

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Commencement of the Complaints Commissioners Ordinance 2010
Paper No: 216/10
Date: 16 September 2010
Report of: Attorney General

1.0 Purpose

To seek Executive Council agreement to a number of matters that need to be put in place to enable the Complaints Commissioners Ordinance to be commenced, and to agree a date for that commencement.

2.0 Recommendations

Executive Council is recommended to:-

- (a) agree that the Governor should publish a notice in the Gazette fixing 1 October 2010 as the date for the Ordinance to come into force,
- (b) agree that the Governor should make the attached Orders under section 44 of the Ordinance (prescribing the form of summons, and the maximum fine that may be imposed under section 41 of the Ordinance),
- (c) agree that the Governor should publish Notices in the Gazette under section 5 of the Ordinance setting:-
 - (i) the daily rate to be paid to a commissioner at £100 per day;
 - (ii) the maximum rate of expenses that may be claimed by a commissioner or a witness as the rates for subsistence and mileage which are for the time being applicable to FIG employees under the Management Code,
- (d) agree that the budget for 2010-11 should be set at £2,000 initially (with a review after six months),

(e) note that the Governor intends to appoint Ken Greenland as Principal Complaints Commissioner for an initial period of twelve months,

(f) note that the secretarial support to the Principal Complaints Commissioner will be provided by the Courts Administrator.

3.0 Summary of Financial Implications

None- already in budget.

4.0 Background

4.1 Executive Council will be familiar with the Ordinance, which was passed by the Legislative Assembly at its meeting on 28 May 2010 and assented to by the Governor on 31 May.

4.2 As is usual, the date for the commencement of the Ordinance was not set out in the Ordinance; it commences on a date to be fixed by the Governor by notice in the Gazette. If Executive Council agrees the other recommendations set out in this paper, it would be possible to commence the Ordinance on 1 October 2010 and that is the recommended date.

4.3 To enable that to happen, a number of matters need to be actioned:-

(1) a Principal Complaints Commissioner (PCC) needs to be appointed. Following the consideration of responses to PN adverts, and after informal consultation with members (the appointment is by the Governor in his discretion) the Governor intends to appoint Ken Greenland to this post. The period of appointment will be 12 months to enable matters to be reviewed at that point.

(2) A daily rate to be paid to the PCC needs to be set. Paper 100/10 of 29 April 2010 proposed a rate of £100 per day, but the minutes do not record formal agreement to that. The rate is set by notice in the Gazette.

(3) The maximum rates that can be paid to the PCC and to witnesses as subsistence and mileage need to be fixed. Again paper 100/10 proposed the maximum should be the rates provided for in the Management Code. This needs to be confirmed, and again is then set out in a notice to be published in the Gazette.

(4) A secretary to the Complaints Commissioners needs to be appointed; the Chief Executive has agreed with the Senior Magistrate that the Courts Administrator will be appointed for this purpose.

(5) The budget for 2010/11 needs to be agreed. Paper 100/10 proposed an initial budget of £2,000 to be reviewed after six months.

(6) Two orders need to be made under section 44 of the Ordinance. Drafts are attached. The maximum fine is proposed to be level six on the standard scale, currently £7,500. This is the same figure that was set for fines under the PAC Ordinance. Section 44 also provides that an order may be made prescribing procedures to be followed in the investigation of complaints. It is not proposed to exercise this power at the present time: the Ordinance provides that if an order is not made, the procedure is to be determined by the Commissioner, and it seems preferable to permit the PCC to develop his own procedures, leaving the power to make an order as a reserve power to be exercised only if these are problems identified with the procedures adopted by the PCC.

5.0 Financial Implications

The only direct financial implications are the initial budget of £2,000; this is already in the Attorney General's 2010/11 budget.

6.0 Legal Implications

None which have not been set out above.

7.0 Human Resources Implications

None which have not been set out above.

SUBSIDIARY LEGISLATION

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Complaints Commissioners (Form of Summons) Order 2010

S. R. & O. No. of 2010

Made: 2010

Published: 2010

Coming into force: see article 2

I make this order under section 44(a) of the Complaints Commissioners Ordinance (No 4 of 2010) on the advice of the Executive Council.

1. Title

This order is the Complaints Commissioners (Form of Summons) Order 2010.

2. Commencement

This order comes into force on a date to be fixed by the Governor by notice published in the *Gazette*.

3. Interpretation

In this order —

“Complaints Commissioner” means a person whom the Governor appoints under section 95(1) of the Constitution as a Complaints Commissioner; and

“summons” means a summons to appear before a Complaints Commissioner served on a person under section 22(1) of the Complaints Commissioners Ordinance.

4. Form of summons to appear before Complaints Commissioner

The prescribed form for the purposes of section 22(2) of the Complaints Commissioners Ordinance of a summons is set out in the Schedule.

SCHEDULE

FORM OF SUMMONS

article 4

COMPLAINTS COMMISSIONERS ORDINANCE

section 22(1)

SUMMONS TO A WITNESS

To *(insert name, address and occupation of witness)*

You are summoned to appear before *(insert name of Complaints Commissioner)*, a Complaints Commissioner.

This summons is served on you under section 22(1) of the Complaints Commissioners Ordinance (No 4 of 2010).

You must attend *(insert place where person must appear)* at *(insert time)* on *(insert date)*.

(You must also bring with you the documents and publications in the list attached to this summons.)*

You will be required to give evidence to *(insert name of Complaints Commissioner)* and you will be required to remain in attendance until your evidence has been completed.

(You will also be required to produce the documents and publications in the attached list.)*

(insert date)

(signature),
Complaints Commissioner.

Note: The bracketed words marked “” may be omitted if the person is not required to produce any documents or publications.*

Made

2010

A. E. Huckle,
Governor.

EXPLANATORY NOTE

(not forming part of the order)

Section 22(1) of the Complaints Commissioners Ordinance (No 4 of 2010) provides that a Complaints Commissioner may serve a summons on a person to appear and to provide information.

Section 22(2) provides that a summons is to be in writing in the prescribed form and section 44(a) gives the Governor power to prescribe by order the form of a summons.

This order prescribes the form of a summons for the purposes of section 22(2).

SUBSIDIARY LEGISLATION

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Complaints Commissioners (Maximum Fine) Order 2010

S. R. & O. No. of 2010

Made: 2010

Published: 2010

Coming into force: see article 2

I make this order under section 44(c) of the Complaints Commissioners Ordinance (No 4 of 2010) on the advice of the Executive Council.

1. Title

This order is the Complaints Commissioners (Maximum Fine) Order 2010.

2. Commencement

This order comes into force on a date to be fixed by the Governor by notice published in the *Gazette*.

3. Interpretation

In this order, "Complaints Commissioner" means a person whom the Governor appoints under section 95(1) of the Constitution as a Complaints Commissioner.

4. Maximum fine under section 41 of Complaints Commissioners Ordinance

(1) This article prescribes the maximum fine that a Complaints Commissioner may impose under section 41 of the Complaints Commissioners Ordinance.

(2) The maximum fine that a Complaints Commissioner may impose is one at level 6 on the standard scale.

Made 2010

A. E. Huckle,
Governor.

EXPLANATORY NOTE
(not forming part of the order)

Sections 39 and 40 of the Complaints Commissioners Ordinance (No 4 of 2010) provide for the circumstances in which a person is liable to a fine under section 41 of the Ordinance.

Section 44(c) of the Ordinance gives the Governor power to prescribe by order the maximum fine that a Complaints Commissioner may impose under section 41.

This order prescribes that the maximum fine a Complaints Commissioner may impose is one at level 6 on the standard scale of fines (currently, £7,500).