



# Public Services Ombudsman Act (Northern Ireland) 2016

CHAPTER 4

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## CHAPTER 4

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# Public Services Ombudsman Act (Northern Ireland) 2016

## 2016 CHAPTER 4

An Act to Establish and make provision about the office of the Northern Ireland Public Services Ombudsman; 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 Ombudsman is, by virtue of holding that office, the Northern Ireland Judicial Appointments Ombudsman; and for connected purposes. [19th February 2016]

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### PART 1

#### THE NORTHERN IRELAND PUBLIC SERVICES OMBUDSMAN

##### **The Northern Ireland Public Services Ombudsman**

**1.**—(1) There is to be a Northern Ireland Public Services Ombudsman (in this Act “the Ombudsman”).

(2) The principal purpose of the Ombudsman is to investigate alleged maladministration in listed authorities.

(3) Schedule 1 makes further provision about the Ombudsman.

##### **Independence**

**2.**—(1) The Ombudsman is not subject to the direction or control of—

- (a) a Minister,
- (b) the Secretary of State,
- (c) a Northern Ireland department,
- (d) the Assembly, or

- (e) the Assembly Commission.
- (2) But this is subject to—
  - (a) the power of the Assembly Commission to determine the salary, pension and terms of appointment of the Ombudsman under paragraphs 6, 7 and 8 of Schedule 1,
  - (b) the power of the Assembly to request Her Majesty to remove the Ombudsman 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 Ombudsman must prepare, under paragraph 7 of Schedule 2, or sections 9 to 13 of the Government Resources and Accounts Act (Northern Ireland) 2001.

### **Appointment**

- 3.**—(1) The Ombudsman is to be appointed by Her Majesty, on the nomination of the Assembly.
- (2) Appointment is for a term of 7 years.
  - (3) A person appointed as the Ombudsman is not eligible for re-appointment.
  - (4) The Assembly Commission is to make arrangements for—
    - (a) determining the criteria for appointment, and
    - (b) ensuring that the person to be appointed has been identified by fair and open competition.
  - (5) The validity of the exercise of any function of the Ombudsman is not affected by any defect in appointment.

### **Abolition of existing offices**

- 4.**—(1) The offices of—
  - (a) Assembly Ombudsman for Northern Ireland, and
  - (b) Northern Ireland Commissioner for Complaints,are abolished.
- (2) In this Act those offices are referred to as “existing offices”.
  - (3) Schedule 2 (which provides for the transfer of assets, liabilities, staff etc. of the existing offices to the Ombudsman, and which makes other transitional and savings arrangements) has effect.

## PART 2

### INVESTIGATIONS

#### *Power of investigation*

### **Power to investigate complaints made by a person aggrieved**

- 5.**—(1) The Ombudsman may investigate a complaint, made by a member of the public who claims to have sustained an injustice (in this Act referred to as “a person aggrieved”), if the requirements of this section are met.

(2) The complaint must relate to action taken by a listed authority (see sections 12 and 13).

(3) The complaint must relate to a matter which can be investigated (see sections 14 to 23).

(4) The procedural requirements of sections 24 to 27 must have been followed.

(5) In this section “member of the public” means any individual or any incorporated or unincorporated body other than—

(a) a listed authority acting in its capacity as such, or

(b) a member or officer, at the time of the action complained of and acting in that capacity, of the listed authority against which the complaint is made.

#### **Power to investigate complaints referred by a listed authority**

**6.**—(1) The Ombudsman may investigate a complaint referred by a listed authority if the requirements of this section are met.

(2) The complaint must have been made to the listed authority by a person aggrieved.

(3) The listed authority must have been unable to resolve the complaint.

(4) The complaint must relate to action taken by the listed authority (see sections 12 and 13).

(5) The complaint must relate to a matter which can be investigated (see sections 14 to 23).

(6) The procedural requirements of section 28 must have been followed.

#### **Acting on behalf of a person aggrieved**

**7.**—(1) A member of the Assembly may act on behalf of a person aggrieved if authorised to act by the person.

(2) The following may act on behalf of a person aggrieved who has died, or is unable for any reason to act—

(a) a member of the Assembly,

(b) a personal representative,

(c) a family member, or

(d) any other person the Ombudsman considers appropriate.

(3) Any other person may act on behalf of a person aggrieved if—

(a) that person is authorised in writing to act by the person aggrieved, and

(b) the Ombudsman considers that person appropriate.

(4) In the case of a complaint referred by a listed authority to the Ombudsman, the requirement in subsection (2) and (3) that the Ombudsman considers a person appropriate has no effect.

(5) Where, under this section, another person acts on behalf of a person aggrieved, references in any other provision of this Act to a person aggrieved are to be construed as including that other person.

### **Power to investigate on own initiative**

**8.**—(1) The Ombudsman may investigate a matter in respect of which—

- (a) no complaint has been made, or
- (b) one or more complaints have been made (even if these complaints do not satisfy the requirements set out in sections 24 to 27),

if the requirements of this section are met.

(2) The matter must relate to action taken by one or more listed authorities (see sections 12 and 13).

(3) The matter must be one which can be investigated (see sections 14 to 23).

(4) The Ombudsman must have a reasonable suspicion—

- (a) that there is systemic maladministration, or
- (b) in a case where the matter is one which falls to be investigated under section 15(2)(b), 16(2)(b) or 17(2)(b), that systemic injustice has been sustained as a result of the exercise of professional judgement.

(5) The procedural requirements of section 29 must have been followed.

(6) The matter may relate to action taken before as well as after the day this section comes into operation.

### **Criteria for own initiative investigations**

**9.**—(1) The Ombudsman must establish (and may from time to time amend) criteria to be used in determining whether to commence an investigation under section 8.

(2) The Ombudsman must publish and have regard to these criteria.

### **Alternative resolution of complaints**

**10.**—(1) The Ombudsman may take any action which the Ombudsman considers appropriate with a view to resolving a complaint which could be investigated under section 5 or 6.

(2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.

(3) Any action under this section must be taken in private.

### **Purposes of investigation**

**11.** The purposes of an investigation are—

- (a) to ascertain if—
  - (i) the matter properly warrants investigation, and
  - (ii) the allegations contained in a complaint are in substance true,
- (b) where it appears to the Ombudsman to be desirable, to bring about a settlement, including by recommending that—
  - (i) action be taken by the person aggrieved or listed authority, or
  - (ii) the listed authority make a payment to the person aggrieved, and
- (c) in the case of an investigation under—
  - (i) section 8(4)(a), to ascertain if there is systemic maladministration,

- (ii) section 8(4)(b), to ascertain if there is systemic injustice.

*Listed authorities*

**Listed authorities**

**12.**—(1) Each of the authorities listed in Schedule 3 is a listed authority for the purposes of this Act.

(2) The Office of the First Minister and deputy First Minister may by order amend Schedule 3 by—

- (a) adding or omitting an authority, or
- (b) altering its description.

(3) But an order under subsection (2) may not add an authority unless the authority—

- (a) exercises functions on behalf of the Crown,
- (b) is a body whose members, in whole or in part, are public appointees,
- (c) is substantially financed out of public funds, or
- (d) exercises functions conferred by a statutory provision.

(4) For the purposes of this section, a public appointee is a person appointed by—

- (a) the Crown,
- (b) a Minister,
- (c) a Minister of the Crown,
- (d) a Northern Ireland department,
- (e) a department of the Government of the United Kingdom,
- (f) the Assembly, or
- (g) the Assembly Commission.

(5) For the purposes of this section, a body is financed out of public funds if—

- (a) its expenses are defrayed out of moneys appropriated by Act of the Assembly,
- (b) its expenses are defrayed out of moneys appropriated by Act of Parliament,
- (c) its expenses are charged on and issued out of the Consolidated Fund, or
- (d) its expenses are charged on and issued out of the Consolidated Fund of the United Kingdom.

(6) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman, the authority concerned, and any other person it thinks appropriate.

**Meaning of action taken by a listed authority**

**13.**—(1) For the purposes of this Act, action is taken by a listed authority if it is taken by—

- (a) that authority,
- (b) a member, officer or member of staff of the authority acting in the discharge of functions of the authority,

- (c) a person to whom the authority has delegated any function, in the discharge of that function,
- (d) any other person acting on behalf of the authority.

(2) In this Act references to action taken by a listed authority include a failure to act on the part of the authority; and such other expressions connoting action are to be construed accordingly.

*Matters which may be investigated*

**Matters which may be investigated: general**

**14.**—(1) The Ombudsman may investigate alleged maladministration through action taken in the exercise of administrative functions by a listed authority.

- (2) This section does not apply to—
  - (a) health and social care bodies,
  - (b) general health care providers,
  - (c) independent providers,
  - (d) the universities referred to in section 18.

**Matters which may be investigated: health and social care bodies**

**15.**—(1) This section applies where a listed authority is a health and social care body.

- (2) The Ombudsman may investigate—
  - (a) alleged maladministration through action taken in the exercise of administrative functions by the health and social care body,
  - (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement exercisable in connection with the provision of health or social care.

**Matters which may be investigated: general health care providers**

**16.**—(1) This section applies where a listed authority is a general health care provider.

- (2) The Ombudsman may investigate—
  - (a) alleged maladministration through action taken in the exercise of administrative functions by the general health care provider in connection with general health care services,
  - (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement in connection with general health care services.
- (3) In this Act, a general health care provider is—
  - (a) an individual undertaking to provide primary medical services or general dental services under Part 6 of the Health and Personal Social Services (Northern Ireland) Order 1972,
  - (b) a person undertaking to provide general ophthalmic services or pharmaceutical services under Part 6 of that Order, or

- (c) an individual performing primary medical services or personal dental services in accordance with arrangements made under Article 15B of that Order (except as employees of, or otherwise on behalf of, a health and social care body or an independent provider).

(4) In this Act, general health care services are the services mentioned in subsection (3).

**Matters which may be investigated: independent providers of health and social care**

17.—(1) This section applies where the listed authority is an independent provider of health and social care.

(2) The Ombudsman may investigate—

- (a) alleged maladministration through action taken in the exercise of administrative functions by the independent provider in connection with an arrangement with a health and social care body or a general health care provider to provide a service,
- (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement exercisable in connection with the provision of health or social care under that arrangement.

(3) In this Act, an independent provider of health and social care is a person—

- (a) providing services (of any kind) under an arrangement with a health and social care body or a general health care provider, and
- (b) who is not a health and social care body or a general health care provider.

**Matters which may be investigated: universities**

18.—(1) This section applies where the listed authority is—

- (a) The Queen's University of Belfast,
- (b) University of Ulster.

(2) The Ombudsman may investigate alleged maladministration through action taken by a university in the exercise of administrative functions, in respect of students enrolled in courses provided or validated by the university.

(3) Where the investigation is under section 5 or 6, the complaint must have been made by a student, or a person who has been a student.

(4) But the Ombudsman has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement.

(5) If the Ombudsman has jurisdiction in respect of a complaint, the visitor of a university has no jurisdiction in respect of that complaint.

(6) Where, before this section has come into operation, a complaint has been made to the visitor but has not been resolved by the visitor, the visitor has jurisdiction to deal with that complaint as if the other provisions of this section had not come into operation.

(7) In this Act, references to a university include references to a constituent college, school or hall or other institution of a university.

### **Administrative functions of staff of tribunals**

**19.**—(1) For the purposes of section 14, administrative functions exercisable by any person appointed or assigned by the Department of Justice to serve as a member of the administrative staff of any court or tribunal are to be taken to be administrative functions of that Department.

(2) For the purposes of section 14, administrative functions exercisable by any person appointed or assigned to serve as a member of the administrative staff of a tribunal listed in Schedule 4—

- (a) by a listed authority, or
- (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of a listed authority,

are to be taken to be administrative functions of that listed authority.

(3) The Office of the First Minister and deputy First Minister may by order amend Schedule 4 by—

- (a) adding or omitting an entry, or
- (b) altering its description.

(4) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman and any other person it thinks appropriate.

### **Exclusion: public sector employment**

**20.** The Ombudsman must not investigate action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to—

- (a) service in any office or employment under a listed authority,
- (b) service in any office or employment under the Crown,
- (c) service—
  - (i) in any office or employment; or
  - (ii) under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in a listed authority.

### **Exclusion: other remedies available**

**21.**—(1) The Ombudsman must not investigate—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative,
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.

(2) But this is subject to—

- (a) section 78 of the Northern Ireland Act 1998 (investigations involving discrimination or making oaths or declarations), and
- (b) subsection (3).

(3) The Ombudsman may investigate—

- (a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in subsection (1), if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort to or have resorted to it, or
- (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in subsection (1)(a), if the person aggrieved complains that the injustice sustained remains unremedied thereby and the Ombudsman is satisfied that there are reasonable grounds for that complaint.

#### **Other excluded matters**

**22.**—(1) The Ombudsman must not investigate any actions or matters that are described in Schedule 5 otherwise than as authorised by paragraph 4(2) of that Schedule.

(2) The Office of the First Minister and deputy First Minister may by order amend Schedule 5 so as to exclude from the provisions of that Schedule any action or matter that is described in that order.

(3) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman and any other person it thinks appropriate.

#### **Decisions taken without maladministration**

**23.**—(1) Nothing in this Act authorises the Ombudsman to question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.

(2) But this is subject to—

- (a) section 15(2)(b),
- (b) section 16(2)(b), and
- (c) section 17(2)(b).

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

#### **Complaints handling procedure to be invoked and exhausted**

**24.**—(1) The Ombudsman may investigate a complaint under section 5 only if satisfied that the person aggrieved has invoked and exhausted the listed authority's complaints handling procedure.

(2) But the Ombudsman may investigate a complaint despite the requirements of this section not being met, if there are special circumstances which make it proper to do so.

#### **Duty to inform person aggrieved about the Ombudsman**

**25.**—(1) This section applies where a listed authority's complaints handling procedure is exhausted.

(2) The authority must, within 2 weeks of the day on which the complaints handling procedure is exhausted give the person aggrieved a written notice stating—

- (a) that the complaints handling procedure is exhausted, and

- (b) that the person aggrieved may, if dissatisfied, refer the complaint to the Ombudsman.
- (3) A notice under subsection (2) must—
  - (a) inform the person aggrieved of the time limit for referring the complaint to the Ombudsman, and
  - (b) provide details of how to contact the Ombudsman.

#### **Form and time limit for making complaint**

- 26.**—(1) The Ombudsman may specify—
- (a) the form in which complaints must be made, and
  - (b) any particulars which complaints must contain.

(2) Where the complaints handling procedure has been exhausted, the complaint must be made to the Ombudsman within 6 months of the day that the notice under section 25 is sent.

(3) Where the complaints handling procedure has not been exhausted but section 24(2) applies, the complaint must be made to the Ombudsman within 12 months of the day on which the person aggrieved first has notice of the matters alleged in the complaint.

(4) But the Ombudsman may investigate a complaint, despite the requirements of subsections (1) to (3) not being met, if there are special circumstances which make it proper to do so.

#### **Meaning of exhausting the complaints handling procedure**

- 27.** A complaints handling procedure is exhausted when—
- (a) a final decision is made on the complaint,
  - (b) it is determined not to deal with the complaint, or
  - (c) it is determined not to deal any further with the complaint.

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

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

- 28.**—(1) Complaints referred to the Ombudsman must—
- (a) have been made to the listed authority within 12 months of the day on which the person aggrieved first had notice of the matters alleged in the complaint, and
  - (b) be referred to the Ombudsman within six months of the day on which the complaint was made to the listed authority.

(2) But the Ombudsman may investigate a complaint, despite the requirements of this section not being met, if there are special circumstances which make it proper to do so.

*Procedure for own initiative investigations*

**Procedure for own initiative investigations**

**29.**—(1) Before commencing an investigation under section 8, the Ombudsman must—

- (a) prepare an investigation proposal, and
  - (b) submit that proposal to any listed authority which it is proposed be investigated.
- (2) The investigation proposal must set out—
- (a) the reasons for the proposed investigation, and
  - (b) how the criteria referred to in section 9 have been met.

*Conduct of investigations*

**Investigation procedure**

**30.**—(1) It is for the Ombudsman—

- (a) to decide whether to begin, continue or discontinue an investigation,
  - (b) to determine if the requirements of sections 5, 6 or 8 have been met.
- (2) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.
- (3) If the Ombudsman conducts an investigation into a complaint in respect of a listed authority, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any allegations contained in the complaint,
  - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person.
- (4) If the Ombudsman conducts an investigation into a listed authority under section 8, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any evidence of systemic maladministration or systemic injustice, as the case may be,
  - (b) give any person who appears to have taken part in or authorised systemic maladministration or systemic injustice, as the case may be, an opportunity to comment on any evidence of that.
- (5) An investigation must be conducted in private.
- (6) Subject to subsections (3) to (5), the procedure for conducting an investigation is to be such as the Ombudsman considers appropriate in the circumstances of the case.
- (7) In particular the Ombudsman may—
- (a) make such inquiries as are appropriate, and
  - (b) determine whether any person may be represented in the investigation by counsel, solicitor or otherwise.
- (8) The Ombudsman may pay to a person aggrieved and to any other person who attends or provides information for the purposes of an investigation—

- (a) such sums as the Ombudsman may determine in respect of expenses properly incurred by them,
- (b) such allowances as the Ombudsman may determine by way of compensation for the loss of their time.

(9) In exercising powers under subsection (8), the Ombudsman must have regard to the desirability of keeping the sums and allowances payable broadly in line with those payable in respect of persons attending, or providing information to, a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative.

(10) The conduct of an investigation in respect of a listed authority does not affect—

- (a) the validity of any action taken by the listed authority, or
- (b) any power or duty of the listed authority to take further action with respect to any matter under investigation.

### **Information, documents, evidence and facilities**

**31.**—(1) For the purposes of an investigation, the Ombudsman may require the listed authority being investigated and any of the persons mentioned in subsection (2) to provide information or produce documents relevant to the investigation.

(2) Those persons are—

- (a) any member, officer or member of staff of the listed authority, and
- (b) any other person, who in the Ombudsman's opinion is able to provide this information or produce these documents.

(3) For the purposes of an investigation, the Ombudsman has the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad, and
- (b) the production of documents.

(4) For the purposes of an investigation, the Ombudsman may require a person who is able to provide information or produce a document relevant to the investigation, to provide any facility the Ombudsman may reasonably require.

(5) Subject to section 32(1) and (2), no person is compelled, for the purposes of an investigation, to give any evidence or produce any document which that person could not be compelled to give or to produce in civil proceedings in the High Court.

### **Privileged and confidential information**

**32.**—(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in the service of the Crown, whether imposed by any statutory provision or any rule of law, applies to the disclosure of information for the purposes of an investigation.

(2) A listed authority is not entitled in relation to any investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(3) No person is or may be required or authorised by virtue of this Act to provide any information or answer any question relating to proceedings of the Executive Committee of the Assembly or of a sub-committee of that Committee, or to produce so much of any document as relates to such proceedings.

(4) For the purpose of subsection (3) a certificate issued by the secretary of the Executive Committee of the Assembly with the approval of the First Minister and deputy First Minister acting jointly and certifying that any information, question, document or part of a document relates to any proceedings mentioned in that subsection is conclusive.

### **Obstruction and contempt**

**33.**—(1) If any person without lawful excuse—

- (a) obstructs the Ombudsman, any member of staff of the Ombudsman or any person authorised in accordance with paragraph 14(2) of Schedule 1 in the performance of functions under this Act, or
- (b) is guilty of any act in relation to an investigation under this Act which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Ombudsman may certify the offence to the High Court.

(2) Where an offence is certified under this section, the High Court may inquire into the matter and, after hearing—

- (a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
- (b) any statement that may be offered in defence,

may deal with the person charged with the offence in any manner in which the court could deal with the person if the person had committed the like offence in relation to the court.

(3) This section does not apply to the taking of any action mentioned in section 30(10).

## PART 3

### COMPLAINTS HANDLING PROCEDURE

#### **Meaning of complaints handling procedure**

**34.** In this Act “complaints handling procedure” is the procedure of a listed authority for examining complaints in respect of matters which the Ombudsman may investigate.

#### **Statement of principles**

**35.**—(1) The Ombudsman must publish a statement of principles concerning complaints handling procedures of listed authorities.

(2) The first statement of principles is not to be published unless a draft of the statement has been laid before, and approved by a resolution of, the Assembly.

(3) Before laying a draft statement of principles before the Assembly, the Ombudsman must consult—

- (a) Ministers of Northern Ireland departments, and
- (b) such listed authorities and other persons as the Ombudsman thinks fit.

(4) The Ombudsman must, in preparing the draft statement of principles, have regard to any representations made during the consultation.

(5) The statement of principles comes into force when it is published by the Ombudsman.

(6) The Ombudsman may from time to time revise and re-publish the statement of principles.

(7) Where the Ombudsman considers that any revision of the statement of principles is material, subsections (2) to (5) apply to that statement of principles as they do to the first statement of principles.

### **Obligation for listed authority to have complaints handling procedure**

**36.**—(1) A listed authority must ensure—

- (a) it has a complaints handling procedure in respect of action taken by the listed authority, and
- (b) any such procedure complies with the statement of principles.

(2) A listed authority which is responsible for a complaints handling procedure—

- (a) in relation to, or
- (b) operated by,

another listed authority, must ensure the procedure complies with the statement of principles.

### **Model complaints handling procedures**

**37.**—(1) The Ombudsman may publish model complaints handling procedures for listed authorities.

(2) A model complaints handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.

(3) The Ombudsman may publish different model CHPs for different purposes.

(4) Before publishing a model CHP the Ombudsman must consult such listed authorities and other persons as the Ombudsman thinks fit.

(5) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so, subsection (4) applies.

(6) Where a model CHP is revised and re-published, section 38 has effect with the following modifications—

- (a) any specification under section 38(1) in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
- (b) any other reference to a model CHP is to the model CHP as revised and re-published,

(c) section 38(2)(b) is omitted.

(7) The Ombudsman may withdraw any model CHP at any time; and any specification under section 38(1) in relation to the model CHP ceases to have effect upon that withdrawal.

#### **Obligation for listed authority to comply with model CHPs**

**38.**—(1) The Ombudsman may specify a listed authority to which a model CHP is relevant, and must notify the authority accordingly.

(2) Where a listed authority has been notified in accordance with subsection (1)—

(a) the listed authority must ensure that there is a complaints handling procedure which complies with the model CHP,

(b) the authority must submit a description of the complaints handling procedure, having taken account of the relevant model CHP, within 6 months of the specification.

(3) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it, but only to the extent that is necessary for the effective operation of the procedure by the authority.

(4) The Ombudsman may revoke a specification at any time.

#### **Declaration of non-compliance of complaints handling procedure**

**39.**—(1) The Ombudsman may make a declaration of non-compliance in relation to a complaints handling procedure if subsection (2) or (3) applies.

(2) This subsection applies where the Ombudsman—

(a) has specified that a model CHP is relevant to a listed authority, and

(b) is of the opinion that a listed authority's complaints handling procedure does not comply with the model CHP.

(3) This subsection applies where the Ombudsman—

(a) has not specified that a model CHP is relevant to a listed authority, and

(b) is of the opinion that a listed authority's complaints handling procedure does not comply with the statement of principles.

(4) Where a declaration is made, the Ombudsman—

(a) must give reasons in writing,

(b) may specify such modifications to the complaints handling procedure as would result in the declaration being withdrawn.

(5) Where a declaration is made, the listed authority must submit a description of its complaints handling procedure to the Ombudsman, having taken account of the reasons given under subsection (4)(a) and any modifications specified under subsection (4)(b), within 2 months of the declaration.

(6) The Ombudsman may withdraw a declaration at any time if the Ombudsman thinks fit.

**Submission of description of complaints handling procedure: general**

40.—(1) A listed authority must submit a description of its complaints handling procedure to the Ombudsman if the Ombudsman so directs.

(2) The description must be submitted within three months of being so directed, or such other period as the Ombudsman may direct.

(3) Sections 38(2)(b) and 39(5) are subject to any direction given under this section.

(4) Where a listed authority has submitted a description of its complaints handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may reasonably request.

(5) The additional information must be provided within such period as the Ombudsman directs.

**Application of other enactments**

41. The duties in sections 36 and 38(2)(a) do not apply to the extent that—

- (a) the listed authority lacks necessary powers (other than by virtue of this Act) to ensure compliance with the duties, or
- (b) the duties are inconsistent with any other statutory provision.

**Promotion of best practice etc.**

42.—(1) The Ombudsman must—

- (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
- (b) promote best practice in relation to such complaints handling,
- (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints handling.

(2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).

(3) The duty in subsection (2) does not apply to the extent that—

- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty, or
- (b) the duty is inconsistent with any other statutory provision.

PART 4

MISCELLANEOUS AND GENERAL

*Reports*

**Reports on investigations**

43.—(1) The Ombudsman must send a report of—

- (a) an investigation,
- (b) the reasons for discontinuing an investigation,

(c) the reasons for not investigating a complaint, as the case may be, to the persons referred to in subsection (2).

(2) Those persons are—

- (a) a person aggrieved,
- (b) the listed authority investigated, or which it was proposed be investigated,
- (c) any other person alleged to have taken the action to which a complaint relates, and
- (d) any other person that the Ombudsman considers appropriate.

(3) A report of the reasons for not investigating a complaint need only be sent to a person referred to in subsection (2)(b) or (c) if the Ombudsman considers it appropriate to do so.

(4) Where a report is to be sent to a person referred to in subsection (2)(c), the Ombudsman may determine to only send to that person the part of the report which relates to that person, if the Ombudsman considers it appropriate to do so.

#### **Publication of reports on investigations in the public interest**

**44.**—(1) This section—

- (a) applies where the Ombudsman proposes to publish a report of a type referred to in section 43(1), but
- (b) does not apply in respect of an investigation conducted under section 8.

(2) The Ombudsman must give notice of this proposal to the persons referred to in section 43(2).

(3) The notice must set out why the Ombudsman believes it would be in the public interest to publish the report.

(4) The Ombudsman may publish the report if, after taking account of the interests of any person aggrieved and any other person considered appropriate, the Ombudsman considers it to be in the public interest to do so.

(5) The Ombudsman may, for a reasonable fee, supply a copy of the report, or any part of it, to any person who requests it.

#### **Publication of reports on own initiative investigations**

**45.**—(1) The Ombudsman must publish a report of an investigation conducted under section 8.

(2) The Ombudsman may, for a reasonable fee, supply a copy of the report, or any part of it, to any person who requests it.

#### **Reports to the Assembly**

**46.**—(1) The Ombudsman must lay before the Assembly annually a general report on the exercise of the Ombudsman's functions.

(2) If, after conducting an investigation (other than one under section 8) it appears to the Ombudsman that—

- (a) an injustice has been sustained by a person aggrieved, and
- (b) the injustice has not been, or will not be, remedied or adequately remedied,

the Ombudsman may lay before the Assembly a special report on the investigation.

(3) Where the Ombudsman has conducted an investigation under section 8, the Ombudsman must lay the report on that investigation before the Assembly.

(4) The Ombudsman may lay before the Assembly such other reports on the exercise of the Ombudsman's functions as the Ombudsman thinks fit.

### **Reports and privileged information**

**47.**—(1) This section applies where the Ombudsman has obtained documents or evidence under section 31(1) by virtue of section 32(2).

(2) A report made by the Ombudsman under sections 43 to 46—

- (a) may disclose that documents or evidence of this nature were obtained, but
- (b) must not disclose the content of those documents or that evidence.

#### *Protection from defamation*

### **Privilege for certain publications**

**48.**—(1) For the purposes of the law of defamation, any publication to which this section applies is absolutely privileged.

(2) This section applies to—

- (a) publication by the Ombudsman of a report under this Act,
- (b) publication by the Ombudsman of any statement made in communication with any person, in connection with an investigation,
- (c) publication by a person aggrieved, in the course of communication with the Ombudsman, of any statement made by the person aggrieved in connection with an investigation,
- (d) publication by the Ombudsman of any other matter in the discharge of the Ombudsman's functions under this Act.

(3) In this section “statement” has the meaning given in the Defamation Act 1996.

#### *Disclosure*

### **Disclosure of information**

**49.**—(1) The information to which this section applies is—

- (a) information obtained by the Ombudsman—
  - (i) in deciding whether to begin an investigation,
  - (ii) in the course of an investigation,
  - (iii) in resolving a complaint under section 10,
- (b) information obtained by the Ombudsman which is obtained from a person mentioned in section 51(4),
- (c) information obtained by the Ombudsman which is obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).

(2) The information must not be disclosed except—

- (a) for the purposes of deciding whether to begin an investigation,
  - (b) for the purposes of an investigation,
  - (c) for the purposes of resolving a complaint under section 10,
  - (d) for the purposes of a statement or report made in relation to a complaint or investigation,
  - (e) for the purposes of any provision of section 51,
  - (f) for the purposes of proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,
  - (g) for the purposes of proceedings for an offence of perjury alleged to have been committed in the course of an investigation,
  - (h) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f) and (g),
  - (i) for the purposes of proceedings under section 33 or sections 54 and 55,
  - (j) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest,
  - (k) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
  - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments are—
- (a) Part 5 of the Data Protection Act 1998 (enforcement),
  - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations),
  - (c) Part 4 of that Act (enforcement).
- (5) The offences are those under—
- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution warrant),
  - (b) section 77 of the Freedom of Information Act 2000 (offence of altering records with intent to prevent disclosure).
- (6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1).

#### **Disclosure contrary to public interest**

**50.**—(1) A person to whom subsection (2) applies may give written notice to the Ombudsman with respect to—

- (a) any document or information specified in the notice, or
- (b) any class of document or information so specified,

that in the opinion of that person, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to public safety or otherwise contrary to the public interest.

(2) This subsection applies to—

- (a) the First Minister and deputy First Minister acting jointly,
- (b) a Northern Ireland Minister, and
- (c) the Secretary of State.

(3) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

(4) The Ombudsman and the Secretary of State must enter into, and may from time to time revise, a memorandum of understanding concerning the exercise of their functions in relation to this section.

(5) The Ombudsman must lay before the Assembly a copy of this memorandum and any revisions to it.

*Consultation and co-operation with other ombudsmen*

**Consultation and co-operation with other ombudsmen**

**51.**—(1) This section applies if, at any stage in the course of considering a complaint or conducting an investigation, the Ombudsman forms the opinion that the matter could be the subject of an investigation by a person mentioned in subsection (4).

(2) The Ombudsman must consult that person about the matter.

(3) The Ombudsman may co-operate with that person, including co-operation—

- (a) by way of disclosure of information relating to the complaint or investigation,
- (b) in the conduct of the investigation,
- (c) in the form, content and publication of a report.

(4) The persons referred to in subsection (1) are—

- (a) the Parliamentary Commissioner for Administration under the Parliamentary Commissioner Act 1967,
- (b) the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002,
- (c) the Commissioner for Children and Young People for Northern Ireland under the Commissioner for Children and Young People (Northern Ireland) Order 2003,
- (d) the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,
- (e) the Commissioner for Older People for Northern Ireland under the Commissioner for Older People Act (Northern Ireland) 2011,
- (f) the Equality Commission for Northern Ireland under the Northern Ireland Act 1998,

- (g) the Northern Ireland Human Rights Commission under the Northern Ireland Act 1998,
- (h) the Ombudsman in the Republic of Ireland, in respect of complaints about or investigations into an implementation body to which the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 applies,
- (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 Regulation and Quality Improvement Authority under the Health and Social Care (Reform) Act (Northern Ireland) 2009.

*Court proceedings*

**Application to county court by person aggrieved**

**52.**—(1) This section applies where, following a complaint under section 5 or 6, the Ombudsman reports that—

- (a) the requirements of section 5 or 6 (as the case may be) have been satisfied, and
- (b) the person aggrieved has sustained an injustice.

(2) The person aggrieved may apply to the county court for relief under section 53.

(3) The application must be made in accordance with county court rules and upon notice to the listed authority.

**Relief granted by county court**

**53.**—(1) Following an application under section 52, the county court may award damages to be paid by the listed authority concerned to the person aggrieved.

(2) Damages must be of an amount which the court thinks just in all the circumstances to compensate the person for any loss or injury which the person may have suffered on account of—

- (a) expenses reasonably incurred by the person in connection with the injustice, and
- (b) the person's loss of opportunity of acquiring the benefit which the person might reasonably be expected to have had but for the injustice.

(3) In calculating the amount of damages to be awarded by virtue of subsection (2)(b) the court must apply the same rule concerning the duty of a person to mitigate loss as applies in relation to damages recoverable at common law.

(4) Where it appears to the court that justice could only be done to the person by directing the listed authority to take, or refrain from taking, any particular action, the court may, if satisfied that in all the circumstances it is reasonable to do so, make an order containing such a direction.

(5) Where an order under subsection (4) is duly served on the listed authority, disobedience to that order by that authority or any member or officer of that

authority may be treated as contempt of court to which Article 55 of the County Courts (Northern Ireland) Order 1980 applies.

(6) Without prejudice to Articles 61 and 65 of that Order, the listed authority or the person aggrieved may, if dissatisfied with an order of the court under this section, appeal from that order as if it had been made in the exercise of the jurisdiction conferred by Part 3 of that Order and the appeal were brought under Article 60 of that Order.

(7) The powers conferred on the court by this section may be exercised notwithstanding anything to the contrary in any statutory provision which imposes limitations on its jurisdiction by reference to an amount claimed or to the value of property.

### **Application to High Court by Attorney General**

**54.**—(1) This section applies where the Ombudsman is of the opinion, following an investigation, that—

- (a) there is systemic maladministration in a listed authority, and
- (b) that systemic maladministration is likely to continue unless the High Court grants relief under section 55.

(2) This section also applies where the Ombudsman is of the opinion, following an investigation carried out in accordance with section 15(2)(b), 16(2)(b), or 17(2)(b), that—

- (a) systemic injustice has been sustained as a result of the exercise of professional judgement, and
- (b) that systemic injustice is likely to continue unless the High Court grants relief under section 55.

(3) The Attorney General for Northern Ireland may, at the request of the Ombudsman, apply to the High Court for relief under section 55.

### **Relief granted by High Court**

**55.**—(1) This section applies where the High Court is satisfied as to the matters mentioned in section 54(1) or (2).

(2) The court may grant such mandatory or other injunction or such declaration or other relief as appears to it to be proper in all the circumstances.

(3) Without prejudice to the generality of the foregoing, the court may grant an injunction restraining the listed authority, or any member or officer of the listed authority, from engaging in, or permitting others to engage in—

- (a) the systemic maladministration (in the case of an application in respect of section 54(1)), or
- (b) the professional judgement causing the systemic injustice (in the case of an application in respect of section 54(2)).

(4) The court may, in determining whether the matters mentioned in section 54(1) or (2) are satisfied, take into account not only the matters investigated by the Ombudsman under section 5, 6 or 8, but also any other matters which appear to the court to be relevant.

### **Court proceedings and privileged information**

**56.** Documents or evidence obtained by the Ombudsman under section 31(1) by virtue of section 32(2) for the purposes of an investigation are not admissible for the purposes of any proceedings under sections 52 to 55.

### **Supplementary provision in relation to court proceedings**

**57.—**(1) For the purposes of any proceedings under sections 52 to 55—

(a) a report of the Ombudsman relating to an investigation is to be accepted as evidence of the facts stated within it, unless the contrary is proven, and

(b) the authenticity of the report may be proved by production of a certificate of its authenticity signed by the Ombudsman.

(2) Nothing in sections 52 to 55 affects the right to bring any proceedings, whether civil or criminal, which may be brought otherwise than under those sections.

## PART 5

### THE NORTHERN IRELAND JUDICIAL APPOINTMENTS OMBUDSMAN

#### **Ombudsman to be Judicial Appointments Ombudsman**

**58.—**(1) For section 9A(2) of the Justice (Northern Ireland) Act 2002 (appointment of Northern Ireland Judicial Appointments Ombudsman) substitute—

“(2) The Northern Ireland Public Services Ombudsman is, by virtue of holding that office, the Northern Ireland Judicial Appointments Ombudsman.”.

(2) Schedule 6 (which makes amendments consequent upon the Ombudsman being the Northern Ireland Judicial Appointments Ombudsman) has effect.

(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.

## PART 6

### SUPPLEMENTARY PROVISIONS

#### **Interpretation**

**59.** In this Act—

“action taken by a listed authority” has the meaning given in section 13,

“Assembly Commission” means the Northern Ireland Assembly Commission,

“complaints handling procedure” has the meaning given in section 34,

“the Crown” means the Crown in right of Her Majesty’s Government in Northern Ireland, except—

(a) in the expression “Minister of the Crown”, and

(b) in paragraphs 1 and 15 of Schedule 1,

- “existing offices” has the meaning given in section 4,  
“general health care provider” has the meaning given in section 16,  
“health and social care body” means any of the following bodies—
- (a) health and social care trusts,
  - (b) special health and social care agencies,
  - (c) the Regional Health and Social Care Board,
  - (d) the Regional Agency for Public Health and Social Well-being,
  - (e) the Regional Business Services Organisation, and
  - (f) the Health and Social Care Regulation and Quality Improvement Authority,
- “independent provider of health and social care” has the meaning given in section 17,  
“Minister” means—
- (a) Minister of a Northern Ireland department, and
  - (b) junior Minister,
- “model CHP” has the meaning given in section 37,  
“Northern Ireland Minister” has the same meaning as in the Northern Ireland Act 1998,  
“Ombudsman” means the Northern Ireland Public Services Ombudsman,  
“person aggrieved” has the meaning given in section 5(1),  
“statement of principles” has the meaning given in section 35,  
“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954, and  
“tribunal” includes any authority, body or person having power to determine any matter.

### **Power to make further provision**

**60.** The Assembly Commission may by order make such supplementary, incidental, consequential or transitional provision as it considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision made by or under this Act.

### **Orders**

**61.**—(1) No order to 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 60.

(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, transitional and savings provisions as appear to the authority making them to be necessary or expedient.

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

**62.** Schedule 7 (which makes amendments to Part 9 of the Local Government Act (Northern Ireland) 2014) (conduct of councillors) has effect.

### **Other minor and consequential amendments**

**63.** Schedule 8 (which makes other minor and consequential amendments) has effect.

### **Commencement**

**64.—**(1) Except as provided below, the provisions of this Act come into operation on 1 April 2016.

(2) The following provisions come into operation on the day after this Act receives Royal Assent—

- (a) section 1 (including Schedule 1),
- (b) section 3,
- (c) section 34,
- (d) section 59,
- (e) section 60,
- (f) section 61,
- (g) this section,
- (h) section 66,
- (i) in Schedule 2, paragraphs 5, 11 and 13.

(3) The following provisions come into operation on 1 October 2016—

- (a) section 14(2)(d),
- (b) section 18,
- (c) in Schedule 3, the entries relating to—
  - (i) an institution of further education,
  - (ii) University of Ulster,
  - (iii) The Queen's University of Belfast,

(d) in Schedule 9—

- (i) in the entry relating to the Commissioner for Children and Young People (Northern Ireland) Order 2003, the repeal of paragraph 7 of Schedule 1 (institutions of further education),
- (ii) in the entry relating to the Commissioner for Older People Act (Northern Ireland) 2011, the repeal of paragraph 4 of Schedule 3 (institutions of further education).

(4) The following provision comes into operation on 1 April 2017—

- (a) in Schedule 3, the entry relating to the board of governors of a grant-aided school,
- (b) in Schedule 9, in the entry relating to the Commissioner for Children and Young People (Northern Ireland) Order 2003, the repeal of paragraph 5 of Schedule 1 (the board of governors of grant-aided schools).

(5) The following provisions come into operation on 1 April 2018—

- (a) section 8,
- (b) section 9,
- (c) section 11(c),
- (d) section 29,
- (e) section 30(4),
- (f) section 45,
- (g) section 46(3).

(6) Part 3 (other than section 34) comes into operation on such day as the Assembly Commission may by order appoint.

### **Repeals**

**65.** The statutory provisions mentioned in Schedule 9 are repealed to the extent specified in the second column of that Schedule.

### **Short title**

**66.** This Act may be cited as the Public Services Ombudsman Act (Northern Ireland) 2016.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE NORTHERN IRELAND PUBLIC SERVICES OMBUDSMAN

##### *Status*

1.—(1) The person for the time being holding the office of the Northern Ireland Public Services Ombudsman is by that name a corporation sole.

(2) The Ombudsman is not to be regarded—

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

(3) Property held by the Ombudsman is not to be regarded as property of, or held on behalf of, the Crown.

(4) But the Ombudsman is a Crown servant for the purposes of the Official Secrets Act 1989.

##### *Eligibility*

2.—(1) A person is disqualified from being appointed as the Ombudsman if the person is a member of—

(a) a district council,

(b) the Assembly,

(c) the House of Commons,

(d) the House of Lords, or

(e) the European Parliament.

(2) Where a person who is the Ombudsman—

(a) is nominated as a candidate for election to a body listed in sub-paragraph (1), or

(b) becomes a member of a body listed in sub-paragraph (1),

that person ceases immediately to be the Ombudsman.

3.—(1) A person is disqualified from being appointed as the Ombudsman if the person is disqualified from being a member of the Assembly.

(2) Where a person who is the Ombudsman—

(a) is appointed to an office which would disqualify the person from being a member of the Assembly,

(b) takes employment which would disqualify the person from being a member of the Assembly, or

- (c) becomes a member of a body which would disqualify the person from being a member of the Assembly,

that person ceases immediately to be the Ombudsman.

(3) In this paragraph “disqualified from being a member of the Assembly” means disqualified from being a member of the Assembly under the Northern Ireland Assembly Disqualification Act 1975 as applied by section 36(1) of the Northern Ireland Act 1998.

(4) But references to disqualification from being a member of the Assembly do not include disqualification by virtue of being—

- (a) the Ombudsman, under Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, or
- (b) the Northern Ireland Judicial Appointments Ombudsman, under Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

4.—(1) A person is disqualified from being appointed as the Ombudsman if the person is—

- (a) a listed authority,
- (b) a member, officer or member of staff of a listed authority.

(2) A person who is the Ombudsman is disqualified from being—

- (a) a listed authority,
- (b) a member, officer or member of staff of a listed authority.

5.—(1) A person is disqualified from being appointed as the Ombudsman if the person—

- (a) holds any other office,
- (b) holds employment, or
- (c) is a member of a body,

in respect of which remuneration or expenses are payable.

(2) A person who is the Ombudsman must not—

- (a) be appointed to any other office,
- (b) take employment, or
- (c) become a member of a body,

in respect of which remuneration or expenses are payable.

(3) This paragraph has no effect in relation to a particular office, employment or membership if—

- (a) the person gives notice of it to the Assembly Commission—
  - (i) before becoming Ombudsman, or
  - (ii) before being appointed to the office, taking the employment, or becoming the member, as the case may be, and
- (b) the Assembly Commission is of the opinion that the office, employment or membership would not compromise—
  - (i) the ability of the Ombudsman to discharge functions under this Act, and
  - (ii) the independence of the Ombudsman.

(4) But—

- (a) a person is not disqualified from being appointed as Ombudsman by virtue of being the Northern Ireland Judicial Appointments Ombudsman,
- (b) the Ombudsman is not prevented from being the Northern Ireland Judicial Appointments Ombudsman.

*Salary*

6.—(1) The Assembly Commission must by order determine the salary payable to the Ombudsman.

(2) An order under sub-paragraph (1) may provide for the salary determined by the order to be payable from such date, whether before or after the making of the order, as may be specified in the order.

(3) The salary must not exceed the maximum salary for the time being payable to any person employed in the civil service of Northern Ireland.

(4) The salary must be charged on, and issued out of, the Consolidated Fund.

(5) The salary must be abated by the amount of any pension payable in respect of any public office, in the United Kingdom or elsewhere, to which the Ombudsman had previously been appointed or elected.

*Pension*

7.—(1) The Assembly Commission must make arrangements for the provision of pension and other benefits for or in respect of persons who have held office as the Ombudsman.

(2) Scheme regulations for a scheme under section 1 of the Public Services Pensions Act (Northern Ireland) 2014, which is a scheme made by virtue of section 1(2)(a) of that Act, have effect with respect to the pension and other benefits to be paid in respect of persons who have been the Ombudsman, as if service in that office were service in the employment of the civil service of Northern Ireland.

(3) Any sums required for the purposes of making an arrangement under sub-paragraph (1) must be charged on, and issued out of, the Consolidated Fund.

(4) Any abatement under paragraph 6(5) is to be disregarded in computing the salary for the purposes of any pension payable by virtue of this paragraph.

*Other terms and conditions of appointment*

8. The Assembly Commission may determine the other terms and conditions of appointment of the Ombudsman.

*Removal from office*

9.—(1) Her Majesty may, on the passing of a resolution of the Assembly, remove the Ombudsman from office.

(2) The resolution may only be passed on the ground of the Ombudsman's—

- (a) ill health, or
- (b) misconduct.

(3) The resolution is not passed unless it has the support of a number of members of the Assembly which equals or exceeds two-thirds of the total number of seats in the Assembly.

*Resignation*

10. Her Majesty may remove the Ombudsman from office upon request from the Ombudsman.

*Restrictions on subsequent employment*

11.—(1) When a person ceases to be the Ombudsman, that person must not, without the consent of the Assembly Commission—

- (a) become a listed authority,
- (b) be appointed or elected to a listed authority, other than a listed authority which is a district council,
- (c) become a member, officer or member of staff of a listed authority,
- (d) provide services to a listed authority,
- (e) be appointed or elected by a listed authority to any office or post.

(2) This restriction ends on the expiry of the financial year following the financial year in which the person ceased to be the Ombudsman.

*Acting Ombudsman*

12.—(1) This paragraph applies where the office of the Ombudsman is vacant.

(2) Her Majesty may, on the nomination of the Assembly, appoint an acting Ombudsman at any time during the period of 12 months beginning with the date on which the vacancy arose.

(3) The acting Ombudsman is to be regarded as the Ombudsman except—

- (a) for the purposes of section 3(1) to (4),
- (b) that the salary payable under paragraph 6 may be of a different amount to that payable to the Ombudsman,
- (c) that the pension arrangements under paragraph 7 may be different to arrangements in respect of the Ombudsman,
- (d) that the terms and conditions of appointment under paragraph 8 may be different to the terms and conditions of appointment of the Ombudsman.

(4) The acting Ombudsman holds office until either—

- (a) the appointment of a new Ombudsman, or
- (b) the expiry of the period of 12 months beginning on the date on which the vacancy arose,

whichever comes first.

(5) A person who is disqualified from being appointed as the Ombudsman is disqualified from being appointed as the acting Ombudsman.

(6) A person appointed as acting Ombudsman may have previously held office as the Ombudsman.

(7) A person appointed as acting Ombudsman is not disqualified from being appointed as the Ombudsman by virtue of that fact.

(8) A person appointed as acting Ombudsman is also to be regarded as holding office as Ombudsman for the purposes of section 9A(2) of the Justice (Northern Ireland) Act 2002 (Northern Ireland Judicial Appointments Ombudsman).

*General powers*

13. The Ombudsman may do anything (including acquire or dispose of property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of the Ombudsman's functions.

*Delegation of functions*

14.—(1) Any function of the Ombudsman may be performed by any member of staff of the Ombudsman authorised by the Ombudsman for that purpose.

(2) Any function of the Ombudsman may be performed by any other person authorised by the Ombudsman for that purpose if—

- (a) that other person is suitably qualified to do so, and
- (b) there are special circumstances which make it proper to do so.

*Staff*

15.—(1) The Ombudsman may—

- (a) appoint staff,
- (b) determine the terms and conditions of their employment, and
- (c) make arrangements in respect of salary and pensions for them.

(2) In exercising powers under sub-paragraph (1), the Ombudsman must have regard to the desirability of keeping the terms and conditions of employment, salary and pensions broadly in line with those applying to persons employed in the civil service of Northern Ireland.

(3) No member of staff of the Ombudsman is to be regarded—

- (a) as the servant or agent of the Crown, or
- (b) as enjoying any status, immunity or privilege of the Crown.

(4) But each member of staff is a Crown servant for the purposes of the Official Secrets Act 1989.

(5) Scheme regulations for a scheme under section 1 of the Public Services Pensions Act (Northern Ireland) 2014, which is a scheme made by virtue of section 1(2)(a) of that Act, have effect with respect to the pension and other benefits to be paid in respect of persons who have been staff of the Ombudsman, as if they were employed in the civil service of Northern Ireland.

*Advisers*

16.—(1) The Ombudsman may obtain advice from any person who, in the opinion of the Ombudsman, is qualified to give it, to assist in the discharge of the Ombudsman's functions.

(2) The Ombudsman may pay to any person from whom advice is obtained under sub-paragraph (1) such fees or allowances as the Ombudsman may determine.

(3) In exercising powers under this paragraph, the Ombudsman must have regard to the desirability of keeping the fees and allowances broadly in line with those paid by the civil service of Northern Ireland.

*Expenses*

17. The expenses of the office of the Ombudsman must be defrayed out of money appropriated by Act of the Assembly, but this is subject to—

- (a) paragraph 18, and
- (b) section 64 of the Local Government Act (Northern Ireland) 2014 (expenditure of Ombudsman under that Act).

*Budget estimates*

18.—(1) The Ombudsman must, for each financial year other than the first, prepare an estimate of the use of resources (within the meaning of the Government Resources and Accounts Act (Northern Ireland) 2001) by the office of the Ombudsman.

(2) That estimate must be submitted to the committee established under section 66 of the Northern Ireland Act 1998.

(3) In considering that estimate, that committee must have regard to the advice of the Department of Finance and Personnel.

(4) That estimate must, subject to any modifications agreed between that committee and the Ombudsman, be laid before the Assembly by that committee.

*Accounts and audit*

19.—(1) The Ombudsman must publish—

- (a) the certified accounts of the office of the Ombudsman, and
- (b) the report of the Comptroller and Auditor General on those accounts.

(2) In this paragraph “certified accounts” and “report” mean the accounts and report laid by the Department of Finance and Personnel before the Assembly in accordance with section 10 of the Government Resources and Accounts Act (Northern Ireland) 2001.

*Meaning of ‘financial year’*

20. For the purposes of this Schedule—

- (a) a financial year is a period of 12 months ending on the 31st March, but
- (b) the first financial year is the period beginning with the day on which the Ombudsman is appointed and ending on 31 March 2017.

SCHEDULE 2

Section 4.

TRANSFER OF ASSETS, LIABILITIES, STAFF, AND OTHER  
TRANSITIONAL AND SAVINGS ARRANGEMENTS

*Transfer of assets and liabilities*

1.—(1) All property, rights and liabilities to which each existing office is entitled or subject immediately before the transfer day are on that day transferred to, and by virtue of this paragraph vest in, the Ombudsman.

(2) Sub-paragraph (1) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would

prevent or restrict the transfer of the property, rights or liabilities otherwise than by that sub-paragraph.

(3) But sub-paragraph (1) does not apply to property, rights or liabilities under a contract of employment.

2. Anything (including legal proceedings) which is in the process of being done by or in relation to an existing office immediately before the transfer day and which relates to—

- (a) any function of that existing office, or
- (b) any property, rights or liabilities of that existing office transferred to the Ombudsman under paragraph 1,

may, on and after the transfer day, be continued by or in relation to the Ombudsman.

3. Anything done by an existing office for the purpose of, or in connection with—

- (a) any function of that existing office, or
- (b) any property, rights or liabilities of that existing office transferred to the Ombudsman under paragraph 1,

and which is in effect immediately before the transfer day is to have effect on and after the transfer day as if done by the Ombudsman.

4. On and after the transfer day, the Ombudsman is to be substituted for each existing office in any instruments, contracts or legal proceedings which relate to—

- (a) any function of that existing office, or
- (b) any property, rights or liabilities of that existing office transferred to the Ombudsman under paragraph 1,

and which are made or commenced before the transfer day.

#### *Transfer of staff*

5.—(1) This paragraph applies to persons who immediately before the transfer day are employed by the existing offices.

(2) The Department must make arrangements providing for the transfer as from the transfer day of persons to whom this paragraph applies to the employment of the Ombudsman.

(3) The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer effected by the arrangements whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of those regulations.

(4) The arrangements must—

- (a) identify transferring employees,
- (b) include provision securing pension protection for such employees,
- (c) include provision for procedures designed to resolve any grievances of such employees arising in relation to matters dealt with by the arrangements, and

- (d) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of that transfer.
- (5) Procedures under sub-paragraph (4)(c) must involve consideration of grievances by a person other than—
  - (a) the holders of the existing offices,
  - (b) a member of staff of the existing offices, or
  - (c) a member of the civil service of Northern Ireland.
- (6) The arrangements may include supplementary, incidental, transitional and consequential provision.
- (7) Before making the arrangements the Department must consult—
  - (a) the holders of the existing offices, and
  - (b) the transferring employees.
- (8) For the purposes of this paragraph—
  - (a) “pension protection” is secured for a transferring employee if after the change of employer effected by the arrangements the employee has rights to acquire pension benefits and those rights are the same as or (taken as a whole) no less favourable than those that the transferring employee had as an employee of the existing offices, and
  - (b) “transferring employee” means an employee of the existing offices who is transferred to the employment of the Ombudsman by the arrangements.

*Transfer of seconded staff*

6. Any person seconded to an existing office under an arrangement made by the existing office is to be treated on and after the transfer day as seconded to the office of the Ombudsman under a similar arrangement.

*Accounts and reports: transitional arrangements*

7.—(1) The Ombudsman must make arrangements for statement of accounts to be prepared in relation to the existing offices for such period ending immediately before the transfer day as the Department may determine.

- (2) The statement of accounts must—
  - (a) be in such form, and
  - (b) contain such information,as the Department may determine.
- (3) The Department must send a copy of the statement of accounts to the Comptroller and Auditor General for Northern Ireland.
- (4) The Comptroller and Auditor General must—
  - (a) examine and report on any statement of accounts received from the Department under sub-paragraph (3), and
  - (b) send a copy of any such report to the Department.
- (5) The Department must lay a copy of the statement of accounts and the Comptroller and Auditor General’s report before the Assembly.

(6) The Ombudsman must make arrangements for a general report on the performance of the functions of the existing offices for such period ending immediately before the transfer day as the Ombudsman may determine.

(7) The Ombudsman must lay this general report before the Assembly.

*Pension of holders of existing offices*

8.—(1) The repeal by this Act of the Commissioner for Complaints (Northern Ireland) Order 1996 and the Ombudsman (Northern Ireland) Order 1996 does not affect any entitlement to pension and other benefits payable to or in respect of persons who have been holders of the existing offices.

(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.

*Complaints made to an existing office before the transfer day*

9.—(1) Sub-paragraph (2) applies where a complaint—

- (a) has been made or referred to an existing office before the transfer day, and
- (b) has not been determined by that office before that day.

(2) On and after the transfer day, the relevant existing statutory provision continues to apply in relation to the complaint notwithstanding the other provisions of this Act.

(3) As applied by sub-paragraph (2), the relevant existing statutory provision has effect as if for references to the existing office in relation to which that provision applies there were substituted references to the Ombudsman.

(4) In this paragraph—

“the relevant existing office” means the existing office to which the complaint was made or referred,

“the relevant existing statutory provision” means—

- (a) the Ombudsman (Northern Ireland) Order 1996, where the relevant existing office is the Assembly Ombudsman for Northern Ireland,
- (b) the Commissioner for Complaints (Northern Ireland) Order 1996, where the relevant existing office is the Northern Ireland Commissioner for Complaints,
- (c) the Commissioner for Complaints (Northern Ireland) Order 1996 and Part 9 of the Local Government Act (Northern Ireland) 2014 where the relevant existing office is the Northern Ireland Commissioner for Complaints and the complaint is in relation to Part 9.

*Action taken but complaint not made to existing office before the transfer day*

10.—(1) Sub-paragraph (2) applies if—

- (a) action was taken by a listed authority before the transfer day, and
- (b) a complaint could have been, but was not made or referred to an existing office before the transfer day.

(2) On and after the transfer day, the complaint may be made or referred under this Act, and the provisions of this Act apply for the purposes of making, referring, investigating and dealing with that complaint, save that if the complaint is made or referred within the time period required under—

- (a) the Ombudsman (Northern Ireland) Order 1996, where the complaint could have been made or referred to the Assembly Ombudsman for Northern Ireland,
- (b) the Commissioner for Complaints (Northern Ireland) Order 1996, where the complaint could have been made or referred to the Northern Ireland Commissioner for Complaints,

the complaint will be deemed to comply with the time period required under this Act.

*Eligibility of holders of existing offices to be appointed as Ombudsman*

11. A person who has been appointed to any existing office is not disqualified from being appointed as the Ombudsman or acting Ombudsman by virtue of that fact.

*Commissioner for Public Appointments*

12.—(1) The repeal by this Act of the Commissioner for Complaints (Northern Ireland) Order 1996 does not affect the definition of “public appointment” in the Commissioner for Public Appointments (Northern Ireland) Order 1995.

(2) Sub-paragraph (1) does not affect the exercise of prerogative powers in respect of the Commissioner for Public Appointments referred to in section 23(3) of the Northern Ireland Act 1998.

*Interpretation*

13. In this Schedule—

“the transfer day” means 1 April 2016, and

“the Department” means the Department of Finance and Personnel.

SCHEDULE 3

Section 12.

LISTED AUTHORITIES

*Northern Ireland Assembly*

Assembly Commission

The Independent Financial Review Panel

*Northern Ireland Departments*

A Northern Ireland department

*Local Government*

A district council

The Local Government Staff Commission for Northern Ireland

The Northern Ireland Local Government Officers’ Superannuation Committee

*Education and Training*

The board of governors of a grant-aided school  
An industrial training board  
An institution of further education  
The General Teaching Council for Northern Ireland  
The Northern Ireland Council for Postgraduate Medical and Dental Education  
The Northern Ireland Council for the Curriculum, Examinations and Assessment  
The Education Authority  
University of Ulster  
The Queen's University of Belfast  
The Youth Council for Northern Ireland  
The Council for Catholic Maintained Schools

*Policing, Criminal Justice and Law*

A policing and community safety partnership or a district policing and community safety partnership  
The Northern Ireland Policing Board  
The Chief Inspector of Criminal Justice in Northern Ireland  
The Commission for Victims and Survivors for Northern Ireland  
The Northern Ireland Police Fund  
The Probation Board for Northern Ireland  
The Royal Ulster Constabulary George Cross Foundation  
The Northern Ireland Law Commission  
The Police Rehabilitation and Retraining Trust

*Arts and Leisure*

The Arts Council of Northern Ireland  
The Board of Trustees of the National Museums and Galleries of Northern Ireland  
The Northern Ireland Library Authority  
The Northern Ireland Museums Council  
The Northern Ireland Tourist Board  
The Sports Council for Northern Ireland

*Health and Social Care*

A health and social care trust  
A special health and social care agency  
The Northern Ireland Practice and Education Council for Nursing and Midwifery  
The Health and Social Care Regulation and Quality Improvement Authority  
The Northern Ireland Social Care Council  
The Patient and Client Council  
The Regional Agency for Public Health and Social Well-being  
The Regional Health and Social Care Board

The Regional Business Services Organisation

A general health care provider

An independent provider of health and social care

*Investment and Economic Development*

Invest Northern Ireland

The company for the time being designated under Article 5 of the Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003

A development corporation established under Part III of the Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003

*Industrial Relations*

Office of the Certification Officer for Northern Ireland

The Labour Relations Agency

*Harbours*

The Northern Ireland Fishery Harbour Authority

A harbour authority within the meaning of the Harbours Act (Northern Ireland) 1970

*Housing*

A registered housing association within the meaning of Article 3 of the Housing (Northern Ireland) Order 1992

The Northern Ireland Housing Executive

*Children and Young People*

The Safeguarding Board for Northern Ireland

The Office of the Commissioner for Children and Young People for Northern Ireland

*Charity and Voluntary Sector*

Regulator of Community Interest Companies

Appeal Officer for Community Interest Companies

The Charity Commission for Northern Ireland

The Northern Ireland Community Relations Council

*Miscellaneous*

The Agri-Food and Biosciences Institute

Civil Service Commissioners for Northern Ireland

The Comptroller and Auditor General

The Equality Commission for Northern Ireland

The General Consumer Council for Northern Ireland

The Health and Safety Executive for Northern Ireland

The Livestock and Meat Commission for Northern Ireland

The Northern Ireland Audit Office

The Northern Ireland Authority for Utility Regulation

The Northern Ireland Fire and Rescue Service Board

The Office of the Commissioner for Older People for Northern Ireland

Ulster Sheltered Employment Limited

A new town commission established under the New Towns Acts (Northern Ireland) 1965 to 1968

An implementation body to which the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 applies

Notes:

1. An implementation body is a listed authority only to the extent that it exercises functions in or as regards Northern Ireland.

2. In relation to any function exercisable by a listed authority for the time being listed in this Schedule which was previously exercisable on behalf of the Crown by a body not so listed, the reference to the listed authority so listed includes a reference to the other body.

#### SCHEDULE 4

Section 19.

#### TRIBUNALS REFERRED TO IN SECTION 19

The Lands Tribunal for Northern Ireland established under section 1 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964.

A tribunal constituted under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972.

The Northern Ireland Valuation Tribunal established under Article 36A of the Rates (Northern Ireland) Order 1977.

The Water Appeals Commission constituted under Article 292 of the Water and Sewerage Services (Northern Ireland) Order 2006.

Rent assessment committees constituted under Schedule 1 to the Private Tenancies (Northern Ireland) Order 2006.

Industrial tribunals established by regulations made under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996.

The Mental Health Review Tribunal for Northern Ireland constituted under Article 70 of the Mental Health (Northern Ireland) Order 1986.

The Fair Employment Tribunal for Northern Ireland established under regulations under Article 81 of the Fair Employment and Treatment (Northern Ireland) Order 1998.

The Planning Appeals Commission constituted under section 203 of the Planning Act (Northern Ireland) 2011.

The Industrial Court constituted under Article 91 of the Industrial Relations (Northern Ireland) Order 1992.

Registered Homes Tribunals constituted under Part V of the Registered Homes (Northern Ireland) Order 1992.

Appeal tribunals constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998.

The tribunal established to adjudicate on claims under the scheme for compensation for loss of employment through civil unrest.

Adjudicators appointed under Article 7(1)(b) of the Criminal Injuries Compensation (Northern Ireland) Order 2002.

Adjudicators appointed under Article 29(1) of the Traffic Management (Northern Ireland) Order 2005.

The Charity Tribunal for Northern Ireland established under section 12 of the Charities Act (Northern Ireland) 2008.

## SCHEDULE 5

Section 22.

### OTHER EXCLUDED MATTERS

1. Action which has been or is the subject of—

- (a) an inquiry which is referred to in section 23 of the Interpretation Act (Northern Ireland) 1954 (inquiries and investigations),
- (b) an inquiry under the Inquiries Act 2005, or
- (c) an inquiry under the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013.

2. Action taken by the Regional Health and Social Care Board in the exercise of its functions under regulations made under Articles 61, 62 or 63 of the Health and Personal Social Services (Northern Ireland) Order 1972 by virtue of Article 10 of the Health and Medicines (Northern Ireland) Order 1988 (investigations of matters relating to services).

3. The commencement or conduct of any civil or criminal proceedings before a court of law in the United Kingdom, or of proceedings before any international court or tribunal.

4.—(1) Action which is or may be investigated by the Attorney General with a view to the institution of proceedings under section 31 or 46(9) of the Local Government Act (Northern Ireland) 1972.

(2) But the Ombudsman 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—

- (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.

(4) Condition 2 is that—

- (a) a person aggrieved complains that the action resulted in the person aggrieved sustaining injustice in consequence of maladministration and that such injustice has not been remedied, and
- (b) the Ombudsman is satisfied that there are reasonable grounds for that complaint.

5. Action taken in matters certified by the First Minister and deputy First Minister acting jointly, or by a Northern Ireland Minister, to affect relations or dealings between the Government of Northern Ireland and any other Government.

6. Action taken by a member of the administrative staff of any court or tribunal who was appointed or assigned to serve as a member of that staff by the Department of Justice, so far as the action is taken at the direction, or on the authority (whether express or implied), of any person acting in a judicial capacity or in the capacity of a member of the tribunal.

7. Action taken by any member of the administrative staff of a tribunal listed in Schedule 4, so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in the capacity of a member of the tribunal.

## SCHEDULE 6

Section 58.

### AMENDMENTS CONSEQUENT UPON OMBUDSMAN BEING NORTHERN IRELAND JUDICIAL APPOINTMENTS OMBUDSMAN

1. The Justice (Northern Ireland) Act 2002 is amended as follows.
2. In section 88 (interpretation) insert at the appropriate place in alphabetical order—

“the Northern Ireland Public Services Ombudsman” has the meaning given by the Public Services Ombudsman Act (Northern Ireland) 2016.”
3. Schedule 3A (The Northern Ireland Judicial Appointments Ombudsman) is amended as follows.
4. For paragraph 1 substitute—

#### *“Circumstances where Ombudsman ineligible to exercise specified functions*

- 1.—(1) The Ombudsman is ineligible to exercise specified functions if either sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies where the Ombudsman—
  - (a) is engaged in political activity as a member of a political party; or
  - (b) has ever been any of these—
    - (i) a practising barrister in England and Wales;
    - (ii) a practising solicitor of the Senior Courts of England and Wales;
    - (iii) a practising advocate in Scotland;
    - (iv) a practising solicitor in Scotland;
    - (v) a practising member of the Bar of Northern Ireland;
    - (vi) a practising solicitor of the Court of Judicature of Northern Ireland;
    - (vii) the holder of a listed judicial office.
- (3) This sub-paragraph applies where the Ombudsman considers—
  - (a) that the Ombudsman has exercised functions that appear to be of a judicial nature and such as to make it inappropriate for the Ombudsman to exercise specified functions; or

(b) that past service in a capacity mentioned in sub-paragraph (5) makes it inappropriate for the Ombudsman to exercise specified functions.

(4) As part of the considerations under sub-paragraph (3), the Ombudsman may consult the Department of Justice.

(5) The service referred to in sub-paragraph (3)(b) is service as any of these –

- (a) a Commissioner;
- (b) a member of staff of the Commission;
- (c) a person employed in the civil service of the State.

*Ombudsman to direct a person to exercise specified functions*

1A.—(1) Sub-paragraph (2) applies where—

- (a) the provisions of this Act require the Ombudsman to exercise a specified function; but
- (b) the Ombudsman is, under paragraph 1, ineligible to exercise that function.

(2) The Ombudsman must direct—

- (a) a member of the office of the Northern Ireland Public Services Ombudsman; or
- (b) any other appropriate person;

to exercise that function on behalf of the Ombudsman.

(3) The Ombudsman may direct—

- (a) different persons to exercise different functions,
- (b) different persons to exercise the same function.

(4) Where the Ombudsman has directed a person to exercise a specified function, that person is to be treated, for the purposes of exercising that function, as the Ombudsman.

*Persons whom the Ombudsman must not direct*

1B.—(1) The Ombudsman must not direct a person under paragraph 1A if either sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies where—

- (a) the person is employed in the civil service of the State;
- (b) the person is a member of the House of Commons;
- (c) the person is a member of the Northern Ireland Assembly;
- (d) the person is engaged in political activity as a member of a political party;
- (e) the person has ever been any of these—
  - (i) a practising barrister in England and Wales;
  - (ii) a practising solicitor of the Senior Courts of England and Wales;
  - (iii) a practising advocate in Scotland;
  - (iv) a practising solicitor in Scotland;
  - (v) a practising member of the Bar of Northern Ireland;
  - (vi) a practising solicitor of the Court of Judicature of Northern Ireland;
  - (vii) the holder of a listed judicial office.

(3) This sub-paragraph applies where the Ombudsman considers—

- (a) that the person has exercised functions that appear to be of a judicial nature and such as to make it inappropriate for the person to exercise specified functions; or
  - (b) that past service in a capacity mentioned in sub-paragraph (5) make it inappropriate for the person to exercise specified functions.
- (4) As part of the considerations under sub-paragraph (3), the Ombudsman may consult the Department of Justice.
- (5) The service referred to in sub-paragraph (3)(b) is service as any of these—
- (a) a Commissioner;
  - (b) a member of staff of the Commission;
  - (c) a person employed in the civil service of the State.

*Meaning of “specified functions” and “practising”*

1C.—(1) For the purposes of this Schedule, the functions of the Ombudsman set out in the following provisions are specified functions—

- (a) section 8;
- (b) in section 9D, subsections (2), (3) and (4);
- (c) section 9E;
- (d) section 9F;
- (e) section 9H.

(2) In section 7(6A)(c), the function of convening a tribunal by the Ombudsman is a specified function for the purposes of this Schedule, but the person to be notified by the Lord Chief Justice under that subsection is the Ombudsman and not a person that the Ombudsman has directed to exercise a specified function.”.

5. Omit the following—
  - (a) paragraphs 3, 4 and 5 (term of office etc. of Ombudsman),
  - (b) paragraph 6 (salary, allowances and expenses of Judicial Appointments Ombudsman, and
  - (c) paragraph 7 (acting Judicial Appointments Ombudsman).
6. For paragraph 10(3) (approval of arrangements for assistance) substitute—

“(3) In making arrangements, the Ombudsman must have regard to the desirability of keeping fees broadly in line with those paid by the civil service of Northern Ireland.”.
7. Omit paragraph 11 (arrangements by the Department of Justice).
8. In paragraph 12(1)(a) (delegation of functions) omit “or 11”.
9. Omit paragraph 13 (financial provisions and directions).
10. Omit paragraph 14 (code of conduct).
11. In paragraph 15 (reports)—
  - (a) in sub-paragraph (1) for “provide to the Department of Justice” substitute “lay before the Assembly”,
  - (b) omit sub-paragraphs (2) to (4),
  - (c) in sub-paragraph (5) for “under sub-paragraph (4)” substitute “before the Assembly”, and
  - (d) in sub-paragraph (6) for “(4)” substitute “(1)”.

SCHEDULE 7

Section 62.

AMENDMENTS TO PART 9 OF THE LOCAL GOVERNMENT ACT  
(NORTHERN IRELAND) 2014

1. Part 9 of the Local Government Act (Northern Ireland) 2014 (conduct of councillors) is amended as follows.

2. After section 56 insert—

*“Adjudication hearings*

**Adjudication hearings**

56A.—(1) Where the Commissioner proposes to make an adjudication under section 55(5)(c), the Commissioner may first hold an adjudication hearing.

(2) The adjudication hearing must be held in public save to the extent that the Commissioner determines that this would not be in the public interest.

(3) Subject to—

(a) subsection (2), and

(b) the provisions of the 2016 Act which apply to adjudication hearings by virtue of section 63,

the procedure for an adjudication hearing is to be such as the Commissioner considers appropriate in the circumstances of the case.”.

3. In section 59 (decision following report) after subsection (7) insert—

“(7A) Where the Commissioner censures a person under subsection (4), the Commissioner must give notice to the clerk of the council concerned—

(a) stating that the person has failed to comply with the code of conduct;

(b) specifying the details of that failure; and

(c) stating that the person is censured in the terms the Commissioner has decided.”.

4. In section 59(10)—

(a) in subsection (a) omit “and”,

(b) in subsection (b), at the end insert—

“and

(c) may be published elsewhere.”.

5. For section 63 (extension of 1996 Order) substitute—

**“Extension of 2016 Act**

63.—(1) The provisions of the 2016 Act set out below have effect in relation to this Part as follows, and as if the references to the Ombudsman in the 2016 Act were references to the Commissioner.

(2) In section 30 (investigation procedure) of the 2016 Act, subsections (5) and (7)(a) apply in relation to an investigation under section 55 as they apply in relation to an investigation under the 2016 Act.

(3) Section 31 (information, documents, evidence and facilities) of the 2016 Act, except for subsections (2)(a) and (4), applies in relation to an investigation under section 55—

- (a) as it applies in relation to an investigation under the 2016 Act,
- (b) as if the references to the listed authority being investigated were references to the person being investigated under this Part, and
- (c) as if in section 31(5) the references to section 32(1) and (2) had no effect.

(4) Section 33 (obstruction and contempt) of the 2016 Act, except for subsection (3)—

- (a) applies in relation to the functions of the Commissioner under this Part as it applies in relation to the functions of the Ombudsman under the 2016 Act, and
- (b) applies in relation to an investigation under section 55 as it applies in relation to an investigation under the 2016 Act.

(5) In section 46 (reports to the Assembly) of the 2016 Act, subsections (1) and (4) apply in relation to functions of the Commissioner under this Part as they apply in relation to functions of the Ombudsman under the 2016 Act.

(6) Section 48 (privilege for certain publications) of the 2016 Act applies in relation to reports, investigations, adjudications or notices under this Part as it applies in relation to reports and investigations under the 2016 Act.

(7) Section 49 (disclosure of information) of the 2016 Act –

- (a) applies in relation to information obtained by the Commissioner in accordance with this Part as it applies in relation to information obtained by the Ombudsman in accordance with the 2016 Act,
- (b) applies as if the references to section 10 (alternative resolution of complaints) of the 2016 Act were references to section 55(2) of this Act,
- (c) applies as if the reference in section 49(2)(e) to section 51 (consultation and co-operation with other ombudsmen) only applied in respect of the persons listed in section 51(4)(i) and (j) (local government auditor and Comptroller and Auditor General), and
- (d) applies as if the references to section 54 and 55 (court proceedings) were omitted.

(8) In Schedule 1 (The Northern Ireland Public Services Ombudsman) of the 2016 Act—

- (a) paragraph 14 (delegation of functions) applies in relation to functions of the Commissioner under this Part as it applies in relation to functions of the Ombudsman under the 2016 Act,
- (b) paragraph 16 (advisers) applies in relation to the functions of the Commissioner under this Part as it applies in relation to the functions of the Ombudsman under the 2016 Act,
- (c) in paragraph 18 (budget estimates) references to resources of the Ombudsman include resources used under this Part.

(9) The following provisions of the 2016 Act apply in relation to an adjudication hearing under section 56A as they apply in relation to an investigation under the 2016 Act—

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- (a) section 30(7)(b) of the 2016 Act (legal representation),
- (b) section 30(8) of the 2016 Act (payments to persons giving evidence),
- (c) section 31(3) of the 2016 Act (power to compel witnesses and require production of documents), and
- (d) section 33 of the 2016 Act (obstruction and contempt) except for subsection (3).”.

6. In section 65(1)—

- (a) for the entry relating to the 1996 Order substitute—

““the 2016 Act” means the Public Services Ombudsman Act (Northern Ireland) 2016;”

- (b) for the entry relating to the Commissioner substitute—

““the Commissioner” means the Ombudsman (within the meaning of the 2016 Act) who is to be known, for the purposes of exercising functions under this Part, as the Northern Ireland Local Government Commissioner for Standards;”.

## SCHEDULE 8

Section 63.

### OTHER MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

1. In Schedule 1, Part 3, insert in the appropriate place in alphabetical order “the Northern Ireland Public Services Ombudsman”.

#### *Mental Health (Northern Ireland) Order 1986 (NI 4)*

2. In Article 16(3)(g) for “, the Northern Ireland Parliamentary Commissioner for Administration or the Northern Ireland Commissioner for Complaints” substitute “or the Northern Ireland Public Services Ombudsman”.

#### *Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

3. In section 117(8)—

- (a) for paragraphs (b) and (c) substitute—

“(b) the Northern Ireland Public Services Ombudsman;”,

- (b) in paragraph (i) after “above” in the first place it occurs, insert “, of the Northern Ireland Public Services Ombudsman,”.

#### *Juries (Northern Ireland) Order 1996 (NI 6)*

4. In Schedule 3, for the entry relating to the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints, substitute—

“The Northern Ireland Public Services Ombudsman.”

#### *Northern Ireland Act 1998 (c. 47)*

5. In section 75(3) for paragraphs (b) and (c) substitute—

“(b) any authority (other than the Equality Commission, the board of governors of a grant-aided school, the Comptroller and Auditor

General, a general health care provider or an independent provider of health and social care) listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities);”.

6. In section 76(7) for paragraphs (c) and (d) substitute—  
 “(c) any authority (other than a Northern Ireland department, the board of governors of a grant-aided school, the Comptroller and Auditor General, a general health care provider or an independent provider of health and social care) listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities);”.
7. In section 77(4) for paragraphs (b), (c), (d) and (e) substitute—  
 “(b) any authority (other than a Northern Ireland department, the board of governors of a grant-aided school, the Comptroller and Auditor General, a general health care provider or an independent provider of health and social care) listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities);”.
8. In section 78(2) for paragraphs (b) and (c) substitute—  
 “(b) section 21(1)(b) of the Public Services Ombudsman Act (Northern Ireland) 2016.”.

*Commissioner for Children and Young People (Northern Ireland) Order 2003*  
 (NI 11)

9. In Article 4(1) for sub-paragraphs (a) and (b) substitute—  
 “(a) any authority (other than the Office of the Commissioner or the Comptroller and Auditor General) listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities);”.
10. In Schedule 1, for paragraphs 8 and 9 substitute—  
 “8. The Northern Ireland Public Services Ombudsman.”.

*Commissioner for Older People Act (Northern Ireland) 2011 (c. 1)*

11. In section 7(6), for “the Northern Ireland Commissioner for Complaints, the Assembly Ombudsman for Northern Ireland” substitute “the Northern Ireland Public Services Ombudsman”.
12. In section 26(1) for paragraph (a) and (b) substitute—  
 “(a) any authority (other than the Office of the Commissioner, the board of governors of a grant-aided school or the Comptroller and Auditor General) listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities);”.

SCHEDULE 9

Section 65.

REPEALS

Short Title	Extent of Repeal
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The Northern Ireland Constitution Act 1973 (c. 36)	Section 36(1)(a) and (b).
The Salaries (Comptroller and Auditor General and Others) (Northern Ireland) Order 1973 (NI 14)	The whole Order.
The Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Schedule 1, in Part 3, the entries relating to the Northern Ireland Commissioner for Complaints and the Assembly Ombudsman for Northern Ireland.
The Social Security Administration (Northern Ireland) Act 1992 (c. 8)	In section 117(8)(i), the words “(b), (c),”.
The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)	The whole Order.
The Ombudsman (Northern Ireland) Order 1996 (NI 8)	The whole Order.
The Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)	In Schedule 1, paragraph 13.
The Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997 (NI 14)	The whole Order.
The Museums and Galleries (Northern Ireland) Order 1998 (NI 2)	In Schedule 3, the entry relating to the Commissioner for Complaints (Northern Ireland) Order 1996.
The Social Security (Northern Ireland) Order 1998 (NI 10)	In Schedule 6, paragraph 115.
The Northern Ireland Act 1998 (c. 47)	In section 75(3), paragraphs (ce) and (cf), and in paragraph (cc) the words “the Northern Ireland Policing Board,”.

	In section 76(7), paragraphs (f), (fa) and (fb). In Schedule 8, paragraph 11. In Schedule 13, paragraphs 17 and 18.
The Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 (NI 18)	In Schedule 1, paragraph 26.
The Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21)	In Schedule 3, the entry relating to the Ombudsman (Northern Ireland) Order 1996.
The North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 (1999 No. 859)	In Schedule 2, paragraph 5.
The Departments (Northern Ireland) Order 1999 (NI 1)	In Schedule 2, the entry relating to the Ombudsman (Northern Ireland) Order 1996.
The Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3)	Section 50. In Schedule 1, paragraph 17.
The Industrial Development Act (Northern Ireland) 2002 (c. 1)	In Schedule 1, paragraph 19.
The Health and Personal Social Services Act (Northern Ireland) 2002 (c. 9)	In the Schedule, paragraph 17.
The Justice (Northern Ireland) Act 2002 (c. 26)	In Schedule 3A, paragraphs 3 to 7, 11, in paragraph 12(1)(a) the words “or 11”, paragraphs 13 and 14 and paragraph 15(4). In Schedule 12, paragraphs 63 and 64.
The Strategic Investment and Regeneration of Sites (Northern Ireland) Order	Article 5(7). In Schedule 1, paragraph 21.

2003 (NI 1)	
The Housing (Northern Ireland) Order 2003 (NI 2)	Article 146.
The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9)	In Schedule 4, the entry relating to the Commissioner for Complaints (Northern Ireland) Order 1996.
The Commissioner for Children and Young People (Northern Ireland) Order 2003 (NI 11)	In Schedule 1, paragraphs 1, 2, 5, 7, 14 to 17 and in paragraph 12 the words “The Northern Ireland Policing Board and”. In Schedule 2, paragraph 14.
The Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003 (c. 12)	Section 5(5).
The Agriculture (Northern Ireland) Order 2004 (NI 23)	In Schedule 1, paragraph 20.
The Inquiries Act 2005 (c. 12)	In Schedule 2, paragraph 37.
The Fire and Rescue Services (Northern Ireland) Order 2006 (NI 9)	In Schedule 1, paragraph 18.
The Private Tenancies (Northern Ireland) Order 2006 (NI 10)	In Schedule 4, paragraph 12.
The Victims and Survivors (Northern Ireland) Order 2006 (NI 17)	In the Schedule, paragraph 18.
The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)	In Schedule 12, paragraph 37.
The Libraries Act (Northern Ireland) 2008 (c. 8)	In Schedule 3, paragraph 4.

The Charities Act (Northern Ireland) 2008 (c. 12)	In Schedule 1, paragraph 13.
The Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1)	In Schedule 6, paragraph 15.
The Commissioner for Older People Act (Northern Ireland) 2011 (c. 1)	In Schedule 1, paragraph 14. In Schedule 3, paragraphs 1, 2 and 4.
The Safeguarding Board Act (Northern Ireland) 2011 (c. 7)	Section 13(2).
The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (c. 17)	In Schedule 5, paragraph 2.
The Justice Act (Northern Ireland) 2011 (c. 24)	In Schedule 7, paragraph 4.
The Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013 (c. 2)	Section 23(1).
The Health and Social Care (Amendment) Act (Northern Ireland) 2014 (c. 5)	In the Schedule, paragraph 2.
The Education Act (Northern Ireland) 2014 (c. 12)	In Schedule 1, paragraph 18.
The Ombudsman and Commissioner for Complaints (Amendment) Act (Northern Ireland) 2015 (c. 6)	The whole Act.







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