



**HUMAN RIGHTS COMMISSION**

## **REPORT TO THE GOVERNMENT UNDER SECTION 24 OF THE HUMAN RIGHTS COMMISSION ACT, 2000**

**July 2003**

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# CHAPTER 1

## INTRODUCTION

The Good Friday Agreement of 1998 provides that the Irish Government will establish a Human Rights Commission with a mandate and remit equivalent to that within Northern Ireland.

The Human Rights Commission was established on 25 July 2001 and operates under and in accordance with the provisions of the Human Rights Commission Acts, 2000 and 2001.

Section 24 of the Human Rights Commission Act, 2000 provides as follows:

The Commission shall, before the expiration of the period of two years from the establishment day, make to the Government a report containing such recommendations as it thinks fit for improving -

- (a) the effectiveness of the Commission,
- (b) the effectiveness of any of the functions conferred on it by this Act, particularly having regard to any developments in the field of human rights that have occurred in the said period of two years (whether within or outside the state).

In compliance with section 24, the Commission is pleased to submit to the Government for its consideration this report. In formulating its recommendations, the Commission has drawn not only on its experience to date as well as the experience of other national human rights institutions but also on its operational values as identified in its *Plan for 2003 - 2006* entitled, *Promoting and Protecting Human Rights in Irish Society*, and on the UN Principles Relating to the Status of National Human Rights Institutions, known as “the Paris Principles” (see Appendix 3). The Commission has also had regard, in considering the method of appointment of members of the Commission, to the Code of Practice for Ministerial Appointments to Public Bodies in the United Kingdom (see Appendix 4).

The operational values of the Commission may be described as follows:

- The Commission will act independently.
  - The Commission will act in a transparent manner.
  - The Commission will act in a fair manner.
  - The Commission will be as accessible as possible.
  - The Commission will be as accountable as possible.
  - The Commission is committed to consultation and dialogue.
  - The Commission will co-operate closely with other bodies at home and abroad.
  - The Commission will work in support of other agencies active in the field of human rights. Its aim will be to work in harmony with such bodies and avoid any unnecessary duplication of work.
- The Commission will be guided by the need to deploy its limited resources as effectively as possible.
  - The Commission will seek to bring ‘added value’ to work already undertaken in the State to promote and protect human rights.
  - The Commission will aim to respond effectively to situations as they arise.
  - The Commission will be motivated by respect for the inherent equality and dignity of all individuals and a commitment to promote and protect the rights of the most vulnerable members of society.
  - The Commission will review and evaluate its own work in order to ensure that it exercises its mandate to promote and protect human rights as effectively as possible.

The UN Principles Relating to the Status of National Human Rights Institutions were approved by the United Nations’ General Assembly on 20 December 1993. They constitute a minimal code in respect of the competence, responsibilities, composition, guarantees of independence and pluralism, and methods of operation of national human rights institutions; and only national institutions which comply with these principles are eligible to become members of the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (the ICC), the representative body at the international level of national human rights institutions.

The Act of 2000 defines human rights as, in effect, rights guaranteed by the Irish Constitution and rights in international agreements to which Ireland is a party. The level of legal costs is such that it is often not feasible for a person to seek redress for an infringement of their constitutional rights through the courts. Also, international agreements, such as the European Convention on Human Rights (ECHR) and many other instruments at UN and European level, either do not form part of Irish law at all, or else (in the case of the ECHR) have not been made part of law in a way that would allow the courts to enforce them fully. Yet such international agreements contain many rights additional to those in the Constitution, and Ireland is obliged internationally to honour the obligations it has assumed under these agreements. The Commission can seek to ensure that these constitutional and international standards are upheld even where court proceedings are not possible or are not financially feasible.

There may have been a certain complacency in Ireland that the existence of a written constitution made the establishment of a Human Rights Commission less important in the South than would be the case in the North. In reality, of course, there are plenty of human rights issues to be addressed in the South and in fact jurisdictions such as Northern Ireland and Great Britain, precisely because of the absence of written constitutions, have probably developed greater familiarity with the nuances of jurisprudence emanating from international tribunals, particularly the European Court of Human Rights in Strasbourg. It may take some time for institutions in this jurisdiction to develop a comparable familiarity sufficient to ensure in certain areas “at least an equivalent level of protection of human rights as will pertain in Northern Ireland” (paragraph 9 of the Section of the Good Friday Agreement entitled “Rights, Safeguards and Equality of Opportunity”). The Commission hopes to carry out its statutory functions as efficiently and effectively as possible to this end and to seek to raise the level of human rights protection overall.

## **CHAPTER 2**

### **THE EFFECTIVENESS OF THE COMMISSION**

#### *Overview of the First Two Years*

The Commission was formally established on 25 July 2001 and operated in shadow form for a few months prior to its establishment.

Initial work included the interpretation of key functions as outlined by the Human Rights Commission Act, 2000 (“the Act”), the development of procedural rules of operation, negotiations with relevant Government Departments to draw down the funds required for the operation of the Commission, the employment of temporary staff, the identification of suitable premises, the development of contacts with other statutory bodies, meetings with non-governmental organisations to explore a range of issues relevant to the Commission’s functions, attendance at a large number of meetings, seminars and conferences both nationally and internationally, and the establishment of a Joint Committee of Representatives of both Human Rights Commissions on the island of Ireland. All of this work fed into the process of formulating a strategic plan for the Commission for the years 2003-2006.

Unfortunately the first President of the Commission, Judge Donal Barrington, had to resign for health reasons with effect from 31 July 2002. His successor, Dr. Maurice Manning, assumed office as President on 1 August 2002.

An early decision of the Commission meant that staffing structures were to be developed and personnel recruited only following the recruitment and appointment of a chief executive. This proved to be a time-consuming matter, due in part to the requirements of the legislation whereby all details concerning appointment levels, salaries and conditions of service had to be agreed with two Government Departments which themselves were experiencing staff shortages. It also had implications for the effectiveness of the work of the Commission in so far as staffing resources were severely limited for almost a year.

In June 2002 the Commission appointed a chief executive. A staffing structure was subsequently agreed (see Appendix 5) and a recruitment process put in train for another ten members of staff. This process has been completed and five of the additional members of staff needed for the Commission to fulfil its statutory functions have assumed duties with the Commission. It is envisaged that the remaining staff will assume their duties by the autumn of this year.

To date the Commission has operated from temporary premises at 17 - 19 Lower Hatch Street, Dublin 2. With the increase in staff, the Commission will relocate to larger premises, and it is intended that the Commission will move to permanent premises over the summer months.

On 31 March 2003, the Commission published its strategic plan for the next three years, *Promoting and Protecting Human Rights in Irish Society: A Plan for 2003 - 2006*. Besides describing the functions of the Commission and the activities it intends to undertake to fulfil its mandate, the Plan sets out key areas of work on which the Commission proposes to focus over the period of the Plan. The Commission has identified six key areas of work. They are:

- civil and political rights, in particular the administration of justice;
- economic, social and cultural rights;
- racism;
- persons with disabilities;
- gender; and
- equality and human difference.

In the absence of staff, the Commission established a number of Committees and Advisory Groups in order to advance its work. With the recruitment of staff, the Commission has commenced a review and rationalisation of its committee system with a view to focusing on its role and responsibility for the policies, strategies and priorities relating to the performance of its functions. In this connection consideration is being given to the establishment of committees in each of its key areas of work. The present Committees of the Commission are:

- Ad Hoc Committee on the Offences Against the State Acts, 1939 - 1998;
- Casework Committee;
- Committee on Approach to Work;
- Committee on Economic, Social and Cultural Rights;
- Committee on Gender and Women's Rights;
- Committee on Racism;
- Finance Committee; and
- Research Committee.

In addition, the Commission has an Advisory Group on Research concerning the Treatment of Older Persons in Institutions.

### *Recommendations*

The first two years of the Commission's existence have essentially been a start-up phase. Inevitably at such a time, especially with the lack of a full complement of staff, the Commission's effectiveness has been limited. Notwithstanding this, through its plenary meetings, its committees and the individual effort of Commissioners and staff, it has progressed its work and engaged in many activities (see Appendix 6).

The Commission faces a significant increase in its workload in the years ahead and will be vigilant to ensure that the increase in work does not lead to a diminution of its effectiveness. On the contrary, it can be expected that, with the recruitment of staff, it will be in a position more effectively to discharge its various functions.

Nevertheless, the Commission has identified a number of factors which it believes inhibit its capacity to be effective. These factors relate in particular to its link to the Department of Justice, Equality and Law Reform as its parent Department; the adequacy, management, method of determining and control of its budget and staffing. The Commission will address each of these in turn and make recommendations accordingly.



(i) *Linkage to a Department*

The legislation which established the Commission and under which it operates was initiated and piloted through the legislative process by the Minister for Justice, Equality and Law Reform; and the link of the Commission to the Department of Justice, Equality and Law Reform is evident in many of the provisions of the legislation.

Thus, the Minister for Justice, Equality and Law Reform may pay the Commission, out of moneys provided by the Oireachtas, an annual grant of such amount as she or he, with the consent of the Minister for Finance, determines towards the expenses of the Commission in the performance of its functions (section 22); the Minister approves the form of the Commission's accounts and its accounting periods (section 16(1)); a copy of the Commission's accounts and of the report of the Comptroller and Auditor General on the accounts must be presented to the Minister who shall cause copies of these documents to be laid before each House of the Oireachtas (section 16(2)); the consent of the Minister is needed to the appointment of members of staff of the Commission, to their terms and conditions of service, to the grades at which they will serve and to their remuneration and allowances (section 17); the Commission is required to submit to the Minister a scheme or schemes for the granting of superannuation benefits to its staff, the Minister's approval thereof is needed for any such scheme to be carried out by the Commission and any dispute arising as to the claim of any person to, or to the amount of, any superannuation benefit in pursuance of a scheme must be submitted to the Minister (section 20 (1), (4) and (5)); and the Commission must submit an annual report to the Minister on its activities and the Minister shall cause copies of the report to be laid before each House of the Oireachtas (section 23).

The Commission is of the view that the best way of ensuring the effectiveness of the Commission and its independence would be to have no formal link between the Commission and any Government Department. Rather, in so far as the Commission is to be made accountable to another organ of the State, the Commission should be accountable to the Oireachtas. The Commission takes this view for a number of reasons.

First, in the exercise of its function to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights, the Commission may

review the performance of the Government or of a Minister and the respective Government Department in relation to the protection of human rights.

Secondly, the Commission may act as a human rights sounding-board for any Minister of the Government in that it may, at the request of a Minister, examine any legislative proposal and report to the Minister its views on any implications of the proposal for human rights. The Minister may accept, reject or ignore the views of the Commission.

Thirdly, it may, either of its own volition or on being requested to do so by the Government, make such recommendations to the Government as it deems appropriate in relation to the measures which it considers should be taken to strengthen, protect and uphold human rights in the State. Again, the Government may accept, reject or ignore the recommendations of the Commission.

Fourthly, in the exercise of its function to promote understanding and awareness of the importance of human rights in the State, it may undertake or commission research and educational activities in relation to the work of a Government Department.

Fifthly, the conduct of an enquiry by the Commission may involve an investigation into the affairs of a Government Department and, for the purposes of the enquiry, the Commission may require a civil servant to furnish to the Commission information, a document or a thing relevant to the enquiry and, where appropriate, may require the civil servant to attend before the Commission for that purpose.

Sixthly, the Commission may initiate proceedings in any court of competent jurisdiction against a Minister for the purposes of obtaining relief in respect of any matter concerning the human rights of any person or class of person.

Clearly the potential exists for a divergence of views, tension and conflicts between a Minister or the Government as a whole and the Commission in the exercise of its functions.

To some extent the Commission operates as an aid to Government in that it may draw the attention of a Minister or of the Government to the human rights implications of a legislative

proposal, or to the nonconformity of a law or practice with human rights standards and, in the latter regard, may recommend corrective measures. However, it is also part of the role of the Commission to monitor and call to account a Minister or the Government for what it sees as non-compliance with the human rights standards guaranteed by the Constitution or by any international agreement to which the State is a party. It is in this respect that the potential for disagreement, including serious disagreement, between a Minister or the Government and the Commission arises and that its role, albeit only within the area of human rights, is more like that of the Ombudsman or other similar institutions which must be, and must be seen to be, completely independent of Government. The Commission believes this would be more effectively achieved if it was accountable directly to Dáil Éireann to which the Government is constitutionally responsible (Article 29.4.1° of the Constitution).

The Commission, through its chief executive, is accountable under the Act to the Public Accounts Committee of Dáil Éireann in relation to its financial affairs, the use of its resources and the effectiveness of its operations. Also, any Oireachtas Committee may require the chief executive to attend before it to give account for the general administration of the Commission (section 15(2) of the Act). It would seem to be a logical extension of this accountability for the Commission to be made answerable to the Oireachtas for the performance of its functions in general. Such a system would have the merit of being transparent and would accord with the Commission's operational value that it be as accountable as possible. Provision could be made for the President of the Commission to appear, when requested, before an Oireachtas Committee to answer questions relating to the policies and strategies of the Commission.

The Commission is ultimately responsible to the public. It is mandated to promote and protect the rights and freedoms conferred on, or guaranteed to, persons by the Constitution or by any international agreement to which the State is a party. Thus, it would seem appropriate that the Commission be linked and made accountable to the organ of State which comprises, among others, elected representatives of the people of Ireland, namely the House of Representatives called Dáil Éireann (sections 15.1.2° and 16.2.1° of the Constitution).

**The Commission therefore recommends, for the reasons given above, that consideration be given by the Government to linking the Commission more closely to the Oireachtas in terms of its accountability for the exercise of its functions.**

To the extent that a link may continue to be necessary between the Commission and a Government Department, the Commission is of the view that it is particularly inappropriate that it be linked to the Department of Justice, Equality and Law Reform. There are two principal reasons for this view.

First, the range of activities for which the Minister for Justice, Equality and Law Reform is responsible, notably policing, criminal justice, asylum, immigration and citizenship, are those in respect of which human rights concerns are most frequently voiced. It can reasonably be expected that the views of the Commission on these matters will not always coincide with those of the Minister, and that where there is disagreement, particularly where there is serious disagreement, between the Commission and the Minister as to the policy being pursued, the link of the Commission to the Department of Justice, Equality and Law Reform could undermine the Commission's independence and the public's confidence in that independence. The potential for the curtailment of the Commission's independence is especially great when, as is the present case, the Minister to whose Department the Commission is linked has control over the Commission's budget, including items thereof, and staffing.

Secondly, the present link between the Commission and the Department of Justice, Equality and Law Reform involves the interaction of staff of the Commission with civil servants in the Department. In practice, staff of the Commission liaise directly with the Human Rights Division of the Department and, through this Division, indirectly with other Divisions of the Department. The Commission recognises that civil servants in the Department have been helpful to the Commission and would like to express its appreciation of this help. It also recognises that the primary role of Government civil servants is to advise their Minister and to implement policies as laid down by the Minister. Given the human rights sensitivities attaching to much of the work of the Department, on matters on which there is disagreement between the Commission and the Minister, the civil servant is duty-bound to pursue the policy of the Minister not to promote the interests or views of the Commission. A hypothetical but realistic example of where such a situation may arise relates to immigration. It is possible that a civil servant tasked with dealing with the Commission would also be responsible for drafting the Heads of an Immigration Bill containing provisions in respect of which the Commission would have human rights concerns. The Commission thinks it undesirable that a civil servant be put in such a position and, if the Commission is to be

linked to a Department, would wish that the officials of the Department with whom it deals not be responsible for substantive human rights issues.

It is not meant to suggest that the remit of the Minister for Justice, Equality and Law Reform is the only area of Government activity which may give rise to human rights concerns. Such concerns may arise in relation to the work of any Government Department. However, the Commission is of the opinion that, if its link to a Department is to be retained, the link should be with the Department which is least involved in operational policy matters.

The Commission also thinks it desirable that the link should be with the Department which has the greatest degree of overview of public affairs. The Commission's role in the promotion and protection of human rights in the State is a general one. It is not limited to any particular area or areas of Government activity. It would therefore seem appropriate that any Departmental link be with the Department which maintains an overview of Government activity and is least involved in the implementation of specific aspects of Government policy.

It would appear to the Commission that the Department with the least involvement in operational policy matters and with the greatest degree of overview of Government activity is the Department of the Taoiseach. **The Commission therefore recommends that, to the extent that a link is to be retained between the Commission and a Government Department, that link should be with the Department of the Taoiseach.**

There is a further reason why a link with the Department of the Taoiseach would be appropriate. The Commission is conscious of its genesis in the Good Friday Agreement. Under the terms of this Agreement, the Irish Government undertook to establish a Human Rights Commission with a mandate and remit equivalent to that within Northern Ireland (Section entitled "Rights, Safeguards and Equality of Opportunity", paragraph 9). The Agreement also envisaged the creation of a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of human rights issues in the island of Ireland (*ibid.*, paragraph 10). The Taoiseach maintains a close involvement with Northern Ireland affairs and the remit of his Department includes the co-ordination, and contribution to, the development of Government policy in relation to Northern Ireland.

(ii) *The Commission's Budget*

(a) The adequacy of the budget

In order to function effectively and to exercise the full range of its statutory functions, it is imperative that the funding granted to the Commission be adequate for these purposes. If funding is restricted, the capacity of the Commission to fulfil its statutory remit will inevitably be limited. Conversely, if funding is adequate, the Commission will be able fully to realise the role envisaged for it in its founding legislation.

The Paris Principles recognise the need for a national human rights institution to receive adequate funding if it is to be independent of Government and not be subject to financial control which might affect its independence.

Section 22 of the Act provides that:

The Minister [for Justice, Equality and Law Reform] may, in each financial year of the Commission, pay to the Commission, out of moneys provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Finance, determines towards the expenses of the Commission in the performance of its functions.

The grant paid to the Commission in 2003 is €1,280,000.

The Commission wishes to draw to the attention of the Government that the funding afforded by the British authorities to the Northern Ireland Human Rights Commission is significantly higher than that afforded to the Commission in the South. The budget of the Northern Ireland Human Rights Commission for the period 1 April 2003 to 31 March 2004 is £1,300,000 sterling which, converted into euro, is not far short of €2,000,000. In other words, the Northern Commission, with a much smaller population to serve and fewer powers, receives almost twice the amount of public funding as the southern Commission.

The Commission is of the view that the amount of the grant it has received in 2003 is seriously inadequate and manifestly disproportionate to that afforded the Northern Ireland Human Rights Commission given the Government's obligation under the Good

Friday Agreement to ensure at least an equivalent level of protection of human rights North and South.

In March 2003, the Commission submitted to the Minister for Justice, Equality and Law Reform estimates of its annual operating costs for the coming year. The amount sought is €2,211,314.41. The estimates were based on a detailed costing of the moneys required to enable the Commission to carry out effectively its various functions as laid down in the Human Rights Commission Act, 2000 and as elaborated in the Commission's *Plan for 2003-2006*. It was a realistic costing which took due account of the financial constraints applying at present across the public sector.

To date in 2003 two significant drawbacks which the lack of adequate funding have had for the Commission are difficulties in the acquisition of permanent premises and a scaling down of structured consultation and dialogue with non-governmental organisations, Government Departments, local and thematic groups and political parties as well as public meetings, following the publication of its strategic plan. It can also reasonably be expected that it will not be possible for the Commission to exercise some of its functions in 2003 owing to the expenditure which would be involved, notably those in relation to legal proceedings, such as the competence to seek to appear as *amicus curiae* in proceedings before the High Court or the Supreme Court in relation to a person's human rights, to institute proceedings for the purpose of obtaining relief in respect of any matter concerning the human rights of any person or class of persons, or to grant legal assistance to persons seeking to vindicate their rights.

In his reply to the submission by the Commission of its estimates of its annual operating costs, the Minister for Justice, Equality and Law Reform indicated that the information supplied by the Commission would be very helpful to his Department in its discussion with the Department of Finance about the estimates of the Department of Justice, Equality and Law Reform for 2004 and assured the Commission that he would do all that he can to ensure that the Commission's requirements are met.

**The Commission recommends that the Government ensure that at least the estimated amount of its annual operating costs as submitted to the Minister for**

**Justice, Equality and Law Reform in March 2003, namely €2,211,314.41, be made available to the Commission by way of its budget for 2004.**

(b) Method of determining the budget

The Commission notes that to date no budget for the Commission has been agreed by the Minister for Justice, Equality and Law Reform with the Commission itself. Rather grants appear to have been paid to the Commission on the basis of a Departmental view of the needs of the Commission.

At a meeting with the Minister for Justice, Equality and Law Reform on 21 October 2002, the Commission expressed its wish that the amount of the grant it is to receive be the subject of negotiations between the Minister and the Commission and agreed between the two. It reiterated this wish in its *Plan for 2003-2006*. **The Commission therefore further recommends that, in future, the question of the amount of the grant it is to be paid be the subject of negotiations between the relevant authorities and itself with a view to achieving agreement as to the moneys needed for it effectively to fulfil its statutory functions.**

(c) Management of the budget

Until January 2003, the Commission was funded by way of a grant from the Minister for Justice, Equality and Law Reform which was administered by the Department of Justice, Equality and Law Reform. This system was extremely bureaucratic and led to problems such as delays in the payment of invoices and Commissioners' fees. For example, an invoice to the Commission was processed first by a member of the Commission's staff, then by the Human Rights Division of the Department which passed it on for payment to the Finance Division of that Department.

With the appointment of a chief executive, the Commission requested that management of the Commission's funds be transferred to the chief executive, and the concerns of the Commission in this regard were made known to the Minister for Justice, Equality and Law Reform at its meeting with him on 21 October 2002. At that meeting, the Minister



indicated that he was considering funding the Commission in future by way of a grant-in-aid which would allow the Commission more direct control of its financial matters; and on 23 January 2003, the Commission received the first instalment of a grant-in-aid for the year 2003. The instalment related only to the non-pay element of the Commission's budget. Owing to the difficulty experienced by the Commission in recruiting a financial and human resources officer (see below), the Department continues to administer the pay element of the Commission's budget.

It is imperative that the Commission be in a position, through its chief executive, to manage its own budget. The change in the manner of funding the Commission from a grant directly administered by the Department of Justice, Equality and Law Reform to a grant-in-aid facilitates this, but is not in itself sufficient to bring this situation about. For that, it is necessary that the Commission have available to it the requisite staff.

**The Commission is optimistic that, in the next few months, it will be able to appoint a suitably qualified financial officer. However, should this prove not to be the case, the Commission recommends that, as a temporary measure, the Government arrange for a suitable officer to be seconded to the Commission to deal with financial matters until a finance and human resources administrator is appointed by the Commission.**

(d) Control of the budget

Control of the finances of an institution is a classic method by which the affairs and work of that institution may be influenced, and at worst dictated, by the person or body in which the control is vested; and the Paris Principles state that a national human rights institution should not be subject to financial control which might affect its independence.

Financial accountability is essential in respect of the expenditure of public moneys. Any other exercise of financial control is a clear infringement of the independence of an institution. Even the possibility of the exercise of such control is a threat to the independence of the institution. It is not necessary that control actually be exercised for the independence of the institution to be jeopardised. The independence of the

organisation may also be jeopardised by the potential for control by another person or body.

In the estimates of its annual operating costs which the Commission submitted to the Minister for Justice, Equality and Law Reform, it itemised the expenditure it envisaged incurring under a number of heads ranging from staff salaries, the rent of premises and administration to the costs likely to be incurred in the exercise of its many functions. This itemisation was necessary in order to substantiate the overall budget which the Commission is seeking, to show that there was no inflation of the figures and to demonstrate that the operation of the Commission would constitute value for money in terms of public expenditure. In future, however, the Commission would prefer not to have to itemise its estimates in this way but to agree an overall budget on a yearly basis with the relevant authorities.

The Commission recognises the role of the Minister for Finance in advising the Government on the economic and financial management of the State and the overall management and development of the public sector. The Commission believes however that this role should not extend to the details of the expenditure of a body which is intended to be independent of Government and which, as part of its remit, is to keep under review the adequacy and effectiveness of practice in the State relating to the protection of human rights – which practice includes the practice of Government Departments. The Commission does not regard as compatible with its independence or with the Paris Principles a situation whereby any Minister may determine how much the Commission may spend on any item or items of its business. It is for the Commission itself to establish its own priorities, including its priorities in matters of expenditure, while keeping within its agreed annual budget.

In this connection the Commission recalls that it is under a statutory obligation to keep all proper and usual accounts of moneys received or expended by it, including an income and expenditure account and a balance sheet; that its accounts must be submitted for audit to the Comptroller and Auditor General; and that, after the audit, a copy of its accounts and of the Comptroller and Auditor General's report on the accounts have to be presented to the Minister for Justice, Equality and Law Reform who shall cause copies thereof to be

laid before each House of the Oireachtas (section 16 of the Act). Moreover, the chief executive of the Commission may be required to give evidence to the Public Accounts Committee of Dáil Éireann on –

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by this Act to prepare,

(b) the economy and efficiency of the Commission in the use of its resources,

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(Section 14(1) of the Act.)

The accountability of the Commission for the expenditure of its grant is thus a matter which is specifically addressed and regulated by its founding legislation.

**Accordingly, the Commission recommends that the Government ensure that no Minister or Department exercise or seek to exercise control in respect of particular items of the Commission’s expenditure.**

(iii) *Staffing*

Section 17 of the Act provides that the consent of two Ministers, the Minister for Justice, Equality and Law Reform and the Minister for Finance, is required for “such and so many persons to be members of the staff of the Commission as it may from time to time determine” (section 17(1)). The consent of the same two Ministers is moreover needed to the terms and conditions of service of each member of staff, to the grade at which she or he serves, and to the remuneration and allowances to be paid to members of staff (section 17 (2) and (3)).

Shortly after the appointment of the chief executive, the Commission decided on its staffing structure (see Appendix 5) and set about arranging for the recruitment of its first round of staff. Consent to the appointment of ten members of staff was sought. The ten posts were:

- Clerical Officer (2)
- Desk Officer
- General Administrator
- Administrator (Finance and Human Resources)
- Assistant Caseworker
- Assistant Legislation and Policy Review Officer
- Senior Caseworker
- Senior Legislation and Policy Review Officer
- Senior Human Rights Awareness Officer

There followed a considerable period of negotiations with the Department of Justice, Equality and Law Reform and the Department of Finance over the grades and terms and conditions of service of the staff being sought. Consent was given to the number of staff but in general consent was only given to appointment at a lower grade and moreover at a lower salary than that considered appropriate by the Commission. Negotiations with the Department of Finance proved particularly protracted and difficult and were not helped by changes of personnel in the relevant section of the Department. The impression was given, rightly or wrongly, that the Department was willing to sanction only the cheapest person for the job, not, as the Commission would wish, the best person. Moreover, while the Commission was seeking appointment on the basis of a three-year contract and was therefore not offering the prospect of permanent employment, its requests seem to have been treated as though they were requests for the sanctioning of permanent positions within the civil service.

In spite of this, the Commission has been able to appoint staff to nine of the ten positions and is confident that the persons appointed are of a high calibre and will perform well in their jobs. It should be noted that one of the reasons why well qualified persons were attracted to the positions given the relatively low grades and salaries of the positions is the nature of the work and the potential of contributing in the early stages to the development of a national human rights institution. Some were even willing to accept appointment at a lower salary

than they formerly enjoyed. While the Commission benefits from, and appreciates, the high level of motivation and commitment of members of staff, it does not regard it as fair that the State attach a financial penalty to such motivation and commitment.

It has not been possible to date to fill the tenth position, that of Administrator (Finance and Human Resources). The range of duties associated with the position is very wide, covering both financial and personnel matters. It is believed that there is no comparable position within the civil service. In the competition for the position, only one applicant was deemed appointable, an exceptionally well qualified and highly experienced person. This person was on a salary in excess of the top point of the sanctioned civil service grade but was willing to accept appointment at one of the higher points on the scale. The consent of the Minister for Finance to appointment at the salary level sought was refused. The result is that the Commission must readvertise the position in the knowledge that it will be very lucky indeed to find a suitable person at the grade and salary sanctioned for the position. The cost of advertising will be substantial, both in financial terms and in terms of staff time spent on the recruitment process, and may exceed the saving in salary costs stemming from the non-appointment of the successful applicant in the original competition.

The protracted negotiations with the two Government Departments regarding the staffing of the Commission have obviously led to delay in the recruitment of staff. It has also brought into sharp relief another feature of the current staffing arrangements which causes great concern to the Commission, namely, the significant degree of control enjoyed by two Ministers and their respective Departments over the staffing of the Commission. The Commission does not regard this situation as compatible with either the Paris Principles or its own operational values of independence and transparency.

The Commission has earlier recommended that, in future, its funding should be the subject of negotiations between the relevant authorities and itself with a view to achieving agreement on the moneys needed for it effectively to fulfil its statutory functions and that no Government Minister or Department should be entitled to exercise control over particular items of the Commission's expenditure. Consistently with these earlier recommendations, the Commission believes that no particular item of the Commission's expenditure, including expenditure on particular members of staff, should be subject to control by a Government

Minister or Ministers. Rather staffing requirements should form part of the general negotiations with the relevant authorities over the amount of the Commission's grant-in-aid. Once a budget has been agreed, how the moneys are spent should be a decision to be taken solely by the Commission. In this connection it should not be overlooked that the Commission is statutorily obliged, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms and conditions on which staff are employed, to have regard to the Government or nationally agreed guidelines and to Government policy concerning remuneration and conditions of employment (section 18 of the Act).

Were the Commission to enjoy greater control over its own staffing, it does not follow that it would thereby avoid accountability for its decisions in this regard. As has also been mentioned earlier, the Commission is accountable, through its chief executive, to Committees of the Oireachtas for the decisions it takes in relation to such matters as staffing. Moreover, in the annual negotiations regarding its budget, it can be expected that the Department of Finance will raise questions in relation to the amount sought if it regards the expenditure of the Commission on staffing to be unreasonable or excessive in relation to its expenditure overall.

**The Commission therefore recommends that there should be no direct control by a Government Minister or Department over the number of staff employed by the Commission, the grade at which staff are employed, and the remuneration and allowances as well as other terms and conditions on which they serve. Rather the Commission itself should have direct control of these matters, subject to its overall accountability.**

The Commission recalls that it decided to employ staff initially on a contract basis. Among the reasons for this were the wish to test the staffing structure it had devised to ensure that it was suitable for the purposes of the Commission.

With regard to staffing in the future, the Commission will be giving thought to the possibility of offering more secure employment to its staff and, in this context, will be considering the feasibility and desirability of affording civil service status to at least some of its staff. In this\_

respect it notes that civil servants serve various organs of the State, only one of which is the Government, and that the courts have recognised a distinction between civil servants of the Government and civil servants of the State who serve other organs of the State. In particular, it notes that officers and servants of the Ombudsman are civil servants in the civil service of the State, not the service of the Government (section 10(2) of the Ombudsman Act, 1980). The Commission believes that were such status to be afforded certain of its staff, the independence of the Commission itself would be strengthened in that the staff concerned would not be attached to any Government Department, the Commission would not need periodically to negotiate its staffing requirements with the relevant authorities and the staff themselves would enjoy security of tenure.

**The Commission therefore further recommends that the Government give preliminary consideration to making provision for the Commission to appoint some staff to permanent positions.**

*(iv) Membership of the Commission*

The Commission's founding legislation provides that the Commission shall consist of a President and fourteen other members and that not less than seven of the members of the Commission shall be women and not less than seven men (section 5(1) and (2) of the Act, as amended by section 1 of the Human Rights Commission (Amendment) Act, 2001). The legislation also provides that the members of the Commission shall be nominated and appointed by the Government (sections 5(3) and 6(10) and (11) of the Act).

The Paris Principles identify the need for pluralism in the composition of a national human rights institution. Specifically in this regard, they state that:

The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional

organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

(Paragraph 1 of the section entitled “Composition and guarantees of independence and pluralism”.)

The guarantee of pluralism is addressed in the legislation. The Act provides that the Government, in making appointments to the Commission, shall have regard to the need to ensure that the members of the Commission broadly reflect the nature of Irish society (section 5(12)); and the Government, in making appointments to the present Commission, did have regard to this need. All the social forces listed in the Paris Principles are represented, with the exception of Parliament and Government departments. The present Commission comprises seven women and eight men.

With regard to the actual appointment of members, the Paris Principles state that:

In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured (paragraph 3 of the section entitled “Composition and guarantees of independence and pluralism”).

The Act provides that a member of the Commission may be appointed for a period not exceeding five years and is eligible for reappointment for a further term not exceeding five years (section 5(7) and (8)). The present members of the Commission have been appointed for a term of five years.

The founding legislation clearly contains guarantees of pluralism and independence in relation to the appointment and composition of the Commission. The Commission nevertheless believes that there are a number of ways in which these guarantees could be



strengthened, thereby contributing to the effectiveness of the Commission. They relate to the appointments process and the terms and conditions of appointment.

(a) The appointments process

**It is recommended that the public advertisement process should continue to apply with a view to ensuring open and transparent procedures for appointments. A suitably qualified advisory committee of independent persons, which includes expertise in international and domestic human rights law and relevant experience, could validate the qualifications of all candidates deemed to be suitably qualified for the purpose of section 5 (4) of the Act. The committee may also advise the Government in overall terms with a view to facilitating the appointment by it, of a Commission that broadly reflects the nature of Irish society as referred to in section 5 (12) of the Act.**

(b) Terms and conditions of appointment

The Act provides that each member of the Commission shall hold office on such terms and conditions as are determined by the Government at the time of the appointment (section 5(8)).

The letter of appointment of the first members of the Commission contained little by way of terms and conditions other than notification of the period of the appointment and the remuneration to be afforded the person concerned.

The Act addresses the issues of disqualification from holding office and dismissal from office. In this regard it provides that:

(1) A person who is a member of the Commission shall be disqualified from holding and shall cease to hold office if that person is adjudged bankrupt or makes a composition or arrangement with creditors or, on conviction on indictment by a court of competent jurisdiction, is sentenced to imprisonment.

(2) The Government may dismiss a person from his or her office as the President or another member of the Commission if they are satisfied that-

(a) he or she has without reasonable excuse failed to discharge his or her function for a continuous period of three months beginning not earlier than six months before the day of dismissal, or

- (b) he or she has been convicted of a criminal offence, or
- (c) he or she is unable or unfit to carry out his or her function, or
- (d) for any other stated reason he or she should be dismissed.

(Section 7.)

Many of the circumstances in which a member of the Commission may be regarded as disqualified from continuing in office or may be dismissed from office are objective in the sense that the specified circumstances, e.g. conviction of a criminal offence, either exists or does not exist. However, several of the grounds for dismissal leave a significant margin of discretion to the body with the power to dismiss, at present the Government. Failure to discharge the function of a member of the Commission as well as inability or unfitness to carry out this function fall into this category, as does the reference to “any other stated reason” for dismissal.

The Commission is of the view that greater clarity is desirable with respect to the grounds on which a member of the Commission may be dismissed from office. Greater clarity would militate against the possibility of arbitrariness in the dismissal of a member of the Commission and would be consistent with the operational value of the Commission that it will be as accountable as possible. The Commission believes that this objective may be achieved either by greater specificity in the applicable legislation or by means of terms and conditions attached to the appointment of a member of the Commission.

For example, the amount of time which it is expected a member of the Commission would devote to Commission business, including attendance at Commission meetings, could be specified. Also, indications could be given of what would be regarded as a failure to discharge the function of a member of the Commission and as unfitness to carry out this function.

**The Commission therefore recommends that consideration be given to providing greater specificity in the terms and conditions of appointment of members of the Commission.**

In this context consideration might also be given to including in the conditions of appointment an undertaking that a member of the Commission will serve impartially and independently. This would make explicit what is implicit in the statutory provision that the Commission shall be independent in the performance of its functions, namely, that this collective guarantee is also a responsibility and moreover is a responsibility which extends to each of the members of the Commission. It would also contribute to public confidence in the appointments.

**The Commission therefore further recommends that it be a condition of appointment as a member of the Commission that the member serve impartially and independently and shall exercise or perform his or her powers, duties and functions in good faith, without fear, favour, bias or prejudice and subject only to the law.**

## CHAPTER 3

### THE EFFECTIVENESS OF THE FUNCTIONS OF THE COMMISSION

#### *Overview of the Commission's Functions*

The functions of the Commission are detailed in sections 8 to 11 of the Act. A list of the functions is given in section 8. They are:

- to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights,
- if requested by a Minister of the Government, to examine any legislative proposal and report its views on any implications of such proposal for human rights,
- to consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit,
- either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State,
- to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities,
- to conduct enquiries under and in accordance with section 9,
- to prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored, commissioned or assisted by it or in relation to enquiries,
- to apply to the High Court or the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may be, as *amicus curiae* in proceedings before that court that involve or are concerned with the human rights of any person and to appear as such an *amicus curiae* on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion),
- to take whatever action is necessary to establish and participate in the joint committee of representatives referred to in paragraph 10 of the section entitled "Rights, Safeguards and Equality of Opportunity" of the Agreement Reached in the Multi-Party Talks,

- to provide assistance of the kind referred to in section 10 to persons under and in accordance with that section,
- to institute proceedings under and in accordance with section 11.

Section 9 of the Act regulates the competence of the Commission to conduct an enquiry. This competence is not freestanding but is linked to the performance of four of the other functions of the Commission. The other functions are the review of the adequacy and effectiveness of law and practice in the State relating to the protection of human rights, consultation with other national or international bodies or agencies, the making of recommendations to the Government for the strengthening, protection and upholding of human rights in the State, and the promotion of understanding and awareness of the importance of human rights in the State. The Commission may conduct an enquiry of its own volition if it considers the enquiry necessary or expedient for the purpose of the performance of any of these functions or, subject to certain conditions, at the request of any person who considers the conducting of an enquiry to be necessary or expedient for the performance of any of the functions. An enquiry may be held in public or in private; and the Commission may, for the purposes of an enquiry, require a person to furnish information, a document or a thing to it and, where appropriate, to attend in person before the Commission.

Section 10 of the Act allows the Commission, on certain grounds and subject to certain conditions, to provide assistance to a person at her or his request in relation to legal proceedings which involve law or practice relating to the protection of human rights. The assistance which may be afforded by the Commission includes the provision of legal advice and arranging for the provision of legal representation to the person making the request.

Under section 11 of the Act, the Commission may itself institute proceedings in any court of competent jurisdiction for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or of any class of persons.

The Act also provides that the Commission shall have all such powers as are necessary for or incidental to the performance of its functions (section 4(4)).

### *Recommendations*

Due to the financial and staffing constraints under which the Commission has had to work to date, it has not yet been in a position to carry out the full range of the functions conferred on it by the Act. With the recruitment of staff, it is beginning to undertake work which it was previously beyond its capacity to do. Thus, with the appointment of a Senior Caseworker, it is beginning to deal with the backlog of communications it has received from individuals voicing human rights concerns and deciding whether or not to conduct an enquiry into matters raised with it. Also, the very recent appointment of a Senior Legislation and Policy Review Officer will enable it to commence in earnest its review of the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and to examine the legislative proposals referred to it for any implications the proposals may have for human rights.

Given that the Commission has so far been unable to exercise many of its functions, it is not in a position to make many recommendations at this stage with respect to their effectiveness and would hope to have the opportunity to submit another report to the Government in this regard once it has had sufficient experience of the operation of its functions properly to assess their effectiveness.

**The Commission therefore recommends that provision be made for it to submit a further report to the Government containing recommendations for improving its effectiveness and the effectiveness of the functions conferred on it. This report should be made within five to six years of the establishment date of the Commission, that is, three to four years from the date of the submission of this report.**

The recommendations it wishes to make at present with regard to the effectiveness of its functions relate principally to the examination of legislative proposals at the request of a Minister of the Government, to consultation with other national and international bodies and agencies, to the operation of the Joint Committee of representatives of the Commission and of the Northern Ireland Human Rights Commission and to the competence of the Commission to grant assistance to a person in relation to legal proceedings involving human rights matters.

(i) *Examination of Legislative Proposals*

Late in 2002, the Minister for Justice, Equality and Law Reform referred two Bills to the Commission for its views on their implications for human rights: the Criminal Justice (Terrorist Offences) Bill, 2002 and the Criminal Law (Insanity) Bill, 2002. The Commission reported its views on the Criminal Justice (Terrorist Offences) Bill to the Minister in March 2003 and expects shortly to submit its views to him on the Criminal Law (Insanity) Bill.

Again, in 2003, the Minister for Justice, Equality and Law Reform referred two General Schemes of proposed legislation to the Commission for its views on their implications for human rights: a General Scheme of proposed Committees of Investigations Act, 2003 and a General Scheme of proposed European Union (European Arrest Warrant) Bill, 2003. He also invited the Commission to send a representative on 23 February 2003 to an Information Forum on proposed legislation to govern the retention of traffic data, and the Commission was represented at the Forum and subsequently sent written views on the proposal to the Minister.

The Commission notes that to date the only Minister of the Government to refer legislative proposals to it for an examination of their human rights implications has been the Minister for Justice, Equality and Law Reform. The Commission commends the Minister for his initiative in this regard and would welcome referrals by other Ministers of the Government. It is not only legislative proposals in the areas of justice, equality and law reform which may have implications for human rights. Legislative proposals in any of the areas of Government and ministerial responsibility may have such implications.

In this connection, the Commission also notes that, in its recent report on the work of the Northern Ireland Human Rights Commission, the U.K. Parliament's Joint Committee on Human Rights stated that it was concerned by evidence which suggests that Government Departments in the U.K. have yet to come to grips with the existence of an independent human rights institution in the U.K. with which they should be obliged to consult (para. 15 of the Report, published 15 July 2003).

**Accordingly, the Commission recommends that the Government by resolution require all Ministers of the Government to refer legislative proposals to the Commission for its**

**views where it appears that these proposals may have significant implications for the protection of human rights.**

*(ii) Consultation with National and International Bodies in the Field of Human Rights*

With respect to consultation with other national and international bodies and agencies having a knowledge or expertise in the field of human rights, the Commission has consulted with very many national bodies, including both public bodies and non-governmental organisations, as well as international bodies. This consultation has informed both the Commission's strategic plan and its work to date. For example, it has co-hosted a number of talks, seminars and conferences on human rights topics both nationally and internationally with other organisations (see Appendix 6).

In this regard the Commission recalls that its operational values include the following:

- a commitment to consultation and dialogue;
- close co-operation with other bodies at home and abroad;
- support for other agencies active in the field of human rights, working in harmony with such bodies and the avoidance of any unnecessary duplication of work; and
- the bringing of 'added value' to work already undertaken in the State to promote and protect human rights.

Two of the international bodies with which the Commission has had extensive consultations over the last two years are the Joint Equality and Human Rights Forum and the European Regional Group of the International Co-ordinating Committee of national human rights institutions.

The Joint Equality and Human Rights Forum comprises the main statutory human rights and equality bodies in Ireland and Great Britain, that is, apart from the Commission, the Equality Authority, the Human Rights Commission and the Equality Commission in Northern Ireland, and the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission in Great Britain. It holds four meetings a year, discusses human rights and equality issues of common interest and concern, and engages in various human



rights and equality activities, most recently the production of a substantial piece of research on the topic of multiple identity.

In the last year the Commission has played a prominent role in the European Regional Group of the International Co-ordinating Committee. The Group comprises thirty-seven national human rights institutions throughout Europe. Together with the Northern Ireland Human Rights Commission, in November 2002, the Commission co-hosted a biennial meeting of the Group in Dublin. It was also mandated by the Group to draft a common position for the Group on the proposal for an international convention on the rights of persons with disabilities and to co-ordinate the input of the Group into the negotiations on this convention, most recently at the Second Session of the Ad Hoc Committee of the UN General Assembly which was held in New York from 16 to 27 June 2003 to consider the proposed convention. The role of the International Co-ordinating Committee in promoting the establishment of national human rights institutions, in supporting their work and in co-ordinating their international activities has been growing in importance in recent years. It is significant that, in various international fora, national human rights institutions are increasingly being afforded a status in their own right separate from that of Governments and non-governmental organisations. While not all national human rights institutions conform to the Paris Principles, it can be expected that greater international recognition will in the years ahead be afforded those institutions which do conform to the Principles and are therefore independent in the performance of their functions and that their contribution to human rights developments at the international level will grow.

The Commission finds consultation with national and international bodies in the field of human rights to be invaluable to it and would wish to continue to consult, and to contribute to the work of, these bodies. It regards participation in these organisations as implicit in its various functions and notes that the Act confers upon the Commission all such powers as are necessary for or incidental to the performance of its functions. It is nevertheless of the view that it is desirable that there be greater explicit recognition of this aspect of its work. **It therefore recommends that, in any revision of its founding legislation, its function of consulting with other national and international bodies and agencies having a**

**knowledge or expertise in the field of human rights be expanded expressly to include participating in and contributing, as appropriate, to the work of such organisations.**

*(iii) Joint Committee*

One of its functions which the Commission has fully exercised relates to the Joint Committee of Representatives of the Two Human Rights Commissions on the Island of Ireland. The Committee was formally established on 8 November 2001 and has held regular meetings since that date.

The Joint Committee is required by the Good Friday Agreement to consider the possibility of establishing a charter, open to signature by democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland. It has issued a pre-consultation paper on the proposal for a charter and, in the light of the response to this document, expects to issue a Consultation Paper in the coming months which will be widely distributed and advertised and to undertake a wider and more formal consultation process in relation to the charter.

The Joint Committee has also produced and will very shortly publish a users' guide to the International Convention on the Elimination of All Forms of Racial Discrimination, to which both Ireland and the United Kingdom are parties.

The Joint Committee presently has no legal status distinct from the two Commissions whose representatives participate in it. It has no staff, secretariat or budget of its own and the cost of the activities of the Committee is met from the budgets of the two Commissions. This means that the cost is an item of the budget of each Commission and the amount of money set aside for Committee activities depends on the relative ranking of these activities in the priorities of each Commission. In addition, the budget of each Commission is of course separately determined by the relevant authorities in each jurisdiction.

The Commission is of the view that it is important that this North - South body which was established pursuant to the Good Friday Agreement be recognised as an entity distinct from its constituent members, that it be properly funded, and that formal expression be given to the

joint responsibility of the two states, Ireland and the United Kingdom, in respect of its operation. **Accordingly, the Commission recommends that the Government give consideration to consulting with the British Government with a view to affording a formal status to the Joint Committee distinct from the two Human Rights Commissions on the island of Ireland and to funding jointly the operation of the Committee.**

*(iv) Assistance in Relation to Legal Proceedings Involving Human Rights Matters*

The Commission recalls that it enjoys the competence, under section 10 of the Act, to grant assistance to a person in relation to legal proceedings which involve law or practice relating to the protection of human rights.

It is unclear whether this competence relates only to legal proceedings in the State. The Commission is mindful of the fact that the human rights which it is mandated to uphold include those guaranteed to persons by international agreements to which the State is a party, and that several of these agreements allow a person who believes that their rights under the relevant agreement have been violated to bring a complaint to a specially-constituted international body. For example, the State has recognised the competence of the European Court of Human Rights to hear complaints from individuals about violations of their rights under the European Convention on Human Rights. The State has also recognised the competence of the UN Human Rights Committee to consider communications from individuals alleging violations of their rights under the International Covenant on Civil and Political Rights.

Such international agreements protect a number of rights which are additional to those guaranteed by the Constitution or which are formulated more specifically than in the Constitution. A person may wish to seek to vindicate their rights by having recourse to the relevant international body; and the Commission would like clearly to have the power to grant assistance to persons in such cases. **The Commission therefore recommends that section 10 of the Act be amended to make it clear that the Commission has the power to**

**grant assistance to persons seeking to vindicate their rights before an international body whose competence in this regard has been recognised by the State.**

## CHAPTER 4

### CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

#### *Conclusions*

The effectiveness of the Commission is in large part dependent upon it having at its disposal adequate human and financial resources. The Commission is confident that when the full initial complement of its staff assume duties, it will have available to it the personnel required for it to be able to exercise its many functions. It is however most concerned that its present budgetary allocation falls far short of what is required.

The Commission believes that the amount of its annual grant-in-aid should be negotiated and agreed with it rather than unilaterally determined by the Government or by a Minister of the Government. It also believes that these negotiations should relate to the amount of its grant overall, or at least to the totality of the pay and the totality of the non-pay elements of the grant, not to specific items of its grant, in order to respect its independence and to promote public confidence in its independence.

The Commission is furthermore of the view that its effectiveness and independence would be better ensured were there to be no formal link between the Commission and a Government Department, and would favour a closer link between the Oireachtas and itself in relation to its accountability for the exercise of its functions. Should a link between the Commission and a Government Department nevertheless continue to be necessary, the Commission is of the view that this link should be with the Department of the Taoiseach, not with the Department of Justice, Equality and Law Reform.

As to its membership, the Commission would wish the appointments process to be such as to secure an outcome which is conducive to the effectiveness of the Commission. In this regard it would wish the process to be as open and transparent as possible and for a suitably qualified advisory committee to be established to recommend persons for appointment. Members of this committee should possess knowledge of domestic and international human rights law as well as experience in the field of human rights, and the committee should take

due account of the statutory requirements relating to the membership of the Commission: namely, that the members of the Commission should be suitably qualified for such appointment by reason of possessing relevant experience, qualifications, training or expertise, having regard to the functions conferred on the Commission, and that its members should broadly reflect the nature of Irish society.

The Commission would also favour greater specificity in the terms and conditions of appointment of members and an explicit undertaking by members to serve impartially and independently.

Over the two years covered by this Report, the Commission has essentially been in a start-up phase. It has not been in a position to exercise the full range of its functions. Nevertheless, it has kept developments in legislation and practice under review and has commented publicly where these have given rise to human rights concerns; it has examined several legislative proposals referred to it by the Minister for Justice, Equality and Law Reform for its views on the human rights implications of the proposals; it has consulted widely with other human rights bodies, both nationally and internationally; it has made recommendations to the Government in relation to the upholding of human rights; it has commissioned research and published the results of this research as well as other documents on human rights matters; it has commenced its consideration of requests which have been made to it by persons for the conduct of an enquiry and/or for the provision of assistance in relation to legal proceedings involving issues of human rights; and it has participated fully in the Joint Committee of representatives of the Commission and of the Northern Ireland Human Rights Commission.

It has moreover reflected on its functions and has identified several ways in which the effectiveness of its functions might be improved. These concern the examination of legislative proposals referred to it by a Minister of the Government, consultation with national and international bodies having a knowledge or expertise in the field of human rights, participation in the Joint Committee, and the provision of assistance in relation to legal proceedings involving human rights matters.

The Commission is therefore pleased to submit to the Government this report containing recommendations which, in its opinion, would improve its effectiveness and the effectiveness of the functions conferred on it. A summary of these recommendations is given below.

### *Summary of Recommendations*

The Commission recommends with respect to improving the effectiveness of the Commission that:

1. Consideration be given by the Government to linking the Commission more closely to the Oireachtas in terms of its accountability for the exercise of its functions.
2. To the extent that a link is to be retained between the Commission and a Government Department, that link should be with the Department of the Taoiseach.
3. The Government ensure that at least the estimated amount of its annual operating costs as submitted to the Minister for Justice, Equality and Law Reform in March 2003, namely €2,211,314.41, be made available to the Commission by way of its budget for 2004.
4. In future, the amount of the grant it is to be paid be the subject of negotiations between the relevant authorities and the Commission with a view to achieving agreement as to the moneys needed for the Commission effectively to fulfil its statutory functions.
5. Should the Commission not be able to appoint a suitably qualified financial officer in the next few months, the Government should arrange for a suitable officer to be seconded to the Commission as a temporary measure to deal with financial matters until a finance and human resources administrator is appointed by the Commission.
6. The Government should ensure that no Minister or Department exercises or seeks to exercise control in respect of particular items of the Commission's expenditure.
7. There should be no direct control by a Government Minister or Department over the number of staff employed by the Commission, the grade at which staff are employed, and

the remuneration and allowances as well as other terms and conditions on which they serve. Rather the Commission itself should have direct control of these matters, subject to its overall accountability.

8. The Government should give preliminary consideration to making provision for the Commission to appoint some staff to permanent positions.

9. The public advertisement process should continue to apply with a view to ensuring open and transparent procedures for appointments. A suitably qualified advisory committee of independent persons, which includes expertise in international and domestic human rights law and relevant experience, could validate the qualifications of all candidates deemed to be suitably qualified for the purpose of section 5 (4) of the Act. The committee may also advise the Government in overall terms with a view to facilitating the appointment by it, of a Commission that broadly reflects the nature of Irish society as referred to in section 5 (12) of the Act.

10. Consideration be given to providing greater specificity in the terms and conditions of appointment of members of the Commission.

11. It be a condition of appointment as a member of the Commission that the member shall serve impartially and independently and shall exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the law.

The Commission further recommends with respect to improving the effectiveness of its functions that:

12. The Government by resolution require all Ministers of the Government to refer legislative proposals to the Commission for its views where it appears that these proposals may have significant implications for the protection of human rights.

13. In any revision of its founding legislation, the Commission's function of consulting with other national and international bodies and agencies having a knowledge or expertise in



the field of human rights be expanded expressly to include participating in and contributing, as appropriate, to the work of such organisations.

14. The Government should give consideration to consulting with the British Government with a view to affording a formal status to the Joint Committee distinct from the two Human Rights Commissions on the island of Ireland and to funding jointly the operation of the Committee.

15. Section 10 of the Act should be amended to make it clear that the Commission has the power to grant assistance to persons seeking to vindicate their rights before an international body whose competence in this regard has been recognised by the State.

Finally, the Commission recommends that:

16. Provision be made for it to submit a further report to the Government containing recommendations for improving its effectiveness and the effectiveness of the functions conferred on it. This report should be made within five to six years of the establishment date of the Commission, that is, three to four years from the date of the submission of this report.

# APPENDIX 1

## HUMAN RIGHTS COMMISSION ACT, 2000

### Table of Sections

- [1. Interpretation.](#)
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Acts Referred to

Civil Legal Aid Act, 1995 (No. 32 of 1995)

Civil Service Commissioners Act, 1956 (No. 45 of 1956)

Comptroller and Auditor General (Amendment) Act, 1993 (No. 8 of 1993)

Courts (No. 2) Act, 1997 (No. 43 of 1997)

Courts (Supplemental Provisions) Act, 1961 (No. 39 of 1961)

Criminal Justice (Legal Aid) Act, 1962 (No. 12 of 1962)

European Parliament Elections Act, 1997 (No. 2 of 1997)

Interpretation Act, 1937 (No. 38 of 1937)

Law Reform Commission Act, 1975 (No. 3 of 1975)

Long Title: AN ACT TO PROVIDE FURTHER PROTECTION FOR HUMAN RIGHTS AND, FOR THAT PURPOSE, TO ESTABLISH A BODY TO BE KNOWN AS AN COIMISIÚN UM CHEARTA AN DUINE OR, IN THE ENGLISH LANGUAGE, THE HUMAN RIGHTS COMMISSION, TO DEFINE ITS FUNCTIONS AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.-(1) In this Act-

"the Agreement Reached in the Multi-Party Talks" means the agreement set out in Annex I to the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on the 10th day of April, 1998;

"award redress or grant relief", in relation to the powers of a tribunal or other person, includes making a finding that a person has done, or omitted to do, an act specified in the enactment vesting the said powers in the tribunal or other person or, as the case may be, specified in the resolution of either House of the Oireachtas with respect to the establishment of the tribunal or the appointment of the other person;

"the Commission" has the meaning assigned to it by section 4;

"establishment day" means the day appointed by the Minister under section 3;

"functions" includes powers and duties and references to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

"human rights" has (other than in section 11) the meaning assigned to it by section 2;

"judicial office in the Superior Courts" means the office of judge of the High Court or the office of judge of the Supreme Court;

"the Minister" means the Minister for Justice, Equality and Law Reform.

(2) In this Act -

(a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment.

2.-In this Act (other than section 11) "human rights" means-

(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and

(b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party.

3.-The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

4.-(1) There shall stand established, on the establishment day, a body which shall be known as An Coimisiún um Chearta an Duine or, in the English language, the Human Rights Commission (in this Act referred to as "the Commission") to perform the functions conferred on it by this Act.

(2) The Commission shall, subject to the provisions of this Act, be independent in the performance of its functions.

(3) The Commission shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(4) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

5.-(1) The Commission shall consist of a President and eight other members.

(2) Of the members of the Commission, not less than 4 of them shall be men and not less than 4 of them shall be women.

(3) The members of the Commission shall be appointed by the Government.

(4) A person shall not be appointed to be a member of the Commission unless it appears to the Government that the person is suitably qualified for such appointment by reason of his or

her possessing such relevant experience, qualifications, training or expertise as, in the opinion of the Government, is or are appropriate, having regard, in particular, to the functions conferred on the Commission by this Act.

(5) A person who holds a judicial office in the Superior Courts may, without relinquishing that office, be appointed, with his or her consent, to be the President of the Commission, but, unless otherwise provided by the terms of his or her appointment, he or she shall not be required to perform his or her duties under statute as the holder of that judicial office while he or she remains the President of the Commission.

(6) Where a person who holds judicial office in the Superior Courts is appointed to be the President of the Commission, the following provisions shall have effect:

(a) in case on being so appointed he or she is an ordinary judge of the Supreme Court, then, for so long as he or she continues to hold that judicial office, the number of ordinary judges of the Supreme Court otherwise provided for under any enactment for the time being in force may be exceeded by one and, if the said person so appointed is a former Chief Justice, the proviso to paragraph (a) (inserted by the Courts (No. 2) Act, 1997) of section 14 (1) of the Law Reform Commission Act, 1975, shall apply to him or her in respect of his or her appointment as President of the Commission to the like extent as it applies to a former Chief Justice who is appointed to be a member of the Law Reform Commission,

(b) in case on being so appointed he or she is the President of the High Court or an ordinary judge of the High Court, then, for so long as he or she continues to hold the judicial office held by him or her on so being appointed, the number of ordinary judges of the High Court otherwise provided for under any enactment for the time being in force may be exceeded by one and, if the said person so appointed is a former President of the High Court, the proviso to paragraph (b) (inserted by the Courts (No. 2) Act, 1997) of section 14(1) of the Law Reform Commission Act, 1975, shall apply to him or her in respect of his or her appointment as President of the Commission to the like extent as it applies to a former President of the High Court who is appointed to be a member of the Law Reform Commission,

(c) in case he or she is the President of the High Court, he or she may, for so long as he or she continues to be President of the Commission, from time to time appoint an ordinary judge of the High Court to exercise on his or her behalf (and which judge is hereby empowered to exercise) all the jurisdiction exercisable by the President of the High Court under section 10(5) of the Courts (Supplemental Provisions) Act, 1961.

(7) The term of office of a member of the Commission shall be such period, not exceeding five years, as the Government may determine when appointing him or her.

(8) Each member of the Commission shall hold his or her office on such terms and conditions as are determined by the Government at the time of his or her appointment, and shall be eligible for reappointment for a further term not exceeding five years.

(9) The Commission may act notwithstanding any vacancy or vacancies among its members (including one or more vacancies that result in subsection (2) not being complied with).

(10) The Government shall nominate the persons who, on the establishment day, are to comprise the members of the Commission.

(11) On the establishment day, the persons nominated under subsection (10) shall stand appointed under this Act to be members of the Commission.

(12) The Government, in making any appointments under this section, shall have regard to the need to ensure that the members of the Commission broadly reflect the nature of Irish society.

6.-Where the number of ordinary judges of the High Court or the Supreme Court falls to be determined for the purpose of any enactment which makes provision with respect to the number of such judges of the High Court or, as the case may be, the Supreme Court, the operation, for the time being, of section 5(6) shall be taken account of in making that determination.

7.-(1) A person who is a member of the Commission shall be disqualified from holding and shall cease to hold office if that person is adjudged bankrupt or makes a composition or arrangement with creditors or, on conviction on indictment by a court of competent jurisdiction, is sentenced to imprisonment.

(2) The Government may dismiss a person from his or her office as the President or another member of the Commission if they are satisfied that-

(a) he or she has without reasonable excuse failed to discharge his or her function for a continuous period of three months beginning not earlier than six months before the day of dismissal, or

(b) he or she has been convicted of a criminal offence, or

(c) he or she is unable or unfit to carry out his or her function, or

(d) for any other stated reason he or she should be dismissed.

8.-The functions of the Commission shall be-

(a) to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights,

(b) if requested by a Minister of the Government, to examine any legislative proposal and report its views on any implications of such proposal for human rights,

(c) to consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit,

(d) either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State,

(e) to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities,

(f) to conduct enquiries under and in accordance with section 9,

(g) to prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored, commissioned or assisted by it under paragraph (e) or in relation to enquiries referred to in paragraph (f),

(h) to apply to the High Court or the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may be, as amicus curiae in proceedings before that court that involve or are concerned with the human rights of any person and to appear as such an amicus curiae on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion),

(i) to take whatever action is necessary to establish and participate in the joint committee of representatives referred to in paragraph 10 of the section entitled "Rights, Safeguards and Equality of Opportunity" of the Agreement Reached in the Multi-Party Talks,

(j) to provide assistance of the kind referred to in section 10 to persons under and in accordance with that section,

(k) to institute proceedings under and in accordance with section 11.

9.-(1) The Commission may-

(a) of its own volition, if it considers it necessary or expedient to do so for the purpose of the performance of any of its functions under paragraph (a), (c), (d) or (e) of section 8, or

(b) subject to subsections (2) to (5), at the request of any person who considers the conducting of such an enquiry to be necessary or expedient for the performance of any of those functions,

conduct an enquiry under this section into any relevant matter (and such an enquiry referred to in this section as "an enquiry").

(2) The Commission may refuse to conduct an enquiry at the request of any person if it is of opinion that the matter to which the request relates could more appropriately be dealt with by the institution of legal proceedings or the making of an application to a tribunal or other person in whom are vested powers to award redress or grant relief in respect of the matter.

(3) The Commission shall refuse to conduct an enquiry at the request of any person, or shall discontinue any such enquiry which it has commenced, if it is of opinion, or, as the case may be, it becomes, during the course of the enquiry, of the opinion, that-

(a) the matter to which the request relates ("the matter concerned") is trivial or vexatious or any alleged violation of human rights concerned is manifestly unfounded, or

(b) the person making the request has an insufficient interest in the matter concerned.

(4) If the Commission considers that the matter in relation to which it is requested under subsection (1)(b) to conduct an enquiry relates to or is concerned with an application to a tribunal or other person referred to in subsection (2) or legal proceedings that, in its opinion, is or are likely to be made or instituted or that has or have been made or instituted, the Commission shall postpone the making of a decision as to whether or not to accede to the said request until that application or those proceedings has or have been finally determined.

(5) If the Commission considers that each issue relating to human rights which arises in connection with a matter in relation to which it is requested under subsection (1)(b) to

conduct an enquiry has been addressed and properly determined in an application that has been made to a tribunal or other person referred to in subsection (2) or legal proceedings that have been instituted, being an application or proceedings that has or have been finally determined, the Commission shall refuse to conduct an enquiry into the matter.

(6) For the purposes of an enquiry, the Commission-

(a) may require a person who, in the opinion of the Commission, is in possession of information or has a document or thing in his or her power or control that is relevant to the enquiry, to furnish that information, document or thing to the Commission, and

(b) where appropriate, may require such person to attend before the Commission for that purpose,

and that person shall comply with the requirement accordingly.

(7) A requirement under subsection (6) shall specify a period in which the requirement is to be complied with and, as appropriate-

(a) the place at which the person, the subject of the requirement, shall attend to give the information concerned or to which he or she shall deliver the document or thing concerned, or

(b) the place to which the said person shall send the information, document or thing concerned.

(8) A person required to attend before the Commission under subsection (6)-

(a) shall answer fully and truthfully any question put to him or her by the Commission (other than a question the answer to which might incriminate the person), and

(b) if so requested by the Commission, shall sign a declaration of the truth of his or her answers to any such question.

(9) If it appears to the Commission that a person has failed to comply with a requirement under subsection (6), the Commission may apply to the Circuit Court for an order under subsection (10).

(10) Subject to subsection (11) if, on an application under subsection (9), the Circuit Court is satisfied as to the failure of the person concerned to comply with the requirement in question, the Circuit Court may make an order requiring that person to comply with the requirement.

(11) If, on an application under subsection (9), the Circuit Court is of the opinion that the requirement in question purports to require the person concerned-

(a) to produce any document or thing, or

(b) to furnish information,

for which that person is entitled to claim legal professional privilege, the Circuit Court shall set aside the requirement.

(12) An enquiry may be conducted in public or in private as the Commission, in its discretion, considers appropriate.



(13) Subject to the provisions of this Act, the procedure for conducting an enquiry shall be such as the Commission considers appropriate in all the circumstances of the case.

(14) Information obtained by the Commission in the course of conducting an enquiry or by virtue of the performance by it of any of its other functions under this Act, being information which has not otherwise come to the notice of members of the public, shall not be disclosed by any person, save in accordance with law or under and in accordance with an authorisation under subsection (15).

(15) The Commission may authorise the disclosure of information referred to in subsection (14) and such an authorisation may be without any conditions or subject to such conditions as the Commission considers appropriate and specifies in the authorisation.

(16) If a person furnishes any information, document or thing to the Commission, pursuant to a requirement made under subsection (6), the furnishing of that information, document or thing shall not give rise to any civil liability in contract, tort or otherwise and nor shall the information, document or thing be admissible as evidence against that person in any civil or criminal proceedings.

(17) A person who fails to comply with a requirement made under subsection (6) or with subsection (14) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both.

(18) An application under subsection (9) to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the respondent resides or ordinarily carries on any profession, business or occupation.

10.-(1) This section applies to-

(a) legal proceedings involving law or practice relating to the protection of human rights which a person has instituted or wishes to institute, and

(b) legal proceedings in the course of which a person relies or wishes to rely on such law or practice.

(2) A person (in this section referred to as "the applicant") may apply under subsection (3) to the Commission for assistance of the kind referred to in subsection (5) in relation to legal proceedings to which this section applies.

(3) If an application is made under subsection (2) to the Commission, then, unless in the opinion of the Commission-

(a) the assistance sought could be obtained by the applicant-

(i) under the Civil Legal Aid Act, 1995,

(ii) under the Criminal Justice (Legal Aid) Act, 1962, or

(iii) by any other means, whether or not provided for by or under any enactment,

or

(b) powers to award redress or grant relief in relation to the matter to which the proceedings relate stand vested in any tribunal or other person and the matter could, in the opinion of the Commission, be more effectively or conveniently dealt with by that tribunal or other person, the Commission may decide to grant to the applicant such assistance of the kind referred to in subsection (5) as is appropriate on any of the grounds referred to in subsection (4).

(4) Each of the following is a ground referred to in subsection (3), namely-

(a) the matter to which the legal proceedings concerned relate ("the matter concerned") raises a question of principle,

(b) it would be unreasonable to expect the person to deal with the matter concerned without assistance of the kind referred to in subsection (5) because of its complexity or for any other reason,

(c) there are other special circumstances which make it appropriate for the Commission to grant such assistance.

(5) The assistance referred to in the preceding provisions of this section is-

(a) the provision, or the arranging for the provision of, legal advice to the applicant,

(b) the provision, or the arranging for the provision of, legal representation to the applicant,

(c) the provision of such other assistance to the applicant as the Commission deems appropriate in the circumstances.

(6) Any arrangements made by the Commission under this section for the provision of legal advice or representation to the applicant may include provision for the recovery of expenses incurred by or on behalf of the Commission in that behalf from the applicant in specified circumstances.

11.-(1) The Commission may institute proceedings in any court of competent jurisdiction for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or class of persons.

(2) The declaratory relief the Commission may seek to obtain in such proceedings includes relief by way of a declaration that a statute or a provision thereof is invalid having regard to the provisions of the Constitution or was not continued in force by Article 50 of the Constitution.

(3) In this section-

"human rights" means-

(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and

(b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party and which has been given the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such force;

"statute" has the same meaning as it has in the Interpretation Act, 1937.

12.-(1) There shall be a chief executive of the Commission who shall be appointed by the Commission (and such an officer shall be known, and is referred to in this Act, as "the chief executive").

(2) The chief executive shall hold office under a written contract of service (which contract may be renewed) for such period as is specified in the contract, and subject to such terms and conditions (including terms and conditions relating to remuneration and to suspension and termination of employment) as are so specified, being terms and conditions which are determined by the Commission and approved by the Minister with the consent of the Minister for Finance.

(3) In subsection (2) "remuneration" includes allowances for expenses, benefits in kind and superannuation.

(4) The Civil Service Commissioners Act, 1956, shall not apply to the appointment of a person as the chief executive.

13.-(1) The chief executive shall manage and control generally the staff, administration and business of the Commission, and shall perform such other functions as may be conferred on him or her by or under this Act or by the Commission.

(2) The chief executive shall be responsible to the Commission for the performance of his or her functions and the implementation of the Commission's policies.

(3) The chief executive shall provide to the Commission such information in relation to the performance of his or her functions (including information with respect to the performance of those functions in so far as they relate to the financial affairs of the Commission) as the Commission may, from time to time, require.

(4) The chief executive may, from time to time, with the consent of the Commission, authorise one or more members of staff of the Commission to perform a specified function of the chief executive and such a member or members who is or are so authorised may perform that function accordingly.

(5) The functions of the chief executive may be performed during his or her absence or when the position of the chief executive is vacant by such member of the staff of the Commission as may, from time to time, be designated for that purpose by the Commission.

14.-(1) The chief executive shall, whenever required to do so by the Committee of Dáil Eireann established under the Standing Orders of Dáil Eireann to examine and report to Dáil Eireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on-

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by this Act to prepare,

(b) the economy and efficiency of the Commission in the use of its resources,

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Eireann.

(2) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

15.-(1) In this section "Committee" means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in section 14 or the Committee on Members' Interests of Dáil Eireann or the Committee on Members' Interests of Seanad Eireann) or a subcommittee of such a Committee.

(2) Subject to subsection (3), the chief executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Commission.

(3) The chief executive shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the chief executive is of the opinion that a matter in respect of which the chief executive is requested to give an account before a Committee is a matter to which subsection (3) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive is before it, the information shall be so conveyed in writing.

(5) Where the chief executive has informed a Committee of his or her opinion in accordance with subsection (4) and the Committee does not withdraw the request referred to in subsection (2) in so far as it relates to a matter the subject of that opinion-

(a) the chief executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (3) applies, or

(b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court may determine the matter.

(6) Pending the determination of an application under subsection (5), the chief executive shall not attend before the Committee to give account for the matter the subject of the application.

(7) If the High Court determines that the matter concerned is one to which subsection (3) applies, the Committee shall withdraw the request referred to in subsection (2), but if the High Court determines that subsection (3) does not apply, the chief executive shall attend before the Committee to give account for the matter.

16.-(1) The Commission shall keep in such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account and a balance sheet.

(2) Accounts kept in pursuance of this section shall be submitted not later than three months after the end of the accounting period to which they relate by the Commission to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the income and expenditure account, the balance sheet and of such other (if any) accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

17.-(1) The Commission shall appoint, with the consent of the Minister and the Minister for Finance, such and so many persons to be members of the staff of the Commission as it may from time to time determine.

(2) The terms and conditions of service of a member of the staff of the Commission and the grade at which he or she serves shall be such as may be determined from time to time by the Commission with the consent of the Minister and the Minister for Finance.

(3) There shall be paid by the Commission to the members of its staff such remuneration and allowances as it, with the consent of the Minister and the Minister for Finance, from time to time determines.

(4) The Civil Service Commissioners Act, 1956, shall not apply to the appointment of the staff of the Commission.

18.-The Commission, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the Commission shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Commission with the consent of the Minister for Finance.

19.-The Commission may perform any of its functions through or by any member of the staff of the Commission duly authorised in that behalf by the Commission.

20.-(1) As soon as may be after its establishment, the Commission shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such of its staff (including the chief executive) as the Commission shall think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) Every such scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(4) A scheme submitted by the Commission to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or to the amount of, any superannuation benefit in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(6) No superannuation benefit shall be granted by the Commission to or in respect of any of its staff (including the chief executive) who are members of a scheme under this section, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with such scheme or schemes submitted and approved under this section.

(7) Every scheme submitted and approved under this section shall be laid before each House of the Oireachtas as soon as may be after it is approved and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) In this section "superannuation benefit" means a pension, gratuity or other allowance payable on resignation, retirement or death.

21.-(1) The Commission shall, as soon as practicable after its establishment, provide itself with a seal which shall be authenticated by the signatures of the President, or some other member of the Commission authorised by it to act on its behalf, and of an officer of the Commission authorised by it to act in that behalf.

(2) Judicial notice shall be taken of the seal of the Commission and any document purporting to be an instrument made by the Commission and to be sealed with the seal (purporting to be authenticated in accordance with subsection (1)) of the Commission shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

22.-The Minister may, in each financial year of the Commission, pay to the Commission, out of moneys provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Finance, determines towards the expenses of the Commission in the performance of its functions.

23.-The Commission shall not later than the 31st day of March in each year prepare and submit to the Minister a report on its activities in the immediately preceding year and the Minister shall, as soon as may be, cause copies of the report to be laid before each House of the Oireachtas.

24.-The Commission shall, before the expiration of the period of two years from the establishment day, make to the Government a report containing such recommendations as it thinks fit for improving-

(a) the effectiveness of the Commission,

(b) the effectiveness of any of the functions conferred on it by this Act, particularly having regard to any developments in the field of human rights that have occurred in the said period of two years (whether within or outside the State).

25.-The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

26.-This Act may be cited as the Human Rights Commission Act, 2000.

## APPENDIX 2

### HUMAN RIGHTS COMMISSION (AMENDMENT) ACT, 2001

Table of Sections

1. Amendment of section 5 of Human Rights Commission Act, 2000.

2. Short title and collective citation.

Act Referred to

Human Rights Commission Act, 2000 (2000, No. 9)

Long Title: AN ACT TO AMEND THE HUMAN RIGHTS COMMISSION ACT, 2000.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.-Section 5 of the Human Rights Commission Act, 2000 is hereby amended by-

(a) in subsection (1), the substitution of "14" for "eight", and

(b) in subsection (2), the substitution of "7" for "4" in each place where it occurs.

2.-(1) This Act may be cited as the Human Rights Commission (Amendment) Act, 2001.

(2) The Human Rights Commission Act, 2000 and this Act may be cited together as the Human Rights Commission Acts, 2000 and 2001.



## APPENDIX 3

### UN PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS ("THE PARIS PRINCIPLES")

#### Principles relating to the status of national institutions

##### Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

#### Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act

which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

#### Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

#### Additional principles concerning the status of commissions

##### with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

## **APPENDIX 4**

# **CODE OF PRACTICE FOR MINISTERIAL APPOINTMENTS TO PUBLIC BODIES IN THE UNITED KINGDOM**

### **Chapter 1: Introduction**

#### **The role of the Commissioner**

1.1 The post of Commissioner for Public Appointments was established in November 1995 on the recommendation of the Committee on Standards in Public Life, then popularly known as the Nolan Committee.

1.2 The Commissioner is appointed by the Queen under the Public Appointments Order in Council 1995, and is independent of both the Government and the Civil Service. The Commissioner's role is to regulate, monitor and report on ministerial appointments to health bodies, non-departmental public bodies, public corporations, nationalised industries and the appointments of the Utility Regulators.

1.3 The Commissioner's remit is restricted to ministerial appointments within the bodies listed above. There are a few exceptions within some of these bodies where ministers do not make the appointments, and many other public appointments in the wider sphere, all of which fall outside the Commissioner's remit.

1.4 The generic terms 'public body' and 'public appointment process', when used in this Code of Practice, refer only to those appointments that fall within the remit of the Commissioner.

#### **The purpose of the Code of Practice**

1.5 This Code of Practice sets out the regulatory framework for the public appointments process and is based upon seven principles as recommended by the Committee on Standards in Public Life. It aims to provide departments with a clear and concise guide to the steps they

must follow in order to ensure a fair, open and transparent appointments process that produces a quality outcome and can command public confidence.

1.6 With this in mind, the main body of the Code of Practice is arranged in two sections: Chapter 2 which defines and interprets the Code Principles in relation to the process, and Chapter 3 which charts the procedure to be followed from start to finish.

1.7 The procedure takes account of two important factors: it recognises the need both for proportionality and to allow departments the flexibility they require to deal efficiently and effectively with the diverse range of appointments they make. As the range of appointments is so varied, occasionally a situation may arise which is not covered within the Code of Practice. If this happens the Office of the Commissioner for Public Appointment (OCPA) must be consulted. Similarly, any significant departure from the prescribed process must be discussed in advance with OCPA and duly recorded.

### **Complementary guidance on the Public Appointments process**

#### **a) Departmental guidance**

1.8 Some departments find it helpful to develop their own internal guide for staff involved in the appointments process. When such a guide is produced it must supplement, rather than replace or change, the Commissioner's Code of Practice and be lodged with OCPA. It must be available to any organisation that has a nominating function.

#### **b) Central Secretariat's: *Best Practice Guidance***

1.9 A separate volume of *Best Practice Guidance* has been compiled by the Central Secretariat of the Cabinet Office.

## **Chapter 2: Principles**

### **Ministerial responsibility**

The ultimate responsibility for appointments is with ministers.

### **Merit**

All public appointments should be governed by the overriding principle of selection based on merit, by the well-informed choice of individuals who through their abilities, experience and qualities match the need of the public body in question.

### **Independent scrutiny**

No appointment will take place without first being scrutinised by an independent panel or by a group including membership independent of the department filling the post.

### **Equal opportunities**

Departments should sustain programmes to deliver equal opportunities principles.

### **Probity**

Board members of public bodies must be committed to the principles and values of public service and perform their duties with integrity.

### **Openness and transparency**

The principles of open government must be applied to the appointments process, its working must be transparent and information provided about the appointments made.

### **Proportionality**

The appointments procedures need to be subject to the principle of proportionality, that is they should be appropriate for the nature of the post and the size and weight of its Responsibilities.

## **The Principles**

2.1 These are the seven principles that underpin the Code of Practice. They come directly from recommendations by the Committee on Standards in Public Life (*Nolan: First Report*, May 1995). They are the foundations of the public appointments process and are designed to ensure appointment on merit and a quality outcome.

2.2 The relevant procedural points relating to each principle are set out below.

### **Ministerial responsibility**

2.3 Ultimate responsibility for appointments rests with ministers. To ensure ministers can fulfil their role properly departments must:

- agree appointment criteria and the process to be followed with ministers at the outset to avoid disruption of the process at a later stage;
- ensure that once the process is under way these criteria are not changed; and
- ensure that all candidates put to the minister for approval meet the criteria and the standards required by the principle of probity.

### **Merit (and diversity)**

2.4 Appointment on merit is the overriding principle within the appointments process. However, in line with the Nolan Committee's original recommendations, criteria for selection can take account of the need to appoint boards which include a balance of skills and background. Nonetheless:

- departments must guard against positive discrimination;
- political balance is only a consideration where there is a statutory requirement, or in certain strictly limited instances where the nature of a public body makes it essential that individual political parties are represented on it (eg the Committee on Standards in Public Life, the House of Lords Appointments Commission).



2.5 To ensure that existing board members standing for reappointment meet the current criteria and can compete, when appropriate, in an open competition, departments must have in place a meaningful performance appraisal system.

### **Independent scrutiny**

2.6 Independent scrutiny is a mandatory element of every competition. No appointment may be made unless an independent assessor has been involved in the process. Within this requirement:

- departments may recruit their own independent assessors, but should seek suitable candidates from diverse backgrounds using open and transparent methods and select them against the established criteria in accordance with the quality assurance measures set out in Annex A;
- newly appointed independent assessors cannot normally participate in the selection process until they have completed the induction training provided by OCPA. Departments may wish to supplement this training with an internal programme;
- independent assessors must be asked to declare the same personal information and complete the same political activity question as candidates. Departments must record this information for audit purposes, but it should **not** be included in the statistical returns submitted to OCPA.

2.7 When making its recommendation on the principle of independent scrutiny, the Nolan Committee said "*Independence cannot be precisely defined but should normally mean that such a person has no operational role within the bodies or the government departments concerned*". In line with this recommendation:

- a department cannot select a person as an independent assessor if that individual already holds a post on one of the public bodies it sponsors or has left such a post within the past 12 months;
- departments can, if they so choose, select retired civil servants. This is acceptable providing that person has not been employed by the department concerned during the

previous 12 months. Wherever possible departments must avoid a situation where the majority of their independent assessors are former civil servants.

### **Equal opportunities**

2.8 The principles of equal opportunity and diversity are not only socially just, but will benefit any board to which they are applied. Individuals from all sections of society may have much to offer a public body by virtue of their diverse experience and background. Therefore:

- the principles of equal opportunity and diversity must be inherent within the appointments process. Care must be taken, at every stage, not to discriminate on the grounds of gender, race, age, disability, religion, marital status, sexual orientation or community background. Appointments in Northern Ireland must comply with any relevant statutory obligations under the Northern Ireland Act 1998;
- departments should take positive action wherever possible to attract suitable candidates from all sections of society, and this in turn, should lead to wider representation on public bodies. Those involved in the appointments process must however ensure that any initiative or positive action they take to encourage or achieve wider representation is within the law.

### **Probity**

2.9 Departments must ensure that the individuals they appoint are committed to the principles and values of public service. The problem most likely to arise is that of actual or perceived conflict of interest. Therefore, as early as possible in the recruitment process, all candidates must be asked to disclose information or personal connections which, if they were to be appointed, could be misconstrued. Departments, in consultation with the bodies themselves, are best placed to judge what might constitute a conflict of interest. If it appears that a possible conflict might exist or arise in the future, this must be fully explored with the candidate to establish whether it is sufficiently significant to prevent the individual from carrying out the duties of the post. The discussions and decision must be fully documented and the department must be able to justify its decision publicly if necessary.

2.10 In relation to conflicts of interest there are four issues most frequently encountered:

- financial interests or share ownership;
- candidates who are actively sought from within a field of expertise in which the public body works. Such a connection does not preclude an appointment, but it might well be perceived by the public as a conflict of interest and will need to be handled sensitively;
- membership of societies (eg Freemasons). In some instances, such membership may be cited as creating an obvious conflict of interest, but it must not be an automatic bar to appointment. It must be established whether there is a genuine conflict of interest and if it would hamper the individual in carrying out the requirements of the post;
- candidates must be assessed on merit and not treated more or less advantageously because of the activities, associations or employment of a partner or friend, nor must that relationship influence their actions if appointed. Again, such relationships should not automatically preclude appointment but departments must be sensitive to a situation that might create an actual or perceived conflict of interest.

2.11 Appointees must be made aware of the need to notify the department if there is any relevant change in their situation or connections during the period of the appointment.

### **Openness and transparency**

2.12 To gain public confidence the workings of the appointments system must be clearly visible. All stages of the process, including relevant conversations, must be documented and the information readily available for audit. Information should be stored for a minimum of two years. However:

- personal information about applicants and panel members must remain confidential, unless the individual concerned gives permission for its release;
- data protection legislation must be considered in relation to all recorded information.

### **Proportionality**

2.13 A degree of proportionality is built into the appointments process through the tier system. This Code of Practice sets out the minimum measures that departments are required to implement. However, within this framework departments have the flexibility to adopt the

approach they consider to be most suitable and effective. A number of factors will influence that approach. These will include:

- the nature of particularly high profile or potentially contentious appointments;
- availability (and non-availability) of sufficient suitable candidates;
- special circumstances relevant to the appointment (eg the need to appoint quickly or in unusual circumstances).

2.14 Proportionality arguments must not be used to circumvent proper procedures. All deviations from the process must be fully recorded and departments are advised to consult the Commissioner or OCPA in advance of any significant departure.

2.15 The Commissioner can grant specific exemptions where it is judged they are justified by exceptional circumstances.

## Chapter 3: The Appointments Process

### The 'two tier' system

3.1 Under this system all bodies which fall within the Commissioner's remit are allocated to an upper or lower tier according to the level of remuneration paid to their members and/or the level of government funding they receive. Departments have discretion to raise a body that meets the lower tier criteria into the upper tier, if warranted by its public profile. The only requirement is that they should notify the Commissioner.

#### a) Upper tier

A body falls into this category if it meets **at least one** of the following criteria:

- members (**excluding chair**) individually receive £5,000 or more per annum in fees and/or honoraria (excluding travel, subsistence and other expenses such as child care and loss of earnings); **or**
- it receives £10 million or more of government funding (as recorded in the Government publication *Public Bodies*) through its sponsoring department.

#### b) Lower tier

A body falls into this category if it meets **both** of the following criteria:

- members (**excluding chair\***) individually receive less than £5,000 annually in fees and/or honoraria (excluding travel, subsistence and other expenses, such as child care and loss of earnings); **and**
- it receives less than £10 million per annum in government funding (as recorded in the Government publication *Public Bodies*) through its sponsoring department.

\*If the Chair receives £20,000 or more, that **appointment alone** is subject to upper tier procedures, however, the body remains in the lower tier.

### **c) Audit arrangements**

3.2 Audit arrangements are set out in more detail in Chapter 4. However, departments should note that the appointments processes for both upper and lower tiers are subject to audit.

## **The Procedure**

### **Introduction**

3.3 For ease of reference, the process is described in this chapter under three stage headings:

- Stage 1 Planning
- Stage 2 Preparation
- Stage 3 Selection

The regulatory requirements, which reflect the relevant Code principles, are set down at each stage. The requirements apply to all appointments. Where there is a difference in the requirements for upper and lower tier bodies, these are shown under the two separate sub-headings.

3.4 Throughout the process the Commissioner expects departments to frame their procedures in a considerate and timely manner.

3.5 Departments are also encouraged to apply the principle of proportionality wherever possible within the broad regulatory framework.

## **Stage 1 Planning**

### **Initial ministerial involvement**

3.6 Ministers must be consulted very early in the planning stage. In particular, it is important that they agree the selection criteria and the way the process is to be conducted. If ministers wish formally to nominate candidates for consideration they should do so at this stage.

### **Nature and timescale for the administrative process**

3.7 Within the regulatory framework set out in this Code of Practice, departments have the flexibility to design a selection process most appropriate to their needs. However, at the planning stage departments must:

- decide the nature of the process and draw up a firm timetable; and
- decide how and when the independent assessor will be used.

### **Joint departmental bodies or involvement of the Devolved Administrations**

3.8 Arrangements for joint departmental appointments or those requiring consultation with Devolved Administrations must be agreed at the start of the process in order to avoid the risk of subsequent difficulty and delay. It is therefore essential that the sponsoring departments contact the relevant departments and/or Administrations to agree and record, in advance, the approach they intend to adopt and/or their respective level of direct involvement. The agreement should cover how to proceed in the event of a difference of opinion at any stage and should have the full support of all the relevant ministers.

### **Consultation with public bodies**

3.9 As part of their planning of the appointments process, departments may wish to seek the views of the chairs of the bodies concerned on issues such as selection criteria and the balance of the board. Decisions on all such matters, however, remain with ministers.

### **Role and person specification**

3.10 Role and person specifications must be produced for each and every appointment as member, chair or deputy chair of a public body. These must be reviewed each time a post becomes vacant and not automatically assumed to have remained unchanged since the last time an appointment was made. In setting the selection criteria departments must ensure that:

- these do not discriminate unlawfully against any group or groups in Society;
  - role descriptions are comprehensive and include: details of any remuneration, allowable expenses, conditions of service and a realistic indication of the time commitment required.
- Any specific issues which are relevant to the post must be highlighted (eg a particular residential qualification);

- the person specification addresses the qualities, experience, background, competencies, and where applicable the professional qualifications, sought;
- the person specification does not contain unnecessary requirements that will rule out applications from a particular group within society;
- where positive action is taken to attract applications from a particular group, extreme care is exercised to avoid anything which might constitute positive discrimination.

### **Reappointments**

3.11 Once the number of forthcoming vacancies has been identified, departments will need to establish how many of the members whose terms of office are due to end are eligible for a further term of appointment and meet the current requirements of the board. This will be governed by the time and performance criteria set out below. Decision to reappoint must be taken in a timely manner, and in all cases before the current term expires.

#### **a) Total period in post**

3.12 The number of terms an individual may serve and the conditions for reappointment vary between upper and lower tier bodies as set out in paragraph 3.15. However, in either case the maximum period in office must not exceed 10 years on the same board. Only in exceptional circumstances will the Commissioner agree to an extension of service beyond the 10-year limit. Even then, the individual will be expected to compete for the appointment through full and open competition.

Where a member has been promoted to deputy chair, the periods in both posts must be taken into account. Where a member is appointed chair or deputy chair through open competition or elected from amongst the membership under statute or other legally binding rules of the body, it counts as a new appointment so the clock starts again.

#### **b) Performance assessment**

3.13 Departments must have in place performance assessment processes that will provide the necessary, robust evidence for considering reappointments:

- no one can be reappointed unless they have performed satisfactorily during their current term;



- it is essential that, for audit purposes and the investigation of complaints, all performance assessments are fully recorded and documented.

### **Retiring members**

3.14 Members who will not be invited, for whatever reason, to serve for a further term, must be notified once the formal decision has been taken and before any action is taken publicly to replace them.

### **Terms and criteria for reappointments**

3.15 The requirements vary between upper and lower tier bodies and are as follows:

#### **a) Reappointment to upper tier bodies**

- Appointments to upper tier bodies will normally be restricted to two terms. The length of these terms will be determined by any statutory constraints or be a matter for decision by ministers. In total, though, they cannot exceed the 10-year rule.

##### **– First reappointments**

- First reappointments (ie a second term of office in the same role) may be made subject to a satisfactory performance assessment as set out in paragraph 3.13.

##### **– Second reappointments**

- Second reappointments (ie. a third term of office in the same role) will be rare; and
- can only be made if the individual has been considered alongside other applicants in open competition and has proved to be the most suitable candidate. In making this judgement departments can take into account the fact that the current post holder:

- i) has particular skills or experience essential to efficient functioning of the board; or
- ii) will provide continuity during a period of change (perhaps when a number of appointments are coming to an end simultaneously or bodies are merging).

## **b) Reappointments to lower tier bodies**

Appointees may serve any number of terms subject to the 10-year rule, providing their performance has been continuously assessed as satisfactory.

### **Extensions**

3.16 Where a full term reappointment is not appropriate (eg a pending merger or review) departments may consider an extension of the current term. These will be exceptional and must not be seen as a means of circumventing the appointments procedure. Extensions:

- must be agreed with OCPA in advance;
- must not normally exceed 18 months; and
- should not normally be followed by a reappointment without open competition, although OCPA may consider this in exceptional circumstances.

### **Monitoring reappointments**

3.17 All processes and decisions relating to reappointments are subject to the same information requirements as initial appointments, and to review by the auditors.

### **Promotions to Chair and Deputy Chair**

3.18 Unless there is statutory or other legally binding provision for members to elect a chair from their own number, or a candidate has been selected and appointed as chair designate, promotion to chair is subject to the full appointments process. However:

- where there are urgent and compelling reasons for promoting a member (eg the death or sudden resignation of a chair) OCPA may agree to an exemption, on condition that all existing members of the board have the opportunity to express their interest and all candidates assessed as being suitable are considered for the post;
- promotion from member to deputy chair can be made on the basis of a satisfactory performance assessment without competition.

### **Experts**

3.19 The Commissioner accepts that, very occasionally, there are posts that require such a rare combination of skills and experience that it is impractical to try to fill them through the

usual procedure. These posts are diverse and the only practical approach is to deal with them on an individual basis. Therefore, if a department thinks that a particular appointment falls into this category it can present its case to OCPA for 'expert' designation.

### **Emergency appointments**

3.20 Departments will, on occasion, face emergencies where a public appointment needs to be made very quickly indeed and in politically sensitive circumstances. In such cases either the minister concerned or the permanent secretary of the sponsoring department should contact the Commissioner personally to discuss the options available.

### **Stage 2 Preparation**

3.21 The requirements at the preparatory stage are governed primarily by the need to ensure a demonstrably fair and open process that is appropriate to the nature and degree of responsibility attached to the post being filled. It is recognised that diversity is an essential element on public bodies and that reaching out to a wide range of potential appointees from different backgrounds is the best way to achieve this.

### **Publicising appointments**

3.22 To demonstrate openness of the system people must be made aware that an appointment is available through some form of publicity. Advertising is one way, but may not necessarily be the most effective or proportionate mechanism.

#### **a) Upper tier bodies**

- All posts must be publicised in an effective but proportionate way, eg websites, advertisements, issuing notice of forthcoming appointments to interested groups.
- All competitions to fill chair posts, posts that are paid, have a high profile or have responsibility for managing significant public funds must involve a proportionate form of advertising.

### **b) Lower tier bodies**

As with unpaid posts in upper tier bodies, these appointments must be publicised and departments have the discretion to do so in the most effective and proportionate way.

3.23 All advertisements for posts within the Commissioner's remit must display the *OCPA Regulated* kitemark.

### **Other sources of candidates**

3.24 Departments may also seek candidates through other sources:

#### **a) Public Appointments Unit**

#### **b) Departmental lists**

All entries on departmental lists should be updated regularly and generally time limited to no more than three years. Thereafter, candidates should either be invited to restate their interest or informed courteously that their names have been removed from the list.

#### **c) Targeting of individuals**

- Anyone can suggest or put forward the names of potential candidates. Regardless of the way in which the individual is targeted, applications must go through the same formal process as those from any other source. This includes completing an application form.
- Ministers and officials are equally free to suggest names of possible candidates, but where they wish to make formal nominations applications from their nominees must be received by the same closing date as for applications from any other sources. The sponsor must then take no further part in the selection process, though ministers will obviously be involved at the point of final decision;
- If the sifting process does not produce a strong shortlist, a department can seek additional applications, providing their reasons are fully recorded and notified to OCPA in advance.

#### **d) Nominating bodies**

Some organisations have a statutory right to have their interests represented on a particular public body. Departments may also seek or welcome such nominations. In either case the

department must ensure that the nominating organisation is aware of, and abides by, the guidance set out in the OCPA leaflet *Nominating Bodies*.

#### **e) External consultants**

If a department chooses to use external consultants, the requirements of the Commissioner's Code of Practice still apply and it is the department's responsibility to ensure that the consultants have followed them to the full. In particular, this includes the requirement for all applicants to complete an application form prior to the specified closing date.

#### **Information packs**

3.25 Information packs must be sent out to all applicants and, as a minimum, must contain:

- the application form;
- role and person specifications;
- a realistic indication of the time commitment;
- details of remuneration and expenses relating to the appointment;
- full details of the body;
- information on the process and how long it will take;
- OCPA *Complaints* leaflet; and
- details of expenses to be reimbursed in relation to the selection process.

In the interests of diversity departments must be prepared to respond to requests for this information on audio tapes, in Braille, or in large print, etc.

#### **Application forms**

3.26 Departments will wish to design their own application forms but these must ask for all the information and statistics required by the Commissioner for monitoring purposes (see Chapter 6). However, they should also be simple and straightforward and ask only what is required. In particular:

- applicants should be made aware that some of the information will be placed in the public domain if they are successful;

- the political activity question must be asked of all candidates **exactly** as shown at Annex B (except in Northern Ireland where separate arrangements apply).

### **Closing date for applications**

3.27 Application forms, or the covering letter, should specify the closing date for the competition:

- This should also feature in advertisements or any other form of publicity seeking applications;
- Once the closing date has been specified it must be maintained. If there are exceptional reasons for extending a deadline these must be discussed with OCPA in advance, before an extension is made, and must be documented.

### **Stage 3 Selection**

3.28 This stage covers the identification and selection of appointees. The requirements are governed primarily by the need to maintain the principles of appointment on merit and equal opportunities, and to ensure diversity within boards. The requirements are set out under individual headings, as follows:

#### **The role of independent assessors**

3.29 Independent scrutiny underwrites the integrity of the appointments process and departments are therefore encouraged to involve independent assessors as early as possible. Subject to the minimum requirements set out below, departments can decide at what stage the independent assessor is used in the process. Independent assessors will always be used at the selection stage, which deals with the identification and selection of candidates. Here the following framework requirements apply:

#### **a) Upper tier bodies**

As a minimum, independent assessors must have an overview of the earlier stages of the process and be directly involved in shortlisting and interviewing. This is likely to be as a member of an **advisory or scrutiny panel**, and their role in this respect is described in the context of the overall requirements for these panels, which are set out in paragraph 3.30.

## **b) Lower tier bodies**

- As a minimum, an independent assessor must review the process up to and including shortlisting and **prior** to any final decision being made. However:
- the Commissioner suggests a greater involvement in the case of paid appointments; and
- strongly recommends the full involvement of an independent assessor when the appointment is likely to attract public interest.

## **Advisory and/or scrutiny panels**

3.30 The requirements vary between upper and lower tier bodies as follows:

### **a) Upper tier bodies**

- The key stages of an appointments process must be overseen by a panel rather than an individual. Departments can decide the role of the panel. This might be an advisory panel with permanent membership which oversees all appointments made by the department, or a scrutiny panel that is convened for a particular competition, or a combination of both;
- Whichever arrangement is used, the panel membership will normally include an official from the department, a representative from the public body or other interested group, as appropriate, but must include at least one independent assessor;
- When a scrutiny panel is convened for a particular competition, it should comprise the same members throughout. In extenuating circumstances representatives or officials on the panel may vary, but the independent assessor must not normally be changed. On occasions where the need for change appears unavoidable, departments may apply in advance to OCPA for an exemption;
- A representative of the public body or interest group cannot be designated as the independent assessor;
- The independent assessor is expected to take a full and active part, but cannot chair the panel;
- Departments must consider membership of panels in terms of diversity;
- No appointment can be recommended to ministers unless the candidate has been scrutinised by the panel, even if this means reconvening the panel (eg in exceptional circumstances to look at agreed late entrants).

### **b) Lower tier bodies**

The key stages of an appointment process cannot be overseen by one individual. Whilst departments are not obliged to use full panels as constituted for upper tier bodies, they are strongly advised to do so for high profile or potentially controversial appointments. Where independent assessors are not involved as panel members, they must nonetheless review the overall process and certify their satisfaction prior to any formal decision being made.

### **Selecting a shortlist**

3.31 All those involved must be familiar with the Code principles and be confident that the shortlist is being compiled on the basis of merit. No candidate can be shortlisted unless they have been satisfactorily assessed against the publicised criteria. **All decisions, including those to reject, must be fully documented.**

### **Interviews**

3.32 The requirements vary between upper and lower tier bodies as follows:

#### **a) Upper tier bodies**

A formal interview must take place.

#### **b) Lower tier bodies**

- No individual should be appointed on the basis of written evidence alone. Departments have the discretion to decide the most appropriate approach at this stage. It should be assumed that formal interviews will be held for high profile appointments, whereas a ‘conversation with a purpose’ between a candidate and a senior civil servant will suffice for unpaid appointments. Such conversations must be documented. Only in very exceptional circumstances and when a candidate is already well known to a department can a meeting be considered to be unnecessary;
- Departments are allowed this flexibility of approach, but must adopt a clear policy on interviewing in order to ensure a consistent approach within and between individual competitions. This approach must be documented;
- All decisions arising from interviews or conversations, including those to reject, must be fully documented.



3.33 Whenever an independent assessor is a member of an interview panel, departments must:

- agree with the independent assessor the procedures to be followed during the selection process, including the criteria against which candidates will be assessed;
- provide the independent assessor with a copy of the panel's collective decision on the outcome of the interview process. This must record the names of the candidates whom the panel has agreed to recommend to ministers for appointment. It must also record whether each candidate met the agreed criteria for appointment.

#### **Other considerations at this stage**

3.34 At the shortlisting stage, whether or not it includes an interview, if departments have not already done so they must ensure:

- that candidates are fully aware of the standards of probity required of public appointees;
- that questions of conflict of interest have been explained to and explored with the candidate;
- that all monitoring information, including that on political activity, has been provided; and
- that they themselves have taken account of the statutory disqualifications which apply in respect of MPs, MEPs and members of the Devolved Administrations.

#### **Political activity**

3.35 On the recommendation of the Committee on Standards in Public Life all applicants for a public appointment must answer the standard question on political activity. The format of the question, which appears at Annex B, has been designed by the Commissioner after consultation with the Government and the Committee on Standards in Public Life. It must not be amended in any way. The question only asks for information that is already in the public domain; it does not ask for personal or private information such as membership of political parties or voting preferences. Departments must make a determined effort to ensure that applicants complete the question and any refusal to do so must be recorded.

### **Final ministerial decision**

3.36 Where ministers will expect to be offered a choice of candidates, it is for departments to decide how this should be done. However:

- the overriding principle remains appointment on merit and no candidate can be recommended to ministers unless they have been judged as suitable against the established selection criteria;
- ministers will wish to balance boards in terms of diversity as well as skills and experience; consequently departments may recommend that ministers appoint any candidate who has fully met the selection criteria in order to assist in achieving a desired balance on a board's membership;
- under **no** circumstances, however, should a candidate who has been judged unsuitable for an appointment be recommended in order to achieve that balance on a board.

### **Non-compliance with the Commissioner's Code of Practice**

3.37 If a minister wishes to set aside any of the provisions of this code the department is advised to consult the Commissioner as early as possible:

- if there is no scope for agreement and the minister still decides to proceed, the department must inform the Commissioner, in writing, before an announcement is made;
- similarly, if a minister rejects an entire list of recommended candidates the department must inform the Commissioner immediately, in writing;
- in instances of non-compliance with the Code of Practice the Commissioner may decide to comment publicly on the decision, or require any announcement made by the department to make it clear that the required procedure had not been followed.

### **References**

3.38 It is for departments to decide if they require references and how, and when, they take them up. In reaching this decision they should employ best practice and a consistent approach.

### **Publicising appointments**

3.39 In keeping with the principle of openness and transparency all appointments to public bodies must be publicised in an appropriate way. In all cases, the independent assessor involved must be informed of the final outcome.

### **Upper tier bodies**

Press releases are required for upper tier appointments. These should include:

- a short description of the body to which the appointment has been made and its functions;
- a brief summary of the appointee's career/experience;
- details of the appointee's response to the political activity question. If no political activity has been declared this should be made clear;
- length of appointment and whether it is a paid post or not. If paid, the amount should be given;
- a list of other ministerial appointments held and any related remuneration received. If none, this should be clearly stated.

## **Chapter 4: Audit**

### **Routine audit**

4.1 Under the 1995 Order in Council the Commissioner is required to audit appointments within their remit for compliance with the Code of Practice. The arrangements are as follows:

- a) upper tier appointments will be formally audited by independent auditors;
- b) a selection of lower tier appointments will be audited annually by the Commissioners' Office though independent auditors may be called in to assist if necessary; and
- c) the auditors may be asked to conduct thematic reviews throughout the year.

#### **a) Upper tier bodies**

- Based on the findings of an in-depth **risk analysis** the auditors will conduct a rotating plan of visits to all departments over a three-year cycle;
- Follow up visits will be made to departments if the Commissioner considers it necessary;
- The risk analysis and the rotational plan will be updated annually to ensure that it remains appropriate and takes account of any significant developments in the meantime;
- In the first quarter (ie April–June), departments due to be audited during that year will be informed by the Commissioner's office of the intended schedule of visits, and asked to agree a commencement date with the Auditors;
- Individual audit reports will be issued to the relevant departments via the Commissioner's office as soon as possible after the departmental audit has been completed;
- The Commissioner's office will issue a summary report of the year's audit work to all departments.

#### **b) Lower tier bodies**

- OCPA staff will carry out checks on a selection of lower tier appointments over the course of the year. These reviews will take the form of either a compliance or a thematic audit; and
- Letters detailing the findings and any recommendations will be sent to the department.

**Other audit work**

4.2 In addition to the routine audits described above, the Commissioner may decide to ask the independent auditors to carry out ad hoc audits. These may cover issues arising from a previous audit, or relate to an individual complaint or a series of complaints.

## Chapter 5: Complaints

5.1 The Commissioner **will not deal** with any complaint relating to an appointment made more than **one year previously**, ie from the date specified in the letter of appointment.

5.2 Subject to this time limit the Commissioner will investigate all complaints relating to the appointments procedure that concern:

- i) an individual's experience as an applicant;
- ii) the way a department has handled an appointment's process; or
- iii) a challenge to the appointment of the successful candidate only if it appears that the appointment process has been breached.

5.3 The Commissioner has **no remit** to investigate complaints relating to non-selection or non-reappointment unless it appears that the selection process has breached the Code of Practice.

5.4 The Commissioner **does not deal** with complaints relating to the way in which a public body is run, the actions of its members or remuneration.

5.5 OCPA's *Complaints* leaflet sets out these limitations in detail.

### Complaints to departments

5.6 As a general rule, all complaints must be dealt with first by the department concerned. Therefore, providing it is appropriate, any complaints made directly to the Commissioner will be redirected to the department concerned. If a complainant is dissatisfied with the department's response they may then ask the Commissioner to consider initiating an investigation.

5.7 It is therefore essential for departments to have effective systems in place for handling complaints.

5.8 Departments must also keep a full record of all correspondence and any relevant documentation, such as minutes of meetings and notes of telephone conversations. These must be available for audit if required.

5.9 For the purpose of recording in the annual report, OCPA must be notified of the precise number and the broad details of complaints that a department has received over the relevant period.

### **Complaints to the Commissioner**

5.10 If the Commissioner has agreed to investigate a complaint, it will be dealt with in one of two ways. OCPA may carry out the investigation alone or, in exceptional circumstances, may seek the assistance of the independent auditors. The procedures followed will be fundamentally similar in either case, but for clarity are set out individually and in full below.

### **Complaints investigated by OCPA**

#### **Initial action**

5.11 Once the decision to investigate a complaint is taken OCPA will:

a) send a 'statement of complaint' to the complainant. This will:

- set out the issues that fall within the Commissioner's remit and make it clear that these are the only features of the complaint that will be dealt with;
- make clear the extent of the Commissioner's remedial powers in the event that the complaint is upheld;
- say that OCPA has approached the department on this basis and when OCPA expects to receive a reply; and
- what the next stage will be (see paragraph 5.12).

b) write to the department concerned:

- setting out the complaint;
- listing the issues to which the department is expected to respond;and

- setting a deadline for that response. The department will be asked to notify OCPA immediately if it feels that this deadline cannot be met.

### **Factual accuracy timeline**

5.12 Once a reply has been received from the department, where relevant, OCPA will produce a **factual accuracy timeline**, annotated with all the relevant factual information. This will be sent out simultaneously to the complainant and department and both will be invited to comment on the accuracy and completeness of the record within 15 working days. At the same time they will also be informed that the Commissioner would normally expect to notify them of her findings within 15 working days of their **mutual agreement** on the factual accuracy timeline.

5.13 Disagreements between the parties will be resolved as speedily as possible. All telephone conversations will be documented and both parties' final agreement will be required in written form.

### **Reporting the Commissioner's findings**

5.14 The Commissioner's findings will be communicated to both the complainant and the department in the form of individual letters setting out:

- the key conclusions and the reasons behind them; and
- any action that the Commissioner intends to take or recommends the department should take in the light of the investigation.

### **Ongoing complaints**

5.15 It is possible that the complainant may not be content with the outcome and/or the way that the investigation was handled. These two areas are entirely separate and, accordingly, will be treated differently:

- **OCPA will not** enter into protracted discussion with the complainant about the outcome of the investigation; and
- **OCPA will not reopen** the investigation unless relevant new evidence comes to light.



- However, OCPA **will** clarify points raised in relation to the Commissioner's reply, and respond to questions raised about the way the complaint has been handled.

5.16 If the complainant remains dissatisfied, a **final** letter will be sent to them making it clear that this is the case and setting out the courses of action open thereafter. It will also be made clear that this recourse only applies to the way in which a complaint was handled, or the service received from OCPA, and **not to the outcome of the investigation**.

### **Complaints involving OCPA's independent auditors**

5.17 OCPA recognises that some complaints are particularly complex and/or require specialist skills. However, prior to the final decision to use the auditors, OCPA will speak to the complainant to clarify the issues within the complaint and to ensure that it qualifies for exceptional treatment. Thereafter:

### **Terms of reference**

5.18 OCPA will produce tightly drafted Terms of Reference prior to the start of the investigation. These will:

- set out the complaint;
- set out the key issues to be investigated;
- describe the work to be performed; and
- outline a timetable for the investigation and reporting.

5.19 The Terms of Reference will be for **internal use only**. OCPA will draw up a 'statement of complaint', based on the terms of reference and outlining the issues. This will be sent to both the complainant and the department.

### **Reporting**

5.20 The **auditors** will then draw up a **factual accuracy timeline**. This will relate strictly to matters of 'who did what and when', and does not include matters of judgement. This procedure will help to speed up the process and will afford demonstrably fair and equal treatment to both complainant and department.

5.21 OCPA, **not** the independent auditors, will **manage** the process of agreeing factual accuracy.

- The auditors will draw up a factual accuracy timeline, which will be sent to OCPA;
- OCPA will send this out to both complainant and department, at what will effectively be the draft report stage. The complainant and the department will be invited to comment on the accuracy and completeness of the record within 15 working days.

5.22 Once the factual accuracy has been agreed, the draft conclusions should be discussed and agreed with the department.

### **The final report to the complainant**

5.23 The guiding principle here is that, whilst both the complainant and the department are justified in challenging the factual accuracies in a case, it is not for them to judge the Commissioner's conclusions based on the agreed facts.

5.24 The auditors' report is for the Commissioner only. The Commissioner's formal response to the complainant will draw heavily on the auditors report. It will be in the form of a letter setting out the key conclusions of the investigation and any subsequent action that OCPA intends to take. This will include the Commissioner's recommendations to the department on the action it should take.

### **What should the department receive?**

5.26 The department will receive a letter from the Commissioner. This letter will set out the findings and the reasons behind them. It will draw extensively on the conclusions in the auditors' report.

## **Chapter 6: Statistics and information**

6.1 Detailed information is required for inclusion in the Commissioner's annual report at the end of the financial year. Departments will be consulted in advance of any change to this requirement.

6.2 The information relates to **new appointments made between 1 April and 31 March**. Statistics are divided into 'Chair' or 'Member' categories. For the purpose of this exercise deputy chairs are included as members. In relation to these categories the information required is as follows:

- number of appointments made
- Gender\*
- ethnic minority\*
- Age
- Disability
- political activity by party (includes details about levels of political activity)
- number of reappointments
- whether the appointee holds more than one appointment.

\*In addition, these categories are divided into remuneration bands.

6.3 Although OCPA will not routinely collect the information, for the purpose of audit and possible complaint, departments must also record:

- the source of an appointee; and
- any recorded potential conflict of interest.

### **Independent assessors**

6.4 For audit purposes, departments must record the same information for independent assessors as for appointees.

**Advertisements and press releases**

6.5 Copies of all advertisements and press releases must be kept on file for audit purposes where necessary.

## **Annex A: Independent scrutiny of public appointments**

### **Quality assurance measures**

#### **Introduction**

A.1 The preceding chapters in the Commissioner's Code of Practice set out the regulatory framework for ministerial appointments to public bodies. They describe the procedures and practices that the Commissioner requires departments to adopt in order to ensure a fair, open and transparent system that commands the confidence of the public as well as Parliament and Ministers themselves. Rigorous adherence to the principle of independent scrutiny is an essential element in sustaining that confidence. The purpose of this Annex is to support and supplement the regulatory framework by setting out additional quality assurance measures to ensure the effectiveness of independent assessors.

A.2 The objectives of these measures are to ensure:

- that the function of independent scrutiny is carried out by assessors with the right skills and level of experience (**selection**);
- that they are sure about their role and are equipped to discharge their responsibilities effectively (**induction and training**);
- that the information and support they need is available to them from departments and from OCPA itself (**information**).

#### **Selection of independent assessors**

A.3 When recruiting their independent assessors, departments should seek to draw upon the services of a wide range of people capable of fulfilling the role. The principles and benefits of equality of opportunity and diversity apply as much to the selection of independent assessors as they do to the public appointments process as a whole. Moreover, a diverse pool of independent assessors will help departments to balance the membership of individual advisory and scrutiny panels.

A.4 Further essential elements of the quality assurance measures are as follows:

- Independent assessors must be selected against established criteria. Role and person specifications used by OCPA to describe the core elements are set out at Appendices I and II, respectively. Departments may augment these to reflect their own particular requirements;
- Departments will also wish to assure themselves of candidates' suitability. As a minimum, a senior official must meet individual independent assessors (designate) prior to their appointment, and the outcome of the meeting must be documented.

A.5 Departments are asked to pass contact details and short biographical resumes of those newly selected as independent assessors to the Commissioner's Office. This information will enable OCPA to register departmental appointees for its induction programme and add their names to its mailing list of independent assessors.

#### **Induction of new independent assessors**

A.6 This will comprise two elements: an **induction package** (which will be sent out immediately on notification to each new independent assessor) and an **induction seminar** (which will be arranged by OCPA and take place periodically, as required).

A.7 The **induction package** will comprise:

- a welcoming letter from the Commissioner which also offers new assessors an early opportunity to meet OCPA staff at an induction seminar;
- a copy of the Commissioner for Public Appointments' Code of Practice;
- OCPA's handbook for independent assessors containing written guidance on their role and responsibilities and practical advice on how to discharge these effectively;
- an equal opportunities and diversity resource pack.

A.8 The **induction seminars** for new assessors are designed to reinforce the written guidance and focus on particular aspects. A sample programme for the induction seminars appears at Appendix III.

A.9 Generally speaking, no new independent assessor should take an active part in an appointments competition until they have attended an induction seminar. Exceptionally

though, where the department can demonstrate it is unnecessary, and the individual is content, a dispensation can be arranged with OCPA.

A.10 Where it is felt that independent assessors already appointed would benefit, they are welcome to attend an induction seminar.

**Information for independent assessors**

A.11 Strengthening the Commissioner's links with independent assessors is an important aspect of the quality assurance measures. The *Sentinel*, the newsletter for independent assessors will, in future, be sent out direct from OCPA and OCPA's regular seminars will continue to provide the opportunity for independent assessors to meet, share experiences and keep abreast of new developments, for example relevant legislation.

## **Appendix I: Independent assessor: role specification**

### **Title**

Independent Assessor of the Public Appointments Process

### **Objectives**

- To assist ministers in the task of making effective public appointments that command public confidence;
- To provide an assurance that the appointment process has conformed with the principles and practice set out in the Code of Practice issued by the Commissioner for Public Appointments; and in particular
- To be able to provide an assurance that appointments have been made on merit after a fair, open and transparent process.

### **Main duties**

- To play a full and active part at appropriate stages in the appointment process in order to provide an assurance that the procedures employed by the department comply with the Commissioner for Public Appointments' Code of Practice;
- When required, to act as a member of an advisory or scrutiny panel to review the documented procedures relating to the selection of candidates before recommendations are put to ministers. When part of a scrutiny panel an independent assessor may also be involved in shortlisting and interviewing candidates;
- Whenever necessary, to raise concerns about any shortcomings in the process with the selection panel, responsible officials in departments, or the Commissioner as appropriate.



## **Appendix II: Independent assessor: skills, knowledge and experience**

As an independent assessor, your role is to assist ministers in the task of making effective public appointments that command public confidence and, in particular, to provide an assurance that the appointment process has conformed with the principles and practice set out in the Code of Practice issued by the Commissioner for Public Appointments. To fulfil that role effectively you will already have some familiarity with recruitment processes and selection techniques. You may have gained this knowledge through experience in a variety of fields – perhaps by profession, though relevant knowledge and skills acquired through non-traditional employment patterns are equally valued and formal qualifications are not a requirement. If you have experience as a committee member, if you can work effectively as a member of a team, if you have experience of management or of decision making in other areas, you may be able to put that to good use as an independent assessor. Previous knowledge of Public Appointment procedures, though useful, is not a requirement: any existing knowledge will be supplemented through OCPA training and departmental briefings. You will be a good communicator, able to receive and interpret information, and to make reasoned judgements on the relative merits of candidates for appointment on the basis of agreed selection criteria. You will be able to advance your opinions convincingly whilst being flexible enough to acknowledge when others' views carry greater force. You will be able to bring common sense to bear on sometimes difficult issues and deal with them sensitively.

Above all, you will have the public interest at heart and you will not be afraid to speak up if you feel that the principles underpinning the Commissioner's Code of Practice are being compromised.

## **Appendix III: Sample induction training for independent assessors**

### **PROGRAMME**

*Tea/Coffee*

**1. Welcome and introduction – The Nolan Principles and the Commissioner for Public Appointments Code of Practice**

**2. The Role of the Independent Assessor**

– including departmental training

**3. Participating in the Appointments Process**

– including mentoring

**Lunch (1 hour)**

**4. The Civil Service, Parliament and Public Bodies**

**5. Data Protection Legislation**

**6. Equal opportunities legislation and promoting diversity**

**7. Closing remarks, coffee and informal chat**

## Annex B: Political activity question

All applicants for a public appointment should complete the question below.

This question is asked for two reasons:

- it enables the monitoring of political activity of candidates for a public appointment in so far as it is already in the public domain. Neither activity nor affiliation is a criterion for appointment (except where statute dictates specific representation);
- involvement in political activities enables individuals to gain and to demonstrate skills and experiences they may not otherwise have obtained. You may be asked about these if they are relevant to your application.

If you are successful, the information provided will be published with the announcement of your appointment.

*Please indicate which of the following activities you have undertaken during the past five years by ticking the appropriate box and by providing details of your involvement. Name the party or body for which you have been active. If you have been or are an Independent or have sought or obtained office as a representative of a particular interest group, you should state this. You should tick all relevant categories.*

- a.  Obtained office as a Local Councillor, MP, MEP etc.
- Stood as a candidate for one of the above offices
- Spoken on behalf of a party or candidate
- b.  Acted as a political agent
- Held office such as Chair, Treasurer or Secretary of a local branch of a party
- Canvassed on behalf of a party or helped at elections
- Undertaken any other political activity which you consider relevant
- c.  Made a recordable donation to a political party<sup>1</sup>

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<sup>1</sup>The Political Parties, Elections and Referendums Act 2000 requires the Electoral Commission to publish a register of recordable donations (donations from any individual totalling more than £5,000 in any calendar year, or more than £1,000 if made to a subsidiary accounting unit such as a constituency association, local branch, women's or youth organisation). These provisions became effective from 16 February 2001.

d . ✍ None of the above activities apply

*Details of involvement:*

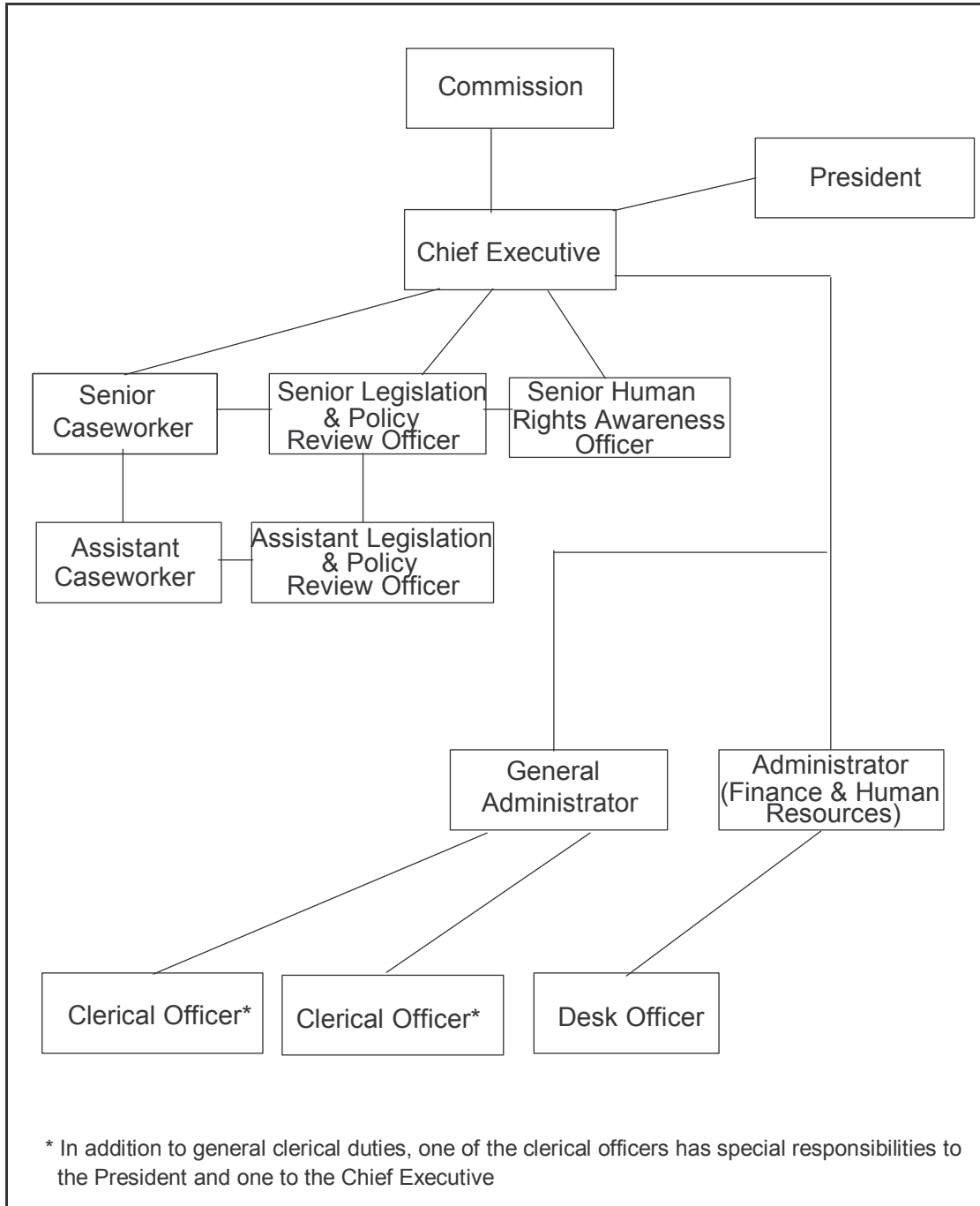
*Name of Party for which activity undertaken:*

NAME.....SIGNATURE.....

DATE.....

## APPENDIX 5

### STAFFING STRUCTURE





## APPENDIX 6

### THE WORK OF THE COMMISSION SEPTEMBER 2001 TO JUNE 2003

The work listed here is illustrative of the range of the Commission's work to date. It is not intended to be comprehensive.

#### *Keeping law and practice under review [Section 8 (a)]*

- A public statement was issued on 21 February 2002 regarding: the Twenty-fifth amendment of the Constitution (Protection of Human Life in Pregnancy) Bill, 2001.
- A public statement was issued on 16 May 2002 expressing concern at the reported degree of force used by members of An Garda Síochána during a 'Reclaim the Streets' parade on 6 May 2002.
- On 10 December 2002 the Commission published its submission on the National Action Plan Against Racism.
- On 17 December 2002 the Commission published "A Proposal for a New Garda Complaints System".
- A public statement was issued on 4 March 2003 regarding the Freedom of Information (Amendment) Bill 2003.
- On 4 March 2003, the Commission sent its observations on the Criminal Justice (Terrorist Offences) Bill, 2002, to the Minister of Justice, Equality and Law Reform.
- A public statement was issued on 30 May 2003 expressing the Commission's concern at the proposal of the Minister for Justice, Equality and Law Reform to take from the Equality Tribunal the right to adjudicate in cases where discrimination is alleged against the licensee of a public house.
- A public statement was issued on 1 July 2003 regarding the late changes to the Immigration Bill, 2002 at Report Stage.
- A public statement was issued on 3 July 2003 welcoming the decision of the United Nations Ad Hoc Committee in New York to establish a Working Group to prepare a draft text for a Convention on Protection and Promotion of the Rights and Dignity of Persons.

with Disabilities and calling on the Irish Government to adopt an active role in advancing the process.

- The Commission has undertaken and intends to publish a review of the Housing (Miscellaneous Provisions) (No.2) Act outlining its concerns regarding the Act.

*Consulting with national and international bodies [Section 8 (c)]*

- The Commission was represented at a number of significant international events including: the UN World Conference on Racism in South Africa in 2001, UN Commission on Human Rights in Geneva in April 2002, the 6th International Conference of National Human Rights Institutions in Copenhagen and Lund in April 2002, the UN Special Session on Children's Rights in New York in May 2002 and at the Second Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons With Disabilities in New York in June 2003.
- The Commission has met with a number of NGOs and statutory bodies.
- The Commission co-sponsored with the Department of Foreign Affairs and the National Disability Authority a conference on a United Nations Convention on the Human Rights of Persons with Disabilities in February 2002.
- The Commission, along with the Equality Authority and the National Consultative Committee on Racism and Interculturalism, co-sponsored a Consultative Conference on the National Action Plan Against Racism in March 2002, organised by the Department of Justice, Equality and Law Reform and the Department of Foreign Affairs.
- Commission members met with a delegation of the European Committee for the Prevention of Torture when they made one of their periodic monitoring visits to Ireland in May 2002.
- The Commission co-hosted a Conference with the Law Society of Ireland on the European Convention on Human Rights Bill, 2001 in October 2002.
- The Commission co-hosted, together with the Northern Ireland Human Rights Commission, a Round Table conference with the Council of Europe and a meeting of the European Group of National Human Rights Institutions in Belfast and Dublin in November 2002.



- The Commission co-hosted with Amnesty International (Irish Section) a seminar on Racism and the Media in Dublin in June 2003.
- The Commission contributes to meetings of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.
  - The Commission is a member of the Steering Group on the National Action Plan Against Racism and of the Joint Equality and Human Rights Forum.
  - The Commission has observer status at the International Co-ordinating Committee of national institutions for the promotion and protection of human rights.

*Making recommendations to Government [Section 8 (d)]*

- The Commission has published its observations on the National Action Plan Against Racism, which were submitted to the Steering Committee on a National Action Plan in September 2002.
- The Commission presented a submission on the European Convention on Human Rights Bill, 2001 to the Oireachtas Committee on Justice, Equality, Defence and Women's Rights in October 2001. This submission was published in June 2002 and is available on the Commission's website. The Commission appeared again before the Committee in December 2002 regarding the incorporation of the Convention into Irish law.
- The Commission has recommended that the Government ratify the International Convention on the Protection of Migrant Workers and their Families.
- The Commission has recommended the repeal of Section 24 of the Housing (Miscellaneous Provisions)(No 2) Act 2002.

*Promoting awareness of human rights and undertaking research [Sections 8 (e) and 8 (g)]*

- An information booklet on the Commission has been produced. The booklet is available on the Commission's website.
- The Commission published a preliminary research document on the Treatment of Older People in Long Stay Care in April 2003. Many organisations have replied with positive feedback on this publication.

- The Commission published *Observations on the Proposals Paper of the Disability Legislation Consultation Group From the Perspective of the International Covenant on Economic, Social and Cultural Rights* in June 2003.

*Participating in the Joint Committee [Section 8 (i)]*

- A preconsultation paper on a Charter of Rights for the Island of Ireland was distributed on 14 May 2003.
- The Joint Committee Sub-Committee on Racism has engaged in a process of consultation with statutory bodies in Northern Ireland and the Republic of Ireland concerning its future work in this area.
- It is intended that the Joint Committee will publish a 'Users Guide' to the UN Convention on the Elimination of All Forms of Racial Discrimination of relevance to the situation in Northern Ireland and the Republic of Ireland shortly.
- The Joint Committee has commenced a review of emergency legislation in Northern Ireland and in the Republic of Ireland.