



Northern Ireland  
Assembly

**Ad Hoc Committee on the Public Services Ombudsperson Bill**

# **Report on the Public Services Ombudsperson Bill**

**Together with the Minutes of Proceedings of the Committee, the Minutes of Evidence,  
Written Submissions and Correspondence and other papers relating to the Report**

**Ordered by the Ad Hoc Committee on the Public Services  
Ombudsperson Bill to be printed on**

**29 September 2015**

# Powers and Membership

## Powers

Under Standing Order 53 ad hoc committees shall be established from time to time to deal with any specific time-bounded terms of reference that the Assembly may set. The Assembly shall decide the membership of any such committee and may direct its method of operation.

The Ad Hoc Committee on the Public Services Ombudsperson Bill was established by Resolution of the Assembly on Monday 11 May 2015 in accordance with Standing Order 53(1). The remit of the Committee was to consider the Public Services Ombudspersons Bill and to submit a report to the Assembly.

Each ad hoc committee may exercise the power in section 44(1) of the Northern Ireland Act 1998 as below:

“(1) The Assembly may require any person—

- (a) to attend its proceedings for the purpose of giving evidence; or.
- (b) to produce documents in his custody or under his control, relating to any of the matters mentioned in subsection (2).

(2) Those matters are—

- (a) transferred matters concerning Northern Ireland
- (b) other matters in relation to which statutory functions are exercisable by Ministers or the Northern Ireland departments.”

## Membership

The Committee has eleven members including a Chairperson and Deputy Chairperson with a quorum of five. The membership of the Committee is as follows:

Lord Morrow of Clogher Valley (Chairperson)

Pat Sheehan (Deputy Chairperson)

Cathal Boylan

Leslie Cree

Colum Eastwood

David Hilditch

Trevor Lunn

Maeve McLaughlin

Alban Maginness

Gary Middleton

Jim Wells

It was agreed by the Committee that where Members were unable to attend meetings they could nominate MLA colleagues to do so.

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## List of Abbreviations

BMA	British Medical Association
C&AG	Comptroller and Audit General
COPNI	Commissioner for Older People for Northern Ireland
CSCNI	Civil Service Commissioners for Northern Ireland
DFP	Department of Finance and Personnel
DHSSPS	Department of Health, Social Services and Public Safety
DoJ	Department of Justice
ECHR	European Convention on Human Rights
FE	Further education
GP	General practitioner
ICCPR	International Covenant on Civil and Political Rights
IOI	International Ombudsman Institute
JR	Judicial Review
LPP	Legal professional privilege
MDU	Medical Defence Union
MLA	Member of the Legislative Assembly
MOU	Memorandum of Understanding
MPS	Medical Protection Society
NI	Northern Ireland
NIAO	Northern Ireland Audit Office
NIHRC	Northern Ireland Human Rights Commission
NIJAO	Northern Ireland Judicial Appointments Ombudsman
NILGA	Northern Ireland Local Government Association

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NIO	Northern Ireland Office
NIPSO	Northern Ireland Public Services Ombudsperson
NISCC	Northern Ireland Social Care Council
NUS-USI	National Union of Students – Union of Students in Ireland
OFMDFM	Office of the First Minister and deputy First Minister
OIA	Office of the Independent Adjudicator for Higher Education
OLC	Office of the Legislative Counsel
OSA	Official Secrets Act
OU	Open University
PRRT	The Police Rehabilitation and Retraining Trust
QUB	Queen’s University Belfast
RQIA	Regulation and Quality Improvement Authority
UK	United Kingdom
UU	Ulster University

## Executive Summary

1. This report sets out the Ad Hoc Committee's consideration of the Public Services Ombudsperson Bill. The main aim of the Bill is to combine the offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints into a single office to be known as the Northern Ireland Public Services Ombudsperson ('the NIPSO'), combining the powers and remit of the existing offices. The Bill will also reform remit and powers and provide for appointment of the NIPSO on the nomination of the Assembly and for the NIPSO to report to the Assembly and Assembly committees.
2. The Committee called for evidence on the Bill and received 34 written submissions and held a number of oral evidence sessions. The Committee considered the issues raised by stakeholders and sought views from the Committee for the Office of the First Minister and deputy First Minister (OFMDFM) as the sponsor of the Bill.

## Amendments

3. The Committee considered stakeholder comments on use of the term Ombudsperson rather than Ombudsman. The Committee noted the Committee for the Office of the First Minister and deputy First Minister's intention that the term be unambiguously gender neutral and also considered a briefing paper prepared for the Committee for OFMDFM by Assembly Research and Information Service on the etymology of the term Ombudsman. The Committee agreed by majority to propose amendments to the Bill to change Ombudsperson to Ombudsman. Given that there are 247 instances in the Bill as introduced, the Committee agreed that amendments to the first instance in Clause 1, to the short title and long title should be tabled in the name of the Chairperson in advance of consideration stage with amendments to subsequent Clauses and Schedules to be dealt with at further consideration stage.
4. During the period covered by this report, the Committee for OFMDFM as the sponsor of the Bill, proposed a number of amendments following legal advice and stakeholder comments. The full text of all amendments is contained in the Clause by Clause consideration section of this report.

## Key issues

5. During consideration of the Bill, the Committee identified a number of key issues:
  - Power to investigate on own initiative (as relating to Clause 8)
  - Recommendations of payment to persons aggrieved (as relating to Clause 11)
  - Inclusion of universities within the NIPSO's remit (as relating to Clause 18)
  - Legal representation, legal privilege and court proceedings and privileged information (as relating to Clauses 30, 32, 38 and 47)
  - Reports to the Assembly (as relating to Clause 37)
  - Budget of the NIPSO (as relating to Schedule 1)

### **Power to investigate on own initiative (as relating to Clause 8)**

6. This is the power for the NIPSO to launch an investigation without waiting for a complaint from a person aggrieved. This is a new power which isn't exercisable by the existing offices. The criteria for own initiative investigations are similar to the criteria for ordinary investigations. The key difference is that the NIPSO can only launch an own initiative investigation where there is a reasonable suspicion of systemic maladministration or systemic injustice (injustice consequent on the exercise of clinical or professional judgement in health and social care). This power is common to most European ombudsmen and to those in Australia and New Zealand.
7. The Committee noted that while a number of stakeholders welcomed the power of own initiative, others expressed concerns in relation to a perceived lack of clarity in respect of the criteria to be used by the NIPSO. Concerns were also expressed by the Commissioner for Older People for Northern Ireland (COPNI) on the potential for duplication with the statutory duties of her office.
8. The Committee noted the provisions in Clause 9 for the NIPSO to establish and publish the criteria to be used in determining whether to commence an own initiative investigation. The Committee also noted that Clause 42 of the Bill requires the NIPSO to consult COPNI if the NIPSO, at any stage in the course of considering a complaint or conducting an investigation, forms the opinion that the matter could be the subject of an investigation by the Commissioner for Older People and hence duplication is unlikely.

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9. The Committee was content with the provisions of Clause 8

### **Recommendations of payment to persons aggrieved (as relating to Clause 11)**

10. The Medical Protection Society, Law Society for Northern Ireland, British Medical Association and Medical Defence Union raised concerns about the power in Clause 11 (b)(ii) for the Ombudsperson to recommend that a listed authority make a payment to the person aggrieved where it appears to be desirable in order to bring about a settlement. Concerns were expressed that this power creates a parallel jurisdiction to award compensation without the necessary safeguards that have evolved in civil court proceedings.
11. The Committee sought legal advice in respect of the issues raised by stakeholders. The Committee considered the legal advice and was satisfied that the provisions in Clause 11 do not create a parallel jurisdiction to award compensation as the NIPSO does not have the power under the Bill to award compensation. The Committee notes that a listed authority may apply for judicial review and that the provisions of Clause 44 provide that that an aggrieved person may apply to the court for relief.
12. The Committee also considered the evidence provided by the British Medical Association in respect of JR55 –v- the Northern Ireland Commissioner for Complaints – an ongoing case on which the appeal hearing in the Supreme Court is expected in March 2016. The BMA believes that the outcome of this case will have implications for provisions within the Bill at Clause 11(b)(ii) – recommendation of a payment to the person aggrieved – and Clause 34(2) reports on investigations. The Committee noted that JR55 refers to legislation which will be repealed by the Bill but sought comment from the Committee for OFMDFM as sponsor of the Bill. The Committee also sought legal advice in respect of this case and its potential implications for this Bill.
13. The Committee considered this legal advice and noted that the decision of the Supreme Court in respect of JR55 will authoritatively state the powers conferred by the Commissioner for Complaints (Northern Ireland) Order 1996, including whether under this Order, the Commissioner has the power to recommend a ‘consolatory’ payment. Under this Public Services Ombudsperson Bill, the Ombudsperson will have express power to recommend a payment to a person aggrieved. The Committee noted that the decision of the Supreme Court on the powers exercisable under the Commissioner for Complaints Order cannot be read across to this Bill.

14. The Committee was content with the provisions of Clause 11.

#### **Inclusion of universities within the NIPSO's remit (as relating to Clause 18)**

15. This Clause introduces a new power for the NIPSO to investigate maladministration as it relates to universities. This supersedes the existing power of the Board of Visitors of a university to investigate complaints by students. This Clause provides that the NIPSO should deal with complaints of maladministration from students and the Board of Visitors would continue to deal with other categories of complaint. The NIPSO has no jurisdiction to investigate a matter to the extent that it relates to academic judgement.
16. In their written submissions and oral evidence to the Committee, neither Queen's University Belfast (QUB) nor the Ulster University accepted the proposed jurisdiction of the NIPSO over the universities. Both institutions were of the view that this proposed Clause duplicated the work of the existing Board of Visitors which they considered offered a more flexible alternative remedy for students.
17. This view was not shared by the student bodies who responded to the call for evidence. QUB Students' Union considered that complaints from students should be transferred completely to the Ombudsperson and that the Board of Visitors should be excluded from considering any complaints in relation to student matters. The NUS-USI expressed significant concerns about the Bill which they considered did not go far enough and called for an independent adjudicator/Ombudsperson which addresses the broadest range of complaints and appeals from students, not simply maladministration. Colleges NI and the NUS-USI also sought clarification on the role of the NIPSO in respect of the six regional colleges of further education
18. The Committee considered these issues and also sought legal advice in respect of implications on the powers granted to the NIPSO of the recent ruling by Mr Justice Horner in the matter of an application by CS for Judicial Review and in the matter of decisions taken by the Queen's University of Belfast. The Committee considered the legal advice and was satisfied that Clause 18 does not interfere with the limits on the availability of judicial review in relation to the jurisdiction of the Board of Visitors.
19. With regard to the role of the NIPSO in respect of the colleges of further education, the Committee noted that such colleges are brought within the

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remit of the NIPSO by their inclusion in the listed authorities in Schedule 3 as 'an institution of further education'.

20. The Committee was content with the provisions of Clause 18. The Committee noted the concerns of Mr Alban Maginness in respect of the inclusion of universities in the remit of the Public Services Ombudsperson.

***Legal representation, legal privilege and court proceedings and privileged information (as relating to Clauses 30, 32, 38, and 47)***

21. The Law Society of Northern Ireland, Colleges NI, the Bar Council, Medical Protection Society and British Medical Association raised strong concerns that Clauses 30(6) and 30(7)(b) create a fundamental imbalance in the legislation in favour of the Ombudsperson and would appear incompatible with the basic right to legal representation and that these proposals raise serious issues of proportionality and right to a fair hearing under Article 6 of the European Convention on Human Rights (ECHR). In addition, these stakeholders expressed concerns about the provisions of Clause 32 and the basic right against self-incrimination and the right of legal professional privilege. Concerns were also expressed on the provisions of Clauses 38 and 47 which stakeholders regarded as ineffective as a safeguard in relation to privileged information.
22. The Committee considered these issues at length and sought legal advice in respect of the issues raised by the stakeholders. The Committee noted that the Ombudsman (Northern Ireland) Order 1996 provides that bodies within the Ombudsman's remit cannot rely on privilege which would be allowed by law in legal proceedings as grounds for the non-production of relevant documents. The Committee considered the legal advice and was satisfied that, in respect of Clause 30, the discretion provided is capable of being exercised in accordance with the principles of fairness and does not give rise to a breach of Convention rights. In respect of Clauses 32 and 38, the Committee noted that the provisions of Clause 32 are subject to the provisions of Clause 38. The Committee also noted that in respect of Clause 47 that while a report of the NIPSO may be produced in evidence it is rebuttable and that where the NIPSO has obtained privileged or confidential information, in accordance with Clause 38(2) may disclose that such documents were obtained but must not disclose the content.
23. Accordingly the Committee was satisfied that the provisions of these Clauses do not breach Convention rights or interfere with privilege and was

content with these Clauses. The Committee noted the concerns of Mr Alban Maginness, Mr Colum Eastwood and Mr Trevor Lunn in respect of provisions in the Bill on privileged and confidential information.

### ***Reports to the Assembly (as relating to Clauses 37)***

24. The NIPSO has several reporting obligations to the Assembly. Firstly, the NIPSO must lay an annual report before the Assembly. Secondly, in a particular case where an injustice has been uncovered by the NIPSO but not remedied, a report on that case can be laid before the Assembly. Thirdly, if an own initiative investigation has been launched, the NIPSO must report on this to the Assembly. Finally, the NIPSO has discretion to make any other reports to the Assembly thought suitable.
25. The Committee noted evidence welcoming this provision as a means of strengthening the office of the NIPSO and also noted the concerns of the Medical Defence Union and British Medical Association that such a power could be construed as coercive and have significant reputational impact, for example for a general practitioner. The Committee noted that the Ombudsman (Northern Ireland) Order 1996 provides the Ombudsman may lay a special report before the Assembly where injustice has been sustained by a person as a result of maladministration and that injustice has not been, or will not be, remedied. The Committee considered the issues raised by stakeholders and was content with Clause 37.
26. As at Clause 11, the Committee considered the evidence provided by the British Medical Association in respect of JR55 –v- the Northern Ireland Commissioner for Complaints and its view that the outcome of this case will have implications for provisions within the Bill at Clause 11(b)(ii) – recommendation of a payment to the person aggrieved – and Clause 34(2) reports on investigations. These concerns potentially also relate to Clause 37. The Committee noted that JR55 refers to legislation which will be repealed by the Bill but sought comment from the Committee for OFMDFM as sponsor of the Bill. The Committee also sought legal advice in respect of this case and its potential implications for this Bill.
27. At its meeting of 29 September 2015, the Committee considered the legal advice in respect of potential implications of JR55. The Committee noted that the decision of the Supreme Court in respect of JR55 will authoritatively state the powers conferred by the Commissioner for Complaints (Northern Ireland) Order 1996. The Committee also noted that while Article 19 of the

Order provides that the *'the Commissioner shall annually lay before the Assembly a general report on the performance of his functions.... and may from time to time lay such other reports before the Assembly as he thinks fit'*, there is no reference in the Order to the laying of special reports before the Assembly. Under Clause 37 of this Bill, the Ombudsperson will have express power to lay a special report before the Assembly.

28. The Committee noted the comments of the Court of Appeal in JR55 which stated *"Even assuming a power to lay such a report before the Assembly there would have to be proper safeguards and procedural fairness before any such power could be properly exercised"*. The Committee noted that the NIPSO, as a public authority, will be required by section 6 of the Human Rights Act 1998 to act in a manner which is compatible with rights under the European Convention on Human Rights, including Article 6 (right to a fair hearing) and Article 8 (right to a private and family life); and to ensure that it discharges its functions in a manner which is procedurally fair.
29. The Committee expressed its reservations in respect of the provisions of this Clause for the NIPSO to lay a special report before the Assembly. The Committee considered legal advice on the issue. The Committee expressed concerns that this power could be potentially construed as coercive and that such a report had the potential to have a detrimental impact on a medical practitioner.
30. The Committee recommends that the Committee for the Office of the First Minister and deputy First Minister, as sponsor of the Bill, satisfies itself that there are proper safeguards and procedural fairness before any such power is exercised.

### ***Budget of the NIPSO (as relating to Schedule 1)***

31. Schedule 1 is introduced by Clause 1 and sets out the administrative detail of the establishment of the NIPSO. The Committee noted that the Assembly's Audit Committee, while content that it should have responsibility for agreeing the estimate of the NIPSO and laying it before the Assembly, expressed concerns that as currently drafted the Bill may not provide the NIPSO with sufficient protection from the Executive controlling or directing its access to resources.
32. The Audit Committee highlighted its experience with the agreement of the budget for the Northern Ireland Audit Office (NIAO). The Audit (Northern

Ireland) Order 1987 provides for the Comptroller and Auditor General (C&AG) to prepare estimates for the use of resources by the NIAO and the Northern Ireland Act provides for the Audit Committee to lay the estimate before the Assembly. The Audit Committee's experience is that, despite it having this statutory function, the Department of Finance and Personnel (DFP) and the Executive have nonetheless sought to direct what the NIAO's budget should be.

33. The Committee noted that the Audit Committee is seeking resolution through a protocol with DFP and is seeking Ministerial agreement to a Memorandum of Understanding between the Assembly and the Executive on the Budget Process where such a protocol could be included. However, the Audit Committee is not aware that such a resolution is imminent and states that it is likely that as currently drafted paragraph 17 of Schedule 1 would allow for similar issues to arise in respect of the NIPSO and the budget of the NIPSO's office.
34. The Committee sought the views of the Committee for OFMDFM on the concerns expressed by the Audit Committee. The Committee for OFMDFM noted the Audit Committee's comments but did not propose to bring forward amendments in this regard. The Committee for OFMDFM noted the distinction made between the Audit Committee agreeing the estimate and it being included in the Finance Minister's Budget Bill. However, the Committee for OFMDFM noted that to date there had been no divergence between the agreed estimate and the figure included in the Budget Bill and it further noted the Audit Committee was seeking to resolve the issue through a protocol with DFP.
35. The Committee was content to agree Schedule 1 but draws the Assembly's attention to the concerns expressed by the Audit Committee that Schedule 1 may not provide the NIPSO with sufficient protection from the Executive controlling or directing its access to resources.
36. The Committee strongly recommends that the Committee for OFMDFM as sponsor of the Bill takes steps to address the concerns raised by the Audit Committee in respect of ensuring that there is sufficient protection from the Executive controlling or directing the NIPSO's access to resources. The Committee notes that the Audit Committee has urged the Minister for Finance and Personnel to agree a proposed Memorandum of Understanding (MOU) between the Assembly and the Executive on the budget process in which a protocol to resolve similar issues in respect of the budget of the

Northern Ireland Audit Office could be included. The Committee notes that to date, no such protocol or MOU has been agreed.

37. The Committee recommends that an MOU acknowledging and safeguarding the NIPSO's financial independence should be agreed with DFP at the earliest opportunity.

### **Delegated Powers of the Bill**

38. The Committee sought advice from the Examiner of Statutory Rules in relation to the powers within the Bill to make subordinate legislation. The Examiner drew attention to provisions in Clause 12(2) in relation to vesting of the power in the Office of the First Minister and deputy First Minister to amend the listed authorities in Schedule 3 by draft affirmative procedure subject to the concurrence of the Assembly Commission; Clause 19(3) as above in respect of amending the list of tribunals set out in Schedule 4; Clause 22(2) where the power of the Assembly Commission to amend by order matters excluded from the Ombudsperson's jurisdiction as set out in Schedule 5 should be subject to draft affirmative resolution and subject to the concurrence of OFMDFM; and Clauses 51 and 52 on the power of the Assembly Commission to make further provision by order.
39. The Committee referred the Examiner's comments to the Committee for OFMDFM and it confirmed that in response to the Examiner's comments it would bring forward appropriate amendments.

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## Introduction

40. The Ad Hoc Committee on the Public Services Ombudsperson Bill – ‘the Committee’ – was established by resolution of the Assembly on 11 May 2015 in accordance with Standing Order 53(1). The remit of the Committee was to consider the Public Services Ombudsperson Bill and to submit a report to the Assembly by 30 June 2015.
41. The Public Services Ombudsperson Bill was introduced to the Assembly on 20 April 2015 by the Committee for the Office of the First Minister and deputy First Minister when the deputy Chairperson said:

*“I beg to introduce the Public Services Ombudsperson Bill [NIA 47/11-16], which is a Bill to establish and make provision about the office of the Northern Ireland Public Services Ombudsperson; to abolish the offices of the Northern Ireland Commissioner for Complaints and the Assembly Ombudsman for Northern Ireland; to provide that the Northern Ireland Public Services Ombudsperson is, by virtue of holding that office, the Northern Ireland Judicial Appointments Ombudsman; and for connected purposes”.*
42. The [Bill as introduced](#) contains 57 Clauses and 9 Schedules and will combine the offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints into a single office to be known as the Northern Ireland Public Services Ombudsperson (‘the NIPSO’), combining the powers and remit of the existing offices. The Bill will also reform remit and powers and provide for appointment of the NIPSO on the nomination of the Assembly and for the NIPSO to report to the Assembly and Assembly Committees.
43. At its first meeting on 12 May 2015, the Committee elected Lord Morrow of Clogher Valley MLA as Chairperson and Mr Pat Sheehan MLA as deputy Chairperson. The Committee agreed a schedule of further meetings and made decisions in relation to calling for evidence.
44. The Committee had before it the Public Services Ombudsperson Bill (NIA 47/11-16) and the Explanatory and Financial Memorandum which accompanied the Bill.
45. At its meeting of 9 June 2015, the Committee agreed to table a motion seeking an extension of the committee stage until 30 September 2015. The motion was agreed in plenary on 23 June 2015.

46. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 12, 19 and 26 May, 2, 9, 16, 23 and 30 June, 8, 14, 15, 22 and 29 September 2015. The relevant extracts from the Minutes of Proceedings for these meetings are included in [Appendix 2](#).
47. The Committee agreed at its meeting of 12 May 2015 to issue a call for evidence. 34 submissions were received and these are at [Appendix 3](#). The Committee took oral evidence from a range of stakeholders and also held a stakeholder event on 28 May 2015 which was attended by 5 organisations and Mrs Hassin, a member of the public.
48. The Committee carried out its formal Clause by Clause scrutiny of the Bill on 15 September 2015.
49. At its meeting of 29 September 2015, the Committee agreed its report on the Bill and agreed that it should be published.

## **Acknowledgements**

50. The Committee wishes to express its sincere appreciation to the all those who provided written and oral evidence. This evidence was very beneficial to the Committee's consideration of the Bill.

## Consideration of the Bill by the Committee

### Background

51. The Office of the First Minister and deputy First Minister (OFMDFM) commissioned Deloitte Ltd. to review the offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints and Deloitte's report on the review was published in 2004. The Northern Ireland Ombudsman Dr. Tom Frawley, current holder of the offices of the Assembly Ombudsman and Commissioner for Complaints, approached the Committee for OFMDFM in April 2010 and asked it to consider taking forward the review's recommendations for updating the offices.
52. OFMDFM indicated in June 2010 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 for OFMDFM doing so and confirmed the Department's willingness to cooperate.
53. The Committee for OFMDFM carried out a public consultation on the recommendations in the Deloitte report and other related matters in late 2010 and commissioned an analysis from Assembly Research and Information Service of the responses received. This [analysis](#) was published in March 2011.
54. The Committee for OFMDFM took evidence from the Northern Ireland Ombudsman and Ombudsmen in the Republic of Ireland, Scotland and Wales during 2011. The Committee for OFMDFM developed its policy proposals and sought views of key stakeholders including OFMDFM, the Assembly Commission, Assembly committees, the Northern Ireland Ombudsman and the Equality Commission on these proposals in 2012.
55. The Committee for OFMDFM agreed its policy proposals in March 2013 and agreed to prepare a written report to inform an Assembly debate on the Committee's legislative proposals. The Committee's [report](#) (NIA 120/11-15) was agreed by the Assembly on 16 September 2013.
56. The Committee for OFMDFM proposed to combine the offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland

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Commissioner for Complaints with their current powers, remit and responsibilities subject to the proposals below and as detailed in full in the Committee for OFMDFM report.

- The new office would be known as the Northern Ireland Public Services Ombudsman or NIPSO;
- Appointment as NIPSO would be for a single, non-renewable, fixed term of seven years;
- The mechanics of recruitment and selection of a suitable candidate would be under the auspices of the Assembly Commission;
- Formal appointment would be by Her Majesty on the nomination of the Assembly and removal before expiry of the fixed term would reflect the appointment arrangements;
- There would be restrictions on appointment and on leaving office aimed at avoiding actual or perceived conflicts of interest;
- Temporary vacancies in office would be provided for by appointment of an acting NIPSO;
- The NIPSO's salary would be determined by the Assembly Commission subject to an upper limit;
- Existing staff/secondes would have the opportunity to transfer to the NIPSO;
- The NIPSO would have a similar relationship to the Assembly as the Comptroller and Auditor General;
- Where the current legislation indicates a requirement for approval by or accountability to an NI Department this would transfer to the Assembly or its committees as provided for in the Assembly's Standing Orders;
- In relation to budget and spending the NIPSO would be accountable to an Assembly Committee as provided for in Standing Orders;
- The NIPSO's remit would include schools, the Assembly Commission, the Northern Ireland Audit Office and further and higher education institutions, in addition to bodies currently within the Assembly Ombudsman/Commissioner for Complaints remit.
- The NIPSO's remit would not include public sector employment issues;
- In relation to public procurement the NIPSO's remit would be extended and complaints regarding professional judgment in social care would be dealt with on the same basis as complaints regarding clinical judgement in health care;
- Complaints could be made orally (if reduced to writing and agreed within 20 working days) and the NIPSO would have discretion in relation to accepting different written forms of complaint;

- Complaints could be made directly by the aggrieved person, by their Member of the Northern Ireland Legislative Assembly (MLA) or by the aggrieved person's representative; Complaints could also be referred to the NIPSO for determination - by a public body which had sought unsuccessfully to resolve an issue;
- The Northern Ireland residency requirement for complainants would be removed;
- The time limit for making a complaint would be reduced from 12 months from a complainant's knowledge of the event complained of to 6 months from the date of the final decision of the public body's complaints procedure – with public bodies under a duty to sign-post the right of complaint to the NIPSO;
- The NIPSO would have discretion to make an investigation report public where it was in the public interest to do so as well as providing copies to the complainant, aggrieved person's representative, public body and any assisting MLA.
- The option for a complainant of applying for a county court order for damages on foot of the NIPSO's upholding a complaint would be available in respect of all bodies within the NIPSO's remit, subject to compliance with Article 6 European Convention on Human Rights (ECHR);
- The NIPSO would be able to request the Attorney General for Northern Ireland to seek a High Court order where a public body is likely to persist in maladministration;
- The NIPSO would report to the Assembly and its Committees as provided for in Assembly Standing Orders;
- The Secretary of State and Northern Ireland Ministers would have a power to give notice prohibiting disclosure of information where it would be contrary to the public interest or prejudicial to the safety of NI/UK;
- Public bodies would be required to disclose relevant legal advice to the NIPSO for the purposes of his or her investigation, subject to compliance with Article 6 ECHR;
- The NIPSO would be required to cooperate and share information with other Ombudsmen, Commissioners and Regulators, particularly with a view to avoiding overlap and duplication of effort;
- Public bodies under investigation would be required to provide the NIPSO with facilities (such as access to a photocopier);
- The NIPSO would have a power of own initiative investigation subject to evidencing the need for this and giving notice to the relevant department and public body;

- The Department of Justice wishes to include in the NIPSO Bill provisions which would fill the office of the Northern Ireland Judicial Appointments Ombudsman (NIJAO) by reference to the person holding office as the NIPSO;
- Where matters do not fall within the legislative competence of the Assembly, legislation at Westminster will be sought. Where provisions of the Bill require the consent of the Secretary of State, this will be requested.

57. The Public Services Ombudsperson Bill was introduced to the Assembly on 20 April 2015 by the Committee for the Office of the First Minister and deputy First Minister.

58. The Ad Hoc Committee on the Public Services Ombudsperson Bill – ‘the Committee’ – was established on 11 May 2015 to consider the Public Services Ombudsperson Bill and to submit a report to the Assembly.

## Call for evidence

59. In response to its call for evidence the Committee received 34 written submissions. All the written submissions received by the Committee are included at [Appendix 3](#).

60. Following consideration of the written submissions, the Committee received oral evidence from stakeholders at its meetings of 12 and 19 May, 2 June and 14 September 2015. Minutes of evidence are in [Appendix 2](#). In addition, the Committee invited a number of stakeholders to provide [oral evidence](#) at an event held on 28 May 2015.

61. Oral evidence was provided by:

- British Medical Association
- Civil Service Commissioners for Northern Ireland
- Committee for the Office of the First Minister and deputy First Minister
- Ms Joan Hassin (member of the public)
- Northern Ireland Audit Office
- Northern Ireland Human Rights Commission
- Northern Ireland Ombudsman and deputy Ombudsman
- Ombudsman, Republic of Ireland
- Queen’s University Belfast
- Ulster University

62. The Committee also considered briefing papers prepared by Assembly Research and Information Service and commissioned by the Committee for OFMDFM which are contained in [Appendix 4](#). During the period covered by the report, the Committee also commissioned and considered legal advice on a number of issues.
63. Following consideration of the evidence given by stakeholders, the Committee sought the views of the Committee for OFMDFM as sponsor of the Bill. The Committee received a number of briefings from Assembly officials working on the Bill on behalf of the Committee for OFMDFM – the Ombudsperson Bill Team - which addressed the concerns raised by stakeholders.

## **Clause by Clause issues**

### **Clause 1: The Northern Ireland Public Services Ombudsperson**

64. This Clause establishes the office of the NIPSO and provides that the primary function of the NIPSO is to investigate maladministration in government, public and quasi-public bodies.
65. In their responses to the call for evidence, a number of stakeholders including the International Ombudsman Institute, the Welsh Ombudsman, Ombudsman Ireland and the Ombudsman Association all expressed concern about the use of the term Ombudsperson as opposed to Ombudsman. They considered that the term Ombudsman is gender neutral, is a trusted and recognised brand and that changing the title would cause confusion among the public and stakeholders. The Committee sought clarification from the Committee for OFMDFM on the proposed title change and considered its response at the meeting of 9 June 2015.
66. At this meeting, the Committee considered the origin and meaning of the term Ombudsman and agreed by majority vote that further clarification on this was not required. The Committee divided on the proposal to adopt the title Ombudsman in lieu of Ombudsperson and it was agreed by a majority vote to amend the title to the Northern Ireland Public Services Ombudsman in Clause 1, the short title and long title and all subsequent Clauses and Schedules.

67. The Committee also considered the concerns raised by a number of stakeholders including Queen's University Belfast, Ulster University and NILGA that the term 'maladministration' is not clearly defined and the proposal by the NI Human Rights Commission to include an amendment that the NIPSO should have due regard to the human rights of others, as an aspect of investigating maladministration.
68. The Committee agreed at the meeting on 2 June 2015 to seek clarification from Committee for OFMDFM on why a definition of maladministration is not provided in the Bill. On the 9 June 2015 the Committee considered the response from the Committee for OFMDFM which reported that neither the Scottish nor the Welsh Ombudsman legislation defined maladministration and the original Parliamentary Commissioner Act 1967 had not attempted a definition. The Committee for OFMDFM considered that in the absence of evidence that the current approach would give rise to any problems it was content that no change to the Clause was necessary to define maladministration.
69. At its meeting on 15 September 2015 the Committee was content to amend Clause 1 to change the title from the Northern Ireland Public Services Ombudsperson to the Northern Ireland Public Services Ombudsman. The Committee acknowledged that this amendment would require a number of consequential amendments throughout the Bill to reflect the change in title.
70. At its meeting of 8 September 2015 the Ombudsperson Bill Team briefed the Committee on a number of consequential amendments which the Committee for OFMDFM is proposing to make to Clause 1 which reflected an amendment to Schedule 1 to change the status of the NIPSO to 'corporation sole'. The Committee for OFMDFM is also proposing to make a further technical amendment to Clause 1.
71. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 1 and the proposed amendments.

## **Clause 2: Independence**

72. This Clause provides for the independence of the NIPSO from the government in the exercise of his/her functions. There are some exceptions to this, for example the NIPSO has to make regular reports to the Assembly and is accountable for the budget of the office. The submissions received in

respect of this Clause welcomed the independence from the Executive and the Secretary of State.

73. At its meeting of 9 June 2015 the Committee considered a number of stakeholder responses which broadly welcomed the provisions of the Clause. The International Ombudsman Institute welcomed the independence of the NIPSO from the Executive and Secretary of State and Brian Thompson, a member of the public, welcomed the importance given to independence.
74. At its meeting of 8 September 2015, the Committee considered a number of amendments to Clause 2 proposed by the Committee for OFMDFM. The Ombudsperson Bill Team briefed the Committee on these amendments which included replacing Clause 2(2) with a new shorter list highlighting the constraints on the NIPSO.
75. At its meeting on 15 September 2015 the Committee was content with Clause 2 and the proposed consequential amendments to the title of the office.

### **Clause 3: Appointment**

76. Clause 3 relates to the appointment of the NIPSO. It provides that the Ombudsperson is to be appointed by Her Majesty following nomination by the Assembly and requires the Assembly Commission to make arrangements for this. Appointment is for a single seven year term.
77. During the consultation process no stakeholder responses were received in respect of Clause 3 and the Committee made no comments on this Clause during its deliberations.
78. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 3 and the proposed consequential amendments to the title of the office.

### **Clause 4: Abolition of existing offices**

79. Clause 4 provides that as a consequence of the establishment of the NIPSO, the existing offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints shall be abolished.

80. The stakeholder submissions received in respect of this Clause welcomed the merger of the two existing offices into the office of the NIPSO in line with international best practice.
81. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 4 and the proposed consequential amendment to the title of the office.

#### **Clause 5: Power to investigate complaints made by a person aggrieved**

82. Clause 5 provides the key criteria for the power to investigate a complaint made by a member of the public. It provides that the NIPSO may exercise the power to investigate complaints made by a person aggrieved provided that the correct procedure has been followed and complaint is made by a member of the public, relates to a listed authority and concerns maladministration or injustice consequent on the exercise of clinical or professional judgement in health and social care.
83. The International Ombudsman Institute welcomed the removal of the requirement for MLA sponsorship of complaints and introduction of direct access by the public and the Northern Ireland Local Government Association (NILGA) supported the direct access that the Bill would now give members of the public to the new NIPSO for all complaints.
84. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 5 and the proposed consequential amendment to the title of the office.

#### **Clause 6: Power to investigate complaints referred by a listed authority**

85. Similar to Clause 5, this Clause sets out the key criteria under which the NIPSO can investigate a complaint referred by a listed authority.
86. During the consultation process no stakeholder responses were received in respect of Clause 6 and the Committee made no comments on this Clause during its deliberations.
87. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 6 and the proposed consequential amendment to the title of the office. The Committee noted the concerns of Mr Alban Maginness

in respect of the inclusion of 'general health care provider' in the listed authorities.

### **Clause 7: Acting on behalf of a person aggrieved**

88. This Clause set outs the other people who can act on behalf of the person aggrieved such as MLAs, personal representatives, family members and others.
89. During the consultation process no stakeholder responses were received in respect of Clause 7 and the Committee made no comments on this Clause during its deliberations.
90. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 7 and the proposed consequential amendments to the title of the office.

### **Clause 8: Powers to investigate on own initiative**

91. Clause 8 provides the power for the NIPSO to launch an investigation without waiting for a complaint from a person aggrieved. The criteria are similar to the criteria for ordinary investigations. The key difference is that the NIPSO can only launch an own initiative investigation where there is a reasonable suspicion of systemic maladministration or systemic injustice (injustice consequent on the exercise of clinical or professional judgement in health and social care).
92. A number of stakeholders welcomed the power of own initiative investigations as provided in Clause 8. The Ombudsman Association while welcoming the proposed new power expressed concerns that as currently drafted the power might be unnecessarily narrow and as a result weaken the impact that the NIPSO could have.
93. A number of stakeholders expressed concern about the proposal to grant the NIPSO the power to conduct own initiative investigations and the perceived lack of clarity in respect of the criteria to be used by the NIPSO prior to exercising this power. The Commissioner for Older People for NI (COPNI) raised a concern that Clause 8 as drafted has the potential to duplicate elements of the primary statutory duties of her office.

94. At the meetings of 9 and 23 June 2015 the Committee received and considered further clarification from the Committee for OFMDFM in respect of the criteria to be used for own initiative investigations and the potential for duplication with other oversight bodies.
95. The Committee considered a paper prepared by the Northern Ireland Assembly Research and Library Service for the Committee for OFMDFM on [Own-Motion Investigations by Ombudsmen](#). The Committee further considered an extract from a Report by the National Assembly for Wales Finance Committee on [Consideration of the Powers: Public Services Ombudsman for Wales](#). (May 2015). The report reflected the views of stakeholders that the Ombudsman should consult with stakeholders before deciding to initiate an investigation and recommended that should a bill be introduced, provisions should be included which provide the Ombudsman with powers to initiate own investigations.
96. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 8 and the proposed consequential amendments to the title of the office.

#### **Clause 9: Criteria for own initiative investigations**

97. This Clause sets out that the NIPSO must establish further criteria for when to launch an own initiative investigation and publish these criteria.
98. Colleges NI sought clarification as to whether the Ombudsperson will be required to consult on the criteria for own initiative investigations prior to publishing. NILGA questioned whether the criteria should be enshrined in primary legislation and if there was a mechanism to approve these criteria.
99. The International Ombudsman Institute proposed an amendment to remove or adjust the provisions provided under Clause 9 so that the NIPSO is not limited in the exercise of his/her discretion to commence an own initiative investigation.
100. At its meeting of 23 June 2015, the Committee considered clarification from the Committee for OFMDFM on criteria for own initiative investigations as at Clause 8.
101. The Committee for OFMDFM proposed a technical amendment to Clause 9 and the Committee was content with the amendment.

102. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 9 and the proposed amendments.

### **Clause 10: Alternative resolution of complaints**

103. Clause 10 provides that the NIPSO has the flexibility to use alternative methods of resolving complaints made about listed authorities.
104. The Medical Protection Society expressed concerns that Clauses 10 and 11 do not require the Ombudsperson to seek to bring about a settlement before proceeding to recommend what action should be taken.
105. The Committee considered this Clause in light of legal advice sought in relation to Clause 11 (see below).
106. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 10 and the proposed consequential amendment to the title of the office.

### **Clause 11: Purposes of investigation**

107. This Clause summarises some of the purposes of an investigation which includes checking whether a complaint was justified and how it can be resolved. The Clause includes the following provision at 11(b)(ii) for the Ombudsperson to recommend that a listed authority make a payment to the person aggrieved where it appears desirable to bring about a settlement.
108. The Medical Protection Society, the Law Society for Northern Ireland and the British Medical Association raised concerns about the power to recommend a payment to a person aggrieved. The Medical Defence Union, the Medical Protection Society and the British Medical Association raised concerns that the Bill creates a parallel jurisdiction to award compensation without the necessary safeguards that have evolved in civil court proceedings.
109. The Committee sought legal advice on this issue. The Committee considered the legal advice and was satisfied that the provisions in Clause 11 do not create a parallel jurisdiction to award compensation as the NIPSO does not have the power under the Bill to award compensation. The Committee notes a listed authority may apply for judicial review and the provisions of Clause 44 provide that that an aggrieved person may apply to the court for relief.

110. The Committee also considered the evidence provided by the British Medical Association in respect of JR55 –v- the Northern Ireland Commissioner for Complaints – an ongoing case on which the appeal hearing in the Supreme Court is expected in March 2016. The BMA believes that the outcome of this case will have implications for provisions within the Bill at Clause 11(b)(ii) – recommendation of a payment to the person aggrieved – and Clause 34(2) reports on investigations. The Committee noted that JR55 refers to legislation which will be repealed by the Bill but sought comment from the Committee for OFMDFM as sponsors of the Bill. The Committee also sought legal advice in respect of this case and its potential implications for this Bill.
111. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 11 and the proposed consequential amendments to the title of the office.
112. At its meeting on 29 September 2015, the Committee considered legal advice in respect of JR55 and potential implications for the Bill. The Committee noted that the decision of the Supreme Court in respect of JR55 will authoritatively state the powers conferred by the Commissioner for Complaints (Northern Ireland) Order 1996, including whether under this Order, the Commissioner has the power to recommend a ‘consolatory’ payment. Under this Public Services Ombudsperson Bill, the Ombudsperson will have express power to recommend a payment to a person aggrieved. The Committee noted that the decision of the Supreme Court on the powers exercisable under the Commissioner for Complaints Order cannot be read across to this Bill.

### **Clause 12: Listed authorities**

113. Clause 12 provides that a body is a listed authority if it is included in Schedule 3. It further provides that a body can only be added to the list if it has some sort of public or governmental dimension and that this list can be updated by the Office of the First Minister and deputy First Minister.
114. During its deliberations, the Committee noted that no stakeholder responses were received in respect of Clause 12 and the Committee had no further comments.
115. At its meeting of 8 September 2015, the Committee considered a number of amendments to Clause 12 as proposed by the Committee for OFMDFM

including an amendment to Clause 12(2) in relation to vesting of power in the Office of the First Minister and deputy First Minister to amend the listed authorities in Schedule 3 by draft affirmative procedure subject to the concurrence of the Assembly Commission.

116. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 12 and the proposed amendments.

### **Clause 13: Meaning of action taken by a listed authority**

117. This Clause provides that action is taken by a listed authority if it does the action itself, or it is done on its behalf. The NIPSO can also investigate a failure by a listed authority to act.
118. The Committee considered this Clause at its meeting of 9 June 2015 and noted that there were no stakeholder comments on Clause 13.
119. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 13.

### **Clause 14: Matters which may be investigated: general**

120. Clause 14 provides that the standard jurisdiction of the NIPSO is to investigate maladministration in listed authorities. The subsequent Clauses set out some specialised cases where the jurisdiction is slightly different.
121. The Committee considered this Clause at its meeting of 9 June 2015 and noted that there were no stakeholder comments on Clause 14.
122. At its meeting of 8 September 2015, the Committee considered an amendment to this Clause proposed by the Committee for OFMDFM. The Ombudsperson Bill Team briefed the Committee on this amendment and explained that this technical amendment was to clarify that matters to be investigated were restricted to 'administrative functions' only to avoid encompassing quasi-judicial functions.
123. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 14 and the proposed amendments.

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**Clauses 15-17: Matters which may be investigated - clinical and professional judgement**

124. Under these three Clauses, the NIPSO can also investigate matters relating to clinical and professional judgement. This can only be done in the health and social care field, in relation to three specific types of bodies:
- health and social care bodies (as defined in Clause 50),
  - general health care providers, and
  - independent providers of health and social care
125. While the NI Social Care Council (NISCC) was broadly supportive of the draft Bill it expressed concern about the proposal to broaden the NIPSO's remit to include complaints about the exercise of professional judgement in relation to social care. The NISCC referred in its submission to the concerns of the Department of Health, Social Services and Public Safety (DHSSPS) in relation to the fact that social care workers are not *'professionally qualified; and could not be considered to have exercised professional judgement'* in relation to social care.
126. The Committee noted that the Explanatory and Financial Memorandum currently contains the clarification sought by NISCC.
127. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on a number of amendments to this Clause proposed by the Committee for OFMDFM. These included an insertion to Clauses 15(2)(a), 16(a)(2) and 17(a)(2) to clarify that NIPSO may investigate maladministration "in the exercise of administrative functions" by the health and social care body, general health care providers and independent providers of health and social care. The Committee for OFMDFM also agreed to restrict matters that the NIPSO may investigate in health and social care bodies and general health care providers to 'professional judgement' and as a consequence agreed to take out Clause 15(2)(b) and 16(2)(b) which relate to clinical judgement.
128. At its meeting on 15 September 2015 the Committee agreed that it was content with Clauses 15-17 and the proposed amendments. The Committee noted the concerns of Mr Alban Maginness and Mr Colum Eastwood in respect of application of these Clauses to 'general health care providers'.

**Clause 18: Matters which may be investigated: universities**

129. Under this Clause the NIPSO is given a new power to investigate maladministration as it relates to universities. This supersedes the existing power of the Board of Visitors of a university to investigate complaints by students. This Clause provides that if the NIPSO doesn't have jurisdiction in a matter relating to universities, the jurisdiction of the Board of Visitors is unaffected. Clause 18 also contains a transitional provision to deal with complaints made to the Board of Visitors but unresolved before this Bill becomes law.
130. In their written submissions and oral evidence to the Committee, neither Queen's University Belfast (QUB) nor the Ulster University accepted the proposed jurisdiction of the NIPSO over the universities. Both institutions were of the view that this proposed Clause duplicated the work of the existing Board of Visitors which they considered offered a more flexible alternative remedy for students.
131. This view was not shared by the student bodies who responded to the call for evidence. QUB Students' Union considered that complaints from students should be transferred completely to the Ombudsperson and that the Board of Visitors should be excluded from considering any complaints in relation to student matters. The NUS-USI expressed significant concerns about the Bill which they considered did not go far enough and called for an independent adjudicator/Ombudsperson which addresses the broadest range of complaints and appeals from students, not simply maladministration. They proposed an amendment for the NIPSO to address complaints and appeals from further and higher education students. Colleges NI and the NUS-USI also sought clarification on the role of the NIPSO in respect of the six regional colleges of further education.
132. QUB also sought clarification on the jurisdiction of the Ombudsperson in respect of St. Mary's College Belfast and Stranmillis University College as both are constituent colleges of QUB but are independent in terms of statute, governance and funding. QUB also sought clarification on the four theological colleges in Northern Ireland. These colleges are independent of the University and some but not all of their teaching provision is validated by QUB. On a similar issue Ulster University (UU) expressed concern that the Bill does not make clear if the Ombudsperson would have jurisdiction over students at Ulster University's London and Birmingham campuses. The UU stated it did not support different approaches to handling complaints from students in different jurisdictions. The Open University in their submission

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welcomed the decision not to include the OU in the remit of the Bill as it considers that OU students have access to a much greater range of issues that they can take to the Office of the Independent Adjudicator for Higher Education (OIA) for England and Wales than they could take to the NIPSO.

133. The Committee wrote to the Committee for OFMDFM to seek clarity as to whether the NIPSO will have jurisdiction over independent teaching and theology colleges (QUB) and the students at Ulster University's London and Birmingham campuses.
134. At its meeting on 23 June 2015 the Committee considered the response from the Committee for OFMDFM *"In relation to Queen's University's concerns regarding Stranmillis and St Mary's colleges the Committee noted that these are described by Queen's as "constituent colleges", the specific term used in the note at the end of Schedule 3. ...The drafter considers the provision in Clause 18(7) is wide enough to cover St Mary's and Stranmillis."*
135. The Committee for OFMDFM further clarified: *"In relation to the issues raised by the Ulster University regarding its campuses in Birmingham and London, the Committee noted advice from the drafter that these are outside the legislative competence as the Assembly cannot make law which would form part of the law of England. The Ulster University indicated that the students at these campuses have access to the Office of the Independent Adjudicator."*
136. Finally the Committee for OFMDFM informed the Ad Hoc Committee *"in relation to the four theological colleges that are members of the Institute of Theology at Queen's University, the Committee has agreed to request research on their status and relationship with Queen's."*
137. With regard to the role of the NIPSO in respect of the colleges of further education, the Committee of OFMDFM confirmed that while Clause 18 does not refer to such colleges, they are brought within the remit of the NIPSO by their inclusion in the listed authorities in Schedule 3 as 'an institution of further education'.
138. The Committee considered the response received from the Committee for OFMDFM on the role of the Ombudsperson in relation to the Board of Visitors which stated: *"The role of the NIPSO in relation to complaints of maladministration from students will be broadly similar to that of the Board of Visitors and the Office of the independent Adjudicator (OIA) in that it will provide an independent review at the conclusion of a university's internal complaints procedure. The Board of Visitors remit in relation to student*

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*complaints may be broader than maladministration and the Committee did not wish to limit students' rights of redress in relation to matters other than maladministration.*

139. The Committee further considered evidence provided by QUB on the recent ruling by Mr Justice Horner when he ruled that the Board of Visitors has exclusive jurisdiction to hear an appeal from a student. At its meeting on 9 June 2015 the Committee agreed to seek legal advice in respect of the issues raised by QUB.
140. At its meeting on 26 June 2015, the Committee considered both the oral and written response from Legal Services. The Committee considered the legal advice and was satisfied that Clause 18 does not interfere with the limits on the availability of judicial review in relation to the jurisdiction of the Board of Visitors
141. Further issues raised concerning this Clause included the restriction on the NIPSO to investigating matters relating to academic judgement and complaints made by staff. During the second stage debate on the Bill on 11 May 2015, Mr Jim Allister MLA welcomed the introduction of the Bill but called for the inclusion of complaints made by staff to be included in the remit of the NIPSO. In its written submission, NILGA considered that the restriction of the NIPSO to investigation of matters relating to academic judgement is contradictory to the provision to investigate matters that relate to clinical judgement
142. In his oral evidence to the Committee, the Northern Ireland Ombudsman responded to the points raised by Mr Allister stating that no other public services Ombudsman has an employment jurisdiction and that it had been decided by the Committee for OFMDFM in considering the policy proposals for the Bill that it is no longer defensible that only people in the public service have access to the Ombudsman in relation to employment issues.
143. At the meeting of 8 September 2015 the Ombudsperson Bill Team briefed the Committee on an amendment proposed to Clause 18 by the Committee for OFMDFM. This amendment creates a new provision - Clause 18(7) - which was previously a note under Schedule 3 and clarifies that "In this Act, references to a university include references to a constituent college, school or hall or other institution of a university."
144. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 18 and the proposed amendments. The Committee

noted the concerns of Mr Alban Maginness in respect of the inclusion of universities in the remit of the Public Services Ombudsperson.

145. At the meeting of 22 September 2015, the Committee noted correspondence from the Committee for OFMDFM dated 17 September which clarified the jurisdiction of the NIPSO with respect to theological institutions: *“The Committee has agreed to request amendments to make provision so that only those students in the theological colleges who are enrolled as students of the University would have recourse to the NIPSO at the conclusion of the University’s internal complaints procedure.”*

### **Clause 19: Administrative functions of staff of tribunals**

146. In its deliberations, the Committee noted that although court proceedings are not subject to the jurisdiction of the NIPSO, Clause 19 provides that the NIPSO may investigate some of the administrative work done by staff working in courts or tribunals. Schedule 4 lists the tribunals where the NIPSO has jurisdiction in respect of their administrative functions (not their judicial functions).
147. The Committee considered this Clause and acknowledged that there were no stakeholder comments received in respect of Clause 19.
148. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on a technical amendment to Clause 19(3) to clarify that the Office of the First and deputy First Minister may by order amend Schedule 4 but only with the concurrence of the Assembly Commission. This amendment reflected a recommendation from the Examiner of Statutory Rules in his report in which he recommended that the powers in Clause 19 should be exercisable with concurrence of the Assembly Commission and OFMDFM respectively.
149. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 19 and the proposed amendment.

### **Clause 20: Exclusion: public sector employment**

150. Clauses 20-22 set out some areas where the NIPSO does not have jurisdiction to investigate. Under Clause 20, the NIPSO cannot investigate a complaint relating to public sector employment.

151. The Committee considered evidence received from Mr Joseph Boyle, a member of the public, who stated in his submission that other avenues for dispute resolution are not available to public sector employees and asked that the Bill does not receive Assembly approval unless this Clause is amended.
152. The Committee also considered the responses from Colleges NI and Mr Brian Thompson, a member of the public, who welcomed the removal of personnel /employment matters from jurisdictions. Colleges NI proposed that the Clause should define 'personnel matters'.
153. The Committee considered issues on removal of personnel matters from jurisdiction under Clause 18 and noted that the NIPSO cannot investigate a complaint relating to public sector employment.
154. At its meeting on 15 September 2015 the Committee was content with Clause 20 and the proposed consequential amendment to the title of the office.

#### **Clause 21: Exclusion: other remedies available**

155. During its deliberations, the Committee noted that the NIPSO cannot investigate a complaint if the person aggrieved has a right to take a case to court instead. However, this rule can be waived if the NIPSO thinks it is not reasonable to expect the person aggrieved to take a case to court.
156. At its meeting of 9 June 2015, the Committee considered the submissions from a number of stakeholders in respect of this Clause. Colleges NI expressed concern that this Clause provided the Ombudsperson with a very wide discretion on what may be investigated with no real boundaries. This view was echoed by the Medical Defence Union who expressed concern about the provision for the Ombudsperson to waive this exclusion and proposed an amendment that 'particular circumstances' be replaced with 'exceptional circumstances'. Following consideration of these matters, the Committee agreed it was content with the Clause as drafted.
157. Following consideration of Clause 21 at its meeting on 15 September 2015 the Committee was content with Clause 21 and the proposed consequential amendments to the title of the office.

**Clause 22: Other excluded matters**

158. This Clause introduces Schedule 5. That Schedule sets out other instances where the NIPSO does not have jurisdiction.
159. The Committee considered this Clause which included acknowledging there were no stakeholder comments on Clause 22.
160. At its meeting of 8 September 2015, the Committee considered an amendment to this Clause proposed by the Committee for OFMDFM. This amendment reflected a recommendation from the Examiner of Statutory Rules in his report in which he recommended that the powers in Clause 22 should be exercisable with concurrence of the Assembly Commission and OFMDFM respectively.
161. At its meeting on 15 September 2015 the Committee was content with Clause 22 and the proposed amendments.

**Clause 23: Decisions taken without maladministration**

162. This Clause reiterates that the prime function of the NIPSO is to investigate maladministration, save in the cases where the investigation concerns clinical or professional judgement. There is no definition of maladministration in the Bill. There is no definition in previous legislation in Northern Ireland, England, Scotland or Wales on the meaning of maladministration.
163. NUS-USI considers that Clause 23 should be removed to enable not only maladministration but other student complaints and appeals to be investigated.
164. The Committee considered the NUS-USI view on 30 June 2015 and heard evidence from the Ombudsperson Bill Team on the rationale for this Clause which was *“it may be worth highlighting that other UK Ombudsman legislation contained similar provision establishing the foundation position that decisions taken without maladministration cannot be investigated by the Ombudsman. The Committee for OFMDFM’s proposals did not envisage extending the NIPSO’s remit beyond maladministration in respect of universities or any other listed authority, the only exception being professional judgement in relation to social care, which was consulted on in the original consultation.”* Members were content with the explanation provided by the Ombudsperson Bill Team.

165. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 23 and the proposed amendment to the title of the office.

#### **Clause 24: Complaint procedure to be invoked and exhausted**

166. This Clause and the following three Clauses set out the procedure which must be followed for a complaint to be made to the NIPSO under Clause 5. Under Clause 24, the person aggrieved must first make the complaint to the listed authority and give the authority a chance to resolve the complaint. The NIPSO has discretion to waive this requirement.
167. At its meeting of 9 June 2015, the Committee considered evidence from Colleges NI who expressed concern that this Clause provided the Ombudsperson with a very wide discretion on what it may investigate with no real boundaries. Colleges NI considered that any decision to investigate where the internal procedure has not been exhausted should only be in very exceptional and clearly defined circumstances.
168. To inform its deliberations, the Committee also heard from the Ombudsperson Bill Team which agreed there were some parallels with the power mentioned in Clause 21 in which listed authorities as well as individuals could complain to the NIPSO. The Bill Team explained that *“the rationale for this is to get the complaint resolved at the lowest possible level but with a discretion there.”*
169. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on an amendment proposed by the Committee for OFMDFM which appeared to address the concerns of Colleges NI. The amendment provides that the NIPSO may investigate a complaint despite the requirements of the section not being met, only when *“there are special circumstances which make it proper to do so”*. The original Clause had provided the NIPSO with the power to do so *“if it is reasonable to do so in the circumstances.”*
170. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 24 and the proposed amendments.

### **Clause 25: Duty to inform person aggrieved about the Ombudsperson**

171. Clause 25 requires the listed authority to tell the person aggrieved when they have exhausted the complaints procedure, and also requires them to tell the person aggrieved that it is possible to refer the complaint to the NIPSO.
172. The Committee considered the response from Colleges NI in respect of this Clause and the concern about the provision that it is for the 'listed authority' to determine if the complaint falls within the jurisdiction of the Ombudsperson.
173. The Northern Ireland Human Rights Commission welcomed the introduction of the statutory duty for listed authorities to inform aggrieved persons about the NIPSO once their own complaint process has been exhausted.
174. To inform its deliberations, at its meeting of 9 June 2015, the Committee sought clarity from the Bill Team in respect of this Clause and agreed that no amendments were required.
175. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 25 and the proposed consequential amendments to the title of the office.

### **Clause 26: Form and time limit for making complaint**

176. This Clause provides that it is for the NIPSO to determine the way in which complaints are to be submitted. The Clause allows the NIPSO to accept claims made in writing, by email or online. It also introduces a special procedure for allowing oral complaints in special circumstances as long as these are subsequently reduced to writing. The Clause provides that the ordinary time limit for making a complaint to the NIPSO is 6 months from the day that the complaints procedure has been exhausted. If the NIPSO has decided to accept a complaint which hasn't exhausted the internal complaints procedure, the time limit is 12 months from the day that the person aggrieved first became aware of the problem.
177. The Committee received a number of submissions both welcoming (NIHRC) and expressing concern about the admission of oral complaints (Law Society for Northern Ireland).
178. In its written and oral evidence to the Committee, the NIHRC also expressed concern about the Bill's proposed reduction to the time limit for making

complaints from 12 to 6 months. The Committee requested additional information from the Northern Ireland Ombudsman on the number of complaints his office had received after the 6 months and on the 24 June 2014 the Ombudsman's office confirmed it did not collate this information.

179. At its meeting on 9 June the Committee considered the clarification received from the Committee for OFMDFM in respect of this Clause: *“The rationale for the reduction in time limit from 12 to 6 months is to encourage the prompt resolution of complaints at a point when the parties’ recollections are freshest.....In addition the NIPSO will have discretion to accept a complaint outside the time limit if there are special circumstances which make it proper to do so.”*
180. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 26 and the proposed consequential amendments to the title of the office.

#### **Clause 27: Meaning of exhausting the complaints procedure**

181. The Committee noted that Clause 27 sets out how the complaints procedure must be exhausted. It provides that a right of appeal to a court does not form part of the complaints procedure and that a complaints procedure is normally exhausted when the listed authority makes a final decision on a complaint.
182. The Committee noted that no responses were received in respect of Clause 27.
183. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 27 as drafted.

#### **Clause 28: Procedure for complaint referred to the Ombudsperson**

184. This Clause sets out the time limit for complaints referred to the NIPSO by a listed authority. The Clause allows the NIPSO to waive these time limits if it is reasonable to do so.
185. In its submission, NILGA expressed the view that six months is too short a period to specify. It acknowledged that the Clause does leave the final timescale open and noted that a complaint against a councillor can take up to a year to progress.

186. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on an amendment to Clause 28(2) proposed by the Committee for OFMDFM. The amendment provides that the NIPSO may investigate a complaint, despite the requirements of this Clause not being met when *“there are special circumstances which make it proper to do so.”*
187. After considering the points raised by NILGA and the proposed amendment, the Committee agreed that it was content with Clause 28 and the proposed amendments at its meeting of 15 September 2015.

### **Clause 29: Procedure for own initiative investigations**

188. The procedure for own initiative investigations is quite different from that for other investigations. The NIPSO must send an investigation proposal to the listed authority. The proposal must state how the criteria for an own initiative investigation have been satisfied.
189. Colleges NI in its submission considered that it would be useful for the authority to have the opportunity to comment on the purpose and criteria for the investigation before it was set up. NILGA in its submission considered that in the interest of natural justice, an authority should have a right to respond/express an opinion before an investigation is commenced.
190. To inform its deliberations on the concerns raised by Colleges NI and NILGA, the Committee sought oral clarification from the Ombudsperson Bill Team during the meeting of 9 June 2015 who advised *“there is nothing explicitly about waiting for the listed authority’s comment but it does say that, before commencing an investigation, the proposal has to be sent to a listed authority. A reasonable interpretation of that is that there is time for them to comment on it.”*
191. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 29 and the proposed consequential amendment to the title of the office.

### **Clause 30: Investigation procedure**

192. This Clause sets out how the NIPSO must carry out investigations. It contains procedural rules to ensure that the investigation is fair to all parties. For example, if an allegation is made against a person, that person will have

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a right to hear that allegation and counter it. The NIPSO has a power to allow parties to an investigation to be legally represented in that investigation. There is also a power to pay expenses or allowances to witnesses.

193. During its meeting on 25 June 2015, the Committee considered stakeholders' comments in respect of this Clause. Colleges NI queried whether the withdrawal of a complaint would end the investigation process.
194. In a response to the Committee dated 9 June 2015, the Committee for OFMDFM did clarify that that NIPSO may begin or continue an investigation even if the complaint is withdrawn. It recognised that this may pose difficulties for the investigation and so sufficient flexibility is provided to enable the NIPSO to ascertain whether a complaint may still warrant investigation on a case-by-case basis.
195. The Northern Ireland Human Rights Commission advised that the Bill should ensure that the NIPSO itself is exemplary in ensuring procedural fairness in its handling and investigation of complaints.
196. The Law Society of Northern Ireland, Colleges NI, the Bar Council, Medical Protection Society and British Medical Association raised concerns that provisions under Clause 30(6) and 30(7)(b) create a fundamental imbalance in the legislation in favour of the Ombudsperson and would appear incompatible with the basic right to legal representation. In their submissions to the Committee they considered that these provisions raise serious issues of proportionality and right to a fair hearing under Article 6 of the European Convention on Human Rights (ECHR).
197. Medical Protection Society in its submission considered that Section 30(7)(b) should be amended to reflect the current position in relation to legal representation, as provided by Article 12(7) of the Commissioner for Complaints (NI) Order 1996
198. The Committee agreed to seek legal advice on 9 June 2015 to inform its deliberations on the points raised in respect of Clause 30(6) and 30(7)(b). The Committee considered the oral and written response from Assembly Legal Services and was satisfied that the discretion provided by these provisions is capable of being exercised in accordance with the principles of fairness and does not give rise to a breach of Convention rights.
199. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 30 and the proposed amendments.

### Clause 31: Information, documents, evidence and facilities

200. Clause 31 entitles the NIPSO to request documents and seek assistance from the persons being investigated. The NIPSO also has the power to compel people to give evidence or produce documents.
201. The Law Society of Northern Ireland raised serious concerns regarding the removal of legal privilege for listed authorities and urged the removal of Clause 31(5) from the Bill.
202. The Committee agreed to seek legal advice on 9 June 2015 to determine whether Clause 31 does infringe on the fundamental rights enshrined in the European Convention on Human Rights and the Rights incorporated in the Human Rights Act 1998. The Committee considered both the oral and written response from Legal Services on 23 June 2015.
203. The Committee noted that Clause 31(5) is subject to Clause 32(1) and 32(2) and considered the issue of privileged and confidential information. The Committee noted that the provisions of Clause 32 are subject to the provisions of Clause 38 and was satisfied that the provisions do not breach Convention rights or interfere with privilege.
204. NILGA reported it was concerned that the provisions do not enable the NIPSO to request information from the aggrieved person and NILGA required an explanation of the rationale for omitting this from Clause 31. The Committee wrote to the Committee for OFMDFM seeking clarification on this point and was informed on 4 June 2015: *“In most cases it is likely that the co-operation of the person aggrieved in providing information and comments will be forthcoming. However, the Clause 31 provides a power for the NIPSO to require information and documents not just from a listed authority but from “any other person, who in the Ombudsperson’s opinion is able to supply this information or produce these documents.”*
205. At its meeting of 8 September 2015, the Committee considered a number of amendments to this Clause proposed by the Committee for OFMDFM which were primarily technical in nature.
206. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 31 and the proposed technical and consequential amendments.

**Clause 32: Privileged and confidential information**

207. The normal rules on confidential information and legal privilege do not apply for the purposes of the NIPSO investigating a listed authority. Normally, a listed authority could refuse to disclose this sort of information. However, the NIPSO can insist on seeing it in the course of an investigation. There are safeguards within provisions in Clauses 38, 40, 41 and 47 in relation to the exercise of this power.
208. In its submission, the Bar Council expressed strong concerns about the wording in sub-sections 32(1) and 32(2) and considers that these paragraphs are inconsistent with the Official Secrets Act (Section 32(1)) and the basic right against self-incrimination and the fundamental right of legal professional privilege (LPP) (section 32(2)). The Bar Council considers that LPP is a fundamental human right long established in common law and recommends amendments to sub-sections 32(1) and 32(2).
209. The Law Society of Northern Ireland expressed serious concern about Clauses 32(1) and (2) and regards this provision in the Bill as an unwarranted interference with the rights of clients to an expectation of privacy in relation to their communication with their legal advisers. The Law Society of Northern Ireland recommends that the Bill is amended to remove Clauses 32(1) and (2).
210. The Committee agreed to seek legal advice to determine whether Clause 32(1) and 32(2) are inconsistent with the Official Secrets Act (Section 32(1)); the basic right against self-incrimination and the fundamental right of legal professional privilege (LPP) (Section 32(2)).
211. Written legal advice was received on 18 June 2015 and oral advice was received from Legal Services to the Committee on 23 and 30 June 2015.
212. The Committee considered the legal advice and noted that the provisions of Clause 32 are subject to the provisions of Clause 38. The Committee noted that the Ombudsman (Northern Ireland) Order 1996 provides that bodies within the Ombudsman's remit cannot rely on privilege which would be allowed by law in legal proceedings as grounds for the non-production of relevant documents. With regard to consistency with the Official Secrets Act, the Committee noted that Paragraph 1(3) of Schedule 1 to the Bill provides that the Ombudsperson is a Crown servant for the purposes of the Official Secrets Act. Accordingly the Committee was satisfied that the provisions of the Clause 32 do not breach Convention rights or interfere with privilege.

213. At the same meeting the Ombudsperson Bill Team advised the Committee *“the provisions in question were given very thorough consideration by the Bill Team, the draftsman and the Committee. The policy position was not adopted lightly.”*
214. In its submission MPS stated there should be an amendment to Section 32 with the aim of protecting the privilege relating to private legal advice (advice which has not been financed out of public funds). The Regional Health and Social Care Board considered this Clause will negatively impact on the ability of the Board and the Trusts to obtain robust legal advice in what are frequently very difficult and complex situations. MDU believes it would be unfair and should not be possible legally for an Ombudsperson to be able to demand documentation that is covered by legal privilege.
215. During the discussions in relation to the medical professions’ concern the Ombudsperson Bill Team advised the Committee *“the normal power of an Ombudsman is to look at maladministration and Clause 23 reinstates that. Nothing in the Bill authorises the Ombudsperson to question the merits of a decision without maladministration by a listed authority in the exercise of discretion. The expectations to that relates to professional judgement in health and social care. Apart from that the Ombudsperson looks only at maladministration.”*
216. At its meeting of 8 September 2015, the Committee considered an amendment to this Clause proposed by the Committee for OFMDFM which was primarily technical in nature and the Committee was content with the amendment.
217. At its meeting on 15 September 2015 the Committee divided on this Clause and by majority agreed that it was content with Clause 32 and the proposed technical amendment. The Committee noted the concerns of Mr Alban Maginness, Mr Colum Eastwood and Mr Trevor Lunn in respect of Clause 32 and the provisions in the Bill on privileged and confidential information.

### **Clause 33: Obstruction and contempt**

218. Clause 33 provides that it is an offence to obstruct the NIPSO in course of his or her work. This is treated as equivalent to contempt of court.
219. At its meeting of 9 June 2015, the Committee noted there were no stakeholder comments on this Clause.

220. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on a technical amendment to this Clause proposed by the Committee for OFMDFM.
221. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 33 and the proposed technical and consequential amendments.

### **Part 3: Miscellaneous and General**

222. Part 3 contains other miscellaneous provisions about the functions of the NIPSO. It obliges the NIPSO to make reports. It gives the NIPSO protection from defamation proceedings for statements made in exercising the functions of the office. It regulates the disclosure of information by the NIPSO. It obliges co-operation with other Ombudspersons. It also sets out the power for the NIPSO or a person aggrieved to apply to a court, following an investigation, in order to remedy any maladministration discovered by that investigation.

### **Clause 34: Reports on investigations**

223. Clause 34 requires the NIPSO to send a copy of a report on an investigation to the people concerned with that investigation.
224. Mr Brian Thompson, a member of the public, proposed an amendment to Clause 34 so that it begins with a discretionary power to publish individual investigation reports in full or in part and recommended the NIPSO provide a report on the decisions for discontinuing investigation and decisions not to investigate complaint. Mr Thompson considered that the revised Clause 34 should remove the need for Clause 35.
225. Mr Jim Allister MLA during the Second Stage debate on 11 May 2015 suggested that the default position should be that all reports should be published in the public interest to meet the requirement of openness and accountability.
226. The Northern Ireland Ombudsman in his written submission to the Committee responded to this suggestion as follows: *“Ultimately the reporting of all reports and decision letters (except where there are particular issues of confidentiality and privacy) is important but it brings with it administrative and*

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*resource issues and there is a question whether such reporting would prevent the NIPSO from achieving a settlement. I would suggest a staged approach with the current NIPSO proposals being a starting point and a review in the future (say two years) to ascertain if there should be wider reporting and whether in fact the Public Interest Reporting has in fact had a 'chilling' effect on settlements with bodies."*

227. During informal deliberations on this Clause at the meeting of 16 June 2015 the Ombudsperson Bill Team clarified "*Reports would continue as at present and would essentially be confidential to the parties, save in cases where the NIPSO decided it was a matter of public interest and that it warranted publication of the report.*" The Ombudsperson Bill Team confirmed that the Committee for OFMDFM shared the concerns of the Ombudsman in respect of the potential "chilling" effect of public interest reporting: *The Committee had some concerns that publication of investigation report across the board may be a disincentive to open and frank engagement and early resolution.*"
228. The Committee also considered the evidence provided by the British Medical Association in respect of JR55 –v- the Northern Ireland Commissioner for Complaints – an ongoing case on which the appeal hearing in the Supreme Court is expected in March 2016. The BMA believes that the outcome of this case will have implications for provisions within the Bill at Clause 11(b)(ii) – recommendation of a payment to the person aggrieved – and Clause 34(2) reports on investigations. The Committee noted that JR55 refers to legislation which will be repealed by the Bill but sought comment from the Committee for OFMDFM as sponsors of the Bill. The Committee also sought legal advice in respect of this case and its potential implications for this Bill.
229. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 34 and the proposed consequential amendments to the title of the office.
230. At its meeting of 29 September 2015, the Committee considered the legal advice in respect of potential implications of JR55. The Committee noted that the decision of the Supreme Court in respect of JR55 will authoritatively state the powers conferred by the Commissioner for Complaints (Northern Ireland) Order 1996. The Committee also noted that while Article 19 of the Order provides that the *'the Commissioner shall annually lay before the Assembly a general report on the performance of his functions.... and may from time to time lay such other reports before the Assembly as he thinks fit'*, there is no reference in the Order to the laying of special reports before the

Assembly. Under this Public Services Ombudsperson Bill, the Ombudsperson will have express power to lay a special report before the Assembly (see Clause 37).

231. The Committee noted the comments of the Court of Appeal in JR55 which stated *“Even assuming a power to lay such a report before the Assembly there would have to be proper safeguards and procedural fairness before any such power could be properly exercised”*. The Committee noted that the NIPSO, as a public authority, will be required by section 6 of the Human Rights Act 1998 to act in a manner which is compatible with rights under the European Convention on Human Rights, including Article 6 (right to a fair hearing) and Article 8 (right to a private and family life); and to ensure that it discharges its functions in a manner which is procedurally fair.

### **Clause 35: Publication of reports on investigations in the public interest**

232. Clause 35 enables the NIPSO to publish a report if it is in the public interest to do so. The Clause requires the NIPSO to first consult with any persons who are the subject of the report.
233. The International Ombudsman Institution in its submission welcomed the enhanced power of the NIPSO to publish reports in the public interest as a means of increasing transparency of the work of the NIPSO.
234. Medical Protection Society expressed concern about the publication of reports on investigations in the public interest when issues of clinical judgement are involved. It recommended Clauses 35 and 37 be amended to prohibit the publication of reports in the public interest and reports to the Assembly, where the matter under investigation relates to the exercise of clinical judgement.
235. The Northern Ireland Human Rights Commission (NIHRC) views as positive the requirement for the NIPSO to give notice of this proposal to the person aggrieved, the listed authority and any other person alleged to have taken the action to which the complaint relates but has concerns that a fee may deter people from seeking a copy of the report, especially those from marginalised or disadvantaged groups. NIHRC recommends that Clause 35(4) be amended to include a duty on the NIPSO to take into account the human rights of any person aggrieved and any other person considered appropriate before publishing any investigation report in the public interest.

236. The Committee sought the rationale behind charging a fee for reports from the Committee for the OFMDFM and received a response in respect to this proposal on 4 June 2015 which clarified that it was likely that all reports which are being published will be made available online and noted that both the offices of the Scottish and Welsh Ombudsman are permitted to charge a fee and reasonable fee respectively for copies of special reports.
237. During informal deliberations on 16 June 2015 the Committee discussed with the Ombudsperson Bill Team the recommendation made by a number of stakeholders that the reports by the NIPSO should be published. The Ombudsperson Bill Team provided the following clarification: *“The Committee for OFMDFM approach is to leave it to the NIPSO to determine whether a report raises an issue of sufficient public interest to warrant publication. It may be that that would be reviewed subsequently. Members could see how it worked. The fee for a copy of the report was adopted by the Committee for OFMDFM from the Scottish and Welsh Ombudsman legislation, which provides for a reasonable fee, as does this Bill.”*
238. At its meeting of 8 September 2015, the Committee considered a number of amendments to this Clause proposed by the Committee for OFMDFM which make it clear that Clause 35 does not apply to own initiative investigations.
239. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 35 and the proposed amendments.

### **Clause 36: Publication of reports on own initiative investigations**

240. Clause 36 requires the NIPSO to publish a report on an own initiative investigation if one is launched.
241. Medical Protection Society expressed concern about the publication of reports on investigations in the public interest when issues of clinical judgement are involved and proposed a number of amendments to Clause 36(1), 36(2) and the insertion of a new section which would exempt the publication of reports on own initiative investigations into health and social care bodies, general health care providers and independent providers of health and social care providers.
242. The Committee considered these issues as at Clause 35 and at its meeting on 15 September 2015 the Committee agreed that it was content with Clause 36 and the proposed consequential amendments to reflect the change in title of the office.

**Clause 37: Reports to the Assembly**

243. The NIPSO has several reporting obligations to the Assembly. Firstly, the NIPSO must lay an annual report before the Assembly on what the NIPSO has done during the year. Secondly, in a particular case where an injustice has been uncovered by the NIPSO but not remedied, a report on that case can be laid before the Assembly. Thirdly, if an own initiative investigation has been launched, the NIPSO must report on this to the Assembly. Finally, the NIPSO has discretion to make any other reports to the Assembly thought suitable.
244. The International Ombudsman Institute, the Law Society of Northern Ireland, NIHRC and Mr Brian Thompson welcome the inclusion of the provision as a means of strengthening the office of the NIPSO.
245. The NIHRC has further considered in respect of Clause 37(1) that the NIPSO's annual report to the Assembly should contain information and publish information on complainants according to protected equality grounds, such as gender, age and ethnicity. Members discussed this matter and agreed that reports would be published with due regard to human rights as a formality and therefore an amendment was not required.
246. Medical Defence Union considered that the power to lay a special report before the Assembly is '*fundamentally coercive, and will, in all likelihood, create what is in effect a binding recommendation*'.
247. At the meeting of 16 June 2015, the Ombudsperson Bill Team confirmed that Clause 37 as drafted reflects the traditional and common approach to reporting across the UK and Ireland. The Committee noted that the Ombudsman (Northern Ireland) Order 1996 provides the Ombudsman may lay a special report before the Assembly where injustice has been sustained by a person as a result of maladministration and that injustice has not been, or will not be, remedied.
248. At the meeting of 8 September 2015 the Ombudsperson Bill Team briefed the Committee on the proposed amendment by the Committee for OFMDFM in respect of Clause 37. The Bill Team explained that this amendment clarifies that the provision of reports to the Assembly as provided for under Clause 37(2) doesn't apply to reports relating to own initiative investigations as provided for under Clause 8 of the Bill.

249. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 37 and the proposed amendments. However, the Committee expressed its reservations in respect of the provisions of this Clause for the NIPSO to lay a special report before the Assembly. The Committee considered legal advice on the issue. The Committee expressed concerns that this power could be potentially construed as coercive and that such a report had the potential to have a detrimental impact on a medical practitioner.
250. The Committee recommends that the Committee for the Office of the First Minister and deputy First Minister, as sponsor of the Bill, satisfies itself that there are proper safeguards and procedural fairness before any such power is exercised.

### **Clause 38: Reports and privileged information**

251. Clause 38 states that the NIPSO's report(s) must not disclose the content of information subject to legal privilege.
252. The Bar Council and Medical Protection Society (MPS) consider that Clause 38(2) is wholly ineffective as a safeguard in relation to privileged information obtained by the NIPSO. In its submission, MPS consider that safeguards in the Bill prohibiting the publication of the privileged information in the NIPSO's report do not protect the fundamental rights of the individual healthcare professionals.
253. At its meeting of 9 June 2015, the Committee agreed to seek legal advice on the issues raised. The Committee considered this legal advice at its meetings on 23 and 30 June 2015.
254. The Committee noted that the provisions of Clause 32 are subject to the provisions of Clause 38. The Committee also noted that where the NIPSO has obtained privileged or confidential information, in accordance with Clause 38(2) may disclose that such documents were obtained but must not disclose the content. The Committee was satisfied with the provisions of this Clause.
255. At the meeting of 8 September 2015 the Ombudsperson Bill Team briefed the Committee on the proposed amendment by the Committee for OFMDFM in respect of Clause 38. The Bill Team explained that this amendment clarifies the provisions of the Bill which authorise the production of documents which would otherwise be legally privileged.

256. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 38 and the proposed amendments. The Committee noted the concerns of Mr Colum Eastwood in respect of the provisions in the Bill on reports and privileged information.

### **Clause 39: Privilege for certain publications**

257. Clause 39 provides that the NIPSO is protected from defamation proceedings for statements published in connection with the performance of functions under the Bill. A person aggrieved is protected in relation to communications with the NIPSO in connection with an investigation.
258. At its meeting of 16 June 2015 the Committee considered this Clause and noted that there were no stakeholder comments on Clause 39.
259. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 36 and the proposed amendments to reflect the change in title from Ombudsperson to Ombudsman.

### **Clause 40: Disclosure of information**

260. Clause 40 requires that information obtained by the NIPSO is to be kept confidential, save for certain purposes. Those purposes include making decisions about investigations, publishing reports, giving assistance in the prosecution of certain criminal offences, protecting the health or safety of the public.
261. The Bar Council considers that Clause 40 is wholly ineffective as a safeguard in relation to privileged information obtained by the NIPSO.
262. During the informal deliberations the Committee agreed to seek its own legal advice in respect of issues on privileged information. The Committee considered this legal advice at its meetings on 23 and 30 June 2015 and noted that where the NIPSO has obtained privileged or confidential information, in accordance with Clause 38(2) may disclose that such documents were obtained but must not disclose the content.
263. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 40 and the proposed amendment to reflect the change in title of the office.

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**Clause 41: Disclosure contrary to public interest**

264. This Clause gives a power to Ministers and the Secretary of State to prevent the NIPSO disclosing information which is not in the public interest. It also requires the Secretary of State and the Ombudsperson to agree a Memorandum of Understanding (MOU) concerning the exercise of their functions in relation to this Clause. This Memorandum of Understanding could make it easier for the Ombudsperson and Secretary of State to liaise in advance over material which it would not be in the public interest to disclose. The Ombudsperson must lay a copy of the agreed Memorandum, and any revisions to it, in the Assembly.
265. The NIHRC was the only stakeholder to respond to this Clause and raised concerns as to the possible obstacles under Clause 41 to the NIPSO exercising his/her powers. In particular this may lead to unnecessary interference with the NIPSO's ability to publish reports in the public interest, investigate complaints or carry out own initiative investigations. Furthermore it advises that Clause 41 should be amended so that the scope for a NI Minister or the Secretary of State to prevent information being disclosed by the NIPSO is narrowed.
266. During the Second Stage debate on 9 May 2015, Mr Jim Allister MLA argued that any Memorandum of Understanding between the Secretary of State and the NIPSO should also extend to Executive Ministers.
267. The Northern Ireland Ombudsman in his response to this argument stated that the MOU with the Secretary of State covers very narrow ground, such as issues of national security, and that any proposal to extend this to the Executive may create a public perception of a lack of independence.
268. At the informal deliberations on this Clause on 16 June 2015, the Committee requested further information in relation to the issues raised by the NIHRC and the Ombudsperson Bill Team responded *"it was the view of the Secretary of State that there is power in the existing legislation and in the Bill for the Secretary of State to serve a non-disclosure notice. Her point was that there are certain excepted matters for which she remains responsible but that she would not normally know whether anything relating to those matters was the subject of a complaint or was going to be disclosed to the NIPSO in the course of a complaint and would, therefore, never really be aware of when she might want to exercise her powers. That, she said, was the underlying rationale for the MOU."* When asked if that was similar in

other places the Ombudsperson Bill Team replied “*yes, there is a similar provision in all UK jurisdictions and in Irish legislation.*”

269. Members of the Committee sought clarification that any Northern Ireland Minister could intervene. The Ombudsperson Bill Team confirmed this to be the case, subject to the public interest and national security test. They also confirmed that this was equivalent to Westminster legislation and applied to individual Ministers. The Committee also sought an example of defining ‘public interest’ and the Bill Team provided an example regarding emergency planning and a particular incident requiring health and ambulance service. With regard to a query on disclosure and whether a Minister could refuse to disclose a document which would otherwise be discoverable under a freedom of information request, the Ombudsperson Bill Team confirmed that the Ombudsperson has the same powers as the High Court in respect of the production of documents as detailed in Clause 31(3).
270. The Ombudsperson Bill Team confirmed to the Committee that any decision taken under this Clause could be judicially reviewed and that the Assembly research paper had highlighted that when it was used in relation to the voluntary disclosure of information code in England, it was judicially reviewed and that was the public protection.
271. At the meeting of 8 September 2015 the Ombudsperson Bill Team briefed the Committee on the proposed amendment by the Committee for OFMDFM in respect of Clause 41. The Bill Team explained that this amendment clarifies that a notice served under Clause 41(1) will be in writing.
272. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 41 as drafted and the proposed amendments.

#### **Clause 42: Consultation and co-operation with other Ombudspersons**

273. Clause 42 requires that if the NIPSO is investigating something that another Ombudsperson is investigating, the NIPSO must consult that other Ombudsperson. Furthermore, the NIPSO may co-operate with that other Ombudsperson, for example by disclosing information, working together or jointly publishing a report. This consultation and co-operation only applies where the other Ombudsperson is one of those referred to in subsection (4). Subsection (4) lists ombudsmen and commissions from Northern Ireland, Scotland, Wales and England. The NIPSO can also work with the Ombudsman from the Republic of Ireland where the investigation concerns a North / South Implementation body.

274. The International Ombudsman Institute commended the inclusion of Clause 42 to ensure consultation and cooperation and to avoid overlap and duplication between the NIPSO and other investigatory bodies. The Commissioner for Older People for NI (COPNI) proposed an amendment to expand Clause 42(2) to outline what is expected of the Ombudsperson with regards to their obligation to 'consult'. The COPNI also proposed an amendment to Clause 42(3) so that "*the NIPSO may co-operate*" should be replaced with "*will co-operate*". The Commissioner considers that NIPSO and the listed person at Clause 42(4) should have the confidence that any decision to investigate will respect the legislative autonomy of persons enacted to carry out specific statutory functions.
275. At the meeting of 26 June 2015 the Ombudsperson Bill Team referred to the COPNI concern and noted that Clause 42 does require the NIPSO to consult with the other Ombudsperson. It is then up to both parties to decide if they wish to co-operate together but the expectation would be that all public investigatory bodies co-operate in a reasonable manner.
276. The Northern Ireland Audit Office (NIAO) requested an amendment to add the name of the Comptroller and Auditor General (C&AG) and the Local Government Auditor to the list of persons at Clause 42(4) of the draft Bill and encouraged the Committee to consider adding a provision to the Bill to exempt the NIPSO from Article 27 of the Local Government (NI) Order 2005.
277. At the meeting on 16 June 2015 the Ad Hoc Committee agreed to defer its consideration of the NIAO issues until the Committee for OFMDFM sought the drafter's advice. At the meeting of 8 September 2015, the Ombudsperson Bill Team confirmed that the Committee for OFMDFM agreed to add the Local Government Auditor and the Comptroller and Auditor General to the list of persons at Clause 42(4).
278. At the Committee meeting of 26 May 2015, the Ombudsperson Bill Team briefed the Committee on an early amendment by the Committee for the OFMDFM which was to add the Regulation and Quality Improvement Authority (RQIA) in 42(4) following engagement with the Health Minister.
279. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 42 and the proposed amendments.

**Clauses 43 & 44: County court applications by a person aggrieved**

280. These two Clauses grant a person aggrieved the right to apply to the county court for compensation. There must first have been a finding by the NIPSO that the person has suffered an injustice and the action is against the listed authority which has caused the injustice. In addition to ordering compensation, the county court can make any other order it thinks appropriate (for example directing the listed authority to do something to right the wrong). The claim itself must be made by an individual.
281. The Law Society of Northern Ireland welcomed the continuance of the power for complainants to apply to the county court and Attorney General for redress under Clause 43 as a means of strengthening the power of NIPSO. The NIHRC agreed with the position in the Explanatory Notes that the statutory bar on the NIPSO disclosing privileged information in court proceedings including the county court mechanism under Clause 43 protects the principle of equality of arms as an aspect of Article 6 of the European Convention of Human Rights and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).
282. The Medical Protection Society sought an amendment which would exempt Health and Social Care Trusts, general health care providers, and independent providers of health and social care from these provisions and provided the proposed amendment. The Committee considered this proposed amendment at its meeting of 16 June 2015 but did not agree to make it.
283. At its meeting on 15 September 2015 the Committee agreed that it was content with Clauses 43 and 44 and the proposed consequential amendments at Clause 43 to the title of the office.

**Clauses 45 & 46: High Court applications by the Attorney General**

284. These two Clauses grant the right to the Attorney General to apply to the High Court in cases of systemic maladministration. There must first have been a finding by the NIPSO of systemic maladministration and a request from the NIPSO to the Attorney General to make this application. Unlike applications to the county court, this type of application is not made by an individual complainant but by the Attorney General. The High Court has the power to order the listed authority involved to do, or not to do a particular

thing. Where the matter being investigated relates to clinical or professional judgement (see Clauses 15, 16 and 17) then rather than looking at systemic maladministration, the test is whether systemic injustice has been sustained as a result of such judgement.

285. The NIHRC welcomed Clauses 45 & 46 as measures to assist in ensuring compliance and securing redress for individuals.
286. At the meeting of 16 June 2015 the Ombudsperson Bill Team confirmed for the Committee that this Clause broadly follows the current legislation. The Committee had no concerns in respect of this Clause.
287. At its meeting on 15 September 2015 the Committee agreed that it was content with Clauses 45 and 46 and the proposed consequential amendments to reflect the change in title of the office.

#### **Clause 47: Court proceedings and privileged information**

288. Clause 47 provides that information which is subject to legal privilege (for example lawyer /client advice) cannot be used in any of these two types of court proceedings.
289. The Bar Council considered Clause 47 as wholly ineffective as a safeguard in relation to privileged information obtained by the NIPSO and the Medical Protection Society considered that the safeguards in the Bill restrict the admissibility of privileged documents in certain court proceedings and do not protect the fundamental rights of individual healthcare professionals.
290. At its meeting of the 9 June 2015, the Committee agreed to seek its own legal advice in respect of the issues by the Bar Council and the Medical Protection Society. The Committee considered this legal advice at its meetings of 23 and 30 June 2015. The Committee noted that while a report of the NIPSO may be produced in evidence it is rebuttable and that where the NIPSO has obtained privileged or confidential information, in accordance with Clause 38(2) may disclose that such documents were obtained but must not disclose the content.
291. At the meeting of 8 September 2015 the Ombudsperson Bill Team briefed the Committee on an amendment by the Committee for OFMDFM which would clarify authority for the production of documents which would otherwise be legally privileged.

292. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 47 and the proposed amendments.

#### **Clause 48: Supplementary provision in relation to court proceedings**

293. Under Clause 48, the court may rely upon what the NIPSO states in any report as being correct, unless there is some evidence to the contrary.
294. The Committee considered this Clause at its meeting of 16 June 2015 and noted there were no stakeholder comments.
295. At the meeting of 8 September 2015 the Ombudsperson Bill Team briefed the Committee on an amendment by the Committee for OFMDFM in respect of a technical amendment to the Clause.
296. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 48 and the proposed amendments.

#### **Part 4 and Clause 49: Northern Ireland Judicial Appointments Ombudsman**

297. Part 4 is made up of Clause 49 only. It provides that the office of the Northern Ireland Judicial Appointments Ombudsman is automatically to be occupied by the person who is currently the NIPSO.
298. The Department for Justice (DoJ) reported it was content with the proposed amendment which the Committee for OFMDFM intended to make to this Clause in relation to the NIJAO function and the termination of the current incumbency.
299. On 26 May 2015 the Committee was informed by the Ombudsperson Bill Team that the Ombudsman had written to the Committee for OFMDFM to confirm that he had reached an agreement with DoJ regarding reallocation of budget from DoJ to cover the cost of delivering the NIJAO function.
300. In light of this the Committee for OFMDFM agreed to bring an amendment to Schedule 6 of the NIPSO Bill to remove DoJ's responsibility for the expenses of the NIJAO by repealing paragraph 13 of Schedule 3A to the Justice (NI) Act 2002.
301. At the meeting of the 23 June 2015 the Ombudsperson Bill Team advised the Committee that this was a purely a technical amendment.

302. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 49 and the proposed amendments.

## **Part 5: Supplementary Provisions**

### **Clause 50: Interpretation**

303. This Clause defines terms used elsewhere in the Bill.
304. The Committee considered this Clause in informal deliberations on 16 June 2015 and noted there were no stakeholder comments on Clause 50.
305. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on a proposed new insertion to Clause 50 to provide a more comprehensive list of interpretations. The Bill Team also advised of two further amendments which sought to clarify the meaning of the term “Minister” in the Bill.
306. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 50 and the proposed amendments.

### **Clause 51: Power to make further provision**

307. This gives the Assembly Commission power to make further provision in order to give effect to this Bill. The Bill authorises the making of subordinate legislation in several instances.
308. The Examiner of Statutory Rules, in his report to the Committee suggested a number of amendments to Clause 52 which were applicable to Clause 51. The Committee agreed to return to consideration of this Clause once it received a response from the Committee for OFMDFM on the Examiner of Statutory Rules’ report.
309. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on the decision by the Committee for OFMDFM to include a new provision after Clause 51 to reflect the concerns raised by the Examiner of Statutory Rules in his report.
310. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 51.

**New Clause to be inserted after Clause 51**

311. This is a new Clause inserted by the Committee for OFMDFM. In their evidence to the Committee on 8 September 2015, the Ombudsperson Bill Team explained that the Committee for OFMDFM opposed the original Clause 52 and wanted to insert this new Clause. They explained that the new Clause *“changes the mechanism for delegated legislation from affirmative procedure to the more usual draft affirmative procedure, which is what the Examiner [of Statutory Rules] suggested. The Committee was content that that mechanism provides for sufficient oversight by the Assembly. The only exception, which, again, the Examiner was happy with, was the power of the Assembly Commission to, by order, set the NIPSO’s salary, which is subject to negative resolution. The new version of Clause 52 also avoids any ambiguity between an order of the Assembly and an order of the court, which the Examiner had also highlighted states what procedure is to be followed in making that subordinate legislation; in particular the degree of control the Assembly has over this process.”*
312. At its meeting on 15 September 2015 the Committee agreed that it was content with the insertion of the new Clause as drafted.

**Clause 52**

313. As noted above, at the meeting of 8 September 2015, the Ombudsperson Bill team had advised the Committee that the Committee for OFMDFM had requested that this Clause be deleted. The Examiner of Statutory Rules in his report had also raised concerns in respect of the original Clause 52.
314. At its meeting on 15 September 2015 the Committee agreed that it was not content with this Clause.

**Clause 53 & 54: Consequential amendments**

315. As a consequence of the changes made by this Bill, there is a need for a large number of consequential changes to other legislation. Clauses 53 and 54 together with Schedules 7 and 8 make these changes. These amendments are contained in two separate Schedules to make it easier to administer and see the nature of the changes made.

316. The Committee considered these Clauses at the meeting of 16 June 2015 and noted there were no stakeholder comments on Clauses 53 & 54.
317. At its meeting on 15 September 2015 the Committee agreed that it was content with Clauses 53 & 54.

### **Clause 55: Commencement**

318. This Clause sets out when the various provisions of the Bill come into operation (i.e. the law comes into effect). The structural provisions of the Bill, such as the title of the Bill, the power to make Orders etc. come into operation on the day after the Bill is made. The provisions allowing for the establishment and appointment of the Ombudsperson come into operation one month after the Bill is made. This allows for the appointment process to commence at an early stage. The bulk of the Bill then comes into operation on 1 April 2016. At this point, the Ombudsperson can exercise the main functions of receiving complaints, commencing investigations etc. The Ombudsperson's remit over further and higher education bodies comes into operation on 1 October 2016. Remit over grant-aided schools comes into operation on 1 April 2017. Finally, the power to investigate on his or her own initiative comes into operation on 1 April 2018.
319. The Committee considered this Clause at its meeting of 16 June 2015 and noted there were no stakeholder comments.
320. At the meeting of 8 September 2015, the Ombudsperson Bill team briefed the Committee and advised of a number of amendments by the Committee for OFMDFM. The Bill Team advised that the power to make arrangements regarding the transfer of staff needs to commence at an early stage for operational reasons. The amendment proposed by the Committee for OFMDFM provides for commencement one month after Royal Assent. The Bill Team advised that the other amendments relate to delayed commencement for other provisions.
321. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 55 and the proposed amendments.

### **Clause 56: Short Title**

322. This Act may be cited as the Public Services Ombudsperson Act (Northern Ireland) 2015.
323. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 56 and the proposed amendment to change the title from Ombudsperson to Ombudsman.

### **Clause 57: Repeals**

324. As well as the consequential changes discussed above, there are repeals which are also consequent upon the making of this Bill. This Clause and Schedule 9 set out those repeals. For example, the legislation regulating the existing offices of the Ombudsman and Commissioner is repealed.
325. The Committee considered this Clause at its meeting of 16 June 2015 and noted there were no stakeholder comments.
326. At its meeting on 15 September 2015 the Committee agreed that it was content with Clause 57.

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**Schedule 1: The Northern Ireland Public Services Ombudsperson**

327. This Schedule is introduced by Clause 1 and sets out the administrative detail of the establishment of the NIPSO.
328. In its submission to the call for evidence, the Northern Ireland Assembly Audit Committee indicated that it was content that it should have responsibility for agreeing the estimate of the NIPSO and laying it before the Assembly. However, the Audit Committee expressed concern that as currently drafted the Bill may not provide the NIPSO with sufficient protection from the Executive controlling or directing its access to resources.
329. The Audit (Northern Ireland) Order 1987 provides for the C&AG to prepare estimates for the use of resources by the NI Audit Office and the Northern Ireland Act provides for the Audit Committee to lay the estimate before the Assembly. The Audit Committee's experience is that, despite it having this statutory function, DFP and the Executive have nonetheless sought to direct what the NIAO's budget should be.
330. The Audit Committee is seeking resolution through a protocol with DFP and is seeking Ministerial agreement to a Memorandum of Understanding (MOU) between the Assembly and the Executive on the Budget Process where such a protocol could be included. However, the Audit Committee is not aware that such a resolution is imminent and states that it is likely that as currently drafted, or without additional legislative provision, paragraph 17 of Schedule 1 would allow for similar issues to arise in respect of the NIPSO and the budget of the NIPSO's office.
331. In its submission, the Audit Committee indicated that, in addition to agreeing the estimate of the NIPSO, it was content to undertake other ancillary functions as detailed in the Explanatory and Financial Memorandum. It considered that these issues could be covered in a Memorandum of Understanding similar to that which it has agreed with the Comptroller and Auditor General and the Northern Ireland Audit Office.
332. Finally, with respect to the salary of the NIPSO which shall be determined by the Assembly Commission, as provided for under Schedule 1, the Audit Committee, in its submission noted that the Northern Ireland Act provides that the Assembly shall not have the power to pass a resolution to reduce the salary payable to the holder of the office of the C&AG at that time. At its meeting on 9 June the Committee considered these concerns and agreed to forward to the Committee for OFMDFM for clarification.

333. The Committee for OFMDFM responded on 26 June 2015 and informed the Committee that while it noted in particular the points made in the Northern Ireland Assembly Audit Committee's submission in respect of the NIPSO estimate, the Committee for OFMDFM did not propose to bring any amendment in this regard. The Committee for OFMDFM also considered the point raised by Assembly Audit Committee in respect of the salary of the C&AG. However, the Committee for OFMDFM considered that the Bill as drafted does provide sufficient safeguards in this respect.
334. At its meeting on 30 June 2015, the Ombudsperson Bill Team further reported to the Committee that the Committee for OFMDFM noted the distinction made between the Audit Committee agreeing the estimate and it being included in the Finance Minister's Budget Bill. However, the Committee for OFMDFM noted that to date there had been no divergence between the agreed estimate and the figure included in the Budget Bill and it further noted the Audit Committee was seeking to resolve the issue through a protocol with DFP.
335. Responding to Members' questions, the Ombudsperson Bill Team advised *"the Budget Bill will always reflect the Estimates, but the Budget Bill must be recommended by the Minister. That is an excepted matter; the Assembly cannot affect that"* but further clarified *"... It should also be said that, as with any Budget Bill, if the Assembly does not like what is in it, it can simply refuse to pass it. That is the ultimate sanction."*
336. At the meeting of 8 September 2015 the Ombudsperson Bill team briefed the Committee on a number of proposed amendments by the Committee for OFMDFM to Schedule 1. The first amendment provides that the Northern Ireland Public Services Ombudsperson should be a corporation sole rather than an office (as currently drafted). The second amendment relates to paragraph 5(4) which deals with disqualification from appointment as the NIPSO. The amendment is to make it clear that a person is not disqualified from appointment as the NIPSO by virtue of being the Northern Ireland Judicial Appointments Ombudsman (NIJAO) and the NIPSO is not prevented from being appointed as the NIJAO.
337. At its meeting on 15 September 2015 the Committee agreed that it was content with Schedule 1 and the proposed amendments. Nonetheless, the Committee draws the Assembly's attention to the concerns expressed by the Audit Committee that Schedule 1 paragraph 17 may not provide the NIPSO with sufficient protection from the Executive controlling or directing its access to resources.

338. The Committee strongly recommends that the Committee for OFMDFM as sponsor of the Bill takes steps to address the concerns raised by the Audit Committee in respect of ensuring that there is sufficient protection from the Executive controlling or directing the NIPSO's access to resources. The Committee notes that the Audit Committee has urged the Minister for Finance and Personnel to agree a proposed Memorandum of Understanding between the Assembly and the Executive on the budget process in which a protocol to resolve similar issues in respect of the budget of the Northern Ireland Audit Office could be included. The Committee noted that to date, no such protocol or MOU has been agreed.
339. The Committee recommends that an MOU acknowledging and safeguarding the NIPSO's financial independence should be agreed with DFP at the earliest opportunity.

#### **Schedule 2: Transfer of assets, liabilities, staff and other transitional arrangements.**

340. This Schedule is introduced by Clause 4 and it sets out how the staff, assets and liabilities of those existing offices are to be transferred to the office of the NIPSO.
341. During the consultation process no stakeholder responses were received in respect of Schedule 2 and the Committee made no comments on this Schedule during its deliberations.
342. At the meeting of 8 September 2015, the Ombudsperson Bill team briefed the Committee on a number of amendments proposed by OFMDFM. A number of amendments were required to reflect the fact that there will be no "appointed" day. A further amendment was required to reflect concerns raised by the Examiner of Statutory Rules in respect of pension provisions. There were a number of further technical amendments to the Bill.
343. At its meeting on 15 September 2015 the Committee was content with Schedule 2 and the proposed amendments.

#### **Schedule 3: Listed authorities**

344. The Schedule is introduced by Clause 12. It lists all the authorities within the NIPSO's remit.

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345. The Department of Education reported that the Minister was content that Schedule 3 brings grant aided schools within the remit of the NIPSO and on the whole the Northern Ireland Assembly Audit Committee, the Law Society and the Northern Ireland Audit Office (NIAO) welcomed the Schedule 3 list which would fall under the NIPSO's jurisdiction.
346. The Civil Service Commissioners NI (CSCNI) requested that the Committee consider the appropriateness of the Commissioners being included in Schedule 3 since they are the only NIO body to be included. In relation to this issue, the Committee for OFMDFM in its response to the Committee noted the apparent anomaly of the Commissioners being included under Schedule 3 explaining that this came about as they had previously been included under the Ombudsman (NI) Order 1996. It noted that the Secretary of State had no raised no objection to their inclusion under Schedule 3 and that the Miscellaneous Provisions Act 2014 paved the way for the functions related to the work of the Commissioners to be devolved in future without primary legislation. The Committee for OFMDFM concluded that in the absence of any problems having arisen under the Ombudsman Order, the Committee was content for the Commissioners to be within the NIPSO's remit.
347. While both the Northern Ireland Assembly Public Accounts Committee and the NIAO welcomed the provision for the C&AG and NIAO to be placed under the remit of the proposed new NIPSO, the NIAO proposed an amendment to the draft Bill to expressly identify its functions under the Audit (NI) Order 1987 and the Local Government (NI) Order 2005.
348. On 18 June 2015 the Committee for OFMDFM provided a number of amendments to the Bill including adding the Audit Office and the Local Government Auditors to the list of bodies in Clause 42.
349. At its meeting on 23 June the Bill Team for the Committee for OFMDFM clarified that the suggestion from the Audit Office was that when the C&AG and the NIAO are identified in Schedule 3, their specific functions which are identified under the Audit (Northern Ireland) Order 1987 and the Local Government (Northern Ireland) Order 2005, should also be included. *"... the drafter's view was that listing the statutes under which each body exercises its functions would introduce complications. The other issue is that if you list the specific statutes under which a body has functions, there is a risk that you will miss one. If you list only the body, however, you capture all the statutory functions of that body."* This approach was further stressed at the meeting on 30 June 2015.
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350. At its meeting on 15 September 2015 the Committee was content with Schedule 3 and the proposed amendments. The Committee noted the concerns of Mr Colum Eastwood in respect of the inclusion of 'general health care provider' in the listed authorities.

#### **Schedule 4: Tribunals referred to in Section 19**

351. This Schedule is introduced by Clause 19. It lists the tribunals where the NIPSO has jurisdiction in respect of their administrative functions (not their judicial functions).
352. The Committee considered this Schedule and acknowledged that no comments had been made by stakeholders in respect of this Schedule. At the meeting of 8 September 2015, the Ombudsperson Bill team briefed the Committee on a number of amendments proposed by OFMDFM including technical amendments to Schedule 4.
353. At its meeting of 15 September 2015 the Committee were content to agree this Schedule and the proposed amendments.

#### **Schedule 5: Other excluded matters**

354. This Schedule is introduced by Clause 22. It sets out other areas where the NIPSO does not have jurisdiction. For example, the NIPSO cannot investigate a complaint about public inquiries or court proceedings.
355. The Committee considered this Schedule which included acknowledging there were no stakeholder comments on Schedule 5. At the meeting of 8 September 2015, the Ombudsperson Bill team briefed the Committee on a number of amendments proposed by OFMDFM including technical amendments to Schedule 5.
356. At its meeting on 15 September 2015 the Committee agreed that was content with Schedule 5 and the proposed amendments.

#### **Schedule 6: Amendments consequent upon the Ombudsperson being the Northern Ireland Judicial Appointments Ombudsman**

357. This Schedule is introduced by Clause 49. The Northern Ireland Judicial Appointments Ombudsman (NIJAO) was established and is regulated by the Justice (Northern Ireland) Act 2002. Under Clause 49, the NIPSO automatically becomes the NIJAO. This Schedule makes the necessary changes to the 2002 Act consequent upon this. Under the 2002 Act, if a person has ever practised law or held judicial office, the person is ineligible to be the NIJAO. If the NIPSO has this legal background, then he or she is ineligible to exercise certain NIJAO functions. In this case, the NIPSO must appoint another person to carry out those particular functions. This Schedule also amalgamates certain of the administrative functions of the two offices.
358. At its meeting of 8 September 2015, the Ombudsperson Bill Team briefed the Committee on a number of amendments by the Committee for OFMDFM in respect of Schedule 6. The first amendment inserted an additional provision under Schedule 6 which would repeal paragraph 13 of Schedule 3(A) to the Justice (NI) Order 2002 to reflect the agreement on the transfer of the budget from the Department of Justice to the NIPSO regarding the NIJAO functions.
359. The second amendment clarifies that it is the Assembly Commission who should exercise the power to direct the NIJAO to include certain matters in his report. This power was previously exercised by DoJ and the amendment clarifies that it is the Assembly Commission and not the Assembly who will now exercise the power.
360. At its meeting on 15 September 2015 the Committee agreed that it was content with Schedule 6 and the proposed amendments.

#### **Schedule 7: Amendments to Part 9 of the Local Government Act (Northern Ireland) 2014**

361. This Schedule is introduced by Clause 53. The Local Government Act (Northern Ireland) 2014 gave the Commissioner for Complaints additional functions in respect of investigations into local government. With the abolition of the office of the Commissioner, there is a need for consequential changes to the 2014 Act. This Schedule contains those consequential amendments. In broad terms, the amendments fall into two categories. Firstly, references to the Commissioner are now to be read as references to the NIPSO. Secondly, in investigating local government matters, the NIPSO

has powers contained in the 2014 Act along with other powers applying to those investigations contained in this Bill.

362. The Committee was informed by the Ombudsperson Bill Team on 16 June 2015 that the Committee for OFMDFM received correspondence from the Ombudsman, including correspondence from the Minister of the Environment, in relation to a change of title when the NIPSO is discharging functions in relation to investigations of code of conduct under the Local Government Act. The Committee for OFMDFM was content to propose an amendment to this effect.
363. At its meeting of 8 September the Ombudsperson Bill Team briefed the Committee on the Committee for OFMDFM amendments to Schedule 7. These amendments add clarity to the existing Schedule 7.
364. At its meeting on 15 September 2015 the Committee agreed that it was content with Schedule 7 and the proposed amendments.

#### **Schedule 8: Other minor and consequential amendments**

365. This Schedule is introduced by Clause 54. It contains other changes to legislation consequent upon the making of this Bill.
366. The Committee considered this Clause and noted there were no stakeholder comments.
367. At its meeting on 15 September 2015 the Committee agreed that it was content with Schedule 8 and the proposed consequential amendments to the title of the office.

#### **Schedule 9: Repeals**

368. This Schedule is introduced by Clause 57. It contains all the repeals which are necessary in consequence of the making of this Bill.
369. At the meeting of 26 May 2015 the Ombudsperson Bill Team briefed the Committee on an amendment proposed by the Committee for OFMDFM on repeal of the Ombudsman and Commissioner for Complaints (Amendment) Bill when the NIPSO Bill comes into effect.

370. At its meeting on 16 June 2015 the Bill Team for the OFMDFM informed the Committee that there may be further technical amendments required.
371. At its meeting on 15 September 2015 the Committee agreed that it was content with Schedule 9 and the proposed amendments.

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## Other Issues

### Complaints Standards Authority (CSA) Role

372. The Committee for OFMDFM consultation in 2010 sought views on whether the NIPSO should play a design authority role in public sector complaints processes. While a majority of respondents favoured such a role, the Committee for OFMDFM did not pursue this policy matter taking the view that the improvement of public administration would be addressed through the investigation of complaints and recommendations to the listed authorities. The Committee for OFMDFM did note the impact for this measure as per the evidence provided by the Scottish Ombudsman but was mindful of the resources required to deliver this policy in the current financial climate.
373. The Committee considered the correspondence of 15 June 2015 from the NI Ombudsman which stated that *“Given the experience in Scotland which has seen CSA in operation since 2011 and the research into the Administrative Justice landscape in Northern Ireland, I do consider there is evidence to support the inclusion of this role in the NIPSO Bill..... The NIPSO Bill provides a unique opportunity for this Assembly to create a modern and effective Public Services Ombudsman and the addition of the CSA role would, if the Committee decides to introduce this element, support the NIPSO to enable effective complaints handling across Northern Ireland.”*
374. The Committee agreed to forward the correspondence to the Committee for OFMDFM for comment. The Committee for OFMDFM considered the NI Ombudsman’s response of 28 August 2015 to its queries regarding the delivery of a complaints standards authority role in the absence of additional funding being made available.
375. Notwithstanding the issues of funding, the Committee for OFMDFM sees merit in such a role for the Ombudsperson and agreed to prepare the necessary amendments to provide in the Bill for a complaints standards authority role, on the same model as in Scotland, but subject to commencement by the Assembly Commission when the necessary resources for implementation are available.
376. As the amendments were not available for the Committee’s consideration prior to the formal Clause by Clause scrutiny, the Committee noted the

Committee for OFMDFM's intentions and the proposed amendments without taking a view.

### **Amendments to Schedule 1 – The Northern Ireland Public Services Ombudsperson**

377. The Committee for OFMDFM considered the request of 2 July 2015 from the NI Ombudsman to amend Schedule 1 to provide for delegation to any other person to firstly, allow for delegation of an investigation to another Ombudsman should a conflict arise; and secondly to provide for an external review process. The Committee for OFMDFM agreed to prepare draft amendments to give effect to this amendment to Schedule 1.
378. As the amendments were not available for the Committee's consideration prior to the formal Clause by Clause scrutiny, the Committee noted the Committee for OFMDFM's intentions and the proposed amendments without taking a view.

### **Amendments to Schedule 3 – Listed authorities**

379. The Committee for OFMDFM considered the request of 6 July 2015 from the General Teaching Council to be added to the listed authorities within the remit of the NIPSO. The Committee for OFMDFM has written to the Minister of Education and the Committee for Education seeking their views. The Committee noted the Committee for OFMDFM's action.
380. The Committee for OFMDFM considered the request of 7 August 2015 from the Department of Justice to add the Police Rehabilitation and Retraining Trust to the listed authorities within the remit of the NIPSO. The Committee for OFMDFM agreed to prepare draft amendments to give effect to this amendment to Schedule 3. As the amendments were not available for the Committee's consideration prior to the formal Clause by Clause scrutiny, the Committee noted the Committee for OFMDFM's intentions and the proposed amendments without taking a view.
381. The Committee for OFMDFM considered the request of 1 July 2015 from the Minister of Agriculture and Rural Development to remove the Rural Development Council from the listed authorities within the remit of the NIPSO. The Committee agreed to prepare draft amendments to give effect to this amendment to Schedule 3. As the amendments were not available

for the Committee's consideration prior to the formal Clause by Clause scrutiny, the Committee noted the Committee for OFMDFM's intentions and the proposed amendments without taking a view.

382. The Committee considered correspondence from the Assembly Committee for Standards and Privileges which indicated that it is considering bringing forward an amendment to Schedule 3 to make the office of the Northern Ireland Assembly Commissioner for Standards a listed authority into which the NIPSO could investigate alleged maladministration. The Committee noted that the Committee on Standards and Privileges has consulted the current NI Ombudsman on this amendment and that he is content for such an amendment. The Committee on Standards and Privileges believes that the Commissioner for Standards meets the criteria to be a listed authority given that the holder of the office is a public appointee who is financed from public funds and exercises functions conferred by statutory provision. As the amendment was not available for the Committee's consideration prior to the formal Clause by Clause scrutiny, the Committee noted the intention of the Committee for Standards and Privileges without taking a view.

## Clause by Clause consideration of the Bill

### *Part 1 – The Northern Ireland Public Services Ombudsperson*

#### **Clause 1 – The Northern Ireland Public Services Ombudsperson**

383. The Committee agreed it was content with Clause 1 subject to the amendments proposed as follows:

Clause 1, Page 1: Leave out 5 ‘Ombudsperson’ and insert 5 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 1, Page 1, Line 4: After ‘Ombudsperson’ insert ‘(In this Action “the Ombudsperson”)’ [Committee for the Office of the First Minister and deputy First Minister]

Clause 1, page 1, Line 5: Leave out subsection (2) [Committee for the Office of the First Minister and deputy First Minister]

Clause 1, Page 1, Line 7: After ‘Investigate’ insert ‘alleged’ [Committee for the Office of the First Minister and deputy First Minister]

#### **Clause 2 – Independence**

384. The Committee agreed it was content with Clause 2 subject to amendments proposed as follows:

Clause 2, Page 1 & 2: Leave out 2 ‘Ombudsperson’ and insert 2 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 2, Page 2, Line 1: Leave out subsection (2) and insert:

‘(2) but this is subject to:

(a) The power of the Assembly Commission to determine the salary, pension and terms of appointment of the Ombudsperson under paragraphs 6, 7 and 8 of Schedule 1,

(b) The power of the Assembly to request her Majesty to remove the Ombudsperson from office under paragraph 9 of Schedule 1,

(c) The power of the Department of Finance and Personnel to direct the form of accounts the Ombudsperson must prepare, under paragraph 7 of Schedule 2, or sections 9 to 13 of the Government Resources and Accounts Act (Northern Ireland) 2001' [Committee for the Office of the First Minister and deputy First Minister

### **Clause 3 – Appointment**

385. The Committee agreed it was content with Clause 3 subject to the amendments as follows:

Clause 3, Page 2: Leave out 3 'Ombudsperson' and insert 3 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 4 - Abolition of existing offices**

386. The Committee agreed it was content with Clause 4 subject to the proposed amendment as follows:

Clause 4, Page 2: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

## **Part 2 – Investigations**

### ***Power of investigation***

#### **Clause 5 – Power to investigate complaints made by a person aggrieve**

387. The Committee agreed it was content with Clause 5 subject to the proposed amendment as follows:

Clause 5, Page 2: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 6 – Power to investigate complaints referred by a listed authority**

388. The Committee agreed it was content with Clause 6 subject to the proposed amendment as follows:

Clause 6, Page 3: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 7 – Acting on behalf of a person aggrieved**

389. The Committee agreed it is content with Clause 7 subject to the proposed amendment as follows:  
Clause 7, Page 3: Leave out 4 'Ombudsperson' and insert 4 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 8 – Power to investigate on own initiative**

390. The Committee is content with Clause 7 subject to the proposed amendments as follows:  
Clause 8, Page 3 & 4: Leave out 2 'Ombudsperson' and insert 2 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]  
  
Clause 8, Page 3 & 4: Leave out 2 'Ombudsperson' and insert 2 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 9 – Criteria for own initiative investigations**

391. The Committee agreed it was content with Clause 9 subject to the proposed amendments as follows:  
Clause 9, Page 4: Leave out 2 'Ombudsperson' and insert 2 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]  
  
Clause 9, Page 4, Line 18  
  
After 'publish' insert 'and have regard to' [Committee for the Office First Minister and deputy First Minister]

### **Clause 10 – Alternative resolution of complaints**

392. The Committee agreed it was content with Clause 10 subject to the proposed amendments as follows:

Clause 10, Page 4: Leave out 3 'Ombudsperson' and insert 3 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 11 – Purposes of investigations**

393. The Committee agreed it was content with Clause 11 subject to the proposed amendment as follows:

Clause 11, Page 4: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### ***Listed Authorities***

#### **Clause 12 – Listed Authorities**

394. The Committee agreed it was content with Clause 12 subject to the proposed amendments as follows:

Clause 12, Page 5: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 12, Page 5, Line 5 – leave out 'First Minister and deputy First Minister acting jointly may' and insert 'Office of the First Minister and deputy First Minister may, with the concurrence of the Assembly Commission' [Committee for the Office First Minister and deputy First Minister]

Clause 12, Page 5, Line 27 – at end insert:

'(b) its expenses are defrayed out of moneys appropriated by Act of Parliament,' [Committee for the First Minister and deputy First Minister]

Clause 12, Page 5, Line 31 - leave out from 'First' to 'jointly' on line 32 and insert 'Office of the First Minister and deputy First Minister' [Committee for the First Minister and deputy First Minister]

Clause 12, Page 5, Line 33 – Leave out 'they think' and insert 'it thinks' [Committee for the First Minister and deputy First Minister]

#### **Clause 13 – Meaning of action taken by a listed authority**

395. The Committee was content with Clause 13.

## ***Matters which may be investigated***

### **Clause 14 - Matters which may be investigated: general**

396. The Committee agreed it was content with Clause 14 subject to the proposed amendments as follows:

Clause 14, Page 6: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 14, page 6, Line 8 After 'taken' insert 'in the exercise of administrative functions' [Committee for the Office of First Minister and deputy First Minister]

### **Clause 15 – Matters which may be investigated: health and social care bodies**

397. The Committee agreed it was content with Clause 14 subject to the proposed amendments as follows:

Clauses 15, Page 6: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 15, Page 6, Line 18 After 'taken' insert 'in the exercise of administrative functions' [Committee for the Office for the First Minister and deputy First Minister]

Clause 15, Page 6, Line 20 – leave out paragraph (b) [Committee for the Office for the First Minister and deputy First Minister]

Clause 15, Page 6, Line 22 – after 'decision' insert 'of that body' [Committee for the Office of the First Minister and deputy First Minister]

### **Clause 16 – Matters which may be investigated; general health care providers**

398. The Committee agreed it was content with Clause 16 subject to the proposed amendments as follows:

Clauses 16 Page 6: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 16, Page 6, Line 29 - After 'taken' insert 'in the exercise of administrative functions' [Committee for the Office of the First Minister and deputy First Minister]

Clause 16, Page 6, Line 31 – after ‘decision’ insert ‘of that body’ [Committee for the Office of the First Minister and deputy First Minister]

Clause 16, page 6, Line 32 – Leave out ‘clinical’ and insert ‘professional’ [Committee for the Office of the First Minister and deputy First Minister]

### **Clause 17 – Matters which may be investigated; independent providers of health social care**

399. The Committee agreed it was content with Clause 17 subject to the proposed amendments as follows:

Clauses 17, Page 7: Leave out ‘Ombudsperson’ and insert ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 17, Page 7, Line 10 – After ‘taken’ insert ‘in the exercise of administrative functions’ [Committee for the Office of the First Minister and deputy First Minister]

Clause 17, Page 7, Line 13 – leave out paragraph (b) [Committee for the Office of the First Minister and deputy First Minister]

Clause 17, Page 7, Line 15 – after ‘decision’ insert ‘of that body’ [Committee for the Office of the First Minister and deputy First Minister]

### **Clause 18 – Matters which may be investigated; universities**

400. The Committee agreed it was content with Clause 18 subject to the proposed amendments as follows:

Clause 18, Page 7: Leave out 3 ‘Ombudsperson’ and insert 3 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 18, Page 7, Line 37 – At end insert – ‘(7) In this Act, references to a university include references to a constituent college, school or hall or other institution of a university.’ [Committee for the First Minister and deputy First Minister]

### **Clause 19 – Administrative functions of staff of tribunals**

401. The Committee agreed it was content with Clause 19 subject to the proposed amendment as follows:

Clause 19, Page 8, Line 10 – leave out ‘First Minister and deputy First Minister acting jointly may’ and insert ‘Office of the First Minister and deputy first Minister may, with the concurrence of the Assembly Commission’ [Commission for the First Minister and deputy First Minister]

#### **Clause 20 - Exclusion: public sector employment**

402. The Committee agreed it was content with Clause 20 subject to the proposed amendment as follows:

Clause 20, Page 8: Leave out ‘Ombudsperson’ and insert ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 21 – Exclusion: other remedies available**

403. The Committee agreed it was content with Clause 21 subject to the proposed amendments as follows:

Clause 21, Page 8 & 9: Leave out 4 ‘Ombudsperson’ and insert 4 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 22 – Other excluded matters**

404. The Committee agreed it was content with Clause 22 subject to the proposed amendments as follows:

Clause 22, Page 9: Leave out ‘Ombudsperson’ and insert ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 22, page 9 Line 7 – after ‘may’ insert ‘with the concurrence of the Office of the First Minister and deputy First Minister’ [Committee for the Office of the First Minister and deputy First Minister]

#### **Clause 23 – Decisions taken without maladministration**

405. The Committee agreed it was content with Clause 23 subject to the proposed amendment as follows:

Clause 23, Page 9: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### ***Procedure for making complaint to the Ombudsperson***

#### **Clause 24 – Complaint procedure to be invoked and exhausted**

406. The Committee agreed it was content with Clause 23 subject to the proposed amendments as follows:

Clause 24, Page 9: Leave out 2 'Ombudsperson' and insert 2 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 24, Page 9, Line 24 – leave out 'it is reasonable to do so in the circumstances' and insert 'there are special circumstances which make it proper to do so' [Committee for the Office of the First Minister and deputy First Minister]

#### **Clause 25 – Duty to inform person aggrieved about the Ombudsperson**

407. The Committee agreed it was content with Clause 25 subject to the proposed amendments as follows:

Clause 25, Page 9: Leave out 3 'Ombudsperson' and insert 3 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 26 – Form and time limit for making complaint**

408. The Committee agreed it was content with Clause 26 subject to the proposed amendments as follows:

Clause 26, Page 9 & 10: Leave out 4 'Ombudsperson' and insert 4 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 27 – Meaning of exhausting the complaints procedure**

409. The Committee agreed it was content with Clause 27.

## ***Procedure for complaint referred to the Ombudsperson***

### **Clause 28 – Procedure for complaint referred to the Ombudsperson**

410. The Committee agreed it was content with Clause 28 subject to the proposed amendments as follows:

Clause 28, Page 10: Leave out 3 ‘Ombudsperson’ and insert ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 28, Page 10, Line 35 – Leave out ‘it is reasonable to do so’ and insert ‘there are special circumstances which make it proper to do so’ [Committee for the Office of the First Minister and deputy First Minister]

## ***Procedure for own initiative investigations***

### **Clause 29 – Procedure for own initiative investigations**

411. The Committee agreed it was content with Clause 29 subject to the proposed amendment as follows:

Clause 29, Page 10: leave out ‘Ombudsperson’ and insert ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

## ***Conduct of investigations***

### **Clause 30 – Investigation procedure**

412. The Committee agreed it was content with Clause 30 subject to the proposed amendments as follows:

Clause 30, Page 11 & 12: Leave out 12 ‘Ombudsperson’ and insert 12 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]]

Clause 30, page 11, Line 36 - leave out ‘furnishes’ and insert ‘provides’ [Committee for the Office of the First Minister and deputy First Minister]

Clause 30, Page 12, Line – leave out ‘furnishing’ and insert ‘providing’ [Committee for the Office of the First Minister and deputy First Minister]

### Clause 31 – Information, documents, evidence and facilities

413. The Committee agreed it was content with Clause 31 subject to the proposed amendments as follows:

Clause 31, Page 12: Leave out 5 ‘Ombudsperson’ and insert 5 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 31, Page 12, Line 12 – leave out ‘supply’ and insert ‘provide’ [Committee for the Office of the First Minister and deputy First Minister]

Clause 31, Page 12, Line 16 – leave out ‘supply’ and insert ‘provide’ [Committee for the Office of the First Minister and deputy First Minister]

Clause 31, Page 12, Line 24

Leave out ‘supply’ and insert ‘provide’ [Committee for the Office of the First Minister and deputy First Minister]

### Clause 32 – Privileged and confidential information

414. The Committee was content with the proposed amendment as follows:

Clause 32, Page 12, Line 38 – Leave out ‘supply’ and insert ‘provide’ [Committee for the Office of First Minister and deputy First Minister]

Question put: that the Committee is content with Clause 32 subject to the proposed amendment:

The Committee divided: Ayes 4; Noes 3; Abstentions 1

#### **AYES**

Leslie Cree  
Gary Middleton  
Lord Morrow  
Jim Wells

#### **NOES**

Colum Eastwood  
Trevor Lunn  
Alban Maginness

#### **ABSTENTIONS**

Pat Sheehan

415. The Committee agreed it was content with Clause 32 subject to the proposed amendment.

### **Clause 33 – Obstruction and contempt**

416. The Committee agreed it was content with Clause 33 subject to the proposed amendments as follows:

Clause 33, Page 13: Leave out 3 ‘Ombudsperson’ and insert 3 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 33, Page 13, Line 6 – Leave out ‘officer’ and insert ‘member of staff’ [Committee for the Office of the First Minister and deputy First Minister]

## **PART 3 – Miscellaneous and General**

### ***Reports***

#### **Clause 34 – Reports on investigations**

417. The Committee agreed it was content with Clause 34 subject to the proposed amendments as follows:

Clause 34, Page 13 & 14: Leave out 5 ‘Ombudsperson’ and insert 5 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 35 – Publication of reports on investigations in the public interest**

418. The Committee agreed it was content with Clause 35 subject to the proposed amendments as follows:

Clause 35, Page 14: Leave out 6 ‘Ombudsperson’ and insert 6 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 35, Page 14, Line 5 – Leave out lines 5 and 6 and insert:  
35(1) This section –

- (a) Applies where the Ombudsperson proposes to publish a report of a type referred to in section 34 (1)

- (b) but does not apply in respect of an investigation conducted under section 8 [Committee for the Office of the First Minister and deputy First Minister]

### **Clause 36 – Publication of reports on own initiative investigations**

419. The Committee agreed it was content with Clause 36 subject to the proposed amendment as follows:

Clause 36, Page 14: Leave out 2 ‘Ombudsperson’ and insert 2 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 37 – Reports to the Assembly**

420. The Committee agreed it was content with Clause 37 subject to the proposed amendments as follows:

Clause 37, Page 14: Leave out 9 ‘Ombudsperson’ and insert 9 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 37, page 14, Line 24 - After ‘investigation’ insert ‘(other than on under section 8)’ [Committee for the Office of the First Minister and deputy First Minister]

### **Clause 38 – Reports and privileged information**

421. The Committee agreed it was content with Clause 38 subject to the proposed amendments as follows:

Clause 38, Page 14: Leave out 2 ‘Ombudsperson’ and insert 2 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 38, page 14, Line 35 – leave out ‘ in accordance with section 32(2)’ and insert ‘under section 31(1) by virtue of section 32(2)’ [Committee for the Office of the First Minister and deputy First Minister]

## ***Protection from defamation***

### **Clause 39 – Privilege for certain publications**

422. The Committee agreed it was content with Clause 39 subject to the proposed amendments as follows:

Clause 39, Page 15: Leave out 5 ‘Ombudsperson’ and insert 5 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

## ***Disclosure***

### **Clause 40 – Disclosure of information**

423. The Committee agreed it was content with Clause 40 subject to the proposed amendments as follows:

Clause 40, Page 15 & 16: Leave out 4 ‘Ombudsperson’ and insert 4 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 41 – Disclosure contrary to public interest**

424. The Committee agreed it was content with Clause 41 subject to the proposed amendments as follows:

Clause 41, Page 16 & 17: Leave out 4 ‘Ombudsperson’ and insert 4 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 41, Page 16, Line 26 – After ‘give’ insert ‘written’ [Committee for the Office of the First Minister and deputy First Minister]

## ***Consultation and co-operation with other Ombudspersons***

### **Clause 42 – Consultation and co-operation with other Ombudspersons**

425. The Committee agreed it was content with Clause 42 subject to the proposed amendments as follows:

Clause 42, Page 17: Leave out 3 'Ombudsperson' and insert 3 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 42, page 17, Line 38 – At end insert-

- (i) a local government auditor within the meaning of Article 4 of the Local Government (Northern Ireland) Order 2005
- (j) the Comptroller and Auditor General, and
- (k) the Health and Social Care Regulations and Quality Improvement Authority under the Health and Social Care (Reform) Act (Northern Ireland) 2009' [Committee for the Office of the First Minister and deputy First Minister]

### ***Court Proceedings***

#### **Clause 43 – Application to county court by person aggrieved**

426. The Committee agreed it was content with Clause 43 subject to the proposed amendment as follows:

Clause 43, Page 17: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 44 – Relief granted by county court**

427. The Committee agreed it was content with Clause 44.

#### **Clause 45 – Application to High Court by Attorney General**

428. The Committee agreed it was content with Clause 45 subject to the proposed amendments as follows:

Clause 45, Page 18 & 19: Leave out 3 'Ombudsperson' and insert 3 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 46 – Relief granted by High Court**

429. The Committee agreed it was content with Clause 46 subject to the proposed amendment as follows:

Clause 46, Page 19: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

#### **Clause 47 – Court proceedings and privileged information**

430. The Committee agreed it was content with Clause 47 subject to the proposed amendments as follows:

Clause 47, Page 19: Leave out 'Ombudsperson' and insert 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 47, Page 19, Line 27 – Leave out from 'in' to '32(2)' on line 28 and insert 'under section 31(1) by virtue section 32(2)' [Committee for the Office of the First Minister and deputy First Minister]

#### **Clause 48 – Supplementary provision in relation to court proceedings**

431. The Committee agreed it was content with Clause 48 subject to the proposed amendments as follows:

Clause 48, Page 19: Leave out 3 'Ombudsperson' and insert 3 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 48, Page 19 Line 35 – leave our from 'or' to 'Ombudsperson' on line 36 [Committee for the Office of the First Minister and deputy First Minister]

## **PART 4 – The Northern Ireland Judicial Appointments Ombudsman**

### **Clause 49 – Ombudsperson to be Judicial Appointments Ombudsman**

432. The Committee agreed it was content with Clause 49 subject to the proposed amendments as follows:

Clause 49, Page 20: Leave out 2 ‘Ombudsperson’ and insert 2 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 49, Page 20, Line 11 – at end insert –

‘(3) The person holding office as Northern Ireland Judicial Appointments Ombudsman immediately before the coming into operation of this section ceases to hold that office upon the coming into operation of this section.’  
[Committee for the Office of the First Minister and deputy First Minister]

## **PART 5 – Supplementary Provisions**

### **Clause 50 – Interpretation**

433. The Committee agreed it was content with Clause 50 subject to the proposed amendments as follows:

Clause 50, Page 20: Leave out 2 ‘Ombudsperson’ and insert 2 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Clause 50, page 20, Line 15 – at end insert –  
“action taken by a listed authority” has the meaning given in section 13’  
[Committee for the Office of the First Minister and deputy First Minister]

Clause 50 Page 20

Leave out lines 34 and 38 and insert –

- (a) Minister of a Northern Ireland Department, and
- (b) junior Minister

[Committee for the Office of the First Minister and deputy First Minister]

Clause 50, Page 20, Line 38 – at end insert –

“Northern Ireland Minister” has the same meaning as in the Northern Ireland Act 1998” [Committee for the Office of the First Minister and deputy First Minister]

### **Clause 51 – Power to make further provision**

434. The Committee agreed it was content with Clause 51 as drafted

### **New Clause – Orders**

435. The Committee agreed it was content the insertion of the new Clause as drafted after Clause 51

#### **NEW CLAUSE**

‘Orders’

52 (1) No order which subsection (2) applies is to be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly

(2) This subsection applies to an order under section 12(2), 19(3), 22(2) or 51

(3) Orders under paragraph 6(1) of Schedule 1 are subject to negative resolution

(4) Orders mentioned in this section may contain such incidental, consequential, supplementary, and transitional and savings provisions as appear to the authority making them to be necessary or expedient.’

[Committee for the Office for the First Minister and deputy First Minister]

### **Clause 52 – Orders**

436. The Committee agreed it was not content with Clause 52 as drafted.

### **Clause 53 – Amendments to Part 9 of the Local Government Act (Northern Ireland 2014)**

437. The Committee agreed it was content with Clause 53

### **Clause 54 – Other minor and consequential amendments**

438. The Committee agreed it was content with Clause 54

### **Clause 55 – Commencement**

439. The Committee agreed it was content with Clause 54 subject to the proposed amendments as follows:

Clause 55, page 22, Line 2 – Leave out ‘paragraph 11’ and insert ‘paragraphs 5(2) and 11’

Clause 55, Page 22, Line 3 At end insert – (a) section 14(2)(d) [Committee for the Office of the First Minister and deputy First Minister]

Clause 55, page 22, Line 23 – at end insert –

(c) Section 11(c)

(d) Section 29

(e) Section 30(4)

(f) Section 36

(g) Section 37(3)

[Committee for the Office of the First Minister and deputy First Minister]

### **Clause 56 – Short title**

440. The Committee agreed it was content with Clause 56 subject to the proposed amendment as follows:

Clause 56, Page 22: Leave out ‘Ombudsperson’ and insert ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Clause 57 – Repeals**

441. The Committee agreed it was content with Clause 57.

## **SCHEDULES**

### **Schedule 1 – The Northern Ireland Public Services Ombudsperson**

442. The Committee agreed it was content with Schedule 1 subject to the proposed amendments as follows:

Schedule 1, Pages 23, 24, 25, 26, 27, 28: Leave out 68 'Ombudsperson' and insert 68 'Ombudsman' [Ad Hoc Committee on the Ombudsperson Bill]

Schedule 1, Page 23, Line 5 – at end insert –

'1. (1) the person for the time being holding the office of the Northern Ireland Public Services Ombudsperson is by that name a corporation sole.'  
[Committee for the Office of the First Minister and deputy First Minister]

Schedule 1, Page 24, Line 40

Leave out sub-paragraph (4) and insert –

'(4) But –

(a) A person is not disqualified from being appointed as Ombudsperson by virtue of being the Northern Ireland Judicial Appointments Ombudsman

(b) The Ombudsperson is not prevented from being appointed as the Northern Ireland Judicial Appointments Ombudsman' [Committee for the Office of the First Minister and deputy First Minister]

## **Schedule 2 – Transfer of assets, liabilities, staff, and other transitional arrangements**

443. The Committee agreed it was content with Schedule 2 subject to the proposed amendments as follows:

Schedule 2, Pages 28, 29, 30, 31: Leave out 17 'Ombudsperson' and insert 17 'Ombudsman' [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Schedule 2, page 28, Line 40 – Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 29, Line 4 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 29, Line 11 - Leave out 'appointed' and insert 'transfer'

Schedule 2, page 29, Line 12 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 29, Line 13 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 29, Line 19 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 29, Line 22 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 29, Line 24 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page, 30, Line 16 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 30, Line 21 - Leave out 'appointed' and insert 'transfer'

Schedule 2, Page 30, Line 36 - Leave out 'appointed' and insert 'transfer'

[Committee for the Office of the First Minister and deputy First Minister]

Schedule 2, page 31, Line 3 – leave out sub-paragraph (2) and insert –

'(2) accordingly, Article 4(4) to (6) of, and Schedule 1 to, the Commissioner for Complaints (Northern Ireland) Order 1996, or, as the case may be, Article 5(4) to (6) of, and Schedule 1 to, the Ombudsman (Northern Ireland) Order 1996 continue to have effect with respect to such persons.'

[Committee for the Office of the First Minister and deputy First Minister]

Schedule 2, Page 31, Line 5 – leave out 'appointed and insert 'transfer'

Schedule 2, Page 31, Line 7 – leave out 'appointed and insert 'transfer'

Schedule 2, Page 31, Line 10 – leave out 'appointed and insert 'transfer'

Schedule 2, Page 31, Line 29 – leave out 'appointed and insert 'transfer'

Schedule 2, Page 31, Line 31 – leave out 'appointed and insert 'transfer'

Schedule 2, Page 31, Line 31 – leave out 'but' and insert 'and'

Schedule 2, Page 31, Line 32 – Leave out 'no complaint was' and insert 'a complaint could have been, but was not'

Schedule 2, Page 31, Line 33 - leave out 'appointed and insert 'transfer'

Schedule 2, Page 31, Line 34 - leave out 'appointed and insert 'transfer'

Schedule 2, Page 32, Line 1 - leave out 'appointed and insert 'transfer'

[Committee for the Office of the First Minister and deputy First Minister]

### **Schedule 3 – Listed authorities**

444. The Committee agreed it was content with Schedule 3 subject to the proposed amendments as follows:

Schedule 3, Page 32 – leave out lines 9 to 21 and insert –

‘NORTHERN IRELAND DEPARTMENTS a Northern Ireland Department’  
Schedule 3, Page 32, Line 29 – Leave out ‘A’ and insert ‘The board of governors of a’

Schedule 3, Page 33 – leave out lines 30 to 32

Schedule 3, Page 34, Line 37 – at end insert – ‘The Health and Safety Executive for Northern Ireland’

Schedule 3, Page 35, Line 2 – leave out paragraph 1

[Committee for the Office of the First Minister and deputy First Minister]

#### **Schedule 4 – Tribunals referred to in section 19**

445. The Committee agreed it was content with Schedule 4 subject to the proposed amendments as follows:

Schedule 4, page 35, Line 30 – leave out from ‘Article’ to ‘1991’ on line 31 and insert ‘section 203 of the Planning Act (Northern Ireland) 2001.’[Committee for the Office of the First Minister and deputy First Minister]

#### **Schedule 5 – Other excluded matters**

446. The Committee agreed it was content with Schedule 5 subject to the proposed amendments as follows:

Schedule 5, Page 36: Leave out 2 ‘Ombudsperson’ and insert 2 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Schedule 5, page 36 – Leave out lines 17 to 24

Schedule 5, Page 36, Line 31 – Leave out sub-paragraph (2) and insert – ‘(2) But the Ombudsperson may investigate that action, notwithstanding any limitation of time imposed by section 26, if conditions 1 and 2 are satisfied.

(3) Condition 1 is that either –

(a) the Attorney General has decided not to proceed with an investigation,

(b) the Attorney General has decided not to institute proceedings, or

(c) there has been a final determination of those proceedings

[Committee for the Office of First Minister and deputy First Minister]

4. Condition 2 is that –

(a) a person aggrieved complains that the action resulted in the person aggrieved sustaining injustice in consequence of maladministration

(b) that injustice has not been remedied, and

(c) the Ombudsperson is satisfied that there are reasonable grounds for that complaint.’ [Committee for the Office of the First Minister and deputy First Minister]

#### **Schedule 6 – Amendments consequent upon Ombudsperson being Northern Ireland Judicial Appointments Ombudsman**

447. The Committee agreed it was content with Schedule 6 subject to the proposed amendments as follows:

Schedule 6, Page 37 & 38: Leave out 3 ‘Ombudsperson’ and insert 3 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Schedule 6, page 39, Line 27 – at end insert – ‘9. Omit paragraph 13 (financial provisions and directions).’

Schedule 6, Page 39, Line 33 – After ‘Assembly’ insert ‘Commission’

Schedule 6, Page 39, Line 36 – After ‘Assembly’ insert ‘Commission’ [Committee for the Office of First Minister and deputy First Minister]

#### **Schedule 7 – Amendments to part 9 of the Local Government Act (Northern Ireland) 2014**

448. The Committee agreed it was content with Schedule 7 subject to the proposed amendments as follows:

Schedule 7, Page 40 & 41: Leave out 14 ‘Ombudsperson’ and insert 14 ‘Ombudsman’

Schedule 7, Page 41, Line 11: Leave out ‘Ombudspersons’ and insert ‘ombudsmen’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

Schedule 7, Page 40, Line 7 – Leave out paragraph 2

Schedule 7, Page 40, Line 22 – Leave out line 22 and insert – ‘63. – (1) The provisions of the 2015 Act set out below have effect in relation to this Part as follows.’

Schedule 7, Page 41 – leave out lines 18 and 19

Schedule 7, page 41, line 27 – “the Commissioner” means the Ombudsperson (within the meaning of the 2015 Act) who is to be known, for the purposes of exercising functions under this Part, as the Northern Ireland Local Government Commissioner for Standards;” [Committee for the Office of the First Minister and deputy First Minister]

### **Schedule 8 – Other minor and consequential amendments**

449. The Committee agreed it was content with Schedule 8 subject to the proposed amendment as follows:

Schedule 8, Pages 41, 42, 43: Leave out 13 ‘Ombudsperson’ and insert 13 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

### **Schedule 9 – Repeals**

450. The Committee agreed it was content with Schedule 9 subject to the proposed amendment as follows:

Schedule 9, page 46, Line 40 – At end insert – The Ombudsman and Commissioner for Complaints (Amendment) Act (Northern Ireland) 2015 / The Whole Act. [Committee for the Office of the First Minister and deputy First Minister]

### **Long Title**

451. The Committee agreed it was content with the Long Title subject to the proposed amendments as follows:

Leave out 2 ‘Ombudsperson’ and insert 2 ‘Ombudsman’ [Ad Hoc Committee on the Public Services Ombudsperson Bill]

# Appendix 1

## Minutes of Proceedings

[12 May 2015](#)

[19 May 2015](#)

[26 May 2015](#)

[2 June 2015](#)

[9 June 2015](#)

[16 June 2015](#)

[23 June 2015](#)

[30 June 2015](#)

[8 September 2015](#)

[14 September 2015](#)

[15 September 2015](#)

[22 September 2015](#)

[29 September 2015](#)

## Appendix 2

### List of Witnesses and Minutes of Evidence

Mr Mike Nesbitt MLA	Chairperson, Committee for the Office of the First Minister and deputy First Minister Ombudsperson Bill Team, Committee for the Office of the First Minister and deputy First Minister	<a href="#">12 May 2015</a>
Dr Tom Frawley Ms Marie Anderson	Northern Ireland Ombudsman's Office	<a href="#">19 May 2015</a>
	Ombudsperson Bill Team, Committee for the Office of the First Minister and deputy First Minister	<a href="#">26 May 2015</a>
Ms Wilma Fee Ms Helen McNeely Mr Derek Weir	Queen's University, Belfast	<a href="#">28 May 2015</a>
Mr Eamon Mullan Ms Maria McGilloway	Ulster University	
Mr Kieran Donnelly Ms Louise Mason	Northern Ireland Audit Office	
Ms Virginia McVea	Northern Ireland Human Rights Commission	
Ms Joan Hassin	Member of the public	
Mr Brian Rowntree Ms Joanne Dowling Mr Peter Murchan	Civil Service Commissioners for Northern Ireland	
Mr Peter Tyndall	Office of the Ombudsman, Ireland	<a href="#">2 June 2015</a>
	Ombudsperson Bill Team, Committee for the Office of the First Minister and deputy First Minister	<a href="#">9 June 2015</a>
	Ombudsperson Bill Team,	<a href="#">16 June 2015</a>

Committee for the Office of the First  
Minister and deputy First Minister

Ombudsman Bill Team,  
Committee for the Office of the First  
Minister and deputy First Minister

[23 June 2015](#)

Ombudsman Bill Team,  
Committee for the Office of the First  
Minister and deputy First Minister

[30 June 2015](#)

Ombudsman Bill Team,  
Committee for the Office of the First  
Minister and deputy First Minister

[8 September 2015](#)

Ms Bernadette Maginnis  
Ms Judith Cross  
Dr Martin McCloskey

British Medical Association

[14 September 2015](#)

[15 September 2015](#)

[22 September 2015](#)

[29 September 2015](#)

## Appendix 3

### Written Submissions

[Audit Committee](#)

[Bar Council](#)

[British Medical Association](#)

[Civil Service Commissioners for Northern Ireland](#)

[Colleges Northern Ireland](#)

[Commissioner for Older People for Northern Ireland](#)

[Committee for Education including Department of Education response](#)

[Committee for Employment and Learning](#) (including submissions from Colleges NI, the Open University, Queen's University, Belfast, Queen's University Students Union)

[Committee for Finance and Personnel](#)

[Committee for Social Development](#)

[Department of Justice](#)

[General Teaching Council for Northern Ireland](#)

[International Ombudsman Institute](#)

[Law Society of Northern Ireland](#)

[Medical Defence Union](#)

[Medical Protection Society](#)

[Northern Ireland Audit Office](#)

[Northern Ireland Human Rights Commission](#)

[Northern Ireland Local Government Association](#)

[Northern Ireland Social Care Council](#)

[NUS-USI](#)

[Office of the Ombudsman Ireland](#)

[Ombudsman Association](#)

[Public Accounts Committee](#)

[Public Services Ombudsman for Wales](#)

[Scottish Public Services Ombudsman](#)

[Regional Health and Social Care Board](#)

[Ulster University](#)

### Individual Submissions

<a href="#">Mr Joseph Boyle</a>
<a href="#">Ms Joan Hassin</a>
<a href="#">Mr Brian Thompson</a>

## Appendix 4

### Other Papers and Correspondence

<b>Correspondence from Committee for OFMDFM</b>	<b>Date</b>
<a href="#"><u>Correspondence from the Minister for Health, Social Services and Public Safety and the Minister for Education</u></a>	13 May 2015
<a href="#"><u>Clarification on key issues including:</u></a>	4 June 2015
<ul style="list-style-type: none"> <li>• use of term ‘Ombudsperson’</li> <li>• lack of definition of maladministration</li> <li>• authority for the NIPSO to investigate complaints against councillors</li> <li>• potential for duplication with other statutory bodies</li> <li>• criteria for own initiative investigations</li> <li>• inclusion of Civil Service Commissioners in listed authorities</li> <li>• jurisdiction re universities and institutes of further and higher education including constituent colleges</li> <li>• exclusion of academic judgement from remit</li> <li>• remit of the NIPSO, the Office of the Independent Adjudicator and the Board of Visitors</li> <li>• reduction in the time limit for making complaints</li> <li>• withdrawal of complaints</li> <li>• requesting information from an aggrieved person</li> <li>• publication of reports</li> <li>• co-operation with the Comptroller and Auditor General</li> <li>• Complaints Standards Authority role</li> <li>• compliance with human rights legislation</li> </ul>	
<a href="#"><u>Correspondence from the NI Ombudsman on defining maladministration</u></a>	16 June 2015
<a href="#"><u>Research paper NIAR 232-15: Ombudsman – Gender Neutral?</u></a>	
<a href="#"><u>Clarification on key issues including:</u></a>	18 June 2015
<ul style="list-style-type: none"> <li>• comments of the Examiner of Statutory Rules</li> <li>• status of constituent colleges</li> <li>• Clause 41 disclosure</li> </ul>	

- amendments proposed

[Clarification on key issues including:](#) 26 June 2015

- Complaints Standards Authority
- Audit Committee submission in respect of the financial independence of the NIPSO

[Comments on issues raised at stakeholder event including:](#) 26 June 2015

- Ombudsman as an arm's length body
- Ombudsman answering questions
- scrutiny and review of the Ombudsman
- definition of maladministration
- guidelines for exercise of discretion
- Power of oath
- accessibility of evidence
- maladministration and misconduct of the Ombudsman

[Proposed amendments following comments from the Examiner of Statutory Rules](#) 3 July 2015

[Clarification on key issues including:](#) 3 September 2015

- Comments on the Bill by OLC
- Constituent colleges
- Research paper NIAR 374-15: Information on universities
- Correspondence from NI Ombudsman on the resources for a Complaints Standards Authority role
- Requests for amendments to Schedule 3 listed authorities from the General Teaching Council; Minister for Agriculture and Rural Development; Department of Justice
- Correspondence from the NI Ombudsman on an amendment to Schedule 1 to allow delegation

[Further amendments in relation to the Complaints Standards Authority and Theological Colleges](#) 17 September 2015

### **Research Papers**

[NIAR 604-11 Information on Public Bodies](#) November 2011

[NIAR 930-13 Own Motion Investigations by Ombudsmen](#) January 2014

[NIAR 490-14 Public Service Ombudsman Bill - Update on estimated cost implications](#) October 2014

[NIAR 907-14 Northern Ireland Public Services Ombudsperson Bill](#) April 2015

**Correspondence from Northern Ireland Ombudsman**

<a href="#">Briefing paper for evidence session including comments on new powers; removal of employment jurisdiction; accountability arrangements</a>	19 May 2015
<a href="#">Additional papers referred to by the Ombudsman on 19 May 2015 including comments on:</a>	20 May 2015
<ul style="list-style-type: none"> <li>• Deloitte Review</li> <li>• Implementation Committee to undertake the work of the NIPSO</li> <li>• Extract from a publication by C White “Enforcing the Decisions of Ombudsmen – the Northern Ireland Local Government Ombudsman’s Experience” (1994)</li> <li>• 40 Years of the Office of the NI Ombudsman – Reflections in Time (2010)</li> </ul>	
<a href="#">Amendment to Schedule 7 as relating to the Local Government Act (Northern Ireland) 2014</a>	2 June 2015
<a href="#">Complaints Standards Authority and report ‘Mapping the Administrative Justice Landscape in Northern Ireland’</a>	15 June 2015
<a href="#">Time limit for complaints</a>	24 June 2015
<a href="#">Requesting an amendment to Schedule 1 to allow for delegation</a>	9 July 2015
<a href="#">Response to issues raised by the BMA</a>	11 September 2015
<b>Additional Correspondence and Reports</b>	
<a href="#">Office of the First Minister and deputy First Minister – comments on the Bill</a>	10 June 2015
<a href="#">Ombudsman Ireland re complaints on procurement and tendering</a>	30 June 2015
<a href="#">Committee for Education re Special Educational Needs redress</a>	2 July 2015
<a href="#">Committee for Justice re Department of Justice comments</a>	6 July 2015
<a href="#">General Teaching Council request to be included in listed authorities</a>	6 July 2015
<a href="#">BMA correspondence to the Chairperson</a>	5 & 12 August 2015
<a href="#">Department of Justice re including the PRRT in Schedule 3</a>	7 August 2015
<a href="#">BMA briefing paper for evidence session</a>	9 September 2015
<a href="#">Committee for Standards and Privileges - Potential amendment to include the Assembly Commissioner for Standards in listed authorities</a>	24 September 2015
<a href="#">Ombudsman Ireland – Learning to Get Better Report</a>	2015
<a href="#">National Assembly for Wales Committee for Finance - Consideration of Powers: Public Services Ombudsman for Wales May 2015</a>	2015

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Ad Hoc Committee for the Public Services Ombudsperson Bill

Paul Gill, Clerk

Northern Ireland Assembly

Parliament Buildings

Ballymiscaw

Stormont

Belfast BT4 3XX

**Tel:** 028 90 521735

**Email:** [nipsoadhoccommittee@niassembly.gov.uk](mailto:nipsoadhoccommittee@niassembly.gov.uk)

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