



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Committee Clerk
Northern Ireland Assembly
Room 430, Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

6 December 2010

Dear

Assembly Members (Independent Financial Review and Standards) Bill

Thank you for alerting the Commission to the introduction of this Bill. Although it was not possible for the Commission to make a formal written submission by 3 December, I understand that you have been advised that we are content that most aspects of the Bill are in line with what we had recommended in our written and oral evidence to the Assembly Committee on Standards and Privileges inquiry on the Conduct of Members and the Appointment of an Assembly Commissioner for Standards.

The Commission has no comments on those elements of the Bill that provide for the establishment of an independent panel to determine the salaries, pensions, allowances and other financial support for members of the Northern Ireland Assembly.

Concerning the Commissioner for Standards, we are pleased to note that almost all of what we recommended in our written and oral submissions to the Committee is reflected in the Bill. Specifically:

- We recommended that the Commissioner's role "would best be set out in statute" – this is provided by Part 2 of the Bill.

- We sought clarification as to the Commissioner’s duty to act on referrals from e.g. the Committee or the Clerk – this is provided by clauses 17 and 24.
- We stressed the principle of independence, which is reflected in clause 18.
- We recommended a fixed term of five or seven years, with dismissal only on a two-thirds vote – clause 19 gives a five-year non-renewable term and clause 21 requires a two-thirds majority for dismissal.
- We said that the Commissioner should have powers to compel evidence etc. – provided for in clause 28.
- We said that the Commissioner ought to be amenable to judicial review. This is secured by establishing it as a statutory office, and scope for judicial review addresses the concern (in our oral evidence) that *suo moto* investigations (i.e. not responding to a complaint) should be amenable to challenge.
- We said that the Commissioner should be appointed by resolution of the Assembly – this is provided by clause 19.
- We said in oral evidence that staffing support for the Commissioner should be arranged so as to avoid any conflict of interest – Sch. 4 provides that staff and support will be provided by the Assembly Commission in consultation with the Commissioner to ensure separation of duties and protect the office’s independence.

One area where the Bill departs from our advice is in the long list of disqualifications from being appointed or serving as the Commissioner (Schedule 3). We said (in oral evidence) that in principle there should be open competition and that any restriction would require justification. However in Sch. 3 those disqualified from the post include uncles, aunts, nephews, nieces, great-nieces or –nephews, great-aunts or –uncles of Assembly members (“whether of the full or half blood”), anyone who has been a Senator in Seanad Éireann within the past five years, anyone who has been employed by a district council within the past two years, any person related to the spouse or civil partner or cohabitant of an Assembly member, etc. etc. The list is extensive and appears to the Commission to be excessive. We note that the disqualification is from serving, not just from appointment, so

if, for example, a serving Commissioner's great-nephew or great-aunt became the partner of an Assembly member, the Commissioner would automatically cease to hold office. The Commissioner, however good a job he or she was doing, would immediately be disqualified from seeing through any investigations that might be under way.

In principle, the occupation, civil status or personal relationships of someone other than the office holder should have little if any bearing on the entitlement of the person to hold that office. The Assembly will certainly seek to appoint a person of high moral standing to this critical position, and such a person ought to be above improper influence; while protection from even the suspicion of improper influence can be afforded by a minimal set of exclusions, for example, debarring the spouse, partner, parent or child of an Assembly Member, it should not be necessary to surround the office with multiple such barriers. Even in the case of close family members, it should be enough for the Commissioner or prospective Commissioner to declare a matter that, if concealed, could give rise to a perception of a conflict of interest. Given the level of scrutiny and possibly challenge to which the Commissioner will be subjected, a declared family relationship ought to present relatively low risk of perceived bias on the part of the office holder.

The Bill in our view goes too far in debarring persons on the basis of degrees of kinship or relationship that extend well into the outer reaches of the family. The Assembly should ask itself if these extended family connections are really circumstances that would so compromise the thinking, standing or credibility of the office holder that he or she would be incapable of performing the role impartially and/or of commanding the Assembly's confidence.

The Commission has no other comments at this time.

Yours sincerely

Professor Monica McWilliams
Chief Commissioner