

Commissioner for Older People in Northern Ireland

a strong independent voice for older people

OFMDFM Committee consideration stage

8 September 2010

Table 1:

This table brings together all of the responses whether by proposed amendment or comment made by each of the eight organisations that submitted written submissions to the OFMDFM Committee regarding the Commissioner for Older People Bill.

Format:

Officials have used a similar tabular format to that used by the Age sector in their evidence to the Committee and so each suggested amendment or comment is detailed against the relevant section of the Bill to which it relates. The table outlines each section of the Bill, by clause. The second and third column provides detail on any amendment proposed or comment made and by whom and the explanation for that comment/amendment. The final column details the view/response from the Department indicating which issues Ministers wish to retain the current formulation in the Bill together with the reason and likewise for non-legislative policy issues, and also where Ministers would be prepared to bring forward legislative amendments to the Bill, subject to the Committee's views.

Some of the issues raised to the Committee by consultees are already provided for in the Bill and so do not require amendment to the legislation. Where this is the case this has been detailed and clarification provided on what the specific clause provides for and/or where this is covered.

Reflecting the number of amendments/comments and the size of the Bill itself and its schedules this is a substantial document. Pages 2 to 100 relate to the Bill. The second part of the table (pages 101 to 107) relate to comments made by consultees in respect of issues not included in the Bill for example this is where comments on '*victim standing*' are included, and general comments from consultees on other non-legislative matters for example resources, communication, and the transition process prior to establishing the Commissioner.

EVIDENCE TO OFMDFM COMMITTEE - Part 1: Comments on the Legislation

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
The Commissioner for Older People for Northern Ireland (Clause 1)			
<p>(1) There is to be an officer known as the Commissioner for Older People for Northern Ireland.</p>	<p>AGE NI There is to be an officer known as the Older People's Commissioner for Northern Ireland.</p>	<p>1. Commissioner for Older People gives the impression of 'doing to/for people' while Older People's Commissioner suggests empowerment, something that older people 'own'/are part of.</p> <p>2. Neither do we want a title that can be shortened to COP, which might give a more forbidding impression of the post than it ought to have.</p>	<p>There is nothing in the Bill which prevents the Commissioner from adopting the title, "The Older People's Commissioner for Northern Ireland" for operational purposes if he or she so wishes. However this will be a matter for the Commissioner to decide.</p> <p>The Title in the Bill is the appropriate title for legal purposes in keeping with the titles of comparable statutory bodies such as the Northern Ireland Commissioner for Children and Young People.</p> <p>The Welsh Commissioner decided to alter her title in the way proposed for operational purposes. However her legal title remains the Commissioner for Older People in Wales.</p>
	<p>OLDER PEOPLE'S ADVOCATE The name should be changed to Older Peoples Commissioner.</p>	<p>Older peoples Commissioner suggests empowerment, a Commissioner that belongs to older people and encouraged them to be fully part of the process.</p>	
	<p>CITIZENS ADVICE BUREAU Support establishment of The Older Peoples Commissioner.</p>		
<p>(2) The Commissioner is to be appointed by the First Minister and deputy First Minister acting jointly.</p>			

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(3) The appointment of the Commissioner under subsection (2) may be made only after taking account of the views of persons aged 60 or over in accordance with arrangements made by the Office.			
Principal Aim of the Commissioner (Clause 2)			
(1)The principal aim of the Commissioner in exercising the functions of the Commissioner under this Act is to safeguard and promote the interests of older persons.	<p>AGE NI</p> <p>(1) The principal aim of the Commissioner in exercising the functions of the Commissioner under this Act is to safeguard and promote the interests, including the rights, of older persons.</p>	<p>Ministers intend that 'interests' encompass 'rights', as confirmed during the 2nd Stage of the Draft Bill on 7th June. Nevertheless, it is the court that decides upon interpretation of law, even where its attention has been drawn to the stated intention in Hansard.</p> <p>The court will question the role and power of the OPC to intervene, dissecting the legislation to determine what power was given in and over what circumstances. Judges compare legislation to ascertain its intention and are liable to compare the OPC's legislation with that of NICCY to the detriment of the OPC and older people as 'rights' are specified in one and not the other. As Ministers have made clear that 'rights' are included that intention should be made clear in the legislation.</p> <p>This 'belt and braces' approach will mean that the Commissioner will never incur costs testing this point. In addition to amending Section 2(1) an interpretation</p>	<p>“Interests” is a broader term covering the wider picture. It includes but is broader than rights. It is not usually defined in legislation as in the Commissioner for Older People in Wales Act, the Fair Employment and Treatment Order and the Commissioner for Victims and Survivors legislation.</p> <p>However after further consideration of the points made, subject to the Committee’s view, Ministers would be prepared to amend the Bill, specifically Clause 27, Interpretation: general to clarify that in the Bill “interests” includes “rights”.</p>

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		amendment should be made to Section 27 to say that "'interests" includes rights'. The unequivocal inclusion of rights is also important in the matter of Victim Standing Status (see later).	
Principal Aim of the Commissioner (Clause 2) Continued			
(1)The principal aim of the Commissioner in exercising the functions of the Commissioner under this Act is to safeguard and promote the interests of older persons.	<p>NIHRC</p> <p>Want Principal Aim to refer to "Rights".</p> <p>2(1) Should read "The principle aim of the Commissioner in exercising the functions of the Commissioner under this Act is to safeguard and promote the interests, including the rights of older people.</p>	NIHRC consider that interests is too vague a term to define. Rights are codified in domestic, national and international law.	See comment above.
	<p>OLDER PEOPLES ADVOCATE</p> <p>The Principal Aim should refer to interests and rights.</p>		See comment above.
(2) In determining whether and, if so, how to exercise the functions of the Commissioner under this Act in relation to any particular older person the Commissioner's paramount consideration must be the interests of that older person but, in the Commissioner's dealings with any body or person under this Act, the Commissioner must at all times have regard to any statutory provision or rule of law which authorises or requires that body or person to act in a particular manner or authorises or	<p>AGE NI</p> <p>In determining whether and, if so, how to exercise the functions of the Commissioner under this Act in relation to any particular older person the Commissioner's paramount consideration must be the interests of that older person.</p>	Nothing after the word 'but' is necessary as the intention is implicit in the restrictions later in the legislation. It is not normal to have a restriction in the second section of a piece of legislation. Furthermore, it does not present a good impression. The legislation will read more clearly without it.	The second part of this section covers the Commissioners dealings with other bodies. The section after "but" is an important provision in relation to the Commissioner's dealings with other persons or bodies who have different authorities/requirements or have different considerations. The Department wishes to retain this formulation.

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requires that body or person to have regard to any consideration other than that mentioned above.			
Principal Aim of the Commissioner (Clause 2) Continued			
<p>(3) In</p> <p>(a) considering, for the purposes of this Act, what constitutes the interests of older persons, and</p> <p>(b) determining whether and, if so, how to exercise the functions of the Commissioner under this Act, the Commissioner must have regard to the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991.</p>	<p>AGE NI</p> <p>No proposed amendment but see comment.</p>	<p>We agree with the reference to the UN Principles for Older People. Older people also have rights under other European and international instruments to which the UK is obligated e.g. older people have the right to a private life (EHRC Art 8) and not to be subject to degrading treatment (ECHR Art 3) and under UN instruments such as CEDAW and CERD. Including the word 'rights' as argued above does not confer additional rights on older people; the OPC simply provides a way of exercising them, which is Ministers' stated intention.</p>	<p>See response to Clause 1(1).</p>
	<p>NIHRC</p> <p>NIHRC believes the UN Principles for Older People do need to be considered but focus should be on Human Rights which older people have as set out in legally binding international treaties.</p>		<p>In relation to suggestions made in the public consultation about the Commissioner taking account of other relevant protocols and international agreements, we consider that the Commissioner should be aware of and take account of these (in a non-statutory manner) but we believe that the clear focus in the legislation should be on the UN Principles. We are proposing that as part of its sponsorship role OFMDFM should draw the Commissioner's attention to these other agreements upon appointment. These would include the UN Paris Principles of National Human Rights Institutions</p>

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			and the EU Employment Framework Directive.
Duties of the Commissioner (Clause 3)			
(1) The Commissioner must promote an awareness of matters relating to the interests of older persons and of the need to safeguard those interests.	<p>AGE NI</p> <p>The Commissioner must advocate the interests of older people, promoting awareness of matters relating to their interests and of the need to safeguard those interests.</p>	We propose this amendment to close a gap we perceive between 'duties' and 'powers'. Legal and investigation powers are there to advocate change and improvement for older people; this is more than promoting awareness and it is not sufficiently reflected in the OPC's duties. Even though legal and investigation powers are in place, the court will ask how does the power further the duties, and will consider whether the duties include advocacy.	Advocacy is about representing an individual; what is being promoted here is an awareness of matters relating to the interests of older people generally. The Department would be concerned that this drafting suggestion could risk narrowing the power from 'representing' a group of older people to the power to 'advocate' for an individual older person or an individual complaint. This would potentially narrow the limit of the Commissioner's work.
	<p>OLDER PEOPLE'S ADVOCATE</p> <p>There should be a duty to act as an advocate this should be defined and articulated.</p>		Advocacy is a key role for the Commissioner. The power of advocacy is already covered in the Bill by Clause 4(6) the wording of which has been used in a number of pieces of legislation for this purpose. OFMDFM would propose putting a note in the EFM clarifying this to make it explicit that 4(6) provides the Commissioner with the power of advocacy.
(2) The Commissioner must keep under review the adequacy and effectiveness of law and practice relating to the interests of older persons.			

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(3)The Commissioner must keep under review the adequacy and effectiveness of services provided for older persons by relevant authorities.			
(4) The Commissioner must promote the provision of opportunities for, and the elimination of discrimination against, older persons.	<p>NIHRC Questions that this clause is a direct duplication of ECNI functions.</p>		<p>The ECNI position is correct. The ECNI duty under the Age Regulations is to “promote equality of opportunity”. The Commissioner’s duty is focused on promoting the “provision of opportunities for, and the elimination of, discrimination against <u>older persons</u>”.</p>
	<p>ECNI No proposed amendment but see comment.</p>	<p>The Commission notes the difference between ‘promoting the provision of opportunities for older people’ envisaged for the Commissioner for Older People and promoting equality of opportunity which is one of the Commission’s duties under the Age Regulations and other legislation. We recognise that this difference indicates the absence of potential conflict. We welcome the obligation on the Commissioner to promote the elimination of discrimination, which mirrors that of the Commission, believing that the broader the range of action against discrimination, the better the outcomes will be.</p>	
Duties of the Commissioner (Clause 3) Continued			
(5) The Commissioner must encourage best practice in the treatment of older persons.	<p>ECNI No proposed amendment but see comment.</p>	<p>We note the duty to encourage best practice in the treatment of older persons and the potential for this to overlap with our work to encourage</p>	

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		best practice by employers in respect of workers whatever their age and would want to work to ensure no unnecessary or confusing duplication.	
(6) The Commissioner must promote positive attitudes towards older persons and encourage participation by older persons in public life.	WCRP Welcomes the duties in the Bill.		No comment required.
(7) The Commissioner must advise the Secretary of State, the Executive Committee of the Assembly and a relevant authority on matters concerning the interests of older persons – (a) as soon as reasonably practicable after receipt of a request for advice; and (b) on such other occasions as the Commissioner thinks appropriate.	AGE NI We recommend the removal of 'a relevant authority'.	This subsection is a 'must', thus making it a requirement for the OPC. The Executive and the Secretary of State represent the devolved and reserved arrangements and it is right that the OPC 'must' respond' to their requests for advice as well as present advice on the OPC's own initiative. However, the requirement to respond to requests from every relevant authority will place a heavy burden on the OPC, and impinge on the OPC's capacity to initiate, pursue and fulfil other duties. While the OPC should and is likely to respond to requests for advice from relevant authorities, it should have the discretion to decide whether this is an appropriate use of resources, etc.	There is no evidence to suggest that the obligation to respond to requests for advice from relevant authorities would prove to be burdensome. Based on the experience of NICCY and other comparable bodies the Department therefore considers this to be a helpful provision and to retain it in the Bill.
	NIHRC Would prefer the wording “matters concerning” replaced with “on measures which ought to be taken to		We consider that what the NIHRC have suggested is narrower than the current provision. Their proposal creates a duty only to advise on what positive steps to take. The Bill

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	protect the interests of older people” (C1.3 (7)).		creates a duty to advise on matters concerning the interests of older people which is wider.
Duties of the Commissioner (Clause 3) Continued			
(8)The Commissioner must take reasonable steps to ensure that -	ADVICE NI Definition needed/concern about “reasonable steps”.	This gives the Commissioner a large degree of interpretation and they are “weary of how this might be qualified and delivered”.	The term “reasonable” is not defined in legislation because what would be considered reasonable will vary with the facts of the particular case. There must be a degree of discretion allowed which enables the particular circumstances to be taken into consideration when determining what is a reasonable course of action.
(a) older persons are made aware of (i) the functions of the Commissioner; (ii) the location of the Commissioner’s office; and(iii) the ways in which they may communicate with the Commissioner;	NIHRC Want “functions” to be defined.	They believe its scope is unclear and as both functions and duties are referred to in the legislation and they are unsure about what aspects of the Bill are covered by “functions.”	This is unnecessary because any statutory powers or duties of a body are “functions” under the definition of the Interpretation Act 1954.
(b) older persons are encouraged to communicate with the Commissioner;			
(c) the views of older persons are sought concerning the exercise by the Commissioner of the Commissioner’s functions;	AGE NI No proposed amendment but please see comment.	We do not have an amendment to this subsection, but simply draw attention to the importance of a good working relationship between the OPC and age sector organizations in support of older people. The OPC must be independent from the sector, and also not become simply an extension of the sector by taking on functions already undertaken in the sector. The Welsh experience demonstrates the importance of	We note the comments made. As part of OFMDFM’s sponsorship role of the Commissioner, it will expect the Commissioner to make every effort to agree memoranda of understanding with relevant and appropriate organisations. A joined-up approach will ultimately better protect the rights and interests of older people as well as ensuring the efficient use of resources.

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		these relationships and of managing them well. Ideas from Wales and NI include Memorandums of Understanding and referral protocols between the Commissioner and age organisations.	
		WCRP Welcomes the Commissioner having a strong duty to communicate with older people.	No comment required.
		WCRP Welcomes the proposal that there is a duty to consult older people.	No comment required.
(d) The services of the Commissioner are, so far as practicable, made available to older persons in the locality in which they live.	ADVICE NI Definition needed/concern about “as far as is practicable”	Concerned that this could enable inequalities to develop and result in some older people to be left without the Commissioner’s service.	The term “as far as is practicable” (similar to “reasonable”) is not defined in legislation because what would be considered practicable will vary with the facts of the particular case. There must be a degree of discretion allowed which enables the particular circumstances to be taken into consideration when determining what is a practicable course of action.
General Powers of the Commissioner (Clause 4)			
(1) The Commissioner may undertake commission or provide	CITIZENS ADVICE BUREAU No proposed amendment but see	The Commission should also be able to provide mediation and advocacy to	The new Clause 12 “Conciliation of Disputes” in the Bill provides for such

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financial or other assistance for research or educational activities concerning the interests of older persons or the exercise of the Commissioner's functions.	Comment.	assist people. This is a process less costly and quicker than court or tribunal proceedings. Many cases would be suitable for this recourse without the need for litigation.	services. The consultation document ¹ explains this. The Bill enables the Commissioner to make arrangements (including the providing of funds) to enable conciliation services to be made available in disputes concerning the interests of older people.
(2) The Commissioner may, after consultation with such bodies or persons as the Commissioner thinks appropriate, issue guidance on best practice in relation to any matter concerning the interests of older persons.			
(3) The Commissioner may, for the purposes of any of the Commissioner's functions, conduct such investigations as the Commissioner considers necessary or expedient.	NI OMBUDSMAN No proposed amendment but see comment.	The notion of an ombudsman advocate is self-evidently contradictory. Clearly, therefore, anyone who is the subject of an investigation by the Commissioner for Older People will always have the perception that the very title of the office biases the investigation in favour of older people.	There are successful precedents for this model: the Children's Commissioner for Wales; the Older Peoples Commissioner for Wales; NICCY; the Irish Ombudsman for Children, the Norwegian Ombudsman for Children. Any potential for tensions between the advocacy and investigatory roles within an organisation can be well managed internally through the creation of different teams etc. On the issue of bias, any organisation, tasked with investigatory functions seeks to prove or disprove the complaint
	ECNI No proposed amendment but please see comment.	The Commission is concerned that an impression may have been created in evidence to the Committee that a body that reports to a Minister or Ministers cannot be independent; that the provision of funding through a Department can have a similar effect; and that there is an inherent incompatibility between the role of	

¹ Consultation Document, paras 10.3-10.9, pp56-59

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		<p>advocacy or advice, on the one hand, and enforcement on the other. Whatever reservations the Commission has in respect of the present proposals, it does not share the view that they can be assailed on these grounds. To do so would question the proper functioning of a number of public authorities.</p>	<p>based on an independent investigation informed by evidence gathered. A decision by the Commissioner would be based on the evidence gathered and the Commissioner, as with any organisation, would be exposed if he/she were to make a decision contrary to these findings.</p>
General Powers of the Commissioner (Clause 4) Continued			
<p>(4) If the Commissioner so determines, Schedule 2 is to apply in relation to an investigation conducted by the Commissioner for the purposes of the Commissioner's functions under section 3(2) or (3).</p>			
<p>5) The Commissioner may - (a) compile information concerning the interests of older persons; (b) provide advice or information on any matter concerning the interests of older persons; (c) publish any matter concerning the interests of older persons, including (i) the outcome of any research or activities mentioned in subsection (1); (ii) the outcome of any investigations conducted under subsection (3); (iii) any advice provided by the Commissioner.</p>			
<p>(6) The Commissioner may make representations or</p>	<p>ADVICE NI</p>		<p>See comments under 3(1) above regarding how this subsection</p>

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recommendations to any body or person about any matter concerning the interests of older persons.	Need measures in the Bill to ensure recommendations are thoroughly acknowledged and acted upon.		empowers the Commissioner to act as an advocate. This will be clarified in the EFM. On enforcement powers/sanctions see comments under 'Sanctions' at Part 2 below.
General Review of Advocacy, Complaint, Inspection and Whistle Blowing Arrangements of Relevant Authorities (Clause 5)			
(1) This section and section 6 apply to the following arrangements of a relevant authority	Citizens Advice Bureau (CAB) No proposed amendment but see Comment	Supports the specific powers of review, however the CAB would encourage the Commissioner to have clear definitions of when there is no other body to offer assistance.	We note the comments made. As part of OFMDFM's sponsorship role of the Commissioner, it will expect the Commissioner to make every effort to agree memoranda of understanding with relevant and appropriate organisations. A joined-up approach will ultimately better protect the rights and interests of older people as well as ensuring the efficient use of resources. This process as well as specific clauses in the Bill will enable the Commissioner to determine when another body may or may not be able to offer assistance.
(a) advocacy arrangements , that is to say arrangements for making persons available (i) to represent the views, wishes and interests of older persons in relation to whom any functions of the authority are exercisable; and (ii) to provide such older persons			

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<p>(A) with information, advice and support to enable or assist them to express their views and wishes to the authority; and</p> <p>(B) with advice about their interests;</p> <p>(b) complaint arrangements, that is to say arrangements for dealing with complaints made to the authority by older persons about actions taken in relation to them by that or another relevant authority;</p> <p>(c) inspection arrangements, that is to say arrangements for examining the state and management of, and the treatment of older persons on, any premises managed by that</p>			

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<p>or another relevant authority in which</p> <p>(i) an older person is living or being looked after;</p> <p>(ii) an older person is being detained whether under any statutory provision or otherwise; or</p> <p>(iii) health, welfare or any other services are provided for older persons; and</p> <p>(d) whistle-blowing arrangements, that is to say arrangements for ensuring that proper action is taken in response to any disclosure of information which may tend to show</p> <p>(i) that a criminal offence has been committed;</p> <p>(ii) that a person has failed to comply with any legal obligation to which that person is subject;</p> <p>(iii) that the health and safety of any older person has been endangered;</p> <p>(iv) that the rights of any older person have been infringed; or</p> <p>(v) that any matter falling within one of the preceding paragraphs has been deliberately concealed, in the course of, or in connection with, the exercise by the relevant authority of any of its functions in relation to older persons.</p>	<p>ECNI</p> <p>No proposed amendment but see Comment</p>	<p>On the face of the section the complaints issue at Clause (1)(b) looks like a duplication although that seems to be resolved later; (1) (d) (ii) also has an Equality Scheme dimension; and we consider that Clause 5 (2) could overlap with aspects of Schedule 9.</p>	<p>Provisions in this clause at Sub-section 5(4) minimise duplication with other bodies.</p> <p>ECNI's role is in the effectiveness of how public bodies have fulfilled their Section 75 obligations including approval of Equality Schemes.</p> <p>The Clause in this Bill provides for wider remit of the oversight role of the Commissioner. The Commissioner could respond to a problem and look at or review the internal procedures.</p>
<p>(2) Subject to subsections (3) and (4), the Commissioner may review the operation of any arrangements to which this section applies for the purpose of</p>			

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ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the interests of older persons.			
(3) The Commissioner may not exercise the Commissioner’s power under subsection (2) in relation to any arrangements made by a relevant authority unless the Commissioner has reasonable grounds to believe that (a) the arrangements in question are ineffective in safeguarding and promoting the interests of older persons; or (b) those arrangements have not been operated, or have been operated incorrectly.			
(4) The Commissioner may not review the operation of the inspection arrangements made by a relevant authority unless it appears to the Commissioner that there is no other body or person likely to review those arrangements.	AGE NI No proposed amendment but see comment.	<ol style="list-style-type: none"> 1. The Age Sector would prefer unrestricted powers to meet the standards of the Paris Principles but are prepared to accept this wording, which is a change to the original formulation. 2. Memorandums of Understanding between the OPC and other bodies will be important. 	This subsection was amended in response to comments from consultees during the ODFMDFM consultation to give the Commissioner greater discretion to act. The need for this Clause must be balanced against concerns as raised by ECNI (see comment above).
(5) Where a relevant authority has failed to make any arrangements of a kind mentioned in subsection (1), the Commissioner may assess the effect of that failure on older persons.			

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(6) The power conferred by this section to review the operation of any arrangements includes power to review the failure of any such arrangements to operate.			
Review of Advocacy, Complaint, Inspection and Whistle-blowing Arrangements of Relevant Authorities in Individual Cases (Clause 6)			
(1) Subject to subsections (2) and (3), the Commissioner may review the operation of any arrangements to which this section applies in the case of a particular older person (or, as regards inspection arrangements, in the case of any particular premises).	<p>CITIZENS ADVICE BUREAU</p> <p>No proposed amendment but see comment.</p>	<p>Citizens Advice Bureau</p> <p>CAB believe there should be a clear understanding of when it is appropriate for the Commissioner to intervene.</p>	<p>See comments under 5(1) above.</p>
(2) The Commissioner may not exercise the Commissioner’s power under subsection (1) in relation to the operation of any arrangements made by a relevant authority in the case of a particular older person unless the Commissioner has reasonable grounds to believe that (a) the arrangements in question were ineffective in safeguarding and promoting the interests of the older person concerned; or (b) those arrangements did not operate, or were operated incorrectly, in relation to the older person concerned.			

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Review of Advocacy, Complaint, Inspection and Whistle-blowing Arrangements of Relevant Authorities in Individual Cases (Clause 6) Continued			
(3) The Commissioner may not review the operation of the inspection arrangements made by a relevant authority unless it appears to the Commissioner that there is no other body or person likely to review those arrangements.	AGE NI No proposed amendment but see comment.	1. We wanted unrestricted powers to meet the standards of the Paris Principles but are prepared to accept this wording, which is a change to the original formulation. 2. Memorandums of Understanding between the OPC and other bodies will be important.	This subsection has already been amended in response to comments from consultees during the OFMDFM consultation. The revised clause now gives the Commissioner greater discretion to act.
(4) The power conferred by subsection (1) to review the operation of any arrangements includes power to review the failure of any such arrangements to operate.			
(5) Where a relevant authority has failed to make any arrangements of a kind mentioned in subsection (1), the Commissioner may assess the effect of that failure on any particular older person.			
Assistance with Complaints to Relevant Authorities (Clause 7)			
(1) The Commissioner may provide assistance (including financial assistance) to an older person in making a complaint to a relevant authority that the interests of the older person have been adversely affected by any action taken by that or another relevant authority.	OLDER PEOPLE'S ADVOCATE The Advocate believes that this Clause could be misleading and suggests that the Commissioner would take on any issue that older people bring to the office. She believes there needs to be clarity that the issues the Commissioner deals with must have a strategic benefit (i.e. affects a lot of people).		This Clause is aimed at assisting individuals and in deciding whether to exercise the Commissioner's functions in relation to a particular older person Clause 2(2) applies. This means that it is the interests of the individual older person that must be the Commissioner's paramount consideration. This Clause was also amended [at 7(1), 7 (3), 7(4)] following public consultation to give

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			the Commissioner greater discretion to act.
(2) The Commissioner may act on behalf of an older person in - (a) making such a complaint to a relevant authority; and (b) any investigation or other proceedings conducted by that authority pursuant to the complaint.			
(3) In deciding whether to provide assistance to an older person under subsection (1), the Commissioner may take account of the financial or other assistance available to the older person in relation to the complaint.	AGE NI No proposed amendment but see comment.	We are prepared to accept this wording, which is a change to the original formulation.	The purpose of this clause is to prevent duplication of the Commissioner's work with that of other bodies. However it was amended in response to the public consultation to give the Commissioner greater discretion to act.
	ECNI No proposed amendment but see comment.	Section 7 seems, on its face, to collide with the legal assistance provisions of existing, and any future, anti-discrimination legislation and, perhaps, with aspects of the Section 75 arrangements. It is recognised that some steps have been incorporated to limit this but it is not clear if duplication is entirely avoided.	
	CITIZENS ADVICE BUREAU No proposed amendment but see comment	CAB are supportive of assistance with complaints to Relevant authorities, however they dispute the condition that the Commissioner will again only act in the occasion that no other body is available to assist.	

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		<p>ECNI – Clause7 (3) & (4).</p> <p>Want the restriction strengthened so that the “Commissioner should be obliged to satisfy herself/himself that no other body is likely to provide assistance (including financial) to an older person or act on behalf of an older person.</p>	
<p>(4) In deciding whether to take action on behalf of an older person under subsection (2), the Commissioner may take account of whether there is any other person or body likely to take such action.</p>	<p>AGE NI</p> <p>No proposed amendment but see comment.</p>	<ol style="list-style-type: none"> 1. The Age Sector would prefer unrestricted powers to meet the standards of the Paris Principles but are prepared to accept this wording, which is a change to the original formulation. 2. Memorandums of Understanding between OPC and other bodies will be important. 	<p>See comment at 7(3).</p>
<p>(5) Where the making of a complaint to a relevant authority is regulated by a statutory provision, nothing in this section authorises a complaint to be made to that authority otherwise than in accordance with that provision.</p>			
<p>(6) For the purposes of this section, “relevant authority” also includes the Northern Ireland Commissioner for Complaints, the Assembly Ombudsman for Northern Ireland, the Information Commissioner, the Pensions Ombudsman and the Northern Ireland Office.</p>	<p>AGE NI</p> <p>No proposed amendment but see comment.</p>	<p>All 'relevant authorities' should be included for all aspects of the legislation. Why are these bodies included in the legislation only for the purposes of this section, i.e. under the Commissioner’s power to assist with complaints, yet are excluded from other aspects?</p>	<p>All of these bodies (except the NI Commissioner for Complaints/Assembly Ombudsman) operate in the reserved field. They can be included as relevant authorities for all clauses in the Bill if they consent to be so included. These bodies did not give their consent to being included as relevant</p>

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			<p>authorities with the exception of being so included for this clause alone.</p> <p>The NI Ombudsman regards his Office as the oversight body of last resort and therefore did not agree to his inclusion as a relevant authority for other clauses in the Bill. It is however for the Assembly to determine the scope of the oversight role for the Commissioner and there is no constitutional/legal reason why the NI Ombudsman should not be listed. [The inclusion of the NI Ombudsman for all purposes may be a matter for the Assembly to consider.]</p>
Investigation of Complaints against Relevant Authorities (Clause 8)			
<p>(1) Subject to subsection (2) and section 9, the Commissioner may conduct an investigation into a complaint made by an older person that the interests of the older person have been adversely affected by any action taken by a relevant authority.</p>	<p>OLDER PEOPLE'S ADVOCATE</p> <p>No proposed amendment but see comment.</p>	<p>Clauses 8 and 9 do not describe what the Commissioner can do but rather the restrictions on any power of investigation that the Commissioner may have.</p>	<p>Comment noted.</p>
	<p>NI OMBUDSMAN</p> <p>No proposed amendment but please see comment.</p> <p>In relation to a credible review process, the commissioner will be confined to dealing purely with a narrow jurisdiction and complaints from older people. I believe that that will lead inevitably to what I would</p>	<p>An Ombudsman, must be in a position to investigate anyone's grievances concerning any decision, recommendation or action, and must consider that grievance against the context of competing priorities, which will involve all individuals and groups, not just older people.</p> <p>The notion of an ombudsman</p>	<p>The Department does not accept that the Commissioner, in providing a service to older people, will not be capable of carrying out Reviews of the internal procedures of relevant authorities in a professional and independent manner.</p>

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	describe as service capture.	advocate is, therefore, I contend, self-evidently contradictory. Clearly, therefore, anyone who is the subject of an investigation by the Commissioner for Older People will always have the perception that the very title of the office biases the investigation in favour of older people.	
<p>CLAUSE 8 CONTINUED</p> <p>(2) The Commissioner may not exercise the Commissioner's power under subsection (1) in relation to a complaint unless the Commissioner is satisfied that</p> <p>(a) the complaint raises a question of principle; and</p> <p>(b) the complaint does not fall within an existing statutory complaints system.</p>	<p>AGE NI</p> <p>(2) The Commissioner may exercise the Commissioner's powers under subsection (1) in relation to a complaint when</p> <p>(a) the complaint falls within the aims and duties of the Commissioner; and</p> <p>(b) it appears to the Commissioner that there is not likely to be an investigation within a statutory complaints system.</p>	<p>1. This is an extremely negative way of framing the Commissioner's powers, which could neutralise casework powers and undermine investigation powers. Most casework will be in areas of statutory complaints procedures and the powers are gravely weakened if the OPC is not able to launch an investigation as a last resort. The Commissioner must have full and proper power to investigate matters germane to its aims and duties and to look at the matters through the eyes of older people. In our view it is essential to amend this section, particularly (2) (b).</p> <p>2. There are also cost implications. Adequate powers under this section will significantly reduce the need to use judicial review and thus reduce costs. If these powers are disallowed then the OPC may have no other option but to go to court on an important case. Furthermore, sufficient powers here will facilitate the use of the alternative dispute resolution (ADR) (alternative to going to court) which is much cheaper. Our</p>	<ul style="list-style-type: none"> • The Department considers that what is proposed is potentially more restrictive, i.e. specifying the (only) circumstances when the Commissioner may act rather than the limited circumstances when he/she may not. • It is also intended to avoid duplication of the Commissioner's work with that of other bodies which already possess the responsibility, the expertise and the resources to act on a complaint. The Commissioner would be able to challenge any such organisation that did not respond promptly to a complaint from an older person by making representations or recommendations as empowered under Clause 4(6).

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		<p>essential amendment to (2) (b) will assist the OPC to be an effective casework body underpinned by the ultimate use of investigation where necessary rather than a litigation-driven body.</p> <p>3. 'Question of principle' is not legally defined and may be ambiguous. We suggest that the legislation will be clearer if, where possible, it refers instead to the OPC's remit or aims and duties. It is not our intention to change the OPC's focus from strategic work. We believe that the Commissioner should adopt a strategic focus, based upon clear principles, which it develops in its strategic and business planning. Rather we want to ensure that there is no doubt about the OPC's standing to undertake this work.</p> <p>4. The Age Sector wish to emphasise concern about the very restrictive nature of this section to which we urge amendment. Please note that we are making two separate points in this section, one in relation to (b) and one in relation to (a).</p>	<ul style="list-style-type: none"> • “Question of principle” is a well established and understood legal concept. It is used in NICCY, the Equality (Disability) (NI) Order 2000 and FETO among others and is undefined. It generally means that the issue raises a matter of public concern or public interest. It is not merely a matter about a dispute based on a personal preference; it must raise a strategic issue. • See comments above. • See comments above on question of principle. On the issue of duplication the Department believes that Clause 8(2) prevents duplication in relation to the power of investigation of complaints. In addition there are many other subsections of the Bill that also limit the Commissioner from acting in circumstances where another body already has the responsibility, expertise and resources to act. This does not prevent the Commissioner from challenging the body about any

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			delay in acting.
<p>CLAUSE 8 CONTINUED</p>	<p>NIHRC</p> <p>'Question of principle' is not legally defined and may be ambiguous. We suggest that the legislation will be clearer if, where possible, it refers instead to the OPC's remit or aims and duties.</p> <p>No proposed amendment but see comment.</p>	<p>The first area of concern is the risk of duplication between the proposed Commissioner for Older People and other bodies.</p>	<p>This provision aims to prevent duplication with other bodies by restricting the Commissioner's powers to act where another organisation has responsibility in that area.</p>

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	<p>ECNI</p> <p>No proposed amendment but see comment.</p>	<p>The provision at sub-paragraph (b) seems to remove any potential for clash with the Commission’s role in respect of investigation of complaints.</p>	<p>The ECNI are correct. This is the case.</p>
<p>CLAUSE 8 CONTINUED</p>	<p>OLDER PEOPLE’S ADVOCATE</p> <p>Wants to know how “question of principle” is defined.</p> <p>Wants to know what is the cut off point between informal and formal investigations.</p>		<p>See comments above on “question of principle”.</p> <p>The formal investigation powers are significant. The decision on whether to carry out a Formal Investigation is a matter that is left to the discretion of the Commissioner. This may include cases where there is evidence of significant systemic failure in a public service or where the same problem arises repeatedly, indicating that remedial action has not been taken by the body to prevent the recurrence of the problem.</p>
	<p>NIHRC</p> <p>Question what type of case would not fall within existing complaints systems and if most complaints are within the remit of the Ombudsman what is the point of this power if this clause is retained (Cl. 8).</p>		<p>The Commissioner’s complaint investigatory power is focused on complaints that adversely impact on the <u>interests</u> of older people. It is therefore wider than complaints based on, for example, maladministration that may focus on the procedural aspects of a decision rather than the merit or how it affects an older person’s ‘interests’. Many public bodies do not have <i>statutory</i> complaints systems.</p>
	<p>CITIZENS ADVICE BUREAU</p> <p>No proposed amendment but see comment</p>	<p>Question why cases can only be investigated on a point of principle and recommend that the Commissioner is given full powers of</p>	<p>See comments above on “question of principle”.</p>

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		investigating complaints.	
	<p>NI OMBUDSMAN</p> <p>No proposed amendment but see comment.</p>	<p>I acknowledge that the new commissioner will be advised not to act without due regard to the statutory powers and duties of other organisations; However, the legislation will not prevent him or her from doing so.</p>	<p>This statement is incorrect. Clause 8(2) does prevent the Commissioner from acting when another body has a statutory complaint system. There are many other examples of clauses limiting the Commissioner from acting when another body has responsibility. As an example these include Clause 5(4); Clause 6(3); Clause 7(4); Clause 9 in its entirety; and Clause 11(3).</p>
<p>(3) For the purposes of subsection (2), a complaint falls within an existing statutory complaints system if a statutory provision confers power on a person to make the complaint to a body or person and (a) that body or person has power under a statutory provision to investigate the complaint; or (b) that body or person would have power under a statutory provision to investigate the complaint but for some exclusion or restriction in that statutory provision.</p>	<p>AGE NI</p> <p>The Age Sector recommend that this subsection should be removed in light of the proposed amendment above.</p>	<p>We propose the removal of this subsection. As a definition of aspects of subsection (2) as it currently stands it is directly contradictory to our proposed amendment. Subsections (2) and (3) as currently worded mean that the court would not know to what to give legislative supremacy. Subsection 3(b) is particularly unacceptable as it leaves a 'void' which the OPC ought to be able to fill. It means that no body can investigate some matters - in other words a matter may be excluded from a statutory complaints system due to a restriction and the OPC could not examine it either.</p>	<p>In relation to subsection 3(b), the reason for this is the need to respect the content of existing legislation. Where such exclusion would be detailed in existing legislation there would have to be a very firm foundation for this, for example a complaint may be excluded under a statutory provision if it is considered malicious or there has been unreasonable delay in making the complaint. The Consultation Analysis Report provides further information on this and examples (paragraphs 11.22 – 11.23 refer).²</p>
	<p>NIHRC</p> <p>Requested clarification on this point.</p>		

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<p>(4) Where the Commissioner decides not to conduct an investigation into a complaint made under subsection (1), the Commissioner must prepare a statement of the Commissioner's reasons for that decision and must send a copy of the statement to - (a) the complainant; and (b) such other persons (if any) as the Commissioner considers appropriate.</p>			
Actions which may be investigated: Restrictions and Exclusions (Clause 9)			
<p>(1) The Commissioner may not conduct an investigation in respect of any action in respect of which the complainant has or had (a) a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or otherwise; or</p> <p>(b) a remedy by way of proceedings in any court, unless the Commissioner is satisfied that, in the particular circumstances, it is not reasonable to expect the complainant to resort to or have resorted to the right or remedy.</p>	<p>AGE NI</p> <p>We propose the following amendment;</p> <p>OPTION 1</p> <p>Remove the subsection completely.</p> <p>OR</p> <p>OPTION 2</p> <p>(1) The Commissioner is not authorised or required to discharge a function in relation to a matter to the extent that the matter is the subject of legal proceedings before, or has been determined by, a court or tribunal.</p>	<p>Even with the rider at the end of this subsection, we believe this subsection is restrictive and not worded well. Almost everything has a legal remedy – legal remedies are a parallel process that should not negate other avenues. For example, the Prison Ombudsman can investigate even where there is a legal remedy. To be sufficiently robust the OPC should have similar powers of investigation.</p> <p>We suggest that the subsection is removed or else wording similar to that in the Commissioner for Wales Act (s21) is used i.e. 'This Act does not authorise or require the Commissioner to discharge a function in relation to a matter to the</p>	<p>The significant risk with the Age Sector proposal is that the investigation process could be used, by someone who wishes to take a legal case (but may not have the evidence), as a means of obtaining evidence to be used in future legal proceedings.</p> <p>If legal proceedings following an investigation in this manner did occur, it would then make it much more difficult for the Commissioner to carry out future investigations. The relevant authority involved would be aware of the need to prepare themselves for the possibility of legal proceedings following the investigation which would significantly alter the nature of the</p>

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		<p>extent that the matter is the subject of legal proceedings before, or has been determined by, a court or tribunal.’ As can be seen from the Welsh legislation the focus is on the exercise of a remedy rather than the existence of a remedy.</p>	<p>relationship between the Commissioner and the relevant authority during the conduct of the investigation.</p> <p>The qualification to this clause is not a wide ranging restriction and allows for the Commissioner to assess if in the circumstances ‘it is not reasonable’ for the complainant to have resorted to the right to remedy.</p> <p>The Department considers that it is preferable to retain the current wording which gives the Commissioner the flexibility to decide whether or not to carry out an investigation.</p>
	<p>CITIZENS ADVICE BUREAU No proposed amendment but see comment.</p>	<p>The process of carrying out an investigation could resolve the dispute in some cases. However where recommendations may not be enough then the Commissioner will need harsher actions and a system of compliance with strict time limits and penalties.</p>	<p>See comments on enforcement powers/sanctions below at Part 2 of the table.</p>
	<p>OLDER PEOPLES ADVOCATE Clarification of the meaning of remedy is needed. Cl.9(1)</p>		<p>See comments above on 9(1).</p>
<p>2) The Commissioner may not conduct an investigation in respect of (a) the commencement before any court in the United Kingdom of (i) any criminal proceedings; or (ii) any civil proceedings by any person other than a relevant authority; (b) the conduct of any civil or criminal proceedings before any court in the</p>			

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United Kingdom; or (c) the commencement or conduct of any proceedings before any international court or tribunal.			
(3) The Commissioner may not conduct an investigation in respect of any action which is, or has been, the subject of a local or public inquiry.	<p>AGE NI</p> <p>3) The Commissioner may not conduct an investigation in respect of any action which is, or has been, the subject of a local or public inquiry, unless new evidence or material comes to light which would warrant such an investigation.</p>	<p>We suggest that it is sensible to add this rider to the subsection for the unforeseen.</p>	<p>The risk with this proposal is that individuals could withhold relevant evidence from a public inquiry. In the event of the inquiry outcome not meeting their expectations the withheld evidence could then be used to produce an investigation by the Commissioner. This would be a very undesirable outcome and we would intend therefore to retain the current wording.</p>
		<p>OLDER PEOPLE'S ADVOCATE</p> <p>"There should be a time limited on enquiries affecting older people".</p>	<p>We have been advised that the period of time during which enquiries affecting older people should reasonably be completed will be dependent on the particular circumstances of the case. We consider therefore that it would not be appropriate to include time limits in the legislation.</p>
(4) The Commissioner may not conduct an investigation into a complaint if it appears to the Commissioner that there has been an unreasonable delay in making the complaint to the Commissioner.	<p>OLDER PEOPLE'S ADVOCATE</p> <p>Unreasonable delay needs to be defined.</p>		<p>See comments above on 3(8).</p>
Power to bring, intervene in or assist in legal proceedings (Clause 10)			
(1) Subject to the following provisions of this section, the Commissioner		<p>CITIZENS ADVICE BUREAU</p> <p>No amendment - supportive of this</p>	<p>No comment required.</p>

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<p>may in any court or tribunal</p> <p>(a) bring proceedings (other than criminal proceedings) involving law or practice concerning the interests of older persons;</p> <p>(b) intervene in any proceedings involving law or practice concerning the interests of older persons;</p> <p>(c) act as <i>amicus curiae</i> in any such proceedings.</p>		<p>power.</p>	
<p>(2) An intervention under subsection (1)(b) may not be made except</p> <p>(a) with the leave of the court or tribunal; and</p> <p>(b) in accordance with any such provision as may be made by the rules regulating the practice and procedure of the court or tribunal.</p>	<p>AGE NI</p> <p>No proposed amendment but see comment.</p>	<p>The practice should be established for the OPC to be recognised and called upon by the court to give expert oral or written evidence on a matter(s) affecting older people.</p>	<p>The Department agrees with this comment.</p> <p>Clause 10(1) (b) empowers the Commissioner to give oral or written evidence to a court through acting as <i>amicus curiae</i>.</p>
<p>(3) The Commissioner may not bring or apply to intervene in proceedings unless the Commissioner is satisfied that</p> <p>(a) the case raises a question of principle; or</p> <p>(b) there are other special circumstances which make it appropriate for the Commissioner to do so.</p>	<p>AGE NI</p> <p>We recommend the removal of this subsection.</p>	<p>1. Section 10(1) already outlines the extent to the OPC's remit here so subsection (3) is not required. It will be difficult to get a court to allow a body to intervene with this provision. We have been advised that there may be future legal guidance that will clarify (and perhaps encourage the use of) interventions by appropriate bodies to assist the court. we should not pre-empt the LCJ's guidance. Intervention can be a cost effective way of exercising influence and it should not be made difficult.</p> <p>2. Our note on 'question of principle' under 8(2) applies here.</p>	<p>Ministers are content with the current formulation of this clause.</p> <p>The purpose of the subsection is to focus the Commissioner's work in relation to legal proceedings on issues that affect older people generally or which raise special circumstances. [Any new guidance from the Lord Chief Justice could be considered by the Commissioner by way of paragraph (b) of this provision that is as under "special circumstances".]</p>

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	<p>ECNI</p> <p>No proposed amendment but see comment.</p>	<p>This provision seems to duplicate a capacity already possessed by the Commission. That, in itself, may not be an issue but care will be required to avoid unnecessary or costly duplication or confusion as to which approach best meets the needs of older people.</p>	<p>Clause 10(3) (a) provides a definition of when the Commissioner may act. As part of OFMDFM’s sponsorship role of the Commissioner, it will expect the Commissioner to make every effort to agree memoranda of understanding with relevant and appropriate organisations. This will assist with preventing any overlap of powers.</p>
		<p>CITIZENS ADVICE BUREAU</p> <p>The CAB indicates support for this power and recommends a clear definition of managing overlap in powers with regard to separate procedures.</p>	<p>Clause 10(3) (a) provides a definition of when the Commissioner may act. As part of OFMDFM’s sponsorship role of the Commissioner, it will expect the Commissioner to make every effort to agree memoranda of understanding with relevant and appropriate organisations. This will assist with preventing any overlap of powers.</p>
	<p>OLDER PEOPLE’S ADVOCATE</p> <p>“principle needs definition”</p>		<p>See comments above on 8(2) regarding question of principle.</p>
Assistance in relation to legal proceedings (Clause 11)			
<p>(1) This section applies to -</p> <p>(a) proceedings involving law or practice concerning the interests of older persons which an older person has commenced, or wishes to commence; or</p> <p>(b) proceedings in the course of which an older person relies, or wishes to rely, on such law or practice.</p>	<p>CITIZENS ADVICE BUREAU</p> <p>Supportive of this clause – see comments under Victim Status</p>	<p>CITIZENS ADVICE BUREAU</p> <p>Victim Standing - The issue around “Victim Standing” is a vital power for the Commissioner to be able to bring cases in their own name.</p> <p>Also see non-Bill matters.</p>	<p>Clause 10(1) does enable the Commissioner to bring legal cases in his/her own name. However in relation to cases relying on European Convention Rights, only the NI Human Rights Commission in NI can take cases without a “victim”.</p> <p>This is not a power that can be granted through this Bill. It would require Westminster legislation. The NIHRC which does have victim</p>

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			<p>standing is willing to take referrals from other organisations. In addition the Commissioner could take a judicial review case without directly using the Human Rights Act 1998 but relying on fundamental common law rights. The Commissioner could also support an individual person who was a “victim” to take a case.</p> <p>See additional comments on Victim Standing at Part 2 of this Table.</p>
<p>(2) Where the older person applies to the Commissioner for assistance in relation to proceedings to which this section applies, the Commissioner may, subject to subsection (3), grant the application if the Commissioner is satisfied that</p> <p>(a) the case raises a question of principle;</p> <p>(b) it would be unreasonable to expect the older person to deal with the case without assistance because of its complexity, or because of that person’s position in relation to another person involved, or for some other reason; or</p> <p>(c) there are other special circumstances which make it appropriate for the Commissioner to provide assistance.</p>	<p>AGE NI</p> <p>(a) the case falls within the aims and duties of the Commissioner;</p>	<p>The note on 'question of principle' under 8(2) applies here.</p>	<p>See comments on 8(2) above.</p>
<p>(3) The Commissioner may not grant an application for assistance under subsection (2) unless it appears to the Commissioner that there is no other person or body likely to provide such assistance.</p>	<p>AGE NI</p> <p>No proposed amendment but see comment.</p>	<p>The Age Sector would prefer unrestricted powers to meet the standards of the Paris Principles, but this is acceptable.</p>	<p>The Department notes the comments. Limitations on the Commissioner’s powers are necessary to prevent duplication of work with other bodies with the</p>

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	<p>ECNI</p> <p>No proposed amendment but see comment.</p>	<p>The provision at 11(3) appears inadequate to avoid duplication and there should be a clear requirement that the Commissioner satisfy herself/himself that no other body is considering an application, or that such consideration has resulted in a decision not to assist, together with a parallel requirement for the other body (ies) to respond to the Commissioner within a specified timescale.</p>	<p>responsibility, expertise and resources to address matters.</p> <p>This Clause limits the Commissioner's powers but does provide for the Commissioner to act in the instance where it appears that no other body or person is likely to provide assistance. At an operational level this could be supplemented with an MOU with the ECNI and the Commissioner drawing up criteria for funding such as the ECNI itself has.</p>
<p>(4) Where the Commissioner grants an application under subsection (2) the Commissioner may arrange for the provision of legal advice or representation and any other assistance which the Commissioner thinks appropriate.</p>			
<p>(5) Arrangements made by the Commissioner for the provision of assistance to an older person may, if the Commissioner thinks it reasonable in the circumstances, include provision for recovery of expenses from the older person.</p>	<p>AGE NI</p> <p>No proposed amendment but see comment.</p>	<p>Clarification of the purpose of this section is needed. Clear ground-rules must be established on the recovery of expenses from older people. We would have concerns that this section may inadvertently prove to be a deterrent to older people who have valid complaints to make or cases to pursue but who would fear the implications of approaching the OPC in light of this provision.</p>	<p>The purpose of this clause is to make the most effective use of the Commissioner's budget. It empowers the Commissioner to recoup costs where this is reasonable.</p>

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Conciliation of disputes (Clause 12)			
<p>(1) The Commissioner may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in relation to disputes which may lead to proceedings involving law or practice concerning the interests of older persons</p>	<p>AGE NI</p> <p>The Commissioner may make arrangements with any other person for the provision of dispute settlement services by, or by persons appointed by, that person in relation to disputes involving law or practice concerning the of older persons.</p>	<p>1. We agree wholeheartedly with including alternative dispute resolution (ADR) processes. We agree with the Minister of Justice who sees ADR as a priority for getting results at the same time as saving costs.</p> <p>2. We agree that the OPC should appoint external ADR personnel rather than undertake this in-house.</p> <p>3. A strong set of ADR powers would be unique and would take the OPC out of the realm of overlap and duplication with other bodies.</p> <p>4. We strongly recommend not restricting the power within the legislation to 'conciliation' which is at the lowest level of ADR: e.g. (i) conciliation; (ii) mediation; (iii) arbitration.</p> <p>We suggest replacing 'conciliation' with 'dispute settlement'. This does not mean that all ADR processes will be included; it simply leaves open the possibility for introducing different levels of these as and when it appears right to do so. It is particularly important to have (i) Conciliation and (ii) mediation included.</p> <p>We appreciate that there are different interpretations of what 'conciliation' means and drafters might intend 'conciliation' to include the more interventionist mediation process whereby the mediator takes a more</p>	<p>Conciliation is defined in a broad manner in 12(7). This definition is comparable to that used in other legislation.</p> <p>However in response to the points made and subject to the Committee's view, the Department is willing to reconsider the definition of conciliation services.</p> <p>See alternate wording that could be substituted for definition of 'conciliation services' at Clause 12 (7).</p>

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		proactive role in brokering agreement. But we want to be sure that this useful role is included. 5. We propose an addition to section 27 (Interpretation: general) to clarify the meaning of dispute settlement services (or conciliation services if the legislation continues to use this term).	
		CITIZENS ADVICE BUREAU No proposed amendment but commented that, the Commissioner should “be able to provide mediation and advocacy to assist people in a process less costly and quicker than court or tribunal proceedings”.	The new Clause 12 provides for this.
(2) Neither the Commissioner nor any officer of the Commissioner may participate in the provision of conciliation services for which arrangements are made under this section.	AGE NI We suggest changing 'conciliation services' to 'dispute settlement services'.	See note above under 12(1).	See comment above.
(3) The Commissioner must ensure that any arrangements under this section include appropriate safeguards to prevent the disclosure to the Commissioner or officers of the Commissioner of information obtained by a person in connection with the provision of conciliation services in pursuance of the arrangements.	NIHRC Question the need for this clause as they assume that the COP would initially seek a resolution outside of an official process and not require the services of a third party - question why this new clause is necessary given that a body with a case work function will ordinarily seek a resolution to a case outside of an official process. The Commission therefore asks why it is proposed to involve the services of a third party. The Commission does not believe it	See note above under 12(1).	Based on the experience of comparable bodies, the Department would anticipate that the Commissioner could in some instances informally mediate in some disputes involving older people with the agreement of all parties involved. However if that proved unsuccessful and as an alternative to legal proceedings, the parties involved were willing to participate in formal conciliation undertaken by a neutral third party, Clause 12 empowers the Commissioner to procure such

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	would compromise the office's role if it were itself to attempt to reach a resolution to the satisfaction of the complainant through informal means.		services.
(4) Subsection (3) does not apply to information relating to a dispute which is disclosed with the consent of the parties to that dispute.			
(5) Subsection (3) does not apply to information which (a) is not identifiable with a particular dispute or a particular person; and (b) is reasonably required by the Commissioner for the purpose of monitoring the operation of the arrangements concerned.	AGE NI We suggest that the word 'and' between (a) and (b) be replaced with 'or'.		This sub-section is to enable the Commissioner to produce anonymised statistical information for his/her reports. Removing the 'and' could create the situation whereby the Commissioner could lawfully be given access to any information which does not have someone's name on it that one party (for e.g. the older person or a relevant authority) may not want them to receive. This scenario could potentially damage the conciliation process and so Ministers wish to retain the current formulation of the clause. Any of the information could of course be disclosed to the Commissioner with the consent of the parties involved.
(6) Anything communicated to a person while providing conciliation services in pursuance of any arrangements under this section is not admissible in evidence in any proceedings except with the consent of the person who communicated it to that person.	AGE NI We suggest changing 'conciliation services' to 'dispute settlement services'.	See note above under 12(1).	See comments above at 12(1) and 12 (7).

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<p>(7) In this section “conciliation services” means advice and assistance provided by a conciliator to the parties to a dispute with a view to promoting its settlement otherwise than through the courts.</p>	<p>AGE NI We suggest changing "conciliation services" to “dispute settlement services”.</p>	<p>See note above under 12(1).</p>	<p>Subject to the Committee’s view, Ministers would be prepared ‘in principle’ to bring forward an amendment to substitute this current definition for similar wording to that used in the Equality Act 2006 [Section 27 (9)]. This provides a broader definition of ‘conciliation services’.</p>
	<p>OLDER PEOPLES ADVOCATE Should refer to “dispute resolution services”</p>		<p>See comments at 12(1) above.</p>
	<p>NI OMBUDSMAN No proposed amendment but see comment.</p>	<p>Within the current proposal, the Commissioner for Older People can initiate arrangements to facilitate resolution of complaints, including the provision of funds to enable conciliation services. In respect of health and social care, that is a direct duplication of the current arrangements established only last year between the regional Health and Social Care Board and the trusts to facilitate mediation and alternative dispute resolution in health and social care.</p>	<p>The power of the Commissioner to arrange conciliation services is not limited to the field of health and social care.</p>
Formal investigations (Clause 13)			
<p>(1) Subject to section 14, the Commissioner may determine to conduct an investigation under this section (“a formal investigation”)</p>		<p>CITIZENS ADVICE BUREAU Indicate they support this clause.</p>	<p>No comment required.</p>

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<p>(a) for the purposes of the Commissioner’s functions under section 5; (b) for the purposes of the Commissioner’s functions under section 6; or (c) into a complaint under section 8(1)</p>		<p>ECNI This section has the potential to clash with investigation powers of the Commissioner (ECNI) but perhaps only to a limited extent.</p>	<p>Clause 8 (2) (b), clause 5(4) and clause 6(3) which place limits on the Commissioner’s powers of investigation should provide reassurance. The ECNI response also notes that Clause 8 (2) (b) removes “any potential for clash with the Commissioner’s role in respect of investigation of complaints”.</p>
<p>(2) In determining whether to conduct or discontinue a formal investigation, the Commissioner may act in accordance with the Commissioner’s own discretion.</p>			
<p>(3) Where the Commissioner determines to conduct a formal investigation for the purposes of the Commissioner’s functions under section 5 or 6 the Commissioner must (a) produce terms of reference for the investigation; (b) send notice of the proposed investigation and a copy of the terms of reference to (i) the relevant authority concerned; and (ii) in the case of an investigation for the purposes of the Commissioner’s functions under section 6, the particular older person mentioned in that section; (c) afford to the relevant authority concerned an opportunity to comment on the matters being investigated and to give oral or other evidence respecting those matters.</p>			

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<p>(4) Where the Commissioner determines to conduct a formal investigation into a complaint under section 8(1) the Commissioner must</p> <p>(a) give to -</p> <p>(i) the relevant authority concerned; and</p> <p>(ii) any other 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 substance of the allegations made in the complaint so far as they relate to that authority or (as the case may be) to that person; and</p> <p>(b) afford to every such authority or person an opportunity to comment on any allegations made in the complaint and to give oral or other evidence respecting those matters.</p>			
<p>(5) Every formal investigation must be conducted in private.</p>	<p>AGE NI</p> <p>Every formal investigation must be conducted in private, unless public hearings would better serve the aims and objectives of the OPC.</p>	<p>There may occasionally be a matter that may warrant a public hearing. Indeed if it is a matter over which there is significant public disquiet Ministers may be relieved to be able to point to the fact that this provision is in place.</p>	<p>The public exposure of organisations through the formal investigation procedure is already provided for in Clause 16 following non-compliance or inadequate compliance with Commissioner recommendations. The Department considers this to be the appropriate occasions when public exposure should be used as an enforcement power and/or sanction.</p>
<p>(6) Except as otherwise provided by this Act, the procedure for conducting a formal investigation must be such</p>		<p>OLDER PEOPLES ADVOCATE Seeks clarification on this point.</p>	<p>It is a matter for the Commissioner to determine whether the circumstances</p>

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as the Commissioner considers appropriate in the circumstances of the case; and, in particular, it is for the Commissioner to determine whether any person may be represented by counsel or solicitor or otherwise in the investigation.			warrant representation by counsel or solicitor.
(7) The Commissioner may for the purposes of a formal investigation obtain information from such persons and in such manner, and make such enquiries, as the Commissioner thinks fit.			
(8) Subject to subsections (9) and (10), in conducting a formal investigation the Commissioner is not obliged to hold any hearing and no person is entitled as of right to be heard by the Commissioner.			
(9) If at any time during the course of a formal investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any relevant authority or other person, the Commissioner must afford to that authority or person (a) an opportunity to give oral or other evidence; and (b) an opportunity of testing by cross examination any evidence which may affect that authority or person.			
(10) Where the opportunities mentioned in subsection (9) are given to a relevant authority or other person, then			

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<p>(a) in any formal investigation for the purposes of the Commissioner's functions under section 6, the same opportunities must be given to the older person mentioned in that section; and</p> <p>(b) in any formal investigation into a complaint under section 8(1), the same opportunities must be given to the complainant.</p>			
<p>(11) The Commissioner may, if the Commissioner thinks fit, pay to any person (including a complainant) who attends or supplies information for the purposes of a formal investigation</p> <p>(a) sums in respect of expenses properly incurred by that person;</p> <p>(b) allowances by way of compensation for the loss of that person's time, in accordance with such scales and subject to such conditions as the Office may determine.</p>			
<p>(12) A formal investigation does not affect</p> <p>(a) any action taken by a relevant authority or by any department or Minister with respect to that authority; or</p> <p>(b) any power or duty of that authority, department or Minister to take further action with respect to any matters subject to the investigation.</p>			
Formal investigations: exclusions (Clause 14)			

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<p>(1) The Commissioner may not conduct a formal investigation for the purposes of the Commissioner's functions under section 6 in relation to the operation of the advocacy, complaint, inspection or whistleblowing arrangements of a relevant authority in the case of any older person if the Commissioner has under section 10 or 11 brought or intervened in, or provided assistance in relation to, any proceedings (a) against the relevant authority which relate to the operation of the arrangements in question in the case of that older person; or (b) in which the correctness in law of any action of the relevant authority in relation to the operation of any such arrangements in the case of that older person is called into question.</p>	<p>AGE NI We recommend the removal of this subsection. Remove Section 14 entirely.</p>	<p>All our legal advisors agree that this is an unnecessary restriction. For example, if the court invites the OPC to intervene on a point the OPC would be disbarred from undertaking a formal investigation. It also seems that the OPC cannot conduct a formal investigation on a later matter involving those arrangements and that older person if the OPC has in any way been involved, however slightly, in any previous proceedings. In any event, an investigation may raise wider implications than a legal case on a specific point. What is listed in the section may be considerations for the Commissioner to take into consideration when deciding the appropriateness of the use of their powers but should not disbar the Commissioner from conducting a formal investigation.</p>	<p>The aim of this clause is to avoid internal conflict between the Commissioner's legal and investigatory powers. The purpose of this Clause is to prevent the circumstances arising whereby the Commissioner, having been unsuccessful in a legal case, then conducted a Formal Investigation on the same matter. In those circumstances the relevant authority concerned could have difficulty in perceiving the Commissioner's investigation as being conducted in an impartial manner.</p> <p>This clause does not prevent the Commissioner from conducting a formal investigation if he or she has previously acted as amicus curiae in a court case.</p> <p>The Department will consider providing clarification on this point in a revision to the EFM of the Bill following Consideration stage.</p>
	<p>Citizens Advice Bureau No proposed amendment but see comment.</p>	<p>Want further clarification on this clause regarding matters 'previously' brought, intervened in or sought legal assistance on. There may be valid instances where further evidence or a change of circumstances has come to light.</p>	<p>See comment at 14 (1) above. We intend to consider clarifying this in the EFM.</p>
<p>(2) The Commissioner may not conduct a formal investigation into a complaint under section 8(1) in respect of any action of a relevant authority if the Commissioner has</p>	<p>AGE NI We recommend the removal of this subsection. Remove Section 14</p>	<p>See note under 14(1) immediately above.</p>	<p>See comments on 14(1) above.</p>

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under section 10 or 11 brought, intervened in or provided assistance in relation to any proceedings (a) against the relevant authority in respect of that action; or (b) in which the correctness in law of that action is called into question.	entirely.		
Report on formal investigations (Clause 15)			
(1) Where the Commissioner conducts a formal investigation for the purposes of the Commissioner's functions under section 5 or 6, the Commissioner must prepare a report on the outcome of that investigation and send it to (a) the relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; and (b) such other bodies or persons as the Commissioner thinks appropriate.	<p>AGE NI</p> <p>Where the Commissioner conducts a formal investigation for the purposes of the Commissioner's functions under section 5 or 6, the Commissioner must prepare a report on the outcome of that investigation and send it to (a) the relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; (b) in relation to section 6, the older person concerned; and (c) such other bodies or persons as the Commissioner thinks appropriate.</p>	Given that section 6 covers reviews in relation to a particular older person, the legislation should specify that that older person is entitled to receive a copy of the report.	<p>In the case of a formal investigation in relation to a review carried out under Clause 6, the particular older person need not have initiated anything, therefore it would not be appropriate to create an obligation to issue the report to them. The current provision gives the Commissioner the discretion to do so if it is appropriate.</p> <p>Clause 15 (2) below concerns a formal investigation into a complaint under section 8(1) and so is always initiated by a complaint made by an older person and so that clause requires the Commissioner to send a report to the complainant (i.e. the older person).</p>
(2) Where the Commissioner conducts a formal investigation into a complaint under section 8(1), the Commissioner must prepare a report on the outcome of that investigation and send it to (a) the complainant; (b) the relevant authority concerned and, where the report contains recommendations as to action to be	<p>NIHRC</p> <p>"The Commission also questions the validity of giving an organisation such extensive powers while at the same time requiring the investigation to be conducted in private and leaving publication of the investigation findings to the discretion of the Commissioner".</p>	This is not the case with High Court proceedings, where it is the exception rather than the norm for its business to be held in private. High Court judgements are also available for public view and scrutiny with certain details redacted if deemed appropriate. Published investigation	<p>Clause 4(5) (c) empowers the Commissioner to publish information on any matter concerning the interests of older people including the outcome of investigations.</p> <p>There is already an obligation on the Commissioner to publish the recommendations from a Formal Investigation report in Clause 16(5).</p>

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<p>taken by any other relevant authority, that relevant authority;</p> <p>(c) any person who is alleged in the complaint to have taken or authorised the action complained of or otherwise to be involved in the allegation made in the complaint; and</p> <p>(d) such other bodies or persons as the Commissioner thinks appropriate.</p>		<p>reports have great merit in terms of demanding a rigorous process from the oversight body, offering learning to other public authorities that are not the subject of the investigation and therefore bringing value much wider than the particular investigation, which for practical reasons often has to be narrow and disciplined in focus.</p>	<p>Clause 16 (5) and clause 16(6) ensure that the Commissioner must maintain a register that should be made publicly available for inspection, containing details of recommendations.</p> <p>Ministers consider these clauses to be appropriate provisions as they stand.</p>
<p>(3) Apart from identifying any relevant authority concerned, a report under this section must not</p> <p>(a) mention the name of any person; or</p> <p>(b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report, unless the Commissioner determines that it is necessary to do so (whether for the purposes of subsection (4) or otherwise).</p>			
<p>(4) A report under this section may include recommendations as to action to be taken by a relevant authority mentioned in the report; and any such recommendations must be accompanied by the Commissioner’s reasons for making them.</p>			
<p>(5) In particular, the report on a formal investigation conducted for the purposes of the Commissioner’s functions under section 6 in relation to any complaint arrangements may recommend that the relevant authority concerned reconsider</p>			

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afresh the complaint in question.			
<p>(6) Where a report contains a recommendation as to action to be taken by a relevant authority, the authority must</p> <p>(a) consider the recommendation; and</p> <p>(b) determine what action (if any) to take in response to the recommendation.</p>	<p>AGE NI</p> <p>Where a report contains a recommendation as to action to be taken by a relevant authority, the authority must</p> <p>(a) consider the recommendation; and</p> <p>(b) determine what action (if any) to take in response to the recommendation; or</p> <p>(c) detail in writing the reasons for not acting in relation to a recommendation.</p>	<p>A relevant authority should be expected to explain why it has decided not to act on the OPC's recommendation. The relevant authority should be required to record why it is not following a recommendation even if the OPC does not, under section 16, ask for a report. This amendment fills a gap in the legislation.</p>	<p>Clause 16(1) (b) already provides the Commissioner with the power to require a relevant authority to provide the Commissioner with a statement of its reason for not complying with a recommendation. Ministers believe that this graduated response to recommendations is appropriate and that the proposed amendment would be a duplication of Clause 16(1) (b).</p>
Further action following report on formal investigations (Clause 16)			
<p>(1) Where the Commissioner has made a report under section 15 which contains a recommendation as to action to be taken by a relevant authority, the Commissioner may by notice require that authority to provide the Commissioner within 3 months of the date of the notice with</p> <p>(a) such information as will enable the Commissioner to determine whether the authority has complied with the recommendation or will be complying with it; or</p> <p>(b) a statement of the authority's reason for not complying with the recommendation.</p>	<p>AGE NI</p> <p>Where the Commissioner has made a report under section 15 which contains a recommendation as to action to be taken by a relevant authority, the Commissioner may by notice require that authority to provide the Commissioner within one month of the date of the notice with</p> <p>(a) such information as will enable the Commissioner to determine whether the authority has complied with the recommendation or will be complying with it; or</p> <p>(b) a statement of the authority's reason for not complying with the recommendation.</p>	<p>The OPC's recourse to judicial review must be protected. The timeframe for judicial review is 3 months (from the OPC's decision and recommendation), so the timescale for a relevant authority to respond should be capped at one month or six weeks at the outside. This subsection allows three options to a relevant authority: to comply, indicate it will comply or refuse to comply. A relevant authority should be capable of one of these responses within a month.</p>	<p>Reducing the time period detailed in this clause to one month does not seem a reasonable time limit to enable a relevant authority to fully consider the recommendations, decide what to do and provide the Commissioner with the necessary and fullest information. In particular the recommendation(s) following a Formal Investigation may require internal consideration and consultation by the authority concerned.</p> <p>On the concerns raised in respect of judicial review, we understand that the High Court would not consider that the three month deadline had elapsed whilst the Commissioner</p>

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			<p>was waiting for a response to his or her recommendations. It is our understanding that the High Court would not regard exhausting alternative remedies to be inaction for the purposes of determining whether a judicial review application was out of time.</p>
	<p>ADVICE NI Further following Report – greater authority needed; follow up inspection should be made to ensure measures pursued have been effective and practice improved.</p>		<p>This clause provides for the Commissioner's power to 'follow-up' on recommendations.</p> <p>Please also see comments on 'sanctions' below.</p>
<p>(2) A notice under subsection (1) must include a statement that a failure by the authority to respond within the period mentioned in that subsection may be published in such manner as the Commissioner considers appropriate.</p>	<p>AGE NI See comments.</p>	<p>This section covers publication of non-compliance by a relevant authority. However, please see the comments at the end in relation to sanctions.</p>	<p>See comments below on sanctions.</p>
<p>(3) If, on receipt of a response from the authority, the Commissioner considers that (a) the action taken or proposed to be taken by the authority to comply with the recommendation is inadequate; or (b) the authority's reason for not complying with the recommendation is inadequate, the Commissioner may send to the authority concerned a further notice setting out the inadequacy and requiring the</p>	<p>AGE NI See comments.</p>	<p>Please see our comments in relation to sanctions.</p>	<p>As above.</p>

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authority to reconsider the matter and respond within one month of the date of the notice.			
(4) A notice under subsection (3) must include a statement that a failure by the authority (a) to provide what the Commissioner considers to be a satisfactory response; or (b) to provide any response within the period mentioned in that subsection, may be published in such manner as the Commissioner considers appropriate.	AGE NI See comments.	Please see our comments in relation to sanctions.	As above.
(5) The Commissioner must maintain a register containing details of (a) recommendations (together with the reasons for them) contained in reports made under section 15; (b) action taken by the Commissioner under subsections (1) and (3); and (c) the results of any such action.	AGE NI See comments.	Please see our comments in relation to sanctions.	As above.
(6) Any register maintained under subsection (5) must be open to inspection by any person at all reasonable times at the offices of the Commissioner and the Commissioner may make arrangements for copies of the register to be available for inspection in such other place or places or by such other means as the Commissioner considers appropriate.	AGE NI See comments.	Naming and shaming' through publication in a public register is the only 'sanction'. Please see the comments at the end in relation to sanctions.	See comments below on 'sanctions'.
	CITIZENS ADVICE BUREAU "There may be some cases where making recommendations to an authority may not be enough".		As above.
(7) The Commissioner must publish those arrangements in such a way as	AGE NI	Naming and shaming is insufficient as the only sanction available to the	As above.

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to bring them to the attention of persons likely to be interested.	See comments.	OPC. Please see the comments at the end in relation to sanctions.	
Evidence in formal investigations (Clause 17)			
(1) For the purposes of a formal investigation the Commissioner may require any person who in the Commissioner's opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such documents.		CITIZENS ADVICE BUREAU Supports this clause	No comment required.
(2) For the purposes of such an investigation the Commissioner 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.			
(3) A person may not be compelled for the purposes of a formal investigation to give any evidence or produce any document which that person could not be compelled to give or produce in civil proceedings in the High Court.			
(4) Where any information required to be supplied under this section consists of, or includes, information held by means of a computer or in any other form, the Commissioner			

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<p>may require any person having charge of, or otherwise connected with the operation of, the computer or other device holding that information to make the information available, or produce the information, in legible form.</p>			
Powers of entry and inspection for purposes of formal investigation (Clause 18)			
<p>(1) Where the Commissioner considers it necessary to do so for the proper conduct of a formal investigation, the Commissioner may, at any reasonable time, enter any premises managed by a relevant authority in which</p> <p>(a) an older person is living or being looked after;</p> <p>(b) an older person is being detained whether under any statutory provision or otherwise; or</p> <p>(c) health, welfare or any other services are provided for older persons.</p>	<p>CITIZENS ADVICE BUREAU Supports this clause</p>		<p>No comment required.</p>
		<p>ECNI</p> <p>This is a valuable power as are the related provisions in respect of places where older people reside or are detained, although we would query whether it might overlap with powers residing in other statutory bodies and highlight the need to avoid unnecessary duplication or confusion.</p>	<p>The formal investigation powers are bound by certain limitations as detailed above.</p> <p>As detailed above MOU or protocols may be an effective means to address this.</p>
<p>(2) On entering any premises under this section, the Commissioner may</p> <p>(a) make any examination into the state and management of the premises and the treatment of older persons there which the Commissioner thinks appropriate;</p>			

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(b) subject to subsection (3), inspect and take copies of any documents or records which are required by any statutory provision to be kept there;	AGE NI (b) subject to subsection (3), inspect and take copies of any documents or records which are kept there;	We suggest this amendment as it may be precisely the non-statutory documents that reveal wrongdoing.	Ministers are content with the current formulation. The widening of this power to any documents may have human rights implications.
(c) subject to subsection (4), interview any older person present on the premises who consents to be interviewed;			
(d) interview in private any other person present on the premises who is employed there (whether the employment is paid or unpaid or under a contract or otherwise).	AGE NI (d) interview any member of the older person's family or nominated friend who consents to be interviewed;	Independently from subsection (4), the OPC may wish to interview someone close to the older person.	This provision relates solely to the Commissioner's statutory power of entry specifically the Commissioner's right to enter premises managed by a relevant authority and then to interview any older person there (see section 18 (2) (c) above), or a member of staff [clause 18(2) (d)]. There is nothing in the legislation to prevent the Commissioner separately from interviewing any member of the older person's family or nominated friend (who consents to be) at any point. The power of entry does not need to be invoked for the Commissioner to do this.
	AGE NI (e) interview in private any other person who is employed there (whether the employment is paid or unpaid or under a contract or otherwise).	We suggest that the subsection may be better without the words 'present on the premises'.	As detailed above this section is specifically about the Commissioner's powers to enter premises and his/her right (irrespective of the relevant authority's consent) to then undertake certain actions there, such

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			<p>as interviewing an older person or employee there.</p> <p>Outside of this power of entry there is nothing to prevent the Commissioner from freely interviewing any other person who agrees to be interviewed in any place they allow him/her access to.</p>
<p>(3) The Commissioner may not exercise the Commissioner’s power under subsection (2) (b) unless the Commissioner considers it necessary to do so for the proper conduct of the investigation.</p>			
<p>(4) An interview under subsection (2)(c) must be conducted (a) if the older person requires another person to be present, in that other person’s presence; and (b) otherwise in the presence of others only to the extent that the older person and the Commissioner have consented to their being present.</p>			
<p>(5) Where the Commissioner proposes to exercise the power of entry conferred by this section the Commissioner must, if so required, produce some duly authenticated document showing the Commissioner’s authority to exercise the power.</p>			
<p>(6) Nothing in this section authorises the Commissioner to enter any premises (or any part of any</p>	<p>AGE NI (6) Nothing in this section authorises</p>	<p>We suggest a small change in</p>	<p>The Commissioner can go anywhere</p>

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premises) used wholly or mainly as a private dwelling.	the Commissioner to enter any premises (or any part of any premises) used wholly or mainly as a private dwelling, without the consent of the person dwelling there.	wording here.	<p>if he/she is invited or allowed including private premises. This provision relates to the Commissioner's 'right of entry' onto certain premises whether or not he or she is invited or allowed.</p> <p>If the Commissioner had the consent of the person dwelling in a private dwelling then the Commissioner would not require the use of the power of entry on this occasion.</p>
Obstruction and contempt in relation to formal investigation (Clause 19)			
(1) If any person without lawful excuse (a) obstructs the Commissioner or any officer of the Commissioner in the conduct of a formal investigation; or (b) is guilty of any act in relation to such an investigation 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.		CITIZENS ADVICE BUREAU Supports this clause	No comment required.

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<p>(2) Where an offence is certified under this section, the High Court may inquire into the matter and, after hearing</p> <p>(a) any witnesses who may be produced against or on behalf of the person charged with the offence; and</p> <p>(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 that person if the person had committed the same offence in relation to the court.</p>			
<p>(3) This section does not apply to the taking in good faith of any action mentioned in section 13(12).</p>			
Disclosure of information by Commissioner (Clause 20)			
<p>(1) Information obtained by the Commissioner or the Commissioner's officers in the course of, or for the purposes of, a formal investigation must not be disclosed except as permitted by subsection (2) or for the purposes of</p> <p>(a) the investigation and any report to be made thereon under this Act;</p> <p>(b) any proceedings for a criminal offence;</p> <p>(c) an inquiry with a view to the taking of proceedings for a criminal offence; or</p> <p>(d) any proceedings under section 19.</p>		<p>CITIZENS ADVICE BUREAU Supports this clause</p>	<p>No comment required.</p>

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<p>(2) Where information is to the effect that any person (“the subject”) is likely to constitute a threat to the health or safety of any other person (“the person at risk”), the Commissioner may disclose that information to any person to whom the Commissioner thinks it should be disclosed in the interests of the health or safety of the person at risk.</p>			
<p>(3) If the Commissioner discloses information as permitted by subsection (2), the Commissioner must</p> <p>(a) where the Commissioner knows the identity of the subject, inform the subject</p> <p>(i) that the Commissioner has disclosed the information; and</p> <p>(ii) of the identity of any person to whom the Commissioner has disclosed it; and</p> <p>(b) inform the person from whom the information was obtained that the Commissioner has disclosed it.</p>			
<p>(4) The Commissioner and the Commissioner’s officers may not be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (1) (b) or (d)) of matters coming to the Commissioner’s or the officers’ knowledge in the course of a formal investigation.</p>			
<p>Review of this Act (Clause 21)</p>			

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<p>(1) The Commissioner must - (a) keep under review the working of this Act; (b) make reports on it to the First Minister and deputy First Minister in accordance with the following provisions of this section.</p>	<p>AGE NI See comment.</p>	<p>The Age Sector has argued consistently that the OPC's independence is paramount and the best way of demonstrating this is for the OPC to have a direct relationship with the Assembly, rather than one that is mediated through OFMDFM. We are content for the OPC to report on effectiveness to the First and deputy First Ministers, but suggest the Commissioner also reports directly to the Assembly.</p>	<p>Sub-section 21 (5) requires the First Minister and deputy First Minister to lay a copy of the Commissioner's report before the Assembly. The Commissioner will be accountable to the Assembly in that he/she may be required to /or request to appear before the OFMDFM Committee or choose to submit a report to any other Committee of the Assembly which addresses the issues of older people.</p>
		<p>CITIZENS ADVICE BUREAU Supports this clause</p>	<p>No comment required.</p>
<p>(2) The first report under this section must be made as soon as practicable after the third anniversary of this Act receiving Royal Assent.</p>	<p>AGE NI No proposed amendment but see comment.</p>	<p>The Age Sector believe that it would be preferable to see the first report as soon as is practical after the second anniversary of the legislation, but are prepared to accept this.</p>	<p>The majority of responses to a question on this in the public consultation favoured reviewing the legislation after 3 years.</p>
<p>(3) A subsequent report under this section must be made at such time as the Commissioner thinks fit, not being earlier than three years after the making of the last previous report.</p>	<p>AGE NI (3) A subsequent report under this section must be made at such time as the Commissioner thinks fit, not being earlier than three years nor more than five years after the making of the last previous report.</p>	<p>Reviews should happen at regular intervals. This gives priority to ensuring at least every five years attention must be paid to assessing whether the legislation is fit for purpose and effective for older people. This is important in a rapidly changing world with a progressively increasing older population in Northern Ireland.</p>	<p>Providing the Committee is content Ministers would be prepared 'in principle' to bring forward an amendment to this sub-section as proposed.</p>
<p>(4) A report under this section (a) must include the views of the Commissioner on the adequacy and</p>			

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
effectiveness of this Act; and (b) may contain recommendations as to amendments to this Act which in the opinion of the Commissioner are necessary or desirable.			
(5) The First Minister and deputy First Minister acting jointly must lay a copy of every report sent to them under this section before the Assembly.	AGE NI See comment.	We are pleased that there is a route for the OPC to report on effectiveness to the Assembly. However, as indicated in 21(1) we believe the OPC should report directly to the Assembly on the legislation's effectiveness. This would help to underscore the independence of the OPC in line with the Paris Principles. We suggest two assurances if the report is to go to the Assembly via OFMDFM (i) it is the OPC's report that is laid in front of the Assembly; and (ii) this is done in a timely manner under a time limit.	This sub-section provides that the First Minister and deputy First Minister <u>must present a copy of the Commissioner's report to the Assembly.</u>
Privilege for certain publications (Clause 22)			
For the purposes of the law of defamation, publication by the Commissioner of any matter which the Commissioner is required or authorised to publish under this Act is absolutely privileged.	CITIZENS ADVICE BUREAU Supports this clause		No comment required.

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
Application of this Act: relevant authorities with mixed functions (Clause 23)			

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
<p>(1) In relation to a general health care provider, the relevant authority provisions of this Act apply only in relation to matters arising in connection with any general health care provided by that provider.</p>	<p>AGE NI</p> <p>Replace subsection (1) with: (1) The OPC may exercise its powers in relation to relevant authorities, including those listed in Schedule 3, whether or not they are exercising a public or a private function and irrespective of the source of the funding enabling that function to be carried out.</p>	<p>1. We are very concerned about the definitions that are used to determine a 'relevant authority' for the purposes of the act. The thrust of this entire section (all subsections) is too restrictive. Its wording is unclear; it does not do what it intends; and it will result in inequality and disparity of approach. Our legal advisors concur that the section is not worded well and places very significant restrictions on the OPC. Our comments cover all subsections of this section.</p> <p>2. The OPC should have scope over all public, private and voluntary bodies providing services for older people. All functions of all public bodies should be covered by all aspects of the legislation; this extends beyond their direct service delivery functions to arrangements that underpin their delivery, procurement of services, etc.</p> <p>3. We would like to see all functions of all private and voluntary providers similarly included; there is an obvious restriction in the OPC's remit as far as these bodies are concerned i.e. the remit only extends to concerns in relation to older people. At the very least, all functions of all private and voluntary providers across the complete range of health and social care provision should be covered by all aspects of the legislation.</p>	<p>Ministers are content with the current formulation of this clause and with the list of relevant authorities included within the remit of the Commissioner.</p> <p>Following the Department's public consultation on the Bill, Ministers agreed, as an exceptional measure to amend the Bill [Clause 23 (3)] to expand the list of relevant authorities that the Commissioner's powers of review, complaint and formal investigation relate to, to now also extend to nursing and residential care homes in the private and voluntary sector.</p> <p>The Bill also enables OFMDFM by Order to add, modify or remove bodies or persons included within the remit of the Commissioner. This provision [Clause 26 (2)] will also enable the Department, through subordinate legislation to address any omissions identified.</p> <p><u>General comment:</u></p> <p>The Commissioner's powers, including acting as an advocate on behalf of older people and the general investigatory powers are not limited to a particular type of organisation or individual and can be exercised in relation to any organisation. In addition to this there are provisions in the Bill which give the Commissioner powers of review, complaint handling and formal investigation which apply to the</p>

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
	<p data-bbox="562 1182 1010 1257">CITIZENS ADVICE BUREAU Supports this clause</p>	<p data-bbox="1032 228 1480 624">4. The wording of this section (all subsections) is a fundamental issue; the correct wording must be found or else it will defeat the true reach of the OPC and the effectiveness of the legislation. We are keen to continue dialogue with OFMDFM and the OFMDFM Committee as to how this might be achieved, but we are clear that the legislation will not be as effective or as good value for money if a wide approach to this is not taken.</p> <p data-bbox="1032 655 1480 1145">5. The linchpin for the effectiveness of this legislation hangs on three things in particular (i) wide coverage of public, private and voluntary bodies insofar as their provision for older people is concerned (and all aspects connected with their operations that are linked to this); (ii) unrestricted, or very limited restrictions to the Commissioners powers (as argued elsewhere); and (iii) a clear and unambiguous statement in the legislation that older people's interests includes their rights.</p>	<p data-bbox="1503 228 1951 1054">relevant authorities. The list of relevant authorities that these additional and strong powers apply to is extensive. The list covers those bodies that are 'relevant' to the concerns of older people and covers all bodies listed within the Commissioner for complaints (NI) Order 1996 Schedule 2 and the Ombudsman (NI) Order 1996 Schedule 2. It also extends to include organisations which carry out work directly 'relevant' to the lives of older people including bodies in the health and social care field. In addition independent bodies (both in the private and voluntary sector) are included within the remit of the Bill when they are providing services of any kind 'under arrangement' with a Health and social care body or general health care provider. In the exercise of its public functions independent clinics, medical agencies, domiciliary care and day care settings are also covered.</p>
<p data-bbox="91 1294 517 1441">(2) In relation to an independent provider, the relevant authority provisions of this Act apply only in relation to matters arising in connection with a service which the</p>	<p data-bbox="562 1294 1010 1433">AGE NI We recommend the removal of subsection (2) as it would be covered through our amendment under</p>	<p data-bbox="1032 1294 1480 1358">All of the comments we make under 23(1) above apply here.</p> <p data-bbox="1032 1374 1480 1433">The OPC should have scope over private and voluntary, as well as</p>	<p data-bbox="1503 1294 1951 1326">See comment above.</p>

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
<p>independent provider was providing, or which it was the independent provider's function to provide, under arrangements with a health and social care body or a general health care provider.</p>	<p>subsection (1)</p>	<p>public, providers of services to older people (and all aspects connected with their operations that are linked to this). There are likely to be many things that fall through the gaps in the wording of section 23.</p> <p>An example of this is what are known as 'direct payments' i.e. where a public payment is made directly to an individual to arrange his/her own social care service. The provision of services under this arrangement does not come within the jurisdiction of another body and is not likely to fall under the OPC under this legislation in the way it is currently framed.</p> <p>We want to engage in further dialogue with OFMDFM and the OFMDFM Committee as to how the proper coverage might be achieved.</p>	
<p>(3) In relation to any other relevant authority (except a person carrying on or managing a residential care home or nursing home), the relevant authority provisions of this Act apply only in relation to matters arising in connection with the exercise by the authority of its public functions.</p>	<p>AGE NI</p> <p>We recommend the removal of subsection (3) and cover it through our suggested amendment under subsection (1)</p>	<p>All of the comments made under 23(1) above apply here.</p> <p>The OPC should have scope over private and voluntary, as well as public, providers of services to older people (and all aspects connected with their operations that are linked to this). We understand that there has been an effort to include some public and voluntary providers under this section, but we do not understand why this should be restricted to those providing residential care - why not day care services for example, or other services?</p>	<p>See comment above at 23 (1).</p>

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		<p>We explain under 23(1) that we want to see private and voluntary providers extensively included – the cut-off point for private and voluntary inclusion is inherent in the Commissioner's remit which must be exercised only as far as older people are concerned. At the very minimum all independent providers of health and social care services that older people rely on or access should be included.</p> <p>We appreciate the intention to move towards this through OFMDFM's amendment to the original draft of the legislation. However, it is our view that the amendment is insufficient. In effect, it means that persons carrying on or managing <u>an independent hospital, clinic, medical agency or domiciliary care agency, or a day care setting</u> (i.e. those bodies listed in para 3 of Schedule 3) are still not within the powers of the OPC, unless those persons would qualify as 'independent care providers' under para 2 of that Schedule because they are providing services under arrangements with a health and social care body or a general health care provider.</p>	
<p>(3) In relation to any other relevant authority (except a person carrying on or managing a residential care home or nursing home), the relevant</p>	<p>AGE NI</p> <p>We recommend the removal of subsection (3) and cover it through our suggested amendment under</p>	<p>In other words, entirely private providers of health and social care services to older people largely escape scrutiny by the OPC. It</p>	<p>See comment at 23 (1) above.</p>

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<p>authority provisions of this Act apply only in relation to matters arising in connection with the exercise by the authority of its public functions.</p>	<p>subsection (1)</p>	<p>seems anomalous that persons carrying on or managing a residential care home or nursing home are being brought within the OPC's powers, but not the other types of institution. This anomaly can be rectified by our amendment to 23(1) or at least by rewording (3) to ensure that all health and social care aspects and functions related to these are covered under the legislation. We want to engage in further dialogue with OFMDFM and the OFMDFM Committee as to how the proper coverage might be achieved.</p>	
<p>(4) For the purposes of this section "public functions" means functions other than those of a private nature; "the relevant authority provisions of this Act" are (a) section 3(3) and (7); (b) section 4(4); (c) sections 5 to 9; (d) sections 13 to 20; and (e) Schedule 2.</p>	<p>AGE NI</p> <p>1. Remove "public functions" means functions other than those of a private nature;</p> <p>2. (e) Should be Schedule 3 (not 2).</p>	<p>The phrase "public functions" means functions other than those of a private nature' is very unclear. Where exactly is the dividing line between public and private? Where older people are concerned, public function should be an inclusionary definition, widely defined to include functions that are capable of including those performed by private providers. This is particularly necessary given contracting out of services, direct payments (as noted above), etc., the dependence of many older people on health, welfare, social care services and the restricted access of other older people to other services.</p>	<p>1. "public functions" is an expansive term and includes functions that are contracted out to private and independent providers.</p> <p>2. Schedule 2 is correct here. The relevant authority provisions are those provisions conferring functions etc in relation to relevant authorities. Schedule 3 is the list of relevant authorities.</p>

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
Application of this Act: matters arising before commencement (Clause 24)			
This Act applies in relation to matters arising before as well as after it comes into operation.			
Interpretation: “older person” (Clause 25)			
(1) Subject to subsections (2) to (4), for the purposes of this Act “older person” means a person aged 60 or over.			
(2) If the Commissioner is of the opinion that a matter raises a question of principle affecting persons aged 50 or over, the Commissioner may direct that, for the purposes of this Act, “older person” means a person aged 50 or over in relation to that matter.	<p>AGE NI</p> <p>(2) If the Commissioner is of the opinion that a matter raises a question of principle likely to impact on the interests of persons aged 50 or over, the Commissioner may direct that, for the purposes of this Act, “older person” means a person aged 50 or over in relation to that matter</p>	We suggest a small change in wording here.	<p>Whilst this amendment would broaden the Commissioners’ scope it could allow for the Commissioner to have to deal with hypothetical cases</p>
	<p>ECNI</p> <p>No proposed amendment but see comment.</p>	The Commission (ECNI) continues to be uncertain of the wisdom of identifying 60, and in certain circumstances 50, as the age at which one is regarded as an older person. It seems out of kilter with changing practices and patterns and at odds with developments in public policy relative to default retirement age and age of pension entitlement.	<p>The public consultation demonstrated overwhelming support that 60+ should be the age range for the Commissioner and that the Commissioner should be able to provide his or her services to people aged 50 and over in certain circumstances.</p>

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	<p>NI OMBUDSMAN</p> <p>No proposed amendment but please see comment</p> <p>Part of the legislation states that the authority would be extended beyond people over 65 to people aged 50 and above.</p>	<p>However, when we look at the changing demographics of Northern Ireland, it becomes clear very quickly that over half of the population of Northern Ireland would then fall within the remit of a Commissioner for Older People</p>	<p>This statement is incorrect. The Bill clearly provides for the age limit at which the Commissioner can act, as “aged 60 and over”. The public consultation showed strong support that the Commissioner should however be able to provide his/her services to people aged 50 years and over in exceptional circumstances where a matter raises a ‘question of principle’, and Clause 25(2) provides for this.</p>
<p>(3) If, in the case of a person aged 50 or over “(P)”, there are in the opinion of the Commissioner exceptional circumstances which make it appropriate to do so, the Commissioner may direct that subsection (4) applies in relation to P.</p>			
<p>(4) Where this subsection applies in relation to P, then –</p> <p>(a) anything which is required or authorised by this Act to be done by an older person may be done by P; and</p> <p>(b) anything which is required or authorised by this Act to be done by the Commissioner in relation to an older person may be done in relation to P.</p>			

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<p>(5) Anything which is required or authorised by this Act to be done by an older person may, where the older person</p> <p>(a) has died; or</p> <p>(b) is for some reason unable to act for himself or herself, be done by the older person’s personal representative or by a member of the older person’s family or other body or individual suitable to represent the older person.</p>	<p>AGE NI</p> <p>(5) Anything which is required or authorised by this Act to be done by an older person may, where the older person</p> <p>(a) has died; or</p> <p>(b) is for some reason unable to act for himself or herself, be done by the older person’s personal representative or by a member of the older person’s family or other body or individual suitable to represent the older person.</p>	<p>We propose the addition of the 'other body' to make this comprehensive.</p>	<p>This is a typo mistake from the Age Sector.</p> <p>‘Other Body’ is already included in this sub-section. This Clause provides that the Commissioner should be able to accept complaints made on behalf of an older person for example if an older person was incapable or unable to do so themselves.</p>
<p>(6) Subject to subsection (7), the Office may by order amend the ages specified in subsections (1) to (3).</p>	<p>AGE NI</p> <p>No proposed amendment but see comment.</p>	<p>We suggest that there be a recommendation that the 60+ age limit be reviewed after 3 years, but it is not necessary to include this in the legislation.</p>	<p>Clause 21 places a duty on the Commissioner to review and report on this legislation. The review might consider and comment on the age range specified here.</p>
<p>(7) An order under subsection (6) may not amend the ages specified in subsection (2) or (3) to any age above the age of 60.</p>			
<p>(8) No order may be made under subsection (6) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.</p>			
<p>(9) An order under subsection (6) may contain such transitional provisions as the Office thinks appropriate.</p>			

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Interpretation: “relevant authority” (Clause 26)			
(1) In this Act “relevant authority” means	NIHRC No proposed amendment but see comment.	The Commission welcomes the inclusion of individuals who are private fee paying residents in a residential or nursing home within the terms of the Bill. ³	No comment required.
	WCRP No proposed amendment but see comment.	We are delighted to note that fee paying residents of private and voluntary sector nursing and residential homes are now covered by the Commissioners formal and specific powers in the proposed Bill.	
	AGE NI See comment.	All 'relevant authorities' should be included for all aspects of the legislation. While there is quite extensive coverage of public bodies, some are included only for the purposes of Section 7 i.e. under the Commissioner’s power to assist with complaints but excluded from other aspects of the Bill. Why is this the case? We also outlined in Section 23 how the legislation falls short in including private and voluntary bodies.	See comment at Clause 7(6). See comment at Clause 23 (1).
(a) any body (other than the Office of the Commissioner) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7) (bodies subject to investigation);			
(b) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland)			

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Order 1996 (NI 8) (departments and other authorities subject to investigation); and			
(c) any body or person listed in Schedule 3	AGE NI See comment	The OPC should apply to all public, private and voluntary sector providers to older people, especially in the health and social care field. We reserve our opinion on whether all bodies are included and may suggest others before the legislation is passed.	See comment at Clause 23.
(2) The Office may by order amend Schedule 3 so as to (a) add a body or person to that Schedule; (b) remove a body or person from that Schedule; or (c) modify any entry in that Schedule.			
(3) No order may be made under subsection (2) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.	AGE NI No proposed amendment but see comment.	We have no problem with the principle of this point but seek clarification in relation to timeliness. We suggest the process of adding other 'relevant authorities' to the list should not be unduly delayed; this point may apply even more to modification of an entry in the Schedule.	There should be no delay in this type of procedure. This sub-section provides that the subordinate legislation goes before the Assembly.
(4) An order under subsection (2) may contain such transitional provisions as the Office thinks			

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appropriate.			
(5) An order under subsection (2) which adds a body or person to Schedule 3 may provide for this Act to apply to that person or body subject to such modifications or exceptions as are specified in the order.			
(6) In this Act “relevant authority concerned” means (a) in relation to an investigation for the purposes of the Commissioner’s functions under section 3(2) or (3), a relevant authority mentioned in the terms of reference produced for that investigation under paragraph 2(2)(a) of Schedule 2; (b) In relation to an investigation for the purposes of the Commissioner’s functions under section 5 or 6, the relevant authority in relation to which the investigation is to be, is being, or (as the case may be) has been conducted; and (c) in relation to a formal investigation into a complaint under section 8(1), the relevant authority against which the complaint was made.			
(7) In this Act any reference to action taken by a relevant authority includes a reference to action taken by – (a) a member or committee of the			

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<p>authority (if it is a body);</p> <p>(b) an officer or member of staff of the authority;</p> <p>(c) any person acting on behalf of the authority;</p> <p>(d) any person to whom the authority has delegated functions.</p>			
Interpretation: general (Clause 27)			
In this Act -			
“action” includes failure to act;	<p>AGE NI</p> <p>"interests" includes rights</p>	Addition to ensure 'interests' is interpreted as including rights.	<p>Providing the Committee is content, Ministers would be prepared 'in principle' to bring forward an amendment here to provide that "interests" includes "rights".</p> <p>See also comment at Clause 1.</p>
	<p>AGE NI</p> <p>"dispute settlement services" means dispute resolution services including conciliation, mediation and arbitration and the resolution service used will be of a type most appropriate, in the Commissioner's view, to assist in resolving the issue.</p>	If the amendment relating to "dispute settlement services" is not accepted in section 12 then instead of these words the words "conciliation services" should be inserted here followed by the appropriate description which includes mediation as we described in section 12(1).	<p>"Conciliation Services" is defined at Clause 12(7) above. See comments at that sub-section with proposed substitution that Ministers, subject to Committee's views would be prepared "in principle" to bring forward.</p>
“advocacy arrangements”, “complaint arrangements”, “inspection arrangements” and “whistle-blowing arrangements” have the meanings given by section 5(1);			
“the Commissioner” means the Commissioner for Older People for			

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Northern Ireland;			
“the complainant”, in relation to a formal investigation into a complaint under section 8(1), means the older person by whom or on whose behalf the complaint was made;			
“formal investigation” means an investigation under section 13;			
“general health care provider” has the meaning given in paragraph 1 of Schedule 3 and references to general health care are to any of the services mentioned in that paragraph;	AGE NI We have concerns - see comment.	We are very concerned about the definitions surrounding 'relevant authorities' as indicated in Section 23 and elsewhere. We are continuing to get clarification and consider this. We will make any information we receive and our further views on this available to OFMDFM and the OFMDFM Committee.	See comment in response to Clause 23.
“health and social care body” means any of the following bodies (a) the Regional Health and Social Care Board; (b) the Regional Agency for Public Health and Social Wellbeing; (c) the Regional Support Services Organisation; (d) a Health and Social Care Trust; (e) a special health and social care agency;	AGE NI We have concerns - see comment.	As indicated, we are very concerned about the definitions surrounding 'relevant authorities' as indicated in Section 23 and elsewhere. We are continuing to get clarification and consider this. We will make any information we receive and our further views on this available to OFMDFM and the OFMDFM Committee. For example, is the Patient/Client Council is included, or Local Commissioning Groups in health and social care, etc.? We have already suggested adding some bodies such as the Regional Quality and Improvement Authority and the	The Patient and Client Council, the RQIA and the NI Social Care Council are within the remit of the Commissioner by their inclusion within Schedule 2 of the Commissioner for Complaints Order.

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		Northern Ireland Social Care Council.	
“independent provider” has the meaning given in paragraph 2 of Schedule 3;	AGE NI We have concerns - see comment.	As indicated, we are very concerned about the definitions surrounding 'relevant authorities' as indicated in Section 23 and elsewhere. We are continuing to get clarification and consider this. We will make any information we receive and our further views on this available to OFMDFM and the OFMDFM Committee.	See comment at Clause 23.
“information” includes information recorded in any form;			
“notice” means notice in writing;	AGE NI See comment.	Does the legislation need to refer to modern methods of communication such as email and fax or is notice in writing sufficient?	No Section 46(1) of the Interpretation Act 1954 provides clarification on this.
“the Office” means the Office of the First Minister and deputy First Minister;			
“practice” includes policy;			
Commencement (Clause 28)			
(1) The following provisions of this Act come into operation two weeks after the day on which this Act receives Royal Assent (a) section 1 (together with Schedule 1); (b) sections 25 to 27 (together with Schedule 3); and			

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(c) this section and section 29.			
(2) The other provisions of this Act come into operation on such day or days as the Office may by order appoint.	AGE NI No amendment but see comment.	This provides for the introduction of the substantive provisions of the Act once the OPC has had sufficient time to set itself up administratively and undertake lead-in planning for the operation of functions. The experience and advice of the Welsh OPC underscores the importance of this. Of course the Northern Ireland OPC needs to work quickly and efficiently to establish the office to have all the powers transferred in a timely manner. This section should not be used as a means of transferring some powers and delaying the transfer of others.	Point noted.
(3) An order under subsection (2) may contain such transitional provisions as appear to the Office to be appropriate.			
Short title (Clause 29)			
This Act may be cited as the Commissioner for Older People Act (Northern Ireland) 2010.	AGE NI This Act may be cited as the Older People's Commissioner Act (Northern Ireland) 2010.	We would prefer the term Older People's Commissioner for Northern Ireland for the reasons stated previously in section 1(1).	See comment at Clause 1 above.
Schedule 1			
Title The Commissioner for Older People for Northern Ireland.	AGE NI The Older People's Commissioner for Northern Ireland [s2]	Change the title in line with previous comments.	See comment at Clause 1 above.

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
Status 1			
(1) The person for the time being holding the office of Commissioner for Older People for Northern Ireland is by that name to be a corporation sole.			
(2) The Commissioner 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) The property held by the Commissioner is not to be regarded as property of, or held on behalf of, the Crown.			
General Powers 2			
(1) The Commissioner may do anything, apart from borrowing money, which the Commissioner considers is (a) appropriate for facilitating, or (b) incidental or conducive to, the exercise of the Commissioner's functions.		CITIZENS ADVICE BUREAU Believe strong links should be forged between the voluntary advice sector and the Commissioner to ensure joined up approach.	Agree with proposal This is not a matter for the Bill. The Department has committed to highlight to the Commissioner the value of agreeing MOU with the appropriate organisations.

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(2) That includes in particular			
(a) co-operating with other bodies exercising functions relating to older persons or their interests (whether in the United Kingdom or elsewhere);	AGE NI See comment.	The power to cooperate is welcome. We believe that collaboration with like-minded bodies to be an important aspect, not only for the OPC but for other bodies as well. The Welsh legislation details ways in which the Welsh OPC can work collaboratively with some bodies similar to itself (s16 & s17). The OPC should be expected and empowered to collaborate with other like bodies on matters concerning older people. They in turn should be similarly required to do so. Reciprocal collaboration with NI bodies like the ECNI, NIHRC and Ombudsman will be important. This power should be underpinned by effective Memorandums of Understanding between bodies.	See comment above.
(b) acquiring, holding and disposing of real or personal property;			
(c) entering into contracts.			
Tenure of office 3			
(1) Subject to the provisions of this paragraph, a person holds and vacates office as the Commissioner in accordance with the terms of that person's appointment..			

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(2) An appointment as the Commissioner is for a term of 4 years.	AGE NI See comment.	We are in favour of 4-yearly terms.	Ministers have considered this as part of the analysis of the Consultation responses. The 4 year term proposed is in line with that for NICCY and the Welsh Older people's Commissioner.
(3) A person who ceases to be the Commissioner on the expiration of that person's first term of office is eligible for re-appointment, but a person who has been re-appointed by virtue of this sub-paragraph is not eligible for appointment or re-appointment as the Commissioner at any time after the end of that person's second term of office.	AGE NI See comment.	We are in favour of a 4-year term renewable once only.	No comment required.
(4) A person may at any time resign from office as the Commissioner by notice to the First Minister and deputy First Minister.			
(5) The First Minister and deputy First Minister acting jointly may remove a person from office as the Commissioner if satisfied that that person has (a) been convicted of a criminal offence; (b) become bankrupt or made an arrangement or composition with that person's creditors; (c) without reasonable excuse, failed to discharge the functions of the Commissioner for a continuous period of 3 months; or			

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(d) become unfit or unable to exercise the functions of the Commissioner.			
Salary, etc 4			
(1) The Office may pay to or in respect of the Commissioner (a) such remuneration, (b) such allowances, and (c) such sums for the provision of a pension, as the Office may determine.			
(2) Where a person ceases to hold office as Commissioner otherwise than on the expiration of that person's term of office and the Office determines that there are special circumstances that make it right for that person to receive compensation, the Office may make to that person a payment of such amount as the Office may determine.			
(3) A determination of the Office under this paragraph requires the approval of the Department of Finance and Personnel.			
Staff 5			
(1) The Commissioner may appoint such number of officers as the Commissioner may determine.	AGE NI No proposed amendment, but see comment.	We wish to draw the attention of OFMDFM and the Committee to the views expressed to us by the office of the Welsh Commissioner for Older People. This Commissioner has a Deputy Commissioner, named as	This is not for the legislation. The Commissioner will be a Corporation Sole and so independent of Government. The Commissioner has the power to employ staff as

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		such in the Act, who acts as the CEO and as an 'official' deputy for the Commissioner. The Welsh office have stressed that they find this particularly effective. We bring this point to your attention for your consideration.	he/she considers necessary. <i>Paragraph 6 of Schedule 1: 'Exercise of Functions of Commissioner' also allows for the Commissioner to delegate his/her role and any of his/her functions to a member of staff within the commissioner's office.</i>
(2) The remuneration and other conditions of service of the officers appointed under this paragraph are to be determined by the Commissioner.			
(3) The Commissioner may make such payments towards the provision of such pensions or allowances to or in respect of the officers appointed under this paragraph as the Commissioner may determine.			
(4) The reference in sub-paragraph (3) to pensions or allowances to or in respect of the officers appointed under this paragraph includes reference to pensions or allowances by way of compensation to or in respect of any of those officers who suffer loss of employment.			
(5) A determination of the Commissioner under this paragraph requires the approval of the Office and the Department of Finance and Personnel.			
(6) Employment as an officer of the Commissioner is among the kinds of employment to which a			

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<p>superannuation scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 (NI 10) can apply and, accordingly, in Schedule 1 to that Order (employments to which Article 3 can apply) the following entry is inserted at the appropriate place –</p> <p>“Employment by the Commissioner for Older People for Northern Ireland.”.</p>			
Exercise of functions of Commissioner 6			
<p>Any function of the Commissioner may be exercised by any officer of the Commissioner who has been authorised (whether generally or specially) by the Commissioner for the purpose.</p>			
Seal 7			
<p>The application of the seal of the Commissioner must be authenticated by the Commissioner’s signature or by the signature of any officer of the Commissioner who has been authorised (whether generally or specially) by the Commissioner for the purpose.</p>			
Evidence 8			
<p>A document purporting to be an instrument issued by the Commissioner and to be duly executed under the Commissioner’s seal or to be signed by, or on behalf</p>			

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of, the Commissioner is to be received in evidence and, unless the contrary is proved, taken to be such an instrument.			
Property 9			
(1) Any real or personal property vested in the Commissioner must (unless and until disclaimed or disposed of) vest in the Commissioner's successor in office.			
(2) Where there is a vacancy in the office of Commissioner at the time when real or personal property would otherwise have vested, the property must vest in the successor on that person's appointment.			
Funding 10			
(1) The Office may make grants to the Commissioner of such amounts as it may determine.	<p>Advice NI</p> <p>There is little information within this schedule to explain how resources will be used.</p>	<p>There are no clear indications to how resources will be allocated to enable the Commissioner to bring about court cases or progress individual cases etc. We would like to see further information and clarification in this area, as funding has huge implications to all aspects of the Commissioners work and on their ability to implement the bill effectively.</p>	<p>This is not a matter for the legislation. see comments on "funding" below.</p>
	<p>NI OMBUDSMAN</p>	<p>Suggests that the Commissioner would cost £2m or £3M</p>	<p>The Deloitte Report considered the budgets for organisations with comparable powers and duties such as NI Commissioner for Children and</p>

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	<p>ECNI No amendment, see comment.</p>	<p>It draws attention again to current circumstances in respect of public expenditure and to the debate about the best way of providing certain public services and the associated architecture of public bodies.</p>	<p>Young People, the Welsh Older People's Commissioner, the NI Ombudsman and the NI Human Rights Commission. On this basis they provided an indicative figure of £1.5m as the annual cost of the Commissioner.</p>
	<p>NI OMBUDSMAN No proposed amendment but please see comment.</p>	<p>In relation to independence, the commissioner proposal is sponsored by a Government Department. Independence is assumed, not demonstrated.</p>	<p>The Department believes that its oversight of expenditure by the Commissioner's office for accountability of public monies is appropriate and does not equate to any loss of autonomy for the Commissioner. There is no evidence of interference by OFMDFM in the decision-making of arms-length bodies that it sponsors such as the Equality Commission, NICCY, the Community Relations Council or the Commission for Victims and Survivors.</p>
	<p>ECNI No proposed amendment but please see comment.</p>	<p>The Commission is concerned that an impression may have been created in evidence to the Committee that a body that reports to a Minister or Ministers cannot be independent; that the provision of funding through a Department can have a similar effect; and that there is an inherent incompatibility between the role of advocacy or advice, on the one hand, and enforcement on the other. Whatever reservations the Commission has in respect of the present proposals, it does not share the view that they can be assailed on these grounds. To do so would question the proper functioning of a number of public authorities.</p>	
<p>(2) Subject to sub-paragraph (3), the Commissioner must pay to the Office all sums received by the Commissioner in the course of, or in connection with, the carrying out of</p>	<p>AGE NI See comment.</p>	<p>The OPC must be guaranteed adequate resources from the Executive, via OFMDFM, to fulfil its duties and powers and meet its aims. There may the occasional</p>	<p>The fine detail of this, including the workings of the funding and audit arrangements between the Department and the Commissioner's office can be drawn up within the</p>

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the functions of the Commissioner.		opportunities when the Commission has access to a little resources from elsewhere (e.g. earned from conference fees in special circumstance or offered from another source for a particular activity). In the interests of ensuring that the OPC is, and is seen to be, an independent body it is important that there is a transparent process for this with clear guidelines between the Office and the OPC.	<i>Financial memorandum</i> and the <i>Management Statement</i> . This will be agreed by the Department and by the Commissioner and do not have to be detailed on the face of the legislation.
(3) Sub-paragraph (2) does not apply to such sums, or sums of such description, as the Office may, with the approval of the Department of Finance and Personnel, direct.	AGE NI See comment.	The comment in 10(2) above applies to this subsection also.	See comment above.
(4) Any sums received by the Office under sub-paragraph (2) must be paid into the Consolidated Fund.			
Accounts 11			
(1) The Commissioner must – (a) keep proper accounts and proper records in relation to the accounts, and (b) prepare a statement of accounts in respect of each financial year.			
(2) The statement of accounts must – (a) be in such form, and (b) contain such information, as the Office may, with the approval of the			

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Department of Finance and Personnel, direct.			
(3) The Commissioner must, within such period after the end of each financial year as the Office may direct, send copies of the statement of accounts relating to that year to (a) the Office, and (b) the Comptroller and Auditor General.			
(4) The Comptroller and Auditor General must			
(a) examine, certify and report on every statement of accounts sent to the Comptroller and Auditor General by the Commissioner under this paragraph, and			
(b) send a copy of the Comptroller and Auditor General's report to the office.	<p>AGE NI</p> <p>(b) send a copy of the Comptroller and Auditor General's report to the Office; and</p> <p>(c) send a copy of the Comptroller and Auditor General's report to the Older People's Commissioner.</p>	<p>1. 'office' presumably means OFMDFM and therefore should be 'Office' with a capital 'O'.</p> <p>2. The OPC should also be entitled to receive a copy.</p>	<p>1. This is a typo error and will be corrected through the Bill Office.</p> <p>2. The procedure set out here is a standard, normal and well established government accounting practice.</p> <p>The Comptroller and Auditor General's report goes to the sponsoring department. The Department has no problem in sharing a copy of this report with the Commissioner.</p> <p>This is an operational issue and is</p>

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			not for the face of the Bill. The Department will as good practice forward the Auditor General's report to the Older People's Commissioner.
(5) The Office must lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.	AGE NI See comment.	We are pleased that there is a route for the OPC to report to the Assembly. However, as indicated in 21(1) and 21(5) we believe the OPC should report directly to the Assembly on its affairs.	The Commissioner will also be accountable to the Assembly in that he/she may be required to appear before the OFMDFM Committee and could be invited to appear before or choose to submit a report for the attention of any other Committee of the Assembly which addresses the issues of older people.
(6) In this paragraph and paragraph 12 "financial year" means (a) the period beginning with the day on which the first person appointed under section 1(2) takes office and ending with the next 31st March following that date, and (b) each successive period of twelve months ending with 31st March.			
Annual report 12			
(1) As soon as practicable after the end of each financial year, the Commissioner must send to the Office a report on the carrying out of the functions of the Commissioner during that year.			
(2) A report under this paragraph in respect of any year must give details of the steps taken by the Commissioner in that year for the	ADVICE NI Want to see evaluative research and attitudinal research to find out how successful the Commissioner has	We believe the Commissioner should organise regular events to update older people of the work being carried out and feedback on progress	The Department welcomes these comments. Ministers recognise the accessibility of the Commissioner and the participation of older people

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<p>purpose of complying with the Commissioner’s duty under section 3(8).</p>	<p>been at ground level and to ensure the Commissioner is accountable to the population he/she serves.</p> <p>Would like to see older people represented on an “oversight committee” to represent the older persons voice.</p>	<p>and results. The Commissioner should also take steps to communicate a range of information to older people, such as policy updates and raising awareness of services, rights and entitlements. Advice NI would be happy to support the Commissioner in raising older people’s awareness of their rights and entitlements and of services and information available to them, given our skills, expertise and resources (e.g. rights based website) in this area.</p> <p>Particular consideration needs to be given to developing methods to involve those considered to be hard to reach in communications in both directions. This is particularly important in relation to isolated older people as well as those with communication difficulties (e.g. those with disabilities or literacy difficulties</p>	<p>was strongly felt issue from the consultation. It is important that older people should feel able both to participate with the work of the Commissioner and to engage with the Commissioner’s office. It is also important that the Commissioner consults regularly with older people and seeks feedback from the people that he/she will be tasked to represent and champion.</p> <p>OFMDFM has made a policy commitment in the ‘<i>Consultation Analysis and Report</i>’ (May 2010) to draw the Commissioner’s attention to the duty to take account of the views of older people when exercising his/her functions. A stakeholder panel or developing the Older people’s Advisory panel are options here. Outreach surgeries and workshops are also useful mechanisms to enable the Commissioner to fulfil the duty to make services and advice available to older people in the localities in which they live.</p>
<p>(3) The Office must –</p> <p>(a) lay a copy of every report sent to it under this paragraph before the Assembly; and</p> <p>(b) send a copy of every such report to the Secretary of State.</p>	<p>AGE NI</p> <p>See comment.</p>	<p>1. We are pleased that there is a route for the OPC’s annual report to be presented to the Assembly. However, as indicated in 21(1) and 21(5) we believe the OPC should report directly to the Assembly.</p> <p>2. We are pleased also that there is a route for the annual report to be sent to the Secretary of State. The OPC’s reporting relationship lies within the devolved administration but the</p>	<p>Clause 4(6) of the Bill allows the Commissioner “to make representation or recommendations to any body or person.” This includes the Secretary of State.</p>

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		<p>Commissioner should have a direct relationship itself with the Secretary of State in order to influence at the highest level reserved matters that impact on older people in Northern Ireland; thus the OPC should itself send a copy of its report to the Secretary of State. Additionally, we think that OFMDFM should send a copy of the OPC's report to the Secretary of State accompanied by a letter from the First and deputy First Ministers drawing the Secretary of State's attention to any concerns or recommendations over reserved matters that the OPC raises in the report. This would demonstrate attention to reserved matters that impact on older people here.</p>	
	<p>ADVICE NI</p> <p>It is outlined in part 12 of schedule 1 that the commissioner must report back, by way of annual report, to the First Minister and Deputy First Minister. However, we do not feel that the areas outlined as the subject of the annual report are adequate measures of the success of the Older Persons Commissioner.</p>	<p>Furthermore, accountability and measures of success could go further, for example, by including evaluative research (e.g. of those who used the services) and attitudinal research (e.g. within the target population of people 60+) to find out how successful the commissioner has been at ground level, and also to ensure the Commissioner is accountable to the population he/she serves.</p>	<p>Comments noted.</p> <p>This detail is not for the face of the legislation but can be brought to the Commissioner's notice by OFMDFM.</p>
The Northern Ireland Assembly Disqualification Act 1975 (c.25) 13			
<p>In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975</p>			

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(disqualifying offices) insert, at the appropriate place - “Commissioner for Older People for Northern Ireland”.			
The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7) 14			
In Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation) insert, at the appropriate place - “The Office of the Commissioner for Older People for Northern Ireland”.	AGE NI See comment.	We are in favour of a mechanism for taking complaints against OPC as a matter of good public administration.	The Older People’s Commissioner will be added to Schedule 2 of the Commissioner for Complaints Order. This would allow the Commissioner for Complaints to deal with complaints about the Commissioner for Older People. In addition the Commissioner will be able to draw up an internal complaints procedure. What this would look like, we believe, should be something that the Older People’s Commissioner would be best placed to take forward as part of his/her accountability once he/she is in post.
The Freedom of Information Act 2000 (c. 36) 15			
In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (offices and bodies which are public authorities for the purposes of the Act) insert, at the appropriate place - “The Commissioner for Older People for Northern Ireland”.			
Schedule 2			
Section 4(4).			

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Investigation under section 4(4) [s3]			
Interpretation 1			
In this Schedule any reference to an investigation is a reference to an investigation in relation to which the Commissioner has made a determination under section 4(4).			
Conduct of Investigation 2			
(1) In determining whether to conduct or discontinue an investigation, the Commissioner may act in accordance with the Commissioner's own discretion.			
<p>(2) Where the Commissioner determines under section 4(4) to conduct an investigation the Commissioner must</p> <p>(a) produce terms of reference for the investigation;</p> <p>(b) send notice of the proposed investigation and a copy of the terms of reference to any relevant authority concerned and such other bodies or persons as the Commissioner thinks fit; and</p> <p>(c) afford to every such authority an opportunity to comment on the matter being investigated and to give oral or other evidence respecting those matters.</p>			
(3) An investigation must be	AGE NI	This mirrors the amendment we	See comment at 13(5).

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conducted in private.	(3) An investigation must be conducted in private, unless public hearings would better serve the aims and objectives of the OPC.	proposed under section 13(5). There may occasionally be a matter that may warrant a public hearing. Indeed if it a matter over which there is significant public disquiet Ministers may be relieved to be able to point to the fact that this provision is in place.	
(4) Except as otherwise provided by this Act, the procedure for conducting an investigation is such as the Commissioner considers appropriate in the circumstances of the case; and, in particular, it is for the Commissioner to determine whether any person may be represented by counsel or solicitor or otherwise in the investigation.			
(5) The Commissioner may for the purposes of an investigation obtain information from such persons and in such manner, and make such enquiries, as the Commissioner thinks fit.			
(6) Subject to sub-paragraph (7), in conducting an investigation the Commissioner is not obliged to hold any hearing, and no person is 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			

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<p>affect any relevant authority or person, the Commissioner must afford to that authority or person</p> <p>(a) an opportunity to give oral or other evidence; and</p> <p>(b) an opportunity of testing by cross examination any evidence which may affect that authority or person.</p>			
<p>(8) The Commissioner may, if the Commissioner thinks fit, pay to any person who attends or supplies information for the purposes of a formal investigation</p> <p>(a) sums in respect of expenses properly incurred by that person;</p> <p>(b) allowances by way of compensation for the loss of that person's time, in accordance with such scales and subject to such conditions as the Office may determine.</p>			
<p>(9) An investigation does not affect</p> <p>(a) any action taken by a relevant authority or by any department or Minister with respect to that authority; or</p> <p>(b) any power or duty of that authority, department or Minister to take further action with respect to any matters subject to the investigation.</p>			
Report on investigation 3			
(1) Where the Commissioner has conducted an investigation pursuant	AGE NI		

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<p>to a determination under section 4(4), the Commissioner must prepare a report on the outcome of the investigation and send it to</p> <p>(a) any relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; and</p> <p>(b) such other bodies or persons as the Commissioner thinks appropriate.</p>	<p>(1) Where the Commissioner has conducted an investigation pursuant to a determination under section 4(4), the Commissioner must prepare a report on the outcome of that investigation and send it to</p> <p>(a) the relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority;</p> <p>(b) to the older person specifically concerned; and</p> <p>(c) such other bodies or persons as the Commissioner thinks appropriate.</p>	<p>Where an investigation concerns a particular older person, the legislation should specify that that older person is entitled to receive a copy of the report.</p>	<p>This is not necessary. Schedule 2 applies in relation to Section 4(4) investigations and these investigations do not involve a particular older person as they are for the purposes of the Commissioner's functions at Section 3(2) – duty to 'keep under review the adequacy and effectiveness of law and practice relating to the interests of older persons' and Section 3(3) – the duty to 'keep under review the adequacy and effectiveness of services provided to older persons by relevant authorities'.</p>
<p>(2) Apart from identifying any relevant authority concerned, a report under this paragraph must not</p> <p>(a) mention the name of any person; or</p> <p>(b) contain any particulars which, in the Commissioner's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report, unless the Commissioner determines that it is necessary to do so (whether for the purposes of subparagraph (3) or otherwise).</p>			
<p>(3) A report under this paragraph may include recommendations as to action to be taken by a relevant authority mentioned in the report; and any such recommendations must be accompanied by the Commissioner's reasons for making them.</p>			

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<p>(4) Where a report contains a recommendation as to action to be taken by a relevant authority, the authority must</p> <p>(a) consider the recommendation; and</p> <p>(b) determine what action (if any) to take in response to the recommendation.</p>	<p>AGE NI</p> <p>(4) Where a report contains a recommendation as to action to be taken by a relevant authority, the authority must</p> <p>(a) consider the recommendation; and</p> <p>(b) determine what action (if any) to take in response to the recommendation; or</p> <p>(c) detail in writing the reasons for not acting in relation to a recommendation.</p>	<p>A relevant authority should be expected to explain why it has decided not to act on the OPC's recommendation. The relevant authority should be required to record why it is not following a recommendation even if the OPC does not, under section 16, ask for a report. This amendment fills a gap in the legislation.</p>	<p>See comment at Clause 15(6).</p>
Further action following report on investigation 4			
<p>(1) Where the Commissioner has made a report under paragraph 3 which contains a recommendation in respect of a relevant authority, the Commissioner may by notice require that authority to provide the Commissioner within 3 months of the date of the notice with</p> <p>(a) such information as will enable the Commissioner to determine whether the authority has complied with the recommendation or will be complying with it; or</p> <p>(b) a statement of the authority's reason for not complying with the recommendation.</p>	<p>AGE NI</p> <p>(1) Where the Commissioner has made a report under paragraph which contains a recommendation in respect of a relevant authority, the Commissioner may by notice require that authority to provide the Commissioner within one month of the date of the notice with</p> <p>(a) such information as will enable the Commissioner to determine whether the authority has complied with the recommendation or will be complying with it; or</p> <p>(b) a statement of the authority's reason for not complying with the recommendation.</p>	<p>The OPC's recourse to judicial review must be protected. The timeframe for judicial review is 3 months (from the OPC's decision and recommendation), so the timescale for a relevant authority to respond should be capped at one month or six weeks at the outside. This subsection allows three options to a relevant authority: to comply, indicate it will comply or refuse to comply. A relevant authority should be capable of one of these responses within a month.</p>	<p>See comment at Clause 16(1).</p>

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(2) A notice under sub-paragraph (1) must include a statement that a failure by the authority to respond within the period mentioned in that subparagraph may be published in such manner as the Commissioner consider appropriate.	AGE NI See comment.	This section covers publication of non-compliance by a relevant authority. However, please see the comments at the end in relation to sanctions.	See response to Sanctions below.
(3) If, on receipt of a response from the authority, the Commissioner considers that (a) the action taken or proposed to be taken by the authority to comply with the recommendation is inadequate; or (b) the authority's reason for not complying with the recommendation is inadequate, the Commissioner may send to the authority concerned a further notice setting out the inadequacy and requiring the authority to reconsider the matter and respond within one month of the date of the notice.	AGE NI See comment.	Please see our comments in relation to sanctions.	As above.
(4) A notice under sub-paragraph (3) must include a statement that a failure by the authority (a) to provide what the Commissioner considers to be a satisfactory response; or (b) to provide any response within the period mentioned in that subparagraph, may be published in such manner as the Commissioner	AGE NI See comment.	Please see our comments in relation to sanctions.	As above.

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considers appropriate.			
<p>(5) The Commissioner must include in the register maintained under section 16(5) details of</p> <p>(a) recommendations (together with the reasons for them) contained in reports made under paragraph 3;</p> <p>(b) action taken by the Commissioner under sub-paragraphs (1) and (3); and</p> <p>(c) the results of any such action.</p>	<p>AGE NI</p> <p>See comment.</p>	<p>Naming and shaming' through publication in a public register is the only 'sanction'. This is insufficient as the only sanction available to the OPC. Please see the comments at the end in relation to sanctions.</p>	<p>See response to Sanctions below.</p>
Schedule 3			
Section 26(1)			
Relevant authorities [S1]			
<p>The following bodies and persons are relevant authorities by virtue of section 26(1)(C)</p>	<p>AGE NI</p> <p>See comment.</p>	<p>All public, private and voluntary bodies providing services for older people should be included, especially those concerned with health and social care.</p>	<p>See comments on relevant authorities at Clause 23 and Clause 26 above.</p>
Health and social care			
<p>1. A general health care provider, that is to say</p> <p>(a) an individual undertaking to provide general medical services or general dental services under Part 6 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);</p> <p>(b) a person (whether an individual or</p>	<p>AGE NI</p> <p>See comment.</p>	<p>We are very concerned about the definitions surrounding 'relevant authorities' as indicated in Section 23 and elsewhere. We are continuing to get clarification and consider this. We will make any information we receive and our further views on this available to OFMDFM and the OFMDFM Committee.</p>	<p>As above.</p>

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<p>a body) undertaking to provide general ophthalmic services or pharmaceutical services under Part 6 of that Order; or</p> <p>(c) an individual performing personal 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).</p>			
<p>2. An independent provider, that is to say a person (whether an individual or a body)</p> <p>(a) providing services of any kind under arrangements with a health and social care body or a general health care provider; and</p> <p>(b) not being a health and social care body or a general health care provider.</p>	<p>AGE NI See comment.</p>	<p>As indicated we are very concerned about the definitions surrounding 'relevant authorities' as indicated in Section 23 and elsewhere. We are continuing to get clarification and consider this. We will make any information we receive and our further views on this available to OFMDFM and the OFMDFM Committee.</p>	<p>As above.</p>
<p>3. Any person carrying on or managing any of the following within the meaning of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9)</p> <p>(a) a residential care home, nursing home or independent hospital in which older persons are accommodated;</p> <p>(b) an independent clinic;</p>	<p>AGE NI See comment.</p>	<p>As indicates we very are concerned about the definitions surrounding 'relevant authorities' as indicated in Section 23 and elsewhere. We are continuing to get clarification and consider this. We will make any information we receive and our further views on this available to OFMDFM and the OFMDFM Committee.</p>	<p>As above.</p>

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(c) an independent medical agency or domiciliary care agency; (d) a day care setting.			
	<p>AGE NI</p> <p>We recommend the insertion of the following additional paragraphs (with consequential renumbering of subsequent paragraphs) :</p> <p>4. The Regional Quality and Improvement Authority.</p> <p>5. The Northern Ireland Social Care Council.</p>	<p>We recommend the addition of these and any similar body. We may recommend the addition of others before the passage of the legislation.</p>	<p>The RQIA and the NI Social Care Council are included in the Bill and therefore within the remit of the Commissioner through Schedule 2 of the Commissioner for Complaints Order.</p>
Education			
<p>4. The governing body of an institution of further education, within the meaning of the Further Education (Northern Ireland) Order 1997 (NI 15).</p>	<p>AGE NI</p> <p>Amend number to 6.</p>	<p>Amendment due to addition of new bodies above.</p>	<p>Not necessary – see comment above.</p>
	<p>AGE NI</p> <p>7. The governing body of an institution of higher education.</p>	<p>We suggest this addition.</p>	<p>See comment in relation to “Relevant Authorities” at Clauses 23 and 26 above.</p>
Others			
	<p>AGE NI</p> <p>See comment. We have reservations about the removal of the listed bodies</p>	<p>We believe that all functions of all public bodies should be included under all aspects of the legislation.</p>	<p>11. The Northern Ireland Commissioner for Complaints. 12. The Assembly Ombudsman for Northern Ireland. (Numbering relates</p>

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	<p>from the legislation.</p>	<p>The bodies listed here at the end of out comment were included in the first draft of the Bill circulated for consultation. No clear rationale is available as to why they have been removed. We ask for a separate written explanation for each body as to why it has been removed from the legislation. We believe that all functions of all public bodies should be included under all aspects of the legislation. The bodies are as follows: Northern Ireland Office, Northern Ireland Commissioner for Complaints, Assembly Ombudsman for Northern Ireland, Parliamentary Commissioner for Administration, Information Commissioner, Qualifications and Curriculum Authority, Prisoner Ombudsman for Northern Ireland, Pensions Ombudsman.</p>	<p>to those included in the draft Bill included in the October 2009 Consultation Document).</p> <p>As detailed above at Clause 7, the NI Ombudsman did not agree to its inclusion as a relevant authority as it views its office as a body of 'last resort' for complainants. Ultimately it is a matter for the Assembly to determine the scope of the oversight role for the Commissioner. The NI Ombudsman and the Commissioner for Complaints are included within Clause 7 of the Bill and so the Commissioner for Older people will still be able to provide assistance to an older person making a complaint in relation to these organisations.</p> <p>13. The Police Ombudsman for Northern Ireland. This body is still included in this section of the Bill.</p> <p>14. The Parliamentary Commissioner for Administration. The Assembly can include as relevant authorities organisations dealing with matters that are not within the Assembly's remit but only with the consent of the organisation. The PCA did not give their consent to be included in the Bill and so have been removed.</p> <p>15. The Information Commissioner. The Assembly can include as relevant authorities organisations dealing with matters that are not within the Assembly's remit but only with the consent of the organisation and the appropriate Secretary of</p>

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
			<p>State. The Information Commissioner (ICO) had agreed 'in principle' to its inclusion but had some concerns about its inclusion within the full range of the Commissioner's powers and so has been removed. The ICO did however agree to be included within clause 7 of the Bill and so the Commissioner will still be able to provide assistance to an older person making a complaint in relation to this organisation.</p> <p>16. The Qualifications and Curriculum Authority. The Office of the Qualifications and Examinations Regulator (Ofqual) is now included instead of the Qualifications and Curriculum Authority (QCA) as it has taken over the relevant responsibilities.</p> <p>17. The Northern Ireland Office. As a consequence of the transfer of policing and justice, the new Department of Justice has been brought within the remit of the Commissioner and as a result the NIO has been removed.</p> <p>18. The Prisoner Ombudsman for Northern Ireland. Following devolution of policing and criminal justice powers, the Prisoner Ombudsman for NI is now listed in the NI Ombudsman Order (Schedule 2) and is therefore brought within the remit of the Commissioner by means of this through Clause 26 of the Bill.</p> <p>19. The Pensions Ombudsman The Assembly can include as relevant authorities organisations dealing with matters that are not</p>

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			<p>within the Assembly's remit but only with the consent of the organisation and the appropriate Secretary of State. As a body dealing with reserved matters the Pensions Ombudsman did not wish to be included in the Bill and so has been removed. However as pension provision is a significant issue raised through the consultation the Pensions Ombudsman has been included within clause 7 of the Bill and so the Commissioner will still be able to provide assistance to an older person making a complaint in relation to this organisation.</p>
<p>5. The ombudsman scheme operator as defined by section 225(2) of the Financial Services and Markets Act 2000(c.8)</p> <p>6. The Office of the Qualifications and Examinations Regulator.</p> <p>7. The Police Ombudsman for Northern Ireland.</p> <p>8. The Northern Ireland Judicial Appointments Commission.</p> <p>9. The Northern Ireland Judicial Appointments Ombudsman.</p>			
	<p>AGE NI</p> <p>If not covered by section 25(1) or 25(2) add Victims Commission Northern Ireland Human Rights Commission Equality Commission for Northern Ireland. Add all public</p>	<p>All public authorities should be included and one comprehensive means of doing this would be to cross-refer to the authorities which are deemed to be public authorities</p>	<p>Victims Commission and ECNI are included under 25(1) and 25(2). The NIHRC is not included. Housing Associations are included within the remit of the Bill. The Utility Regulator</p>

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	<p>authorities designated for the purposes of section 75 of the Northern Ireland Act 1998.</p>	<p>for the purposes of section 75 of the Northern Ireland Act 1998. We are keen to see such bodies as housing associations, Translink, community transport providers, those running relevant community services, utility providers, Post Office, Healthy Living Centres, etc. included.</p>	<p>is also included. Through the inclusion of the Department of the Environment the Office of the Transport Regulator has also been brought within the remit of the Bill.</p>
Justice and Policing			
	<p>AGE NI See comment. We have reservations about the removal of bodies from the legislation.</p>	<p>We believe that all functions of all public bodies should be included under all aspects of the legislation. We want to confirm that all the following bodies previously listed in paragraphs 5 to 10 of the original draft of the Bill are now covered by section 25(2), or section 25(1), given the devolution of policing and justice. If not, a written explanation should be given for the removal each body so removed. These are: The Northern Ireland Court Service; The Northern Ireland Policing Board and the Chief Constable of the Police Service of Northern Ireland; the Probation Board for Northern Ireland; the Chief Inspector of Criminal Justice in Northern Ireland; the Northern Ireland Legal Services Commission; and the Northern Ireland Law Commission.</p>	<p>Following the devolution of Policing and Criminal Justice all of these bodies are brought within the Commissioner's remit by means of Clause 26 and so no longer require explicit reference. This applies to all of the following bodies (the numbering of which relates to the draft Bill included in the October 2009 Consultation Document):</p> <ol style="list-style-type: none"> 5. The Northern Ireland Court Service. 6. The Northern Ireland Policing Board and the Chief Constable of the Police Service of Northern Ireland. 7. The Probation Board for Northern Ireland. 8. The Chief Inspector of Criminal Justice in Northern Ireland. 9. The Northern Ireland Legal Services Commission. 10. The Northern Ireland Law Commission.

DRAFT BILL – MAY 2010	PROPOSED AMENDMENTS	COMMENT/REASON GIVEN FOR PROPOSED AMENDMENT/COMMENT	OFMDFM COMMENT
Non-devolved bodies			
	<p>AGE NI</p> <p>While it may not be possible to include these bodies under Northern Ireland legislation, we wish to draw your attention to the importance of certain UK bodies to older people in Northern Ireland.</p>	<p>Non-devolved bodies should be included insofar as they extend to NI. Those of considerable concern to older people in Northern Ireland include: UK departments and arms-length bodies for pensions, tax and benefits and NICE (National Institute for Health and Clinical Excellence)</p>	<p>Comment noted.</p> <p>The Commissioner has a duty [Clause 3(7)] that he/she must advise the Secretary of State on matters concerning the interests of older people and so can approach the Secretary of State directly about matters and organisations not listed as relevant authorities.</p> <p>The Commissioner also has the explicit power [Clause 4(6)] to make recommendations or representations to any body or person about any matter concerning the interests of older persons. The Commissioner's powers in relation to non-devolved areas exceed those of the Commissioner for Older People in Wales.</p>

EVIDENCE TO OFMDFM COMMITTEE - Part 2: General comments and non-legislative matters

ADDITIONAL POINTS

<p>Enforcement and sanctions</p>	<p>AGE NI Enforcement and sanctions</p>	<p>Enforcement and sanctions remain weak. Weakness in this element undermines the effectiveness of the legislation, leaving the OPC open to criticism and the danger of loss of reputation and authority. The limited methods available to the OPC under the legislation include</p> <ul style="list-style-type: none"> (i) The requirement on a relevant authority to respond to OPC Investigation Reports and Recommendations; (ii) 'Naming and shaming' through publication in Public Register; (iii) Advising SoS or Executive. <p>Other sanctions might include:</p> <ul style="list-style-type: none"> (i) Issuing notices of compliance; (ii) Requirement to comply with Codes of Practice or Guidance; (iii) Application of public procurement/contract/funding barriers to noncompliant private/voluntary providers e.g. exclusion from tender lists; (iv) Recognition of wrong and apology; (v) Lesson learned statement and commitment not to repeat; (vi) Compensation (as takes funding from the public purse some way to reinvest it in improvement for the 	<p>Ministers believe that the current provisions in the Bill should be retained. The Department does not believe that additional sanctions are necessary.</p> <p>As detailed in the 'Consultation Analysis and Report' (May 2010), Ministers believe that the evidence of successful complaint resolution from comparable organisations such as NICCY and the NI Ombudsman does not provide a convincing case for the need for additional enforcement powers and strongly supports the position that such powers are not necessary for the Commissioner to be effective.</p> <p>As requested here the Commissioner can already issue codes of practice, set timescales for action, can formally report and monitor compliance of a body with the Codes of Practice and can as part of his or her recommendations request lessons learned statement, a written apology and a commitment not to repeat. Although not enforceable, it is possible that the Commissioner might, if financial loss was a consequence of the organisations infringement of the older person's interests, recommend that the relevant authority reimburse the older people concerned.</p> <p>Recommendations made by the</p>
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		<p>public good of older people should be found). The Ombudsman has powers over persistent maladministration and the Equality Commission over persistent discrimination. The OPC might be given additional power to exercise a sanction over persistent 'offenders', or to 'enforce' recommendations contained in reports through the County Court. The Commissioner for Complaints has a power where, on application to the court, the court may award compensation for any loss or injury suffered.</p>	<p>Commissioner will not only have the authority of the Commissioner's office but non-compliance with them can be subject to political and significant public exposure.</p> <p>In addition Clause 21- 'Review of this Act' will allow the Commissioner to make recommendations to amend the legislation including if required to include sanctions and/or enforcement powers, should the experience of the Commissioner demonstrate evidence of persistent 'offenders' and thereby a need for this.</p>
	<p>OLDER PEOPLE'S ADVOCATE The Advocate wants methods of sanction to include -</p>	<ul style="list-style-type: none"> • Timescales • Hierarchy of sanctions • Formally reporting • Monitor compliance with Codes of practice • Public procurement • Written apology ; • Notice of compliance; • Lessons learned statement • Place someone in organisation to deliver change • Give powers to age sector to follow up; • Financial compensation. 	<p>The Commissioner, just like the NI Ombudsman could bring their recommendations to the Regulation and Quality Improvement Authority, the Criminal Justice Inspectorate and other regulatory/inspectorate organisations who could use these recommendations as part of how they go on to assess organisations.</p> <p>Several consultees responding to the Department's consultation also suggested the Commissioner should be able to bring their recommendations to the OFMDFM Committee, or the appropriate Departmental Committee to give greater scrutiny and to allow the Committee to call and question the organisation(s) concerned. There is nothing in the legislation to prevent this should the Commissioner wish to do so.</p>
	<p>AGE NI Public disclosure.</p>	<p>The Welsh OPC has raised an issue re public disclosure - as the OPC is not listed as a prescribed person</p>	<p>This is not a matter for the Bill. This point has been noted and officials will continue to liaise with colleagues in</p>

		under the Public Interest Disclosure Act it is not possible for someone to give information in complete confidentiality. This has come up as an issue that Welsh Commissioner is considering. OFMDFM might wish to consider the implications for Northern Ireland.	Wales and the Commissioner there on any implications.
Non-Bill Matters			
Victim Standing	AGE NI Victim Standing	While 'Victim Standing' status might be identified in the legislation as an area of collaboration between the Northern Ireland Human Rights Commission and the OPC, we urge the Executive to pursue 'Victim Standing' status for the OPC in its own right through the UK Government and Westminster legislation.	Victim standing is not a matter that can be included in this Bill. Following the public consultation the Department committed to give further consideration to whether the Commissioner through his/her collaborative powers and powers of co-operation could work with the NIHRC to take forward a case (using the NIHRC victim status) on behalf of the generality of older people.
	CITIZENS ADVICE BUREAU See comment	Victim Standing - The issue around "Victim Standing" is a vital power for the Commissioner to be able to bring cases in their own name.	In their evidence to the Committee and in meetings between the Bill team and the NIHRC they have expressed concerns about any explicit legislative provision relating to this in the Bill. There will therefore be no explicit duty in the Bill in relation to this.
	OLDER PEOPLE'S ADVOCATE Should discuss Victim Standing with NIHRC	A methodology should be found to deal with this matter perhaps through an MOU with the NIHRC.	The NIHRC have however indicated that they engage widely with other individuals and organisations and would welcome referrals as a matter of course where there is the potential for victim standing to be considered.
	NIHRC See comment	The Commission's view is that if the Commissioner's role is to protect the rights of older people then OFMDFM should pursue the option of giving the Commissioner 'victim standing' for the purposes of the Human Rights Act 1998. ⁴ The Commission does not see the merit in any other approach; a body either has victim standing or it does not.	The Commissioner's general powers of collaboration will allow him/her to work with the NIHRC in the interests of older people and OFMDFM

			officials will continue to liaise with NIHRC and NIO to find a methodology for dealing with this issue for e.g. establishing an informal arrangement or MOU (as NIHRC has with many organisations) for facilitating the consideration of taking of referrals.
Reserved Matters	AGE NI Reserved Matters	It is important for the OPC to be able to extend its reach, and remit, to the UK over matters that pertain to Northern Ireland. Tax and benefits, including pensions, are an example of why this is necessary. The OPC should be able to act with authority and influence at UK level. The Executive should set up whatever arrangements are necessary to formalise an arrangement with UK Government.	<p>Comment noted. The Commissioner has a duty [Clause 3(7)] that he/she must advise the Secretary of State on matters concerning the interests of older people and so can approach the Secretary of State directly about matters and organisations not listed as relevant authorities.</p> <p>The Commissioner also has the explicit power [Clause 4(6)] to make recommendations or representations to any body or person about any matter concerning the interests of older persons. The Commissioner's powers in relation to non-devolved areas exceed those of the OPC in Wales.</p> <p>Ministers recognise that pension provision is a significant issue for older people and so the Commissioner has been specifically empowered at Clause 7 to assist an older person with a complaint to a relevant authority.</p>
	AGE NI Ministerial Leadership	Ministerial leadership should be visible in implementing and embedding commitment to the OPC and older people. There should be a network of champions across government and public sector, evidently working with the OPC.	Comment noted.
Finance	AGE NI	An adequate budget must be	

	Finance	<p>allocated to effectively implement the legislation. £500,000 start-up and £1.5m recurrent were suggested in 2008.</p> <p>WCRP Comment</p> <p>When considering VFM, quality and service provision should not be compromised. The budget must be sufficient to convey “sharing and support and resources should be explained and utilised where practical; however it is imperative that this should not reduce the visibility of the Commissioner or Commissioners office.</p>	<p>In examining the case for a Commissioner for Older People, Deloitte considered the budgets for organisations with comparable powers and duties such as NICCY, the Welsh OPC, the NI Ombudsman and the NIHRC and on this basis provided an indicative figure of £1.5m.</p> <p>In the current economic climate it is more important that ever that the Commissioner not only ‘adds value’ to the experiences of older people but that the Commissioner’s office demonstrates maximum benefits within the resources available to it.</p>
	WCRP	<p>When considering VFM, quality and service provision should Not be compromised. The budget must be sufficient to carry out the duties required, ‘sharing and support resources should be explored and utilised where practical however it is imperative that this should not reduce the visibility of the Commissioner or Commissioner’s office”.</p>	
	AGE NI Transition	<p>Following the experience of the Welsh Commissioner the OPC will not be in a position to meet expectations on Day One in the absence of a sound transition process. It is important that sufficient lead-in time is allowed for the OPC to establish itself and undertake initial planning before ‘opening for business’, while at the same time it is working to ‘go live’ as quickly as possible. As well as office set-up, there must be time to agree clear values and understand the full implication of these for operational arrangements; and a vision and</p>	<p>The appointment of the Interim Advocate and her office will ensure that the Commissioner will be well equipped with evidence of issues affecting and of concern to older people.</p> <p>The Advocate’s experience will be of huge benefit to the Commissioner and will aid smooth transition in the set-up of the Commissioner.</p>

		strategy for the first operational period will be needed. While the current Draft Bill allows for this, it must happen in practice. How the transition to establishment is managed will have an impact on the reputation of the OPC.	
Joined up approach	CITIZENS ADVICE BUREAU See comment	Once established, older people will logically approach the Commissioner's office for information and advice and it is imperative that links must be forged between the voluntary advice sector and the new Commissioner's office to ensure that a joined up approach is accomplished.	The Commissioner has a general power at Schedule 1, paragraph 2 to co-operate with other bodies in the exercise of his/her functions relating to older persons or their interests. The Department has also committed to highlight to the Commissioner the value of agreeing MOU with the appropriate organisations.
Evaluation	ADVICE NI It is outlined in part 12 of schedule 1 that the commissioner must report back, by way of annual report, to the First Minister and Deputy First Minister. However, we do not feel that the areas outlined as the subject of the annual report are adequate measures of the success of the Older Persons Commissioner.	Furthermore, accountability and measures of success could go further, for example, by including evaluative research (e.g. of those who used the services) and attitudinal research (e.g. within the target population of people 60+) to find out how successful the commissioner has been at ground level, and also to ensure the Commissioner is accountable to the population he/she serves.	Comments noted. This detail is not for the face of the legislation but can be brought to the Commissioner's notice by OFMDFM.
Communication	CITIZENS ADVICE BUREAU See comment	It is also important that any subsequent public information relating to the office will have the duties of the office identified in clear jargon-free language.	Comments noted.
	WCRP	Welcomes duty on Commissioner to consult with older people. Welcomes commitment from OFMDFM to stakeholder panel.	Comments noted.

		WCRP advocates any panel or group sought for consultation would be gender balanced.	
	<p>ADVICE NI</p> <p>Would like to see older people represented on an “oversight committee” to represent the older persons voice.</p>	<p>We believe the Commissioner should organise regular events to update older people of the work being carried out and feedback on progress and results. The Commissioner should also take steps to communicate a range of information to older people, such as policy updates and raising awareness of services, rights and entitlements. Advice NI would be happy to support the Commissioner in raising older people’s awareness of their rights and entitlements and of services and information available to them, given our skills, expertise and resources (e.g. rights based website) in this area.</p> <p>Particular consideration needs to be given to developing methods to involve those considered to be hard to reach in communications in both directions. This is particularly important in relation to isolated older people as well as those with communication difficulties (e.g. those with disabilities or literacy difficulties</p>	<p>The Department welcomes these comments. Ministers recognise the accessibility of the Commissioner and the participation of older people was a strongly felt issue from the consultation. It is important that older people should feel able both to participate with the work of the Commissioner and to engage with the Commissioner’s office. It is also important that the Commissioner consults regularly with other older people and seeks feedback from the people that he/she will be tasked to represent and champion.</p> <p>OFMDFM has made a policy commitment in the Consultation Analysis and Report (May 2010) to draw the Commissioner’s attention to the duty to take account of the views of older people when exercising his/her functions. A stakeholder panel or developing the Older people’s Advisory panel are options here. Outreach surgeries and workshops are also useful mechanisms to enable the Commissioner to fulfil the duty to make services and advice available to older people in the localities in which they live.</p>