Committee for the Office of the First Minister and deputy First Minister ('the Committee'), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. There are presently two statutory offices:
 - the Assembly Ombudsman for Northern Ireland ('the Ombudsman') provided for in the Ombudsman (Northern Ireland) Order 1996 ('the Ombudsman Order'); and,
 - the Northern Ireland Commissioner for Complaints ('the Commissioner') provided for in the Commissioner for Complaints (Northern Ireland) Order 1996 ('the Commissioner Order').
4. The Office of the First Minister and deputy First Minister ('OFMDFM') commissioned Deloitte to review the offices of the Ombudsman and Commissioner and Deloitte's Report was published in 2004.¹ The then Ombudsman/Commissioner approached the Committee in April 2010 and asked it to consider taking forward the Review's recommendations for updating the offices.
5. The Committee engaged in 2010 with OFMDFM which was undertaking a review of the Deloitte Report recommendations. OFMDFM indicated that due to other competing priorities and resource constraints it would not be bringing forward legislation in light of the Deloitte Report but welcomed the Committee doing so and confirmed the Department's willingness to cooperate.

¹ <http://www.ofmdfmi.gov.uk/index/making-government-work/legislation-and-the-assembly/assembly-ombudsman.htm>

6. The Committee carried out a public consultation in 2010, developed its policy and engaged further in 2012 with key stakeholders including OFMDFM and departments and the current Ombudsman/Commissioner. The Committee's report² on its legislative proposals was debated and approved by the Assembly in September 2013.

7. The Committee has now introduced a Northern Ireland Public Services Ombudsperson bill ('the NIPSO Bill') to merge and reform the offices of Commissioner and Ombudsman in a new single office.

ISSUE AND POLICY

8. The 1996 Orders each contain provision requiring the office holder to vacate the office on completing the year of service in which an office holder attains the age of 65 years. This occurred on 31 August 2014 and the office holder was re-appointed to each office in an acting capacity. This re-appointment was made to enable a future permanent appointment to be made under the new legislation proposed by the Committee.

9. The 1996 Orders provide for the appointment of an acting office holder during the period of 12 months following a vacancy arising. The appointments in an acting capacity will therefore come to an end on 31 August 2015.

10. The time required for the passage into law of the Committee's NIPSO Bill, the lead time for the recruitment and appointment of the first NIPSO and allowance for timely commencement of the NIPSO Bill means that the new office of NIPSO will not replace the existing offices until early 2016.

11. In order to avoid a vacancy in the offices of Ombudsman and Commissioner after 31 August 2015 the Committee agreed that it would take steps to amend the 1996 Orders in order to extend the period for which an acting appointment may be made from 12 months to 24 months.

OPTIONS CONSIDERED AND CONSULTATION

12. Responsibility for identifying office holders for appointment to the existing offices rests with OFMDFM. The Committee has engaged with OFMDFM officials regarding options to manage the risk of a vacancy in the offices. The Committee has also consulted the acting Ombudsman/Commissioner. Given the limited nature and effect of its proposals the Committee did not consider that public consultation was required.

13. Options considered included whether any enabling powers in the 1996 Orders could be used to address this issue. OFMDFM and the Committee concluded that this was not possible.

14. A second option considered was that OFMDFM could commence a recruitment exercise under the 1996 Orders to identify and appoint a new Ombudsman/Commissioner

² [Report on legislative proposals \[http://www.niassembly.gov.uk/assembly-business/committees/office-of-the-first-minister-and-deputy-first-minister/legislation/northern-ireland-public-services-ombudsman-bill/\]](http://www.niassembly.gov.uk/assembly-business/committees/office-of-the-first-minister-and-deputy-first-minister/legislation/northern-ireland-public-services-ombudsman-bill/)

by 31 August 2015. In order to attract suitably qualified candidates it was felt that this appointment would have to be for a minimum term of three years. Given that it is intended the NIPSO Bill would introduce a new statutory regime in April 2016, this would require either provision in the NIPSO Bill under which this Ombudsman/Commissioner would become the first NIPSO or that commencement of the NIPSO Bill be postponed for up to three years.

15. The Committee regards the Ombudsman role in investigating complaints of maladministration in public services as closely aligned with the work of the Assembly and its committees in holding ministers, departments and arm's length bodies to account. This is reflected in a number of key provisions in the NIPSO Bill including that which provides that the Assembly Commission (rather than OFMDFM) would identify a candidate for the position of NIPSO. Formal appointment by Her Majesty would be on the nomination of the Assembly (rather than ministers) and budget estimates would be submitted to the Assembly's Audit Committee rather than ministers. The Committee's view is that the first appointee to the new office should be the Assembly's nominee.

16. The third option considered was to seek to amend the 1996 Orders by substituting "24 months" for "12 months". This would enable the acting Ombudsman/Commissioner to remain in office to 31 August 2016, well beyond the anticipated commencement date of the NIPSO Bill on 1 April 2016.

17. The Committee then considered whether the necessary amendments could be contained in the NIPSO Bill itself. Were the NIPSO Bill to receive Royal Assent before 31 August 2015 then amendments to the 1996 Orders could be made. While mindful of the Assembly's previous support for its proposals and hopeful that the NIPSO Bill may pass the Assembly before summer recess 2015 the Committee does not wish to presume that this will happen.

18. The Committee considered whether the risk would be better managed by a very short bill which had the single purpose of substituting "24 months" for "12 months" in the relevant provisions of the 1996 Orders. The Committee considered that a short single purpose bill would be likely to require less time to pass the Assembly than the NIPSO Bill and the risk would be managed sooner rather than later.

19. The Committee concluded that a short single purpose bill was the best option.

20. The Committee also agreed that it would seek the Assembly's agreement to accelerated passage for the bill on the basis that the Second Stage debate and two amending stages would provide sufficient time for Assembly consideration of a short, single purpose bill.

RETROSPECTIVE EFFECT

21. The Committee understands that at 31 August 2014 the acting Ombudsman was appointed for the maximum time then permitted under the 1996 Orders. The Committee agreed that the bill should have retrospective effect and that the amendments to the 1996

Orders should be regarded as having come into operation on 30 August 2014. This will provide flexibility as to the mechanism used to fill the position of acting Ombudsman after 31 August 2015 - whether by new appointment, reappointment or extension of the existing appointment.

22. The Committee is mindful that retrospective legislation is quite uncommon³. The Committee considered that retrospective effect was justified as the provisions in this case are administrative, are in place for a short time, do not affect the rights of the citizen and quickly and pragmatically resolve a problem which might otherwise arise.

COMMENTARY ON CLAUSES

Clause 1: Extension of period for which acting Ombudsman and acting Commissioner may hold office

Clause 1 amends Article 6(2)(a) of the Ombudsman Order and Article 5(2)(a) of the Commissioner Order; in each case by substituting “24 months” for “12 months”. The effect of these amendments is that the maximum period for which an acting Ombudsman and an acting Commissioner may hold office is 24 months following the office becoming vacant.

Clause 2 Retrospective operation of clause 1

Clause 2 provides that the amendment made by clause 1 is to be regarded as coming into force on 31st August 2014. This ensures that the Acting Ombudsman and Acting Commissioner cease to hold office on 31st August 2016 at the latest.

FINANCIAL EFFECTS OF THE BILL

23. The Committee does not consider that the bill will have any direct financial effect.

24. It is intended to avoid costs which could be incurred were it necessary to take action now to fill the offices of Ombudsman and Commissioner under the 1996 Orders at a point where the Assembly has approved in principle the Committee’s policy proposals to abolish these offices and replace them with a new single office of Public Services Ombudsperson and is about to consider a bill to that effect.

HUMAN RIGHTS AND EQUALITY

25. The Committee does not consider that the bill raises any human rights or equality issues.

³ See however section 27(5) of the Pensions Act (Northern Ireland) 2012.

LEGISLATIVE COMPETENCE

26. The Chairperson of the Committee for the Office of the First Minister and deputy First Minister made the following statement:

“In my view the Ombudsman and Commissioner for Complaints (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly.”