
STATUTORY INSTRUMENTS

1996 No. 1297 (N.I. 7)

NORTHERN IRELAND

**The Commissioner for Complaints
(Northern Ireland) Order 1996**

Made - - - - *15th May 1996*
Coming into operation *16th July 1996*

At the Court at Buckingham Palace, the 15th day of May 1996

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Commissioner for Complaints (Northern Ireland) Order 1996.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“action” includes failure to act and other expressions connoting action shall be construed accordingly;

“body concerned”, in relation to an investigation pursuant to a complaint under this Order, means the body against which the complaint was made;

- “the Commissioner” means the Northern Ireland Commissioner for Complaints;
- “department” means a department of the Government of Northern Ireland;
- “the Department” means the Department of Finance and Personnel;
- “officer” includes employee;
- “person aggrieved” has the meaning assigned by Article S(4);
- “statutory provision” has the meaning assigned by section 1 of the Interpretation Act (Northern Ireland) 1954;
- “tribunal” includes any authority, body or person having power to determine any matter.

The Northern Ireland Commissioner for Complaints

The Northern Ireland Commissioner for Complaints

- 3.—**(1) There shall continue to be a Commissioner, known as the Northern Ireland Commissioner for Complaints.
- (2) A person appointed under section 36(1) of the Northern Ireland Constitution Act 1973 to be the Commissioner shall, subject to paragraphs (3) and (4), hold office during good behaviour.
- (3) A person appointed to be the Commissioner—
- (a) may, at his own request, be relieved of office by Her Majesty;
 - (b) may be removed from office by Her Majesty in consequence of an Address from the Assembly; and
 - (c) shall in any case vacate office on completing the year of service in which he attains the age of 65 years.
- (4) Her Majesty may declare the office of Commissioner to have been vacated if she is satisfied that the person appointed to be the Commissioner is incapable for medical reasons—
- (a) of performing the duties of his office; and
 - (b) of requesting to be relieved of it.

Salary and pension

- 4.—**(1) There shall be paid to the holder of the office of Commissioner such salary as the Department may by order determine.
- (2) An order under 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 payable to a holder of the office of Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he had previously been appointed or elected.
- (4) Schedule 1 shall have effect with respect to the pensions and other benefits to be paid to or in respect of persons who have held office as Commissioner.
- (5) Any abatement under paragraph (3) shall be disregarded in computing the salary of any person for the purposes of any pension or other benefit payable by virtue of Schedule 1.
- (6) Except in so far as Schedule 1 otherwise provides, any salary, pension or other benefit payable under this Article shall be charged on and issued out of the Consolidated Fund.

Appointment of acting Commissioner

5.—(1) Where the office of Commissioner becomes vacant, Her Majesty may, pending the appointment of a new Commissioner, appoint a person under this Article to act as the Commissioner at any time during the period of 12 months beginning with the date on which the vacancy arose.

(2) A person appointed under this Article shall hold office during Her Majesty's pleasure and, subject to that, shall hold office—

- (a) until the appointment of a new Commissioner or the expiry of the period of 12 months beginning with the date on which the vacancy arose, whichever occurs first; and
- (b) in other respects, in accordance with the terms and conditions of his appointment which shall be such as the Department may determine.

(3) A person appointed under this Article shall, while he holds office, be treated for all purposes, except those of Articles 3 and 4, as the Commissioner.

(4) Any salary, pension or other benefit payable by virtue of this Article shall be charged on and issued out of the Consolidated Fund.

Staff and expenses

6.—(1) The Commissioner may appoint such officers as he may determine with the approval of the Department as to numbers and conditions of service.

(2) The Assembly Ombudsman for Northern Ireland may authorise any of his officers to assist the Commissioner in the exercise of the functions of the Commissioner under this Order.

(3) Any function of the Commissioner under this Order may be performed by any officer of the Commissioner or of the Assembly Ombudsman for Northern Ireland authorised for the purpose by the Commissioner.

(4) References in this Order to officers of the Commissioner include references to officers of the Assembly Ombudsman for Northern Ireland acting under this Article.

(5) The expenses of the Commissioner under this Order shall, to such amount as the Department may approve, be defrayed out of money appropriated by Measure.

Investigations by the Commissioner

Bodies subject to investigation

7.—(1) Subject to the provisions of this Article, this Order applies to the bodies listed in Schedule 2.

(2) The Department may by order amend Schedule 2 by the alteration of any entry, the removal or qualification of any entry or the insertion of any additional entry.

(3) Nothing in paragraph (2) authorises the inclusion in Schedule 2 of—

- (a) a department; or
- (b) a body which does not either—
 - (i) exercise functions conferred on it by a statutory provision; or
 - (ii) have its expenses substantially defrayed out of moneys appropriated by Measure.

(4) Any reference in this Order to a body to which this Order applies includes a reference to the members and officers of that body.

Matters subject to investigation

8.—(1) Subject to the provisions of this Order, the Commissioner may investigate any action taken—

- (a) by or on behalf of a body to which this Order applies; and
- (b) in the exercise of administrative functions of that body.

(2) Without prejudice to the generality of paragraph (1)(b), action taken in the exercise of administrative functions of a body includes action taken by or on behalf of that body in relation to any appointment or employment in respect of which power to take action, or to determine or approve action to be taken, is vested in that body.

(3) The Commissioner may investigate any action taken as mentioned in paragraph (1) only if a complaint is made to the Commissioner in accordance with this Order by a person who claims to have sustained injustice in consequence of maladministration in connection with the action so taken with a request to conduct an investigation into it.

(4) In this Order “person aggrieved” means the person who claims or is alleged to have sustained such injustice as is mentioned in paragraph (3).

Matters not subject to investigation

9.—(1) The Commissioner shall not conduct an investigation under this Order in respect of any such actions or matters as are described in Schedule 3, otherwise than as authorised by the proviso to paragraph 2 of that Schedule.

(2) The Department may by order amend Schedule 3 so as to exclude from the provisions of that Schedule any such action or matter as is described in that order.

(3) Subject to paragraph (4) and to section 22 of the Northern Ireland Constitution Act 1973, the Commissioner shall not conduct an investigation under this Order in respect of—

- (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 otherwise;
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.

(4) The Commissioner may conduct an investigation—

- (a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in paragraph (3), if the Commissioner is satisfied that in the particular circumstances it is not reasonable to expect him to resort to or have resorted to it; or
- (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in paragraph (3)(a), if he complains that the injustice sustained by him remains unremedied thereby and the Commissioner is satisfied that there are reasonable grounds for that complaint.

(5) Nothing in this Order authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a body to which this Order applies in the exercise of a discretion vested in that body.

Provisions relating to complaints

10.—(1) A complaint under this Order may be made by any person other than—

- (a) a department;
- (b) a district council or other body constituted for the purposes of local government;

- (c) a body constituted for the purposes of—
 - (i) the public service; or
 - (ii) carrying on under national or public ownership any industry or undertaking or part thereof;
 - (d) any other body—
 - (i) whose members are appointed by Her Majesty, a Minister of the Crown, a department of the Government of the United Kingdom, the head of a department or a department; or
 - (ii) whose revenues consist wholly or mainly of moneys appropriated by Measure or provided by the Parliament of the United Kingdom;
 - (e) a member, at the time of the action complained of, of the body against which the complaint is made.
- (2) Except as provided by paragraph (3), a complaint shall not be entertained under this Order unless made by the person aggrieved himself.
- (3) Where the person by whom a complaint might have been, made under this Order—
- (a) has died; or
 - (b) is for any reason unable to act for himself,
- the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him.
- (4) A complaint shall not be entertained under this Order unless made in such form and containing such particulars as may be prescribed by order made by the Department.
- (5) A separate complaint shall be made under this Order in respect of each separate injustice alleged to have been sustained by the person aggrieved.
- (6) Except as provided by paragraph (7), a complaint shall not be entertained under this Order unless it is made to the Commissioner not later than 12 months from the day on which the person aggrieved first had knowledge of the matters alleged in the complaint.
- (7) The Commissioner may conduct an investigation pursuant to a complaint not made within the period mentioned in paragraph (6) if he considers that there are special circumstances which make it proper to do so.
- (8) A complaint shall not be entertained under this Order unless—
- (a) the person aggrieved is resident in Northern Ireland or (if he is dead) was so resident at his death; or
 - (b) the complaint relates to action taken in relation to the person aggrieved while he was present in Northern Ireland or in relation to rights or obligations which accrued or arose in Northern Ireland.
- (9) Any question whether a complaint is duly made under this Order shall be determined by the Commissioner.

Purposes of investigation

- 11.** The purposes of the investigation by the Commissioner shall be —
- (a) to ascertain if the matters alleged in the complaint—
 - (i) may properly warrant investigation by him under this Order;
 - (ii) are, in substance, true; and
 - (iii) disclose any maladministration by or on behalf of the body concerned; and

- (b) where it appears to the Commissioner to be desirable—
 - (i) to effect a settlement of the matter complained of; or
 - (ii) if that is not possible, to state what action should in his opinion be taken by the body concerned to effect a fair settlement of that matter or by that body or by the person aggrieved to remove, or have removed, the cause of the complaint.

Procedure in respect of investigations

12.—(1) In determining whether to initiate, continue or discontinue an investigation under this Order, the Commissioner shall, subject to the foregoing provisions, act in accordance with his own discretion.

(2) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Order—

- (a) he shall furnish to—
 - (i) the body concerned; and
 - (ii) any person who is alleged in the complaint to have taken or authorised the action complained of or who is otherwise involved in allegations made in the complaint, information as to the allegations made in the complaint so far as they relate to that body or (as the case may be) to that person and the substance of any evidence which the Commissioner has reason to believe may be tendered in support of those allegations; and
- (b) he shall afford to every such body or person an opportunity to comment on any allegations made in the complaint and to furnish oral or other evidence respecting them.

(3) Every investigation under this Order shall be conducted in private.

(4) Except as otherwise provided by this Order, the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case.

(5) The Commissioner may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit.

(6) Subject to paragraphs (7) and (8), the Commissioner shall not be obliged to hold any hearing, and no person shall be entitled as of right to be heard by the Commissioner.

(7) If at any time during the course of an investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any body or person, the Commissioner shall give to that body or person, if it or he so desires—

- (a) the opportunity of being examined by its or his own solicitor or counsel; and
- (b) the opportunity of testing by cross-examination, by its or his own solicitor or counsel or otherwise, any evidence which may affect it or him.

(8) Where the opportunities mentioned in paragraph (7) are given to a person other than the person aggrieved, the like opportunities shall be given to the person aggrieved.

(9) The Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation under this Order—

- (a) sums in respect of expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time,

in accordance with such scales and subject to such conditions as the Department may determine.

(10) An investigation under this Order shall not affect—

- (a) any action taken by the body concerned or by any department or head of a department with respect to that body; or

- (b) any power or duty of that body, department or head of a department to take further action with respect to any matters subject to the investigation.

Evidence

13.—(1) For the purposes of an investigation under this Order the Commissioner may require any person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such documents.

(2) For the purposes of an investigation under this Order the Commissioner shall have 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.

(3) A person shall not be compelled for the purposes of any investigation under this Order to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings in the High Court.

Obstruction and contempt

14.—(1) If any person without lawful excuse—

- (a) obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under this Order; or
- (b) is guilty of any act in relation to an investigation under this Order which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Commissioner may certify the offence to the High Court.

(2) Where an offence is certified under this Article, 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 him if he had committed the like offence in relation to the court.

(3) This Article does not apply to the taking of any action mentioned in Article 12(10).

Reports on investigations

15.—(1) In any case where the Commissioner—

- (a) conducts an investigation under this Order; or
- (b) decides not to conduct an investigation,

he shall send a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation to the person by whom the request for the investigation was made.

(2) In any case where the Commissioner conducts an investigation under this Order, he shall also send a report of the results of the investigation to—

- (a) the body concerned;
- (b) any person who is alleged in the relevant complaint to have taken or authorised the action complained of or otherwise to be involved in the allegations made in the complaint.

Application for compensation by person aggrieved

16.—(1) Where on an investigation under this Order the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration, the county court may, on an application by that person, by order award that person damages to be paid by the body concerned.

(2) An application to the county court under this Article shall be made in accordance with county court rules and upon notice to the body concerned.

(3) Damages awarded under this Article shall be such as the county court may think just in all the circumstances to compensate the person aggrieved for any loss or injury which he may have suffered on account of—

- (a) expenses reasonably incurred by him in connection with the subject matter of the maladministration on which his complaint was founded; and
- (b) his loss of opportunity of acquiring the benefit which he might reasonably be expected to have had but for such maladministration.

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

(5) Where on an application to the county court under this Article it appears to the court that justice could only be done to the person aggrieved by directing the body concerned 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 P such a direction.

(6) Where an order under paragraph (5) is duly served on the body concerned, disobedience to that order by that body or any member or officer of that body may be treated as a contempt of court to which Article 55 of the County Courts (Northern Ireland) Order 1980 applies.

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

(9) The powers conferred on a county court by this Article 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 for relief following report by Commissioner

17.—(1) This Article applies where on an investigation under this Order the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration and it appears to the Commissioner (whether or not so stated in his report) that—

- (a) the body concerned had previously engaged in conduct which was of the same kind as, or of a similar kind to, that which amounted to such maladministration; and
- (b) that body is likely, unless relief is granted by the High Court under this Article, to engage in future in such conduct.

(2) Where this Article applies the Attorney General may, at the request of the Commissioner, apply to the High Court for the grant of relief under this Article.

(3) On an application under this Article the High Court may, if satisfied as to the matters mentioned in sub-paragraphs (a) and (b) of paragraph (1), grant such mandatory or other injunction or such declaration or other relief as appears to the court to be proper in all the circumstances, including an injunction restraining the body concerned or any member or officer of that body from engaging in, or causing or permitting others to engage in, conduct of the same kind as that which amounted to maladministration or conduct of any similar kind specified by the court.

(4) The High Court may in determining for the purposes of an application under this Article whether a body has engaged in a course of conduct, take into account not only the action investigated by the Commissioner on the complaint of the person aggrieved but also any other action whether or not the subject of an investigation by the Commissioner which appears to the court to be relevant.

Supplementary provisions in relation to proceedings under Article 16 or 17

18.—(1) For the purpose of any proceedings under Article 16 or 17—

- (a) a recommendation of the Commissioner and any report of the Commissioner relating to the complaint in connection with which the recommendation is made shall, unless the contrary is proved, be accepted as evidence of the facts stated therein; and
- (b) the authenticity of any such recommendation or report may be proved by production of a certificate of its authenticity signed by the Commissioner or an officer of the Commissioner.

(2) Nothing in Article 16 or 17 affects the right to bring any proceedings, whether civil or criminal, which may be brought otherwise than under those Articles.

Reports to the Assembly

19. The Commissioner shall annually lay before the Assembly a general report on the performance of his functions under this Order and may from time to time lay such other reports before the Assembly as he thinks fit.

Privilege for certain publications

20. For the purposes of the law of defamation, the publication by the Commissioner or his officers of any matter which the Commissioner is required or authorised to publish under this Order shall be absolutely privileged.

Disclosure of information by Commissioner

21.—(1) Information obtained by the Commissioner or his officers in the course of, or for the purposes of, an investigation under this Order shall not be disclosed except for the purposes of—

- (a) the investigation and any report to be made thereon under this Order;
- (b) any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of this Order;
- (c) any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Order;
- (d) an inquiry with a view to the taking of proceedings of the kind mentioned in subparagraphs (b) and (c); or
- (e) any proceedings under Article 14, 16 or 17.

(2) The Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than the proceedings mentioned in paragraph (1)(b) or (c) or proceedings in the High Court under Article 14 or 17) of matters coming to his or their knowledge in the course of an investigation under this Order.

(3) The Secretary of State or the head of a department may give notice in writing to the Commissioner with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or

information, or of documents or information of that class, would be prejudicial to the safety of Northern Ireland or the United Kingdom or otherwise contrary to the public interest.

(4) Where a notice is given under paragraph (3) nothing in this Order shall authorise or require the Commissioner or any officer of the Commissioner to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

Supplementary provisions

Orders

22.—(1) The Department may make provision by order for any matter appearing to it to be necessary or desirable for carrying out effectively the intent or purpose of this Order.

(2) Orders made by the Department under this Order shall be subject to negative resolution.

Amendments, repeals and transitional and saving provisions

23.—(1) The statutory provisions set out in Schedule 4 shall have effect subject to the amendments specified in that Schedule.

(2) The statutory provisions set out in columns 1 and 2 of Schedule 5 are hereby repealed to the extent specified in column 3 of that Schedule.

(3) Any order made by the Secretary of State under the Salaries (Comptroller and Auditor-General and Others) (Northern Ireland) Order 1973 and in operation immediately before the coming into operation of this Order shall, in so far as it relates to the Northern Ireland Commissioner for Complaints, have effect as if made by the Department under Article 4(1).

(4) Any order made under section 13(1)(e) of the Commissioner for Complaints Act (Northern Ireland) 1969 and in operation immediately before the coming into operation of this Order shall have effect as if made under Article 1 O(4).

(5) A complaint may be made under this Order in respect of matters which arose before as well as after the coming into operation of this Order.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 4(4).

PENSIONS AND OTHER BENEFITS

Interpretation

1. In this Schedule—

“the 1993 Act” means the Judicial Pensions and Retirement Act 1993;

“the 1993 scheme” means the scheme of pensions and other benefits constituted by Part I of the 1993 Act;

“the civil service scheme” means the scheme of pensions and other benefits applicable under Article 3 of the Superannuation (Northern Ireland) Order 1972 to the civil service of Northern Ireland;

“judicial pension scheme” means any public service pension scheme, as defined in—

(a) section 1 of the Pensions Schemes Act 1993; or

(b) section 1 of the Pension Schemes (Northern Ireland) Act 1993,

under which pensions and other benefits are payable in respect of service in one or more qualifying judicial offices, within the meaning of the 1993 Act, but does not include the civil service scheme.

Persons holding office before 31 March 1995

2. Notwithstanding any provision in this Order, the Parliamentary Commissioner for Administration and Commissioner for Complaints (Pension) Order (Northern Ireland) 1973 shall continue to apply in relation to a person who held office as Commissioner at any time before 31 March 1995.

Persons taking office on or after 31 March 1995

3. A person who first holds office as Commissioner on or after 31 March 1995 shall be entitled, if he was a member of a judicial pension scheme immediately before he first holds that office, to elect between—

(a) the scheme of pensions and other benefits under that judicial pension scheme (his “former scheme”);

(b) (if different from his former scheme) the 1993 scheme; and

(c) the civil service scheme,

and, if he is not entitled to make an election under this paragraph, or if he is so entitled but fails to make such an election, he shall be treated as if he had been so entitled and had elected for the civil service scheme.

Status: This is the original version (as it was originally made).

Effect of election to continue in former scheme

4. Where a person elects under this Schedule for his former scheme, that scheme shall, subject to regulations made under this Schedule, apply as if his service as Commissioner were service which was subject, in his case, to that scheme.

Effect of election for the civil service scheme

5. Where a person elects under this Schedule for the civil service scheme, the principal civil service pension scheme within the meaning of Article 4 of the Superannuation (Northern Ireland) Order 1972 and for the time being in force shall apply as if his service as Commissioner were service in employment in the civil service of Northern Ireland.

Effect of election for the 1993 scheme

6.—(1) A person who elects under paragraph 3(b) for the 1993 scheme, shall be entitled, when he ceases to hold office as Commissioner, to a pension under Part I of the 1993 Act at the appropriate annual rate (within the meaning of that Act) if he has held that office for at least 5 years and either—

- (a) he has attained the age of 65; or
- (b) he is disabled by permanent infirmity for the performance of the duties of the office.

(2) Subject to the following provisions of, and regulations made under, this Schedule, the provisions of Part I of the 1993 Act (other than sections 1(1) to (4) and 2) and of sections 19, 20 and 23 of, and Schedule 2 to, that Act (which provide for benefits in respect of earnings in excess of pension-capped salary, appeals and transfer of accrued rights) shall apply in relation to him and his service in the office of Commissioner as they apply in relation to a person to whom Part I of that Act applies.

(3) Subject to regulations made under this Schedule, in the application of provisions of the 1993 Act by virtue of sub-paragraph (2), a person who elects for the 1993 scheme shall be treated—

- (a) as if the office of Commissioner were a qualifying judicial office (within the meaning of that Act) by virtue of inclusion among the offices specified in Part I of Schedule 1 to that Act;
- (b) as if his election under this Schedule were an election such as is mentioned in paragraph (d) of section 1(1) of that Act (so that, in particular, section 12 of that Act, which provides for the transfer of accrued rights into the scheme, applies);
- (c) as if his pension by virtue of this Schedule were a pension under section 2 of that Act (and, accordingly, a judicial pension, within the meaning of that Act); and
- (d) for the purpose of determining, in the event of his death, the rate of any surviving spouse's or children's pension payable under sections 5 to 8 of that Act in respect of his service as Commissioner, as if references in those sections to the annual rate of the deceased's judicial pension were references—
 - (i) where a pension had commenced to be paid to him by virtue of sub-paragraph (1), to the appropriate annual rate of that pension; or
 - (ii) where no such pension had commenced to be paid to him, to the rate that would have been the appropriate annual rate of the pension payable to him by virtue of sub-paragraph (1)(b), had he not died, but been disabled by permanent infirmity for the performance of the duties of his office on and after the date of death.

(4) In the application of the 1993 Act to the Commissioner (whether by virtue of paragraph 3(a) or (b)) the references to the appropriate Minister in sections 13 (election for personal pension), 19 (benefits in respect of earnings in excess of pension-capped salary) and 20 (appeals) of, and

Schedule 2 (transfer of accrued rights) to, that Act shall be taken as references to the Minister for the Civil Service and the power conferred by paragraph 2 of that Schedule to make regulations shall be exercisable by the Minister for the Civil Service.

Time for, and manner of, election

7. Any power to make an election under this Schedule shall be exercisable within such time and in such manner as may be prescribed in regulations under this Schedule.

Regulations

8.—(1) The Minister for the Civil Service may make regulations for purposes supplementary to the other provisions of this Schedule.

(2) Any such regulations may, without prejudice to section 38 of the Superannuation Act (Northern Ireland) 1967 or section 39A of the Superannuation Act 1965 (employment in more than one public office), make special provision with respect to the pensions and other benefits payable to or in respect of a person to whom—

- (a) his former scheme, —
- (b) the 1993 scheme, or
- (c) the civil service scheme,

applies, or has applied, in respect of any service other than service as Commissioner.

(3) The provision that may be made by virtue of sub-paragraph (2) includes provision—

- (a) for aggregating—
 - (i) other service falling within his former scheme or the 1993 scheme with service as Commissioner, or
 - (ii) service as Commissioner with such other service,for the purpose of determining qualification for, or entitlement to, or the amount of, benefit under the scheme in question;
- (b) for increasing the amount of the benefit payable under any of the schemes mentioned in head (a)(i), in the case of a person to whom that scheme applied in respect of an office held by him before appointment as Commissioner, up to the amount that would have been payable under that scheme if he had retired from that office on the ground of permanent infirmity immediately before his appointment.

(4) Regulations made under this Schedule shall be subject to annulment in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

Pensions and benefits to be charged on the Consolidated Fund of the United Kingdom

9. Any pension or other benefit granted by virtue of this Schedule (except a pension or other benefit under the civil service scheme) shall be charged on, and issued out of, the Consolidated Fund of the United Kingdom.

SCHEDULE 2

Article 7(1).

BODIES SUBJECT TO INVESTIGATION

The Agricultural Research Institute of Northern Ireland.

Status: This is the original version (as it was originally made).

The Arts Council of Northern Ireland.

The Council for Catholic Maintained Schools.

A district council, a joint committee appointed by two or more district councils for a purpose in which they are jointly interested, and any committee or sub-committee of a district council or joint committee.

An education and library board.

Enterprise Ulster.

The Equal Opportunities Commission for Northern Ireland.

The Fair Employment Commission for Northern Ireland.

The Fire Authority for Northern Ireland.

The Fisheries Conservancy Board for Northern Ireland.

The General Consumer Council for Northern Ireland.

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

The Health and Safety Agency for Northern Ireland.

A health and social services board.

A health and social services council.

A health and social services trust.

An industrial training board.

The Labour Relations Agency.

The Laganside Corporation.

The Livestock and Meat Commission for Northern Ireland.

The Local Enterprise Development Unit.

The Local Government Staff Commission for Northern Ireland.

The Mental Health Commission for Northern Ireland.

The National Board for Nursing, Midwifery and Health Visiting for Northern Ireland.

A new town commission established under the New Towns Acts (Northern Ireland) 1965 to 1968 and any committee or sub-committee thereof.

The Northern Ireland Central Services Agency for the Health and Social Services.

The Northern Ireland Community Relations Council.

The Northern Ireland Council for the Curriculum, Examinations and Assessment.

The Northern Ireland Council for Postgraduate Medical and Dental Education.

The Northern Ireland Fishery Harbour Authority.

The Northern Ireland Housing Executive.

The Northern Ireland Local Government Officers' Superannuation Committee.

The Northern Ireland Museums Council.

The Northern Ireland Tourist Board.

Office of the Certification Officer for Northern Ireland.

Office of the Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.

Office of the Northern Ireland Commissioner for the Rights of Trade Union Members.

The Rural Development Council for Northern Ireland.

A special health and social services agency.
The Sports Council for Northern Ireland.
The Staff Commission for Education and Library Boards.
The Trustees of the Ulster Folk and Transport Museum.
The Trustees of the Ulster Museum.
Ulster Sheltered Employment Limited.
The Youth Council for Northern Ireland.

SCHEDULE 3

Article 9(1).

MATTERS NOT SUBJECT TO INVESTIGATION

1. 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.

2. 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.

Provided that, if, after the Attorney General has decided not to proceed with such an investigation into such action or not to institute such proceedings in respect of it, or after the final determination of any such proceedings in respect of such action, a person aggrieved complains that such action resulted in his sustaining injustice in consequence of maladministration and that such injustice has not been remedied, the Commissioner may, if satisfied that there are reasonable grounds for that complaint investigate such action, notwithstanding any limitation of time imposed by Article 10(6).

3. Action in the discharge of a professional duty by a medical or dental practitioner, pharmacist, nurse, midwife or member of a profession supplementary to medicine (within the meaning of the Professions Supplementary to Medicine Act 1960) in the course of diagnosis, treatment or care of a particular patient.

4. Action taken in respect of any matter which is within the scope of the powers of the Assembly Ombudsman for Northern Ireland.

SCHEDULE 4

Article 23(1).

AMENDMENTS

The Northern Ireland Constitution Act 1973 (c. 36)

In sections 19(1) and 21(4) for “Schedule 1 to the Commissioner for Complaints Act (Northern Ireland) 1969” substitute “Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996”.

For section 22(2)(c) substitute—

“(c) Article 9(3)(b) of the Commissioner for Complaints (Northern Ireland) Order 1996;”.

Status: This is the original version (as it was originally made).

The Northern Ireland Act 1974 (c. 28)

In Schedule 1 in paragraph 4(1), for “section 1 l(3) of the Commissioner for Complaints Act (Northern Ireland) 1969” substitute “Article 19 of the Commissioner for Complaints (Northern Ireland) Order 1996”.

SCHEDULE 5

Article 23(2).

REPEALS

| Chapter or Number | Short title | Extent of repeal |
|--------------------|--|---|
| 1969 c. 25 (N.I.). | The Commissioner for Complaints Act (Northern Ireland) 1969. | The whole Act. |
| 1972 c. 9 (N.I.). | The Local Government Act (Northern Ireland) 1972. | In Schedule 8, paragraphs 24 and 25. |
| 1972 NI 14. | The Health and Personal Social Services (Northern Ireland) Order 1972. | In Part II of Schedule 16, paragraph 82. |
| 1973 NI 14. | The Salaries (Comptroller and Auditor-General and Others) (Northern Ireland) Order 1973. | The whole Order, in so far as it relates to the Commissioner. |
| 1973 NI 16. | The Enterprise Ulster (Northern Ireland) Order 1973. | In Schedule 1, paragraph 9(2). |
| SI 1973 No. 2163. | The Northern Ireland (Modification of Enactments – No. 1) Order 1973. | Article 2(4). |
| | | In Schedule 5, paragraph 59. |
| 1976 c. 25. | The Fair Employment (Northern Ireland) Act 1976. | Section 58(2)(c). |
| 1979 c. 36. | The Nurses, Midwives and Health Visitors Act 1979. | In Schedule 7, paragraph 15. |
| 1980 NI 3. | The County Courts (Northern Ireland) Order 1980. | In Part II of Schedule 1, the amendment to the Commissioner for Complaints Act (Northern Ireland) 1969. |
| 1981 NI 3. | The Housing (Northern Ireland) Order 1981. | In Schedule 1, paragraph 10. |
| 1981 NI 8. | The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. | In Schedule 3, the amendment to the Commissioner for Complaints Act (Northern Ireland) 1969. |
| 1984 NI 9. | The Industrial Training (Northern Ireland) Order 1984. | In Schedule 3, paragraph 4(a). |

| Chapter or Number | Short title | Extent of repeal |
|-------------------|---|---|
| 1984 NI 11. | The Fire Services (Northern Ireland) Order 1984. | In Schedule 3, paragraph 3. |
| 1986 NI 3. | The Education and Libraries (Northern Ireland) Order 1986. | In Schedule 18, the amendment to the Commissioner for Complaints Act (Northern Ireland) 1969. |
| 1986 NI 4. | The Mental Health (Northern Ireland) Order 1986. | In Schedule 4, paragraph 11. |
| 1986 NI 25. | The Recreation and Youth Service (Northern Ireland) Order 1986. | Article 3(9). |
| 1989 NI 2. | The Laganside Development (Northern Ireland) Order 1989. | In Schedule 1, paragraph 14. |
| 1989 c. 6. | The Official Secrets Act 1989. | In Schedule 1, paragraph 1(c). |
| 1989 NI 20. | The Education Reform (Northern Ireland) Order 1989. | In Schedule 9, the amendments to the Commissioner for Complaints Act (Northern Ireland) 1969. |
| 1989 NI 22. | The Youth Service (Northern Ireland) Order 1989. | In the Schedule, paragraph 9. |
| 1990 NI 3. | The Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990. | In the Schedule, paragraph 9(2). |
| 1991 NI 1. | The Health and Personal Social Services (Northern Ireland) Order 1991. | In Part II of Schedule 5, the amendment to the Commissioner for Complaints Act (Northern Ireland) 1969. |
| 1993 c. 8. | The Judicial Pensions and Retirement Act 1993. | Section 25(h). |
| 1993 NI 12. | The Education and Libraries (Northern Ireland) Order 1993. | In Part V of Schedule 4, paragraph 7. |
| 1993 NI 12. | The Education and Libraries (Northern Ireland) Order 1993. | In Schedule 4, the amendment to the Commissioner for Complaints Act (Northern Ireland) 1969. |
| 1993 c. 49. | The Pension Schemes (Northern Ireland) Act 1993. | In Schedule 7, paragraph 9. |
| 1995 NI 12. | The Trade Union and Labour Relations (Northern Ireland) Order 1995. | In Schedule 2, the amendments to the Commissioner for Complaints Act (Northern Ireland) 1969. |

Status: *This is the original version (as it was originally made).*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals and re-enacts with amendments the Commissioner for Complaints Act (Northern Ireland) 1969. The principal amendments make provision for—

- (a) the removal from office of the Commissioner where he is incapable, for medical reasons, of carrying out his duties;
- (b) the appointment of a person to act as Commissioner for a temporary period;
- (c) extending the list of bodies subject to investigation by the Commissioner.