

# **Commissioner for Older People in Northern Ireland**

*a strong independent voice for older people*

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## **Concise summary of proposals**

**May 2010**



Alternative formats of this document and a lengthier more detailed analysis document on the consultation are also available (please see details on back cover)

## **Ministerial Foreword**

In producing this summary of our final proposals following the consultation on the proposals for a Commissioner for Older People we are affirming our commitment to delivering for older people and ensuring that they are given their rightful place as full and valued members of our community.

As part of this process, on 1 October 2009 the consultation proposals to establish a Commissioner for Older People were launched by Junior Minister Kelly and Junior Minister Newton, along with the Advocate for Older People – Dame Joan Harbison. We wish to express our thanks to Dame Joan who facilitated the consultation and chaired the public events.

We wanted the consultation to be meaningful and involved both the age sector and the Advocate in discussions about ways of reaching older people. We have attempted to ensure that this consultation process has been as inclusive and accessible as possible.

In the consultation document we strongly encouraged people to help shape the Office of the Commissioner for Older People through the consultation process. We are delighted and grateful that so many of you did so. Despite heavy rain and windy conditions during this period more than 400 people attended the nine public consultation events in November. We would like to express our thanks to all those who attended and we are very appreciative of their knowledge, expertise and commitment. We also very much appreciated the hard work of all the facilitators involved at the public events. The contribution from the public events, as well as the many written responses, have been most welcome and have played an important part in the decision making process.

Our officials have carefully considered each and every response made, and we are now in a position to publish our views on the best way forward to achieve the Programme for Government commitment to provide a “strong independent voice” for older people. We are pleased that there was such an

overwhelming majority supporting our proposals. The consultation showed that there was significant support for a Commissioner who would be a strong and powerful voice for older people and there was a clear endorsement of the duties and powers proposed. We believe the decisions made in bringing forward our final proposals show that we have listened and acted on the views expressed.

There were a number of significant issues raised where we have amended our proposals to take account of them. Consultees will note that fee paying residents of private and voluntary sector nursing and residential homes are now covered by the Commissioner's formal and specific powers. This was the single most strongly felt point raised at the public consultation events and it was repeated across the majority of written consultation responses.

Additionally, we have agreed that the Commissioner should have the power to be able to commission conciliation services where appropriate and have amended the Bill to reflect that. Many respondents saw this as providing a cost effective alternative to what can be the lengthy process of legal proceedings and to provide a speedier resolution to problems which for older people is very often a critical factor.

Victim standing was another issue to emerge from the consultation however this is not a matter that can be included in the Bill. In her response to the Consultation however the Advocate made an interesting suggestion that the Commissioner for Older People through his/her collaborative powers could work in co-operation with the NI Human Rights Commission (NIHRC) on this issue. This is an innovative suggestion and we will give this further consideration as the Bill passes through the Assembly.

We recognise the need to avoid duplication with existing statutory bodies and there are specific clauses in the legislation to prevent this. However in response to the consultation we have reviewed the restrictions on the Commissioner's powers and where possible softened some of the clauses that place limitations on the Commissioner to give the Commissioner greater

discretion. More information on this is provided in the full Consultation Analysis and Report document available on the OFMDFM website:

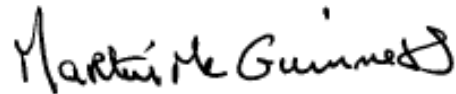
<http://www.ofmdfmi.gov.uk/index/equality/age/older-peoples-commissioner.htm>

We were pleased that there was such a positive endorsement for our proposals. We have taken on board the issues raised by the consultation process and we now look forward to the Bill's introduction and the establishment of a Commissioner that will provide a strong independent voice for older people.

**Peter D Robinson, MLA**

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**Martin McGuinness, MP, MLA**

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**Robin Newton, MLA**

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**Gerry Kelly, MLA**

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## **SUMMARY OF PROPOSALS**

- Any proposal that is a change made as a consequence of consultation responses is marked with an asterisk\* and annotated.

It is proposed that:

### ***Office of an Older People's Commissioner***

- An Older People's Commissioner will be established with a wide range of promotional, advisory, educational, legal and investigatory functions and powers to be deployed in the interests of older people, both generally and individually.
- The Older People's Commissioner may have formal agreements (known as Memoranda of Understanding) with other regulatory bodies so that there is a "joined-up" approach to the interests of older people.
- The Commissioner will be appointed by the First Minister and the deputy First Minister acting jointly for a term of four years and may serve two terms of office.
- Older people will be involved in the process to appoint an Older People's Commissioner.
- The Office of the First Minister and deputy First Minister will provide funds to the Older People's Commissioner.
- The Commissioner may appoint such staff as he or she may determine and any function of the Commissioner may be exercised by a member of staff who has been so authorised by the Commissioner.

### ***United Nations Principles for Older Persons***

- The Commissioner will refer to the United Nations Principles for Older Persons when determining what the interests of older people are and

when deciding if and how to exercise his or her functions or powers in relation to older people. The Principles are Independence, Participation, Care, Self-fulfilment and Dignity.

### ***Interests***

- The Commissioner's role will be framed around the "interests" of Older People. We can confirm that "Interests" is a broader term but it includes "rights".

### ***Age Range***

- The Commissioner will assist people aged 60 and over. In exceptional circumstances or where the issue raises a question of principle affecting persons aged 50 or over, it would be appropriate for the Commissioner to intervene at his or her discretion in relation to people aged 50 or over. It is also proposed that these ages can be changed by legislation. In addition the Commissioner will be permitted to assist in respect of a person since deceased or who for some reason is unable to act for him/herself.

### ***Principal Aim and Paramount Consideration***

- The principal aim of the Older People's Commissioner, in exercising his or her functions or powers generally, will be to safeguard and promote the interests of older people. When working on a particular case involving an individual older person, the paramount consideration that the Commissioner must bear in mind will be the interests of that older person. We are confident that there is no legal conflict between the two.

### ***Duties of the Commissioner***

- The Commissioner must promote an awareness of matters relating to the interests of older people and of the need to safeguard those interests.

- The Commissioner must keep under review the adequacy and effectiveness of the law and practice relating to the interests of older people.
- The Commissioner must keep under review the adequacy and effectiveness of services provided for older people by relevant authorities.
- The Commissioner must promote the provision of opportunities for and the elimination of discrimination against, older people.
- The Commissioner must encourage best practice in the treatment of older people.
- The Commissioner must promote positive attitudes towards older people and encourage their participation in public life.
- The Commissioner must take reasonable steps to make older people aware of the existence and functions of his or her office and the location of the Commissioner's office.
- The Commissioner must take reasonable steps to encourage older people to communicate with the Commissioner and his or her staff and to seek the views of older people on the exercise of the Commissioner's functions.
- The Commissioner and his or her staff must make themselves available to older people at a place convenient for older people, including their own local area.
- The Commissioner must advise the Secretary of State, the Executive and a relevant authority on matters concerning the interests of older people.

### ***General Powers of the Commissioner***

- The Commissioner will have powers to do a number of things to help him/her fulfil the aim of protecting the interests of older people. These powers (including the power to carry out 'informal' investigations) enable the Commissioner to carry out a wide range of activities. This means the Commissioner will be able to influence the actions of many organisations and individuals that affect older people's lives in many different ways.
- The Commissioner may undertake, commission or provide financial or other assistance for research or educational activities concerning the interests of older people or the exercise of his/her functions.
- The Commissioner may issue guidance on best practice in relation to any matter concerning the interests of older people.
- The Commissioner may conduct investigations for the purposes of any of his or her functions.
- The Commissioner may compile and publish information concerning the interests of older people.
- The Commissioner may provide advice or information on any matter concerning the interests of older people.
- The Commissioner may make representations or recommendations to any body or person about any matter concerning the interests of older people.

### ***Relevant Authorities - general***

- In addition to the general powers listed above, the Commissioner will have additional powers of review, complaint and formal investigation in

relation to a group of organisations and individuals known in the Bill as relevant authorities. These relevant authorities include government departments, district councils and other commonly known public bodies. Other organisations which carry out work relevant to the lives of older people are also included in the Bill as relevant authorities. The list of bodies included as relevant authorities can be changed by legislation.

***\*Relevant authorities – public/private coverage – nursing and residential care homes***

- Following strong representations at the public consultation events and written consultation responses, the Bill has been amended to enable all nursing and residential care homes to be brought within the Commissioner’s remit as relevant authorities. [Amended following consultation]

***\*Relevant authorities – additional bodies included***

- The following additional bodies have been included in the Bill as relevant authorities: the Financial Ombudsman Service, the NI Judicial Appointments Commission and the NI Judicial Appointments Ombudsman. Also additional health professionals such as chiropodists and audiologists are now brought within the remit of the Commissioner’s powers as relevant authorities. [Amended following consultation].

***\*Relevant authorities – bodies removed from the Bill***

- Organisations dealing with reserved matters can be included in the Bill with their agreement and that of the appropriate Secretary of State (if applicable). The following bodies did not give their consent to being included in the Bill as drafted and have been removed: the Parliamentary Commissioner for Administration, the Information Commissioner and the Pensions Ombudsman. The NI Ombudsman and the Commissioner for Complaints has also been removed from

inclusion as a relevant authority. In addition the Qualifications and Curriculum Authority no longer exists so it has been replaced in the Bill with the Office of Qualifications and Examinations Regulation (Ofqual). The Commissioner will still be able to provide assistance to an older person in making a complaint to the NI Assembly Ombudsman, the NI Commissioner for Complaints, the Pension Ombudsman and the Information Commissioner. (See note on removal of the NIO at the next bullet point below).

### ***Relevant Authorities – Justice and policing***

- Following the devolution of policing and justice a number of relevant authorities operating in these areas are no longer specifically named in the Bill as they are now included by means of Clause 26(1), that is they are now listed in the Commissioner for Complaints (NI) Order 1996 or the Ombudsman (NI) Order 1996. The new Department of Justice is brought under the Commissioner's remit and the Northern Ireland Office has been removed as a relevant authority from the Bill.

### ***Review of the advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities***

- The Commissioner may conduct a review of the following procedures of relevant authorities: how the interests of older people are represented in the organisation; how complaints made by older people are treated; how the organisation is inspected to see how it is managed and older people are treated; and how the organisation responds when it is informed about something that could be affecting the interests of older people. These reviews may be carried out in relation to how these procedures have affected a particular older person or they may be general reviews.

### ***Assistance with Complaints***

- The Commissioner may provide assistance, including financial assistance, to an older person making a complaint to a relevant authority.

### ***Investigation of Complaints against Relevant Authorities***

- The Commissioner may conduct an investigation into a complaint made by an older person that his or her interests have been adversely affected by any action taken by a relevant authority.

### ***Legal Proceedings***

- The Commissioner may bring, intervene in, or assist in a court case which involves the interests of older people. This can happen when the case raises a question of principle or there are other special circumstances.
- The Commissioner can act as amicus curiae (friend of the Court) in legal proceedings where the “interests” of older people are involved.
- It is not possible to give the Commissioner ‘victim standing’ in relation to Human Rights in this Bill. However as this was an issue raised repeatedly through the consultation further consideration will be given as to whether the Commissioner through his/her collaborative powers and powers of co-operation could work with the NI Human Rights Commission on such cases.

### ***\*Conciliation of disputes***

- As a result of consultation responses on this issue, the Bill has been amended so that the Commissioner may commission conciliation services in relation to disputes which may lead to proceedings involving the law or practice concerning the interests of older persons. This will mean that the Commissioner will be able to commission mediation services for an older person as an alternative to legal proceedings.  
[new power following consultation]

### ***Formal Investigations***

- The Commissioner may conduct a formal investigation into a wide range of bodies (the relevant authorities) and for this purpose the Commissioner will be given the same powers as the High Court to call for documents and witnesses and also powers to enter premises, take copies of documents, interview in private any older person present who consents to be interviewed and any person employed on the premises. Anyone who obstructs the Commissioner from doing these things could be guilty of contempt of court.
- Following a formal investigation the Commissioner must prepare a formal report and send it to the organisation concerned and such other bodies as the Commissioner thinks appropriate.

### ***Privilege***

- Information that the Commissioner is required or authorised to publish will be protected from legal challenge involving the law of defamation (relating to claims of slander or libel).

### ***Non-Devolved Areas***

- The Commissioner will have wide powers, extending into non-devolved areas except in some circumstances where the Commissioner will instead be able to make representations to the Secretary of State and/or the Assembly.

### ***Review***

- The Commissioner will keep under review the working of the legislation which sets up the office and make reports to the First Minister and deputy First Minister every 3 years (or such time as the Commissioner thinks fit, not being earlier than three years after the making of the last previous report).

### ***The Commissioner as a Corporate Entity***

- As mentioned above, the Commissioner will be appointed by the First Minister and the deputy First Minister acting jointly, for a term of 4 years and may serve 2 terms of office.
- Older people will be involved in the process to appoint a Commissioner in accordance with arrangements made by OFMDFM.
- The Commissioner will be a corporation sole (see Glossary of terms for what this means) and independent of Government, with all the standard provisions regarding seal, evidence and property; salary and pension; suspension and removal; and being added to the Northern Ireland Assembly Disqualification Act 1975 (NIO), the Commissioner for Complaints (Northern Ireland) Order 1996 and the Freedom of Information Act 2000. The Commissioner for Older People will be bound by the statutory equality duty set out in Section 75 of the NI Act.
- The Office of the First Minister and deputy First Minister will provide funds to the Commissioner.
- The Commissioner will have a general power to do anything related to the Commissioner's functions including the power to contract and cooperate with other bodies in the UK and elsewhere on the interests of older people.

### ***Retirement Age for the Commissioner***

- Although by law, there is provision for a UK default retirement age of 65, there will be no compulsory retirement age for the Commissioner.

### ***Accounts & Financial Reports***

- The Commissioner must keep proper accounts and submit **an annual financial report** to OFMDFM and to the Comptroller and Auditor

General. OFMDFM must lay a copy of the statement of accounts and the report of the Comptroller and Auditor General before the Assembly.

### ***Annual Report***

- The Commissioner must send to the Office of the First and deputy First Minister an **annual report** on the carrying out of his or her functions during the previous year and the First Minister and deputy First Minister must lay a copy of every such report before the Assembly and send a copy to the Secretary of State.
- The Commissioner may appoint such staff as he or she may determine and any function of the Commissioner may be exercised by a member of staff who has been so authorised by the Commissioner.

### ***\*Other non-statutory policy changes following public consultation***

- Although the Commissioner will have a duty to have regard to the UN Principles for Older Persons, OFMDFM will draw the Commissioner's attention, upon appointment, to other international agreements and relevant legislation.
- As part of its sponsorship role, OFMDFM will highlight to the Commissioner the value of agreeing memoranda of understanding with appropriate organisations to clarify roles and responsibilities and increase co-operation with relevant bodies.
- OFMDFM will also draw the Commissioner's attention to the statutory duty to take account of the views of older people when exercising his or her functions. A stakeholder panel or developing further 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.
- OFMDFM will ensure that the Office of the Commissioner is included in any 'shared services' arrangements to deliver value for money.

## **NEXT STEPS**

The Executive have agreed to the introduction of the Bill to the Assembly as part of the Assembly's 2009-2010 legislative programme. The passage of a Bill through the Assembly can take up to 12 months. The Executive have agreed the Commissioner for Older People Bill and the Bill was introduced to the Assembly before Summer Recess on 24 May.

The Bill will be scrutinised by the OFMDFM Committee who will make a report to the Assembly, which may include proposals for amendments to the Bill. The Bill itself and proposed amendments will be debated several times by the Assembly.

Subject to the consideration of the Assembly, it is hoped that the Bill will be passed in early 2011 and a Commissioner can then be appointed.

## **STAGES OF ASSEMBLY PASSAGE**

**First Stage:** Introduction of Bill – [24 May 2010]

**Second Stage:** A debate on the general principles of the Bill.

**Committee Stage:** Detailed investigation by OFMDFM Committee which concludes with the publication of a report for consideration by the Assembly

**Consideration Stage:** Consideration of, and an opportunity for Members of the Assembly to vote on all the details of the Bill, including amendments proposed to the Bill

**Further Consideration Stage:** Consideration by the Assembly of, and an opportunity for Members to vote on, any further amendments to the Bill

**Final Stage:** Passing or rejecting of Bill by the Assembly, without further amendment

### **Royal Assent**

The Bill becomes law and the Commissioner can be appointed.

## ALTERNATE FORMATS

This is a concise summary document of the key decisions and the final proposals included in the Commissioner for Older People Bill which was introduced to the Assembly before the summer recess.

A more detailed document is also available separately which covers the main issues from and the formal OFMDFM response to the consultation.

Both this summary report and the detailed document are available on the OFMDFM website and on NI Direct in PDF and word format.

Other versions of either of these documents in Braille, large print, other languages or audio-cassette will be made available on request. Alternative copies can be requested by contacting the Bill team at the address below:

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