

## **VICTIMS AND SURVIVORS (NORTHERN IRELAND) ORDER**

### **EXPLANATORY MEMORANDUM**

#### **INTRODUCTION**

1. It is intended that the draft Order will be made under the Northern Ireland Act 2000 and will be subject to affirmative resolution.
2. This Explanatory Memorandum has been prepared by the Office of the First Minister and deputy First Minister (“the Department”). It is intended to assist the reader in understanding the draft Order, and does not form part of the draft Order. It is not, and is not meant to be, a comprehensive description of the draft Order.

#### **BACKGROUND AND POLICY OBJECTIVES**

3. The draft Order is concerned with Victims and Survivors of the Northern Ireland ‘Troubles’. On 1 March 2005, the then Secretary of State, Paul Murphy, announced proposals for the appointment of a Commissioner for Victims and Survivors and opened a period of consultation on the detailed remit of the post, and on the wider future of services for victims and survivors of the Troubles. Following consideration as to the way forward the Secretary of State announced the appointment of Mrs Bertha McDougall as Interim Commissioner for Victims and Survivors on 24 October 2005.
4. Mrs McDougall took up her post as Interim Commissioner on 5 December 2005. Her terms of reference are to review current arrangements for service delivery and coordination of services for victims and survivors across Departments and agencies, identifying any gaps in service provision. She is also tasked with reviewing how well the current funding arrangements in relation to services and grants paid to victims and survivors groups and individual victims and survivors are addressing need and with considering the

practicalities of establishing a victims and survivors forum as envisaged in the Joint Declaration.

5. Whilst the Interim Commissioner is carrying forward essential preliminary work and is expected to complete a report on the issues within her remit around the end of 2006, the draft Order will pave the way for a longer-term appointment. Accordingly, the draft Order makes provision for the establishment of the post of Commissioner for Victims and Survivors for Northern Ireland, and sets out the Commissioner's role and remit.
6. The principal aim of the Commissioner will be to promote the interests of victims and survivors. The Government is concerned that victims and survivors have a strong independent voice, but also that the Commissioner can contribute to the development of policies which address the needs of those who have suffered as a result of the conflict in Northern Ireland. In taking forward the principal aim of promoting the interests of victims and survivors the draft Order provides that the Commissioner will agree a programme of work with the First Minister and deputy First Minister, acting jointly. This programme may cover a range of issues which are set out in Articles 6 and 7 of the draft Order which are outlined below and will include setting up a victims and survivors forum.
7. It is intended that when the legislation is in place the position of Commissioner will be advertised and will be an appointment falling within the remit of the Office of the Commissioner for Public Appointments in Northern Ireland.

#### **PREVIOUS CONSULTATION RELATING TO A COMMISSIONER**

8. A number of consultations have been carried out on victims' issues over the last few years. These consultations have covered the wide range of issues that interest victims and survivors. The outcomes of these processes fed into the development of the consultation document, "Services for Victims and Survivors", which the Secretary of State launched on 1 March 2005 and which included proposals in relation to the role of a Commissioner. The document was distributed widely and invited responses from all interested parties. In general, those who commented were in favour of the concept of having a

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Commissioner, though there were some differences as to his or her detailed remit.

#### **FINANCIAL EFFECTS OF THE ORDER**

9. Costs will extend to salaries and other costs for Commissioner and appropriate staff, as well as accommodation and other running costs to allow the Commissioner to effectively carry out his or her duties. This might include carrying out research or educational activities concerning the interests of victims and survivors. The draft Order also allows for the Office of the First Minister and deputy First Minister to pay grants to bodies or persons involved with victims and survivors, as it considers appropriate. This might cover, for example, core running costs and project costs.

#### **HUMAN RIGHTS ISSUES**

10. The provisions of the draft Order are compatible with the Convention on Human Rights.

#### **EQUALITY IMPACT ASSESSMENT**

11. The draft Order is concerned with the delivery of services to victims and survivors and how they might be better co-ordinated and planned. Equality issues were considered in the consultation document issued in March 2005, and no adverse impacts were identified and none were raised by consultees in their responses. We will continue to keep equality issues under review.

#### **SUMMARY OF THE REGULATORY APPRAISAL**

12. The effects of the draft Order have been assessed from the standpoint of Regulatory Impact, and the conclusion is that the proposed legislation will not result in savings or costs for businesses, charities, social economy exercises or voluntary bodies. It is not considered necessary, therefore, to prepare a Regulatory Impact Assessment.

#### **MAIN ELEMENTS OF THE ORDER**

13. As already noted, the draft Order establishes the post of Commissioner for Victims and Survivors for Northern Ireland, whose principal aim will be to

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promote the interests of victims and survivors. The draft Order sets out the duties and powers of the Commissioner and requires the Commissioner to make arrangements for a forum for consultation and discussion with victims and survivors and for the work of the Commissioner to be the subject of an a programme of work to be agreed with the First Minister and deputy First Minister, acting jointly. The draft Order also specifies such matters as the term of office of a Commissioner and salaries that may be paid. In addition, the draft Order gives the Office of the First Minister and deputy First Minister the authority to pay grants to support work with victims and survivors.

## **COMMENTARY ON ARTICLES**

### **Article 1 – Title and Commencement**

This Article sets out the title of the draft Order and allows for the substantive provisions of the draft Order to come into operation on a day appointed by the Office of the First Minister and deputy First Minister.

### **Articles 2 & 3 – Interpretations**

These Articles provide definitions for some of the terms used in the draft Order. Attention is drawn to two particular interpretations. The draft Order is concerned with victims and survivors of the Northern Ireland conflict, sometimes referred to as the ‘Troubles’. For the purpose of the draft Order ‘conflict-related incident’ is defined as meaning what appears to the Commissioner to be a violent incident in connection with the affairs of Northern Ireland in or after 1968. The term ‘victim and survivor’ is defined as someone who appears to the Commissioner to have been physically or psychologically injured, someone who cares for them, or someone who has been bereaved, as a result of a conflict-related incident. It is intended that the definition is used in an inclusive manner. Those who have witnessed a conflict-related incident and those who provided emergency assistance are also included in the interpretation if they have been psychologically injured.

### **Article 4 – The Commissioner for Victims and Survivors for Northern Ireland**

This Article provides that there will be a Commissioner for Victims and Survivors for Northern Ireland, to be appointed by the First Minister and deputy First Minister, acting jointly. Should devolution not be restored, the reference here and throughout

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the draft Order should be read as meaning the Secretary of State. The Article allows for the post of Commissioner to cease on a day appointed by the First Minister and deputy First Minister, acting jointly. The Article also activates the provisions in the Schedule to the draft Order that deal with certain aspects of the post such as finances, staffing and accountability and is described in more detail below.

**Article 5 – Principal aim of the Commissioner**

This Article describes the principal aim of the Commissioner as being to promote the interests of victims and survivors.

**Article 6 – Duties of the Commissioner**

This Article describes the duties of the Commissioner. These duties will be carried out in accordance with a work programme as referred to in Article 8. The duties include promoting an awareness of matters relating to the interests of victims and survivors and keeping under review the adequacy and effectiveness of law and practice and services provided for victims and survivors. The Commissioner will be under a duty to advise the Secretary of State, the Executive Committee of the Assembly and any organisation or person providing services for victims and survivors on matters concerning victims and survivors. The Commissioner must take reasonable steps to seek the views of victims and survivors concerning the carrying out of his or her functions. The Commissioner will also be under a duty to make arrangements for a victims and survivors forum for consultation and discussion with victims and survivors.

**Article 7 – General powers of the Commissioner**

This Article provides the Commissioner with a range of general powers. As with the duties referred to in Article 6 these powers will be exercised in accordance with a work programme as referred to in Article 8. The powers include compiling information on victims and survivors, the provision of financial or other assistance for research or educational activities concerning the interests of victims and survivors, publishing research and advice and making representations or recommendations to any organisation or person regarding the interests of victims and survivors.

### **Article 8 – Work Programmes**

This Article makes provision for the Commissioner to submit to the First and deputy First Minister a work programme as to the proposed activities in the exercise of his or her functions. The work programme must be in such a form as the First Minister and deputy First Minister, acting jointly, may direct and the Commissioner will be required to consult with such organisations and individuals as he or she thinks appropriate before submitting a work programme. It is anticipated that work programmes are likely to be for a period of one year, but the draft Order allows for the period of a work programme to be directed by the First and deputy First Minister, acting jointly. Any work programme must be approved by the First Minister and deputy First Minister, acting jointly, and they may make modifications before giving approval. The Commissioner is under a duty to carry out only activities as approved in the work programme.

### **Article 9 – Privilege for Certain Publications**

This Article provides that any matter that the Commissioner is required or permitted to publish is exempt from challenge under the law of defamation.

### **Article 10 – Payment of Grants by the Office**

This Article gives the Office of the First Minister and deputy First Minister the authority to pay grants to organisations and individuals in connection with work assisting victims and survivors. These grants may cover such areas as core running costs and project costs for groups. Payment of grants is subject to the approval of the Department of Finance and Personnel.

## **COMMENCEMENT**

It is expected that the Order will progress through Parliament during the Autumn of 2006 and, subject to Parliamentary approval, will be made at the November Privy Council. It is anticipated that the provisions allowing for the appointment of a Commissioner will be brought into operation to allow for the appointment processes to take place early in 2007.

## **SCHEDULE**

The Schedule to the draft Order contains various provisions relating to the Commissioner's general powers, salary, accounting arrangements and staff requirements. Attention is drawn here to the following paragraphs in the Schedule.

**Paragraph 3 – Tenure of Office:** This Paragraph provides for a tenure of four years for an individual appointed as Commissioner, with the possibility of one further term of four years. An individual appointed may resign at any time by giving notice to the First and deputy First Minister. Provision is made for an individual to be removed from office by the First and deputy First Minister in circumstances specified in the Schedule.

**Paragraph 12 – Annual Report:** The Commissioner will be required to produce an Annual Report detailing work done during that year and send it to the Office of the First Minister and deputy First Minister. The Office of the First and deputy First Minister will be responsible for ensuring that a copy of the Annual Report is laid before the Assembly and that a copy is sent to the Secretary of State.

**Paragraph 14 – The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7):** This Article includes the Commissioner under the scope of the Commissioner for Complaints. This ensures that the Commissioner will fall under the terms of Section 75 of the Northern Ireland Act 1998. This places a statutory duty on public authorities to have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependents and persons without.