

“PART 12A

NATIONAL OVERSIGHT AND AUDIT COMMISSION

Interpretation (Part 12A)

126A. In this Part—

‘appropriate Minister’ means any Minister of the Government (other than the Minister)—

- (a) on whom functions stand conferred, or
- (b) who has general responsibility,

in respect of or in connection with the matter in question;

‘Commission’ means the National Oversight and Audit Commission established under this Part;

‘local authority’ includes a joint body and a joint committee;

‘local government body’ means—

- (a) a local authority,
- (b) a regional assembly,
- (c) any trust or other body (whether corporate or unincorporated) over which one or more local authorities or regional assemblies, or both, exercise actual or effective control whether directly or indirectly through nominees (however described) or otherwise,

and includes any trust or other body, or a class of trust or other body, to which a determination under section 126L(3) relates;

‘report’, in relation to a report of the Commission other than its annual report, means a report or information under section 126C(1)(i) or a report under section 126D.

Establishment of Commission

126B.(1) The Minister shall by order establish a body to be known as the National Oversight and Audit Commission (in this Part referred to as the ‘Commission’) to perform the functions assigned to it by this Part.

- (2) The Commission and its members are independent in the performance of their functions.

Functions of Commission

126C.(1) The functions of the Commission are as follows:

- (a) to scrutinise the performance of any local government body against or in comparison with any indicative matter (in this Part referred to as ‘relevant indicators’) that—
 - (i) the Commission considers it appropriate to refer to (which shall include indicative matters relating to customer service), or

- (ii) the Minister may prescribe by regulations for the purpose of this paragraph;
 - (b) to scrutinise the financial performance, including in relation to value for money, of any local government body, in respect of the financial resources available to it;
 - (c) to support the development and enhancement of best practice in the performance by local government bodies of their respective functions;
 - (d) to monitor and evaluate adherence to any agreement in the nature of a service level agreement entered into by one or more local government bodies, whether or not all parties to such an agreement are local government bodies;
 - (e) to oversee how national policy in relation to local government is implemented by local government bodies;
 - (f) to monitor and evaluate the implementation of public service reform (including enhanced efficiencies) by local government bodies either generally or in respect of any local government body or class of such bodies;
 - (g) to monitor the adequacy of the corporate plan prepared—
 - (i) by a regional assembly pursuant to section 43 (as amended by the *Local Government Reform Act 2014*) of the Local Government Act 1991, and
 - (ii) by a council pursuant to section 134,and to evaluate implementation of such plans either generally or in respect of any local government body or class of such bodies;
 - (h) to take such steps as are appropriate under its other functions for the purposes of any request under section 126D and to furnish reports or other information in relation to that request to the Minister or the appropriate Minister, as the case may be;
 - (i) in addition to reports or other information furnished under section 126D and to its annual reports under section 126K, to prepare on its own initiative such other reports or information on matters relating to its functions as the Commission considers appropriate.
- (2) The Commission has power to do anything that appears to it to be requisite, advantageous or incidental to, or to facilitate, the performance of its functions, including the making of arrangements by agreement with any person or body to assist the Commission in the proper discharge of any of its functions.
- (3) (a) The Minister may, with the consent of the Minister for Public Expenditure and Reform, by order confer on the Commission such

additional functions connected with the functions for the time being of the Commission as the Minister determines, subject to such conditions (if any) as may be specified in the order.

- (b) An order under paragraph (a) may contain such incidental, supplementary and additional provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

Reports to Minister or appropriate Minister

126D.(1) The Minister or an appropriate Minister may in writing request the Commission to prepare a report on any matter to which the functions of the Commission relate in respect of any aspect of local government specified by the Minister or the appropriate Minister, as the case may be, in respect of which he or she performs functions or has general responsibilities.

- (2) A request under subsection (1) shall relate to one or more local government bodies specified in the request or to a class of such bodies so specified.
- (3) Where a request has been made under subsection (1) the Commission shall, to the extent that its functions permit, comply with the request and have regard to such considerations or matters in preparing its report as are specified in the request.
- (4) (a) Where the Commission considers it appropriate in the circumstances, the Commission may, following consultation with the regional assembly or regional assemblies concerned, require it or them to prepare and submit for the Commission's consideration a draft of any such report.
- (b) A draft report prepared and submitted to the Commission under paragraph (a) may be amended by it as it sees fit and any such report, whether amended or not, that has been adopted by the Commission and is subsequently submitted by the Commission to the Minister or the appropriate Minister, as the case may be, shall for the purposes of subsection (1) be deemed to be a report prepared by the Commission.
- (c) Without prejudice to the Commission's duty to prepare a report when requested under subsection (1), a draft report prepared and submitted to the Commission under paragraph (a)—
- (i) may be submitted by the Commission to the Minister or the appropriate Minister, as the case may be, without being adopted by the Commission under paragraph (b), and
- (ii) any such report so submitted by the Commission shall be accompanied by a note stating that it has not been adopted and giving the reasons why it has not been adopted.
- (5) A report of the Commission to the Minister or the appropriate Minister

under this section shall—

- (a) be in writing,
 - (b) where appropriate, include the responses by the local government body to which the report relates to queries from the Commission,
 - (c) include the recommendations of the Commission in relation to the matters which are the subject of the report, and
 - (d) include recommendations in relation to such ancillary or related matters (including financial matters) as the Commission may consider appropriate or as the Minister or the appropriate Minister may specify in a request under subsection (1).
- (6) (a) The Minister or the appropriate Minister shall furnish a copy of a report provided to him or her by the Commission under this section to—
- (i) each local government body that is the subject matter of the report,
 - (ii) in the case of a local government body other than a local authority or a regional assembly, to each local authority or regional assembly that exercises actual or effective control within the meaning of ‘local government body’ in section 126A,
 - (iii) the Joint Committee of the Houses of the Oireachtas to which has been assigned the role of examining matters relating to local government, and
 - (iv) any other Joint Committee of the Houses of the Oireachtas which has general responsibility in respect of or connected with the matters to which the report relates.
- (b) Where a report has been furnished under paragraph (a), the Minister or the appropriate Minister shall advise the Commission accordingly and the Commission shall, as soon as practicable thereafter, cause the report to be published.
- (7) Within 28 days of receipt of a report pursuant to subsection (6) in respect of a local authority for which he or she is chief executive, or in respect of any local government body over which the local authority exercises actual or effective control, the chief executive shall present to the council an implementation plan setting out the steps to be taken in relation to that report.
- (8) The adoption of an implementation plan referred to in subsection (7), other than any part of such plan that exercises or would seek to exercise functions in relation to the employees of the local authority or employees of any local government body over which the local authority exercises actual or effective control, shall be a reserved function.

- (9) A local authority or regional assembly which is the subject of a report, or is an authority or assembly that exercises actual or effective control over a local government body which is the subject of a report, published under this section shall, in its annual report, include reference to the steps taken in relation to that report during the period to which the annual report relates.

Requests for information, etc., made to local government body, etc.

126E.(1) It is the duty of every local government body—

- (a) to have due regard to a request made to it by the Commission for any information, document or thing, which in the opinion of the Commission is relevant to assist the Commission in the performance of its functions, and
- (b) subject to subsections (2) and (3), to comply with all such requests so made.
- (2) Where proceedings are instituted by the Commission—
- (a) against a local government body for breach of duty under this section, and
- (b) for the purposes of seeking compliance with the request concerned or a specified part of that request,

it shall be a valid defence for the local government body to show that the request made by the Commission, or so much of the request in respect of which the proceedings relate, was materially disproportionate to what was required to achieve the intended result of the request or that part of the request to which the proceedings relate.

- (3) Nothing in this section shall be read as requiring the disclosure of confidential information, the disclosure of which would be in breach of non-disclosure obligations provided for by law or the disclosure of commercially sensitive information.

Requests for information, etc., made to certain public authorities

126F. A public authority to which section 126E does not apply shall have due regard to a request made to it by the Commission for any information, document or thing, which in the opinion of the Commission is relevant to assist the Commission in the performance of its functions, and to use its best endeavours to facilitate such a request.

Submissions to Commission

126G.(1) The Commission may give public notice of its intention to prepare a report (in this section referred to as a ‘proposed report’) to which section 126C(1)(i) or 126D relates.

- (2) The public notice referred to in subsection (1), which shall be published in a newspaper circulating in the area to which the subject matter of the proposed report relates, shall indicate that—

- (a) any person may make a submission to the Commission in relation to the subject matter of the proposed report in a manner and within the period as is specified in that notice, and
 - (b) submissions received by the Commission within the period specified in that notice may be made available for public inspection.
- (3) The Commission shall consider any submissions made to it in accordance with the public notice or made by a local government body under this section or otherwise.
- (4) Submissions received by the Commission under this section may be made available by them for public inspection—
- (a) at such time and place and under such conditions as may be specified by the Commission and for that purpose may be made available by the Commission on its internet website, and
 - (b) where not published by the Commission on its internet website, the Commission shall permit a copy of such submissions or of extracts from them to be taken on payment of a fee which shall not exceed the reasonable cost of copying the submissions.

Members of Commission

- 126H.(1) Subject to subsection (4) and section 126I(7), the Commission consists of not more than 9 but not less than 6 members, one of whom shall be the chairperson of the Commission.
- (2) The chairperson of the Commission shall be appointed by the Minister.
- (3) Each member of the Commission shall hold office for a period which the Minister shall determine, not exceeding 5 years from the date of appointment to the office and shall include—
- (a) one or more persons having knowledge or experience of local government affairs,
 - (b) one or more persons having knowledge or experience in finance, audit, evaluation or project assessment,
 - (c) one or more persons having knowledge or experience in business, commerce, administration, corporate governance or community development,
 - (d) one or more persons having knowledge or experience in the statutory or voluntary bodies dealing with consumer issues, and
 - (e) one or more than one person who is an officer of the Minister.
- (4) The members of the Commission may include—
- (a) one but no more than one person who is an employee of a local authority, and

- (b) one but no more than one person who is a member of a local authority,
- but shall not include a person who is a member of a regional assembly.
- (5) Any member of the Commission who, subsequent to appointment to the Commission, becomes an employee of a local authority, member of a local authority or member of a regional assembly shall, for the purposes of subsection (4) and section 126I(5)(d), in writing inform the Minister and the chairperson of the Commission accordingly.
- (6) A member of the Commission shall not take part in the preparation or a decision to adopt or not adopt a report under section 126C(1)(i) or section 126D in respect of a local authority or regional assembly if he or she is, or was at the material time, an employee or elected member of that authority or assembly, as the case may be.
- (7) The Minister, to the extent practicable, shall endeavour to ensure that there is an equitable balance between men and women in the membership of the Commission.

Eligibility and tenure of office of members, etc.

- 126I.(1) A person appointed to be a member of the Commission holds office as such member for such period, terms and conditions as may be specified by the Minister at the time of his or her appointment.
- (2) The chairperson and any other member of the Commission may be paid, out of moneys at the disposal of the Minister, such remuneration (if any) and allowances for expenses incurred by the member as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (3) (a) A person is disqualified from becoming a member of the Commission if he or she is—
- (i) a member of either House of the Oireachtas, or
 - (ii) a member of the European Parliament.
- (b) A person ceases to be a member of the Commission if he or she—
- (i) is nominated as a member of Seanad Éireann,
 - (ii) is elected as a member of either House of the Oireachtas or as a member of the European Parliament,
 - (iii) is regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy,
 - (iv) becomes a member of a regional assembly, or
 - (v) fails to attend at 6 consecutive meetings of the Commission where—

- (I) in the case of a member other than the chairperson, the chairperson is of the opinion that the absence is not due to an acceptable reason such as illness or force majeure,
 - (II) in the case of the chairperson, a majority of the Commission is of the opinion that the absence is not due to an acceptable reason such as illness or force majeure.
- (4) A member of the Commission, including the chairperson, may at any time resign from office by letter addressed to the Minister and the resignation takes effect from the date of receipt of the letter by the Minister.
- (5) The Minister may remove from office any member of the Commission (including the chairperson) if, in the opinion of the Minister—
- (a) that person has become incapable through ill-health of effectively performing the duties of the office,
 - (b) the member has committed stated misbehaviour,
 - (c) the member has a conflict of interest of such significance that, in the opinion of the Minister, the member should cease to hold office, or
 - (d) the removal of the member appears to the Minister to be necessary or desirable—
 - (i) for the effective performance by the Commission of its functions, or
 - (ii) to comply with the requirements of section 126H(4).
- (6) A person may not be the chairperson of the Commission or, except in the case of an appointment to which section 126H(3)(e) relates, a member of the Commission for more than 2 consecutive terms of office but is otherwise eligible for re-appointment to be a member of the Commission.
- (7) (a) Notwithstanding section 126H(1), the Minister, as required, may by order under this subsection increase the number of members of the Commission to not more than 12 members where, in the opinion of the Minister, it is necessary taking account of the volume of business coming before the Commission and the need to ensure the effective and efficient discharge by the Commission of its functions, but any such increase is for such temporary period as shall be specified in the order and shall not exceed 2 years from the date of the commencement of the order.
- (b) Upon expiry of an order under paragraph (a), the Minister may make a further order in accordance with the provisions of that paragraph.

- (8) A person shall be disqualified from holding and shall cease to hold office as a member of the Commission if he or she—
- (a) is an undischarged bankrupt,
 - (b) is convicted on indictment of an offence, or is convicted outside the State of an offence consisting of acts or omissions which would constitute an offence triable on indictment if done or made in the State,
 - (c) is convicted of an offence involving fraud or dishonesty, or
 - (d) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act.

Meetings and procedures of Commission

- 126J.(1) The Commission shall hold such and so many meetings as may be necessary for the performance of its functions.
- (2) The chairperson of a meeting of the Commission shall be—
- (a) the chairperson of the Commission if present, or
 - (b) if and so long as the chairperson of the Commission is not present or if the office of chairperson is vacant, the members of the Commission who are present shall choose one of their number to be chairperson of the meeting.
- (3) At a meeting of the Commission—
- (a) subject to paragraph (c), each member of the Commission present has one vote,
 - (b) every question at a meeting of the Commission shall be determined by consensus, but where in the opinion of the chairperson or other person presiding consensus is not possible, the question shall be determined by a majority of the votes of the members present and voting on the question, and
 - (c) in the case of an equal division of votes in circumstances to which paragraph (b) relates, the chairperson of the meeting has a second or casting vote.
- (4) Subject to such standing orders as the Commission may make under subsection (5) regarding a quorum, the Commission may act notwithstanding one or more vacancies in its membership.
- (5) The Commission shall regulate, by standing orders or otherwise, the procedure and business of the Commission, including the keeping of a record of its meetings and of decisions taken.
- (6) (a) The Commission has an absolute discretion to hold an oral hearing in relation to any matter in respect of which functions are conferred

on it by this Part and the hearing may be conducted by—

- (i) one or more members of the Commission,
 - (ii) one or more members of the Commission, together with one or more other persons appointed by the Commission for that purpose, or
 - (iii) one or more other persons appointed by the Commission for that purpose.
- (b) The persons (including any members of the Commission) conducting an oral hearing under paragraph (a) shall make a report in writing on the hearing to the Commission and shall include in the report such recommendations as are considered appropriate with respect to the subject of the report.
- (c) The Commission shall consider a report made to it under paragraph (b) before deciding on the recommendations that it will make in its report.
- (7) Where the number of members of the Commission has been increased by order under section 126I(7)(a), any function of the Commission may be exercised by a division of the Commission comprising of at least 4 of its members and meetings and decisions of any such division are, for all purposes, meetings and decisions of the Commission.

Governance of Commission

126K.(1) Not later than the 30th day of April in each year, the Commission shall prepare and submit to the Minister a report (in this section referred to as the ‘annual report of the Commission’) in relation to the performance of its functions during the preceding year and shall, as soon as may be, furnish a copy of that report to such other persons as it may consider appropriate.

- (2) An annual report of the Commission shall include the following in respect of the year to which it relates:
- (a) particulars of the policies, programmes, services and other activities undertaken by the Commission;
 - (b) such particulars as may be required by a provision of any other enactment;
 - (c) such other particulars (including financial statements) as the Commission may determine to be appropriate to include in the report or as may be directed by the Minister;
 - (d) the total number of meetings of the Commission held during that year and, in respect of each member of the Commission—
 - (i) number of meetings of the Commission attended by the member during that year, and

- (ii) the number of such meetings so held while a member of the Commission.

Regulations and determinations (Part 12A)

126L.(1) The Minister may by regulations prescribe any matter of procedure as regards the appointment and operation of the Commission or the carrying out of its functions.

- (2) Without prejudice to the generality of subsection (1), regulations under this section may provide for any of the following:

- (a) the conduct of any oral hearing held by the Commission under section 126J(6), the procedures at such a hearing, the representation of a local authority or regional assembly at such a hearing or the attendance of persons at such a hearing;

- (b) for the purposes of section 126C(1)(f), identifying or clarifying matters relating to public sector reform by local government bodies;

- (c) prescribing relevant indicators for the purposes of section 126C(1)(a).

- (3) (a) Where—

- (i) any doubt, dispute or question arises or, in the opinion of the Minister, is likely to arise as to whether a trust or other body or a class of such trust or other body is or is not a trust or other body or a class thereof to which paragraph (c) of the definition of ‘local government body’ applies, and

- (ii) the Minister is of the opinion that such trust, other body or class is one to which the said paragraph (c) applies,

then the Minister shall determine the matter accordingly and shall communicate his or her determination in writing to the Commission and to the local authorities and regional assemblies concerned.

- (b) The Minister shall not make a determination under paragraph (a) in respect of a trust or other body, or of a class of trusts or other bodies, for which another Minister of the Government is directly or indirectly responsible unless that other Minister consents to that determination being made and every communication for the purposes of that paragraph shall disclose any such consent.”.

- (2) Section 221(2)(b) of the Principal Act is amended in the manner set out in *Part 1* of *Schedule 1*.

- (3) Paragraph 1(2) of the First Schedule to the Freedom of Information Act 1997 is amended by inserting “the National Oversight and Audit Commission”.