



“Officers of the Assembly”

This paper describes the existing posts that are termed “Officers of the Assembly” in the light of the background to their creation; appointment and dismissal to the posts; accountability arrangements and finance. It also compares the posts with comparable arrangements in other parliamentary bodies in the UK. It further notes proposed changes to some of the posts in the *Government of Wales Act 2006*.

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“Officers of the Assembly”

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Executive Summary

- ◆ The paper explains the development of “Officers of Parliament” as constitutional watchdogs, independent of government, in Westminster style legislatures and explains why the term “Officers of the Assembly” is being used in the context of the paper.
- ◆ It explains the role and functions of the offices of the Auditor General Wales, the Public Services Ombudsman for Wales, the National Assembly Commissioner of Standards, the Children’s Commissioner for Wales and the newly created Older People’s Commissioner for Wales. It outlines arrangements for appointment and dismissal, accountability and finance and indicates where these arrangements will change under the *Government of Wales Act 2006*.
- ◆ Contrasts are drawn with comparable offices in Westminster, Scotland and Northern Ireland.
- ◆ The role of the Information Commissioner, as a non-devolved office in Wales, is explained.
- ◆ The debate about the expansion of “Officers of Parliament” at Westminster and in Scotland is discussed, with particular reference to the Public Appointments Commissioner in Westminster and the Scottish Human Rights Commissioner in Scotland.
- ◆ The Annex provides a table allowing easy reference of comparison between Wales, England, Scotland and Northern Ireland.

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“Officers of the Assembly”

1 Introduction

In the House of Commons, "Officers of the House" was a term originally applied to offices such as that of the Speaker, the Clerk and the Serjeant at Arms. However, during the twentieth century the concept of Officers of the House was developed beyond its earlier usage to apply to new types of constitutional watchdogs.¹ The term has come to denote a special relationship of accountability to Parliament and implicit independence from the executive. Formal mechanisms, such as restrictions on dismissal of Officers and direct appointment of staff as non civil servants underpin this. Similar developments have occurred in other countries operating a Westminster style system.²

Within the UK Parliament the term has been applied in this way to three posts:

- ◆ Comptroller and Auditor General,
- ◆ Parliamentary Commissioner for Administration (“the Parliamentary Ombudsman”),
- ◆ Parliamentary Commissioner for Standards.

The Comptroller and Auditor General’s relationship with Parliament is seen as the "gold standard" of independence and accountability to be applied to the creation of new constitutional watchdogs. The key characteristics of this model can be summarised as:

- ◆ parliamentary involvement in appointment and dismissal
- ◆ a statutory parliament-related committee which is responsible for budget approval and oversight
- ◆ a specific select committee to which the Officer is bound to report
- ◆ staffing independent of the civil service.³

Following the creation of the Scottish Parliament and the National Assembly for Wales, the new institutions have established or acquired officers of their own, with separate auditors general, public services ombudsmen and standards commissioners, although the characteristics of the posts differ between the bodies. Northern Ireland already had some officers that remained in existence following the introduction of direct rule in 1972 but has also acquired some new ones. The introduction of the *Freedom of Information (Scotland) Act* saw the creation of a separate Information Commissioner in Scotland for devolved matters, and Wales led the way in creating a Children's Commissioner and an Older People's Commissioner. Recent attempts in the Scottish Parliament to create a Human Rights Commissioner have run in to difficulty as questions have been raised in regard to the cost of, and need for, the office.

The collective term for these posts is problematic and no established term exists but the term “Officers of the Assembly” is used in this paper because it describes the posts of the Auditor General Wales (AGW), Public Services Ombudsman for Wales (PSOW) and the Standards Commissioner which are recognised as “core” officers of parliament in other Westminster systems.⁴ The other posts, such as the Children’s Commissioner for Wales, have a less established pedigree but nevertheless share some characteristics with the

¹ HC Library Standard Note 03/77, *Officers of Parliament - a Comparative Perspective*. 2003, <http://www.parliament.uk/commons/lib/research/rp2003/rp03-077.pdf>

² Oonagh Gay & Barry K Winetrobe, *Officers of Parliament – Transforming the Role*, Constitution Unit, UCL, 2003.p.7

³ Ibid.

⁴ Op.cit, Gay and Winetrobe, 2003.

“core” posts and reflect a trend in other legislatures for creating new kinds of constitutional watchdog.⁵

The paper examines these posts in the light of the background to their creation; appointment and dismissal to the post; powers of direction and accountability arrangements and funding. It also compares the posts with arrangements in other parliamentary bodies in the UK, more information on which is set out in **Annex 1**. It notes changes to some of the posts in the *Government of Wales Act 2006* which recently received Royal Assent.

2 Auditor General Wales⁶

The Office of the Auditor General for Wales (AGW) is a statutory appointment made in accordance with the provisions of section 90 of the *Government of Wales Act 1998*. The *Public Audit (Wales) Act 2004* created a single public audit body for Wales, the Wales Audit Office (WAO), headed by the AGW. The AGW now exercises most of the functions previously exercised in Wales by the Audit Commission for Local Authorities and the National Health Service. The Wales Audit Office has responsibility for the financial and performance audit of the Assembly; its sponsored bodies and a number of other publicly funded bodies; health bodies (primarily NHS Trusts and Local Health Boards) and local government bodies in Wales.

The role of the AGW combines those of auditor, regulator and inspector. He or she audits the Assembly, Assembly Sponsored Public Bodies (ASPBs) and Local Health Bodies. The AGW does not audit local government but appoints auditors and has direct responsibility for inspection functions related to the Wales Programme for Improvement (WPI). Like the Ombudsman, the main sanction of the AGW is the power to embarrass, which is underpinned by his or her relationship with the Assembly Audit Committee. He or she also audits some non-devolved bodies such as police authorities.

The *Government of Wales Act 2006* provides for the AGW's salary, and the Assembly's contribution to the AGW's pension provision, as well as the pensions of former AGWs, to be charged on the Welsh Consolidated Fund (that is, these amounts will be governed by the terms of appointment of the AGW and will not be subject to annual approval by the Assembly in Budget resolutions tabled by the Welsh Ministers).⁷

2.1 Appointment and Dismissal

Formally, the Auditor General for Wales is appointed by the Monarch on the recommendation of the Secretary of State. However, in practice an *ad hoc* agreement and protocol was drawn up between the Wales Office and the Assembly Parliamentary Service so that the Assembly conducted the selection process on behalf of the Crown.⁸

The Secretary of State for Wales, if satisfied that the process has been carried out according to the Nolan principles, makes the recommendation of a candidate to the Monarch and co-ordinates the appointment on behalf of the Crown.

The term of the appointment is initially for five years, with renewal thereafter subject to review. The Monarch may relieve the Auditor General for Wales of office before the end of

⁵ In Scotland, the term “Parliamentary Commissioners” is being increasingly used as a collective term for these posts.

⁶ Wales Audit Office, Annual Report and Accounts for the year ending 31 March 2005.

http://www.wao.gov.uk/assets/englishdocuments/annual_report_english_2005.pdf

⁷ *Government of Wales Act 2006*, Schedule 8, para.6

⁸ APS/Wales Office, Protocol : Appointment of Auditor General for Wales, September 2004.

the period of appointment, at his or her request; on medical grounds; or on grounds of misbehaviour.

The *Government of Wales Act 2006* places the role of the Assembly in appointing the Auditor General on a statutory basis. The post is to be appointed by the Monarch on the nomination of the Assembly. No nomination is to be made until the Assembly is satisfied that reasonable consultation has been undertaken with bodies that represent the interests of local government in Wales.⁹

2.2 Accountability Arrangements

The Auditor General reports to the Assembly through the Audit Committee. While independent of the Assembly he or she is accountable to the Audit Committee for the use of resources made available to support statutory functions. The Audit Committee also gives its views on the forward programme of economy, efficiency and effectiveness examinations and considers the annual estimate of income and expenses.

Standing Orders require that the Committee:

- ◆ exercises the functions set out in section 93(6)-(7) of the Act relating to estimates submitted by the Auditor General for Wales;
- ◆ presents views to the Auditor General for Wales from time to time on the Auditor General's exercise of his or her powers to undertake examinations into the economy, efficiency and effectiveness of the use of resources.¹⁰

The Committee may also report to the Assembly in accordance with section 102(1) of the Act on documents put before it by the Auditor General for Wales and the Auditor General may be invited to attend private meetings of the Committee.¹¹

The Wales Audit Office Report 2004/5 states:

As in previous years, in 2004/2005, the Auditor General has provided professional advice to the Audit Committee of the National Assembly in order to support the Committee's consideration of his reports and its follow-up work. Such advice has been an important additional output. In the first instance, the Auditor General has published his reports and laid them before the Assembly. This has enabled his reports to provide the basis of evidence sessions of the Audit Committee. At such sessions, Accounting Officers and other officials give evidence in response to questioning from the Committee, and the Auditor General has provided advice to Committee members as how to question the witnesses constructively.¹²

The *Government of Wales Act 2006* largely replicates provisions of the *Government of Wales Act 1998* in setting out the process whereby the AGW seeks annual funding for his or her Office. However, a key change is that the Audit Committee of the Assembly will be able to make modifications to the AGW's estimate without reference to the Secretary of State for Wales. The Audit Committee will, however, have to consult the AGW before laying an estimate containing such modifications before the Assembly.¹³

⁹ *Government of Wales Act 2006*, Schedule 8, para.1

¹⁰ Standing Orders of the National Assembly for Wales, SO. 12.2.

¹¹ *Ibid.*, SO.12.3

¹² Wales Audit Office, Annual Report and Accounts of the Auditor General for Wales for the year ending March 31 2005. http://www.wao.gov.uk/assets/englishdocuments/annual_report_english_2005.pdf

¹³ *Op.cit.*, GoWA 2006, Sch.8, para.12

2.3 Finance

Most of the AGW's funding comes from fees charged to audited bodies and for specific functions carried out on behalf of the the Welsh Assembly Government (such as the Wales Programme of Improvement).¹⁴

For 2005/6 the overall funding for the AGW is £4,530,000, set to rise to £4,642,000 in 2006/7 and £4,757,000 in 2007/8.

The *Government of Wales Act 2006* states that the Assembly must pay the salary, expenses and allowances of the AGW and this will be charged on the Welsh Consolidated Fund.¹⁵ This means that they will not be subject to annual approval as part of the WAG budget.

2.4 Arrangements in the rest of the UK

2.4.1 England/UK

The *National Audit Act 1983* established the office of the Comptroller and Auditor General (C&AG) as an Officer of the House of Commons, to be appointed by the Crown, but in consultation with the Chair of the Public Accounts Committee (PAC). The C&AG holds office during good behaviour and can only be dismissed following resolutions of both Houses of Parliament.

The 1983 Act created an independent National Audit Office (NAO), with staff employed directly by the C&AG and gave the C&AG complete discretion over discharge of functions. The NAO, on behalf of the Comptroller and Auditor General of the United Kingdom, audits matters "reserved" to the UK Government after devolution including defence, foreign affairs, social security and central government taxation, and all other expenditure by central government departments in England. It also audits the payment of the block grants to the devolved administrations and direct expenditure by the Scotland Office, Wales Office and Northern Ireland Office. (The audit of direct expenditure by the Northern Ireland Office is carried out by the Northern Ireland Audit Office on behalf of the UK Comptroller and Auditor General). In addition, it conducts financial audits and/ or value for money examinations of a number of public bodies whose functions are not reserved by Westminster but nonetheless operate across the UK.

In determining to carry out an audit examination, the C&AG must take into account any proposals made by the PAC. A statutory Public Accounts Commission oversees the budget of the NAO and appoint its auditor. It consists of the Chairman of the PAC, the Leader of the House (a Cabinet Minister) and seven other MPs, none of whom can be ministers.

Under c.135 of the *Government of Wales Act 2006* the C&AG can examine payments in and out of the Welsh Consolidated Fund but must consult the AGW.

2.4.2 Scotland

The Auditor General for Scotland (AGS) is an office created by the *Scotland Act 1998*. The Auditor General for Scotland audits or appoints the auditor to those bodies funded by the Scottish Parliament including departments of the Scottish Executive; NHS trusts and health boards; further education colleges; Scottish Water; government agencies and non-

¹⁴ Op.cit., WAO, 2005.

¹⁵ Op.cit., GoWA 2006.; Sch.8, para, 6 (1), (5).

departmental public bodies (NDPBs) such as Scottish Enterprise, the Scottish Prison Service and Historic Scotland.

The AGS does not scrutinise local councils; police boards or fire boards although Audit Scotland provides services to the Accounts Commission, which is responsible for the audit of local authorities, fire and police boards. Audit Scotland was established under section 10 of the *Public Finance and Accountability (PFA) (Scotland) Act 2000*.

The AGS reports to the Scottish Parliament. Under the *Public Finance and Accountability (Scotland) Act 2000*, the Auditor General has the powers to make different types of reports. One of these is a report made under Section 22 of the Act, which allows the Auditor General to draw attention to issues arising from the annual audit of any of the public bodies for which he has responsibility. These reports, together with the accompanying audited accounts, are laid in parliament by Scottish Ministers.¹⁶

The AGS is appointed by the Monarch on the nomination of Parliament and may be removed by a resolution of the Parliament supported by more than two-thirds of all MSPs. The salary, expenses and allowances of the AGS are determined by the SPCB but are paid for by Audit Scotland who also provide the staff to support the AGS.

2.4.3 Northern Ireland

There has been a separate Comptroller and Auditor General (C&AG) for Northern Ireland since 1921. Under devolution the responsibilities of the C&AG for Northern Ireland remain unchanged but the holder of the office reports to the Northern Ireland Assembly. The C&AG for Northern Ireland is responsible for the audit of Northern Ireland Departments and a wide range of public sector bodies including the cross border authorities created by the *Northern Ireland Act 1998*. The C&AG for Northern Ireland is supported by the staff of the Northern Ireland Audit Office. During periods when devolution is suspended in Northern Ireland, the C&AG for Northern Ireland and the Northern Ireland Audit Office report to Parliament in Westminster.

¹⁶ Audit Scotland website <http://www.audit-scotland.gov.uk/auditor/index.htm>

3 The Public Services Ombudsman

The *Public Services Ombudsman (Wales) Act 2005* merged four ombudsman services into a single Public Services Ombudsman for Wales (the "Ombudsman").¹⁷ The four services were the Welsh Administration Ombudsman, the Local Government Ombudsman for Wales, the Health Service Ombudsman for Wales and the Social Housing Ombudsman. The UK Parliamentary Ombudsman retains responsibility for investigating non-devolved functions such as social security and pensions, income tax and immigration. The Act came into force on 1 April 2006. The functions of the office are carried out on behalf of the Crown and the Ombudsman is a Crown servant but not part of the civil service.

'Ombudsman' is a Swedish word and means representative or agent of the people. It is used for both men and women. Sweden had the first ombudsman in 1809 and other countries adopted the term when they appointed ombudsmen of their own. The first UK ombudsman was the Parliamentary Commissioner for Administration appointed under the *Parliamentary Commissioner Act 1967*. The British and Irish Ombudsman Association's definition of the core role of ombudsmen is: 'to investigate and resolve, determine or make recommendations with regard to complaints against those whom the ombudsman is empowered to investigate'.¹⁸

The Public Services Ombudsman for Wales is concerned with complaints that injustice has been caused by 'maladministration' in a range of public bodies including local authorities, health bodies and the Assembly itself. Essentially, ombudsmen can look at the way in which decisions are taken (or policies are implemented), but not at the merits of the decisions or policies themselves. The Ombudsman also enforces the Code of Conduct for Local Councillors in Wales. Members of the public may make complaints directly to the Ombudsman. The Ombudsman has no powers of enforcement, only the power to report on and hence, embarrass public bodies.

If a complaint appears to be within his or her jurisdiction, the Ombudsman must first give the authority against which it is made an opportunity to answer. If a complaint cannot be settled and further investigation is justified, the Ombudsman will usually issue a formal public report on his investigation.

If a complaint is upheld, and the Ombudsman finds that the complainant has suffered an injustice as a result of maladministration, he or she will usually recommend a remedy for the injustice. He or she may also make recommendations to the authority on steps it should take to avoid a repetition of the maladministration and of the injustice. The Ombudsman's findings are not legally binding on an authority. If the Ombudsman is not satisfied with a response to one of his reports, he or she may issue a further report. If an authority fails to comply with recommendations in a further report, the Ombudsman can require the authority to pay for the publication of a statement in the press drawing attention to that failure. It is exceptionally rare for the publication of such a statement to become necessary, but beyond that step the Ombudsman has no further sanction at his or her disposal.

¹⁷ *Public Services Ombudsman (Wales) Act, 2005*.

<http://www.opsi.gov.uk/ACTS/acts2005/20050010.htm#aofs>

¹⁸ Sir Edward Osmotherly, Ombudsmen, *Advisor*, Vol.100, November/December 2003, p.6.

http://www.bioa.org.uk/otherinfo/Advisor_Article_Ombudsmen_Osmotherly.pdf

S.24 of the 2005 Act sets out the required procedure if a special report is made by the Ombudsman in a case where a complaint was made in respect of the Assembly. The First Minister must lay a copy of the report before the Assembly and, unless the required action has already been taken, give the Assembly notice of his or her intention to move that the Assembly resolve to approve the recommendations contained in it. Standing Orders should specify that these actions should be taken as soon as reasonably practicable after the Ombudsman has made his or her recommendations.

3.1 Appointment and Dismissal

The Ombudsman is currently appointed by the Monarch, on the recommendation of the Secretary of State following consultation with the Assembly. During the passage of the Bill this method of appointment was questioned. For example, during the second reading in the Lords, Lord Roberts of Llandudno asked, with 'increasing emphasis on devolution and democratic appointments, is this not an opportunity for the Government to allow the Assembly to make the appointment?'¹⁹ The *Government of Wales Act 2006* amends the 2005 Act so that the Ombudsman is to be appointed by the Monarch on the nomination of the Assembly.²⁰

The Ombudsman is appointed for a non-renewable 7 year term and can resign by requesting that the Monarch relieves him or her from office. The Monarch can also dismiss the Ombudsman if he or she is medically incapable of performing the functions of the office or on the grounds of misbehaviour. Under the 2005 Act the Secretary of State is required to consult the Assembly before recommending the dismissal of the Ombudsman. The *Government of Wales Act 2006* amends the 2005 Act so that this can only be done following a resolution passed by at least two thirds of the total number of Assembly Members.²¹

3.2 Accountability Arrangements

The Public Services Ombudsman's Annual Report is required to be laid before the Assembly. Standing Order 6.6. requires that time shall be made available in Plenary, in each twelve month period, to discuss the Report. The Ombudsman can also present extraordinary reports to the Assembly if he or she wishes.

3.3 Finance

In 2005/6 the Ombudsman received £2,681,000 in funding. It will receive £3,185,000 in 2006/7 rising to £3,288,000 in 2007/8. The Ombudsman's budget estimate is considered by the Cabinet of the Welsh Assembly and put forward in the draft budget. It can be changed with Assembly approval.

Following separation, the financial independence of the Ombudsman will be strengthened as the office will be funded from the Welsh Consolidated Fund through the Assembly.

3.4 Arrangements in the rest of the UK

3.4.1 England/UK

As already mentioned, the Parliamentary Ombudsman still deals with reserved matters in relation to Wales, Scotland and Northern Ireland as well as complaints about maladministration in Government departments, their agencies and some other public

¹⁹ HL Debates, 16 December 2004, c.1436.

²⁰ *Government of Wales Act 2006*, Schedule 5.

²¹ *Ibid.*

bodies in the UK in relation to England. The Parliamentary Ombudsman is also the Health Service Commissioner for England and investigates complaints about the NHS in England.²² Complaints about maladministration in local government in England are dealt with by three Local Government Ombudsmen for England. Together with the Parliamentary Ombudsman they form the Commission for Local Administration in England.²³

A key difference between the English Ombudsman and those in Wales and Scotland is that the so called 'filter' still exists. This means that complaints must be submitted via an MP rather than directly by members of the public.

In August 2005 the UK Government launched a consultation paper on reform of public sector Ombudsman services in England.²⁴ The proposed reforms are intended to enable the Parliamentary Commissioner for Administration, the Health Service Commissioner for England, and the three Local Government Ombudsmen in England, to work together more effectively and provide complainants with a more effective and streamlined service.

The main proposals are to:

- ◆ Enable the Ombudsmen to consult each other and work together on cases and issues that are relevant to more than one of them.
- ◆ Give the Ombudsmen powers to seek the resolution of a complaint through more informal means without having to conduct a formal investigation.
- ◆ Provide powers for the Ombudsmen to issue advice and guidance on good administrative practice to those who deliver our public services.²⁵

The consultation closed in November 2005. The proposed changes to legislation are intended to be implemented by way of a Regulatory Reform Order under the *Regulatory Reform Act 2001*. The current proposals do not include plans to remove the "MP filter" despite the fact that this is strongly endorsed by the current Parliamentary Ombudsman, Ann Abraham. The reason given by the Government was that the Regulatory Reform Order was not the appropriate vehicle for ending the "filter".²⁶

The Parliamentary Ombudsman makes an annual report to Parliament and is supported by the House of Commons Select Committee on Public Administration. The investigative powers of the office cover most types of administrative actions by more than 100 government departments and non-departmental public bodies and has wide powers to carry out investigations. The Ombudsman has the same powers as the High Court to compel witnesses to attend for examination and can require any Minister or civil servant to provide relevant information or documents. The Ombudsman can only be removed by a resolution of both Houses of Parliament.

The Office is completely independent of the Government and is excluded from normal running cost controls. Apart from the Commissioner's salary (a charge on the Consolidated Fund) expenditure of the Office is funded by the Government. The Local Government Ombudsman service in England is financed by an annual grant, top-sliced from the Revenue Support Grant for local government.

²² Parliamentary and Health Service Ombudsman, website.

<http://www.ombudsman.org.uk/index.html>

²³ Local Government Ombudsman website. <http://www.lgo.org.uk/>

²⁴ Cabinet Office, *Reform of public sector Ombudsman services in England*, Consultation Paper, August 2005

http://www.cabinetoffice.gov.uk/propriety_and_ethics/documents/ombudsmen_reform.pdf

²⁵ Cabinet Office, *Consultation launched today on reform of public sector Ombudsman services*, Press Release, 2 August 2005. http://www.cabinetoffice.gov.uk/newsroom/news_releases/2005/050802_psombudsman.asp?ID=93

²⁶ Op.cit., Cabinet Office, August 2005, p.14

3.4.2 Scotland

Scotland took the lead in merging the former ombudsmen's offices of the Scottish Parliamentary and Health Service Commissioners, the Commissioner for Local Administration in Scotland (Local Government Ombudsman for Scotland) and the Housing Association Ombudsman for Scotland in 2002, creating the Scottish Public Services Ombudsman (SPSO).

The SPSO has three part-time Deputies, each of whom has experience in particular areas of public administration such as local government or health. However, each is able to consider complaints across the full range of the SPSO's jurisdiction, and is not confined to his or her particular area of expertise.

The *Scottish Public Services Ombudsman Act 2002* had cross party support in the Scottish Parliament. Key changes made by it included:

- ◆ removing the need for complaints to go through MSPs (the 'filter');
- ◆ greater accessibility to the Ombudsman including provision for a person to authorise a representative to complain on their behalf, and to allow oral complaints to be accepted in special circumstances;
- ◆ publication of all investigation reports;
- ◆ empowering the Ombudsman to publicise cases where an injustice has not been remedied;
- ◆ appointment of the Ombudsman and deputies by the Monarch on the nomination of the Parliament.²⁷

The SPSO is appointed by the Monarch on the nomination of Parliament for a 5 year renewable period and may be removed following a resolution passed by more than two-thirds of all MSPs. Salary, expenses and allowances are determined and provided by the Scottish Parliamentary Corporate Body. SCPB also approves the appointment of staff by the SPSO. Unlike the English Ombudsman and the UK Parliament, the Scottish Parliament (through the SPCB) is within the SPSO's jurisdiction.

The SPSO must lay an Annual Report before Parliament. He or she may also lay any other reports with respect to the exercise of the office's functions and must lay copies of any reports on its investigations before Parliament. Investigation reports must also be sent to the Scottish Executive.

3.4.3 Northern Ireland

The title of Northern Ireland Ombudsman is a popular name for two offices which are currently held by the same person:

- ◆ The Assembly Ombudsman for Northern Ireland; and
- ◆ The Northern Ireland Commissioner for Complaints.

This Office was originally established in 1969, but the current powers and responsibilities are laid down in the *Ombudsman (Northern Ireland) Order 1996* and the *Commissioner for Complaints (Northern Ireland) Order 1996*. On 1 December 1997 these were

²⁷ SPICe Briefing, *Regulatory and Investigatory Bodies created by the Parliament since devolution*, 06/16, 1 March 2006. <http://www.scottish.parliament.uk/business/research/SB06-16.pdf>



extended, by the *Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997*, to include complaints about doctors, dentists, pharmacists and optometrists (ophthalmic opticians) providing family health services and by other health care professionals in health and personal social services.

The Northern Ireland Ombudsman investigates complaints from people who claim to have suffered injustice because of maladministration by the bodies which are specified in the legislation. This includes all local councils, education and library boards, health and social services boards and trusts, as well as all government departments and their agencies. The Northern Ireland Ombudsman currently provides an investigatory service to the Committee on Standards and Privileges of the Northern Ireland Assembly in respect of cases of complaint against Members of the Assembly. This service is operated on a case by case basis and investigatory action is initiated by the Committee. Complaints about Members of the Assembly are directed to the Clerk of Standards in the Northern Ireland Assembly and not to the Northern Ireland Ombudsman.

The Northern Ireland Ombudsman is independent of the Northern Ireland Assembly and of the government departments and public bodies which can be investigated. The Northern Ireland Ombudsman is appointed by the Monarch, and reports to the Northern Ireland Assembly.²⁸

²⁸ Northern Ireland Ombudsman's website
<http://www.ni-ombudsman.org.uk/index.htm>

4 National Assembly Commissioner for Standards

The National Assembly Commissioner for Standards is not a statutory post. Standing Order 16.3 provides for the appointment of a person to act as the Commissioner for Standards. It states:

The Assembly shall appoint a person who is not an Assembly Member or a member of its staff to act as Commissioner for Standards.²⁹

This change to Standing Orders came about in 2005 following the recommendations of the Woodhouse Review. Previously, the Assembly had an Independent Advisor on Standards. Putting the case for the change in Plenary, the Chair of the Standards of Conduct Committee, Kirsty Williams AM stated:

However, the Woodhouse review recommended that the Assembly should consider creating a statutory commissioner for standards, in line with practice in other legislatures. This would demonstrate how seriously we take standards of conduct and further embed independence from political interference into our procedures. The committee accepted this recommendation, but recognised that the change would require primary legislation. As an interim measure, the committee agreed that a non-statutory commissioner for standards should be created through our Standing Orders.³⁰

Part 2 of the *Government of Wales Act 2006*, allows the Assembly to pass a Measure placing the post on a statutory basis if it so wished.

Richard Penn was appointed, following open competition, on 15th March 2005 as the National Assembly's first Commissioner for Standards. The main duties of the Commissioner are:

- ◆ to investigate factual matters arising out of any complaint against a Member;
- ◆ to advise the Committee on any matters of general principle relating to the standards of conduct of Members;
- ◆ to advise the Committee on any matters of general principle relating to the Registration of Members' Interests and the Recording of Membership of Societies; and
- ◆ otherwise render such assistance on matters relating to the standards of conduct of Members as the Assembly may from time to time decide.

The Committee on Standards of Conduct established a formal procedure for dealing with complaints against Assembly Members. A number of considerations were taken into account when drawing up the procedure, including:

- ◆ the unique provisions of the *Government of Wales Act 1998*, which make it a criminal offence to participate in proceedings whilst failing to declare/register an interest;
- ◆ the types of complaints that the Committee could/should consider, and
- ◆ the Committee's relationship with the Commissioner for Standards.

²⁹ Op.cit., NafW, Standing Orders, SO.16.3.

³⁰ RoP, 2 March 2005, p.70.

The Complaint Procedure was formally approved by the Assembly's Committee on Standards of Conduct on 18 November 2004, and formalises the steps required in any investigation into a complaint made against a Member of the Assembly.

In its 2005 Annual Report, the Standards Committee outlined the role of the Commissioner:

In relation to his duties arising from complaints against Members, the Commissioner has sole responsibility for the preliminary investigation of complaints, concluding whether they are 'admissible'. He also has the ability to refer complaints directly to the Committee on Standards of Conduct for consideration, a role that had been previously undertaken by the Presiding Officer.

Stemming from the Woodhouse review, the Committee agreed to seek the co-operation of Party leaders (and others) in building the Standards Culture in the Assembly. This is a task that the Commissioner is taking forward and the Committee is grateful for the efforts made.³¹

4.1 Appointment and Dismissal

The appointments process was conducted by a panel chaired by the Presiding Officer and the appointment was approved by the Assembly through a resolution in Plenary. The current appointment is for 4 years

4.2 Accountability Arrangements

The Commissioner provides reports to the Assembly's Standards Committee on a regular basis and produces an Annual Report which is circulated to all Assembly Members.

4.3 Finance

The Commissioner's post is funded through the Assembly Parliamentary Service (APS) budget. The current Commissioner does not receive a salary but is paid an annual retainer and receives fees on a *per diem* basis. The post is supported by APS staff.

4.4 Arrangements in the rest of the UK

4.4.1 Westminster

The Office of the Parliamentary Commissioner for Standards was set up by the House of Commons in 1995 as a result of recommendations made by the Committee on Standards in Public Life. The Commissioner is non-statutory, and is appointed by Resolution of the House of Commons and is appointed for a 6 year period. The Office of the Parliamentary Commissioner for Standards is wholly funded by the House of Commons administration.

The Commissioner's main responsibilities are :

- ◆ Overseeing the maintenance and monitoring the operation of the Register of Members' Interests

³¹ National Assembly for Wales, Committee on Standards of Conduct, Annual Report 2005, paras. 4.11-12
<http://www.wales.gov.uk/assemblydata/N00000000000000000000000041702.rtf#commissioner>

- ◆ Providing advice on a confidential basis to individual Members and to the Select Committee on Standards and Privileges about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members.
- ◆ Preparing guidance and providing training for Members on matters of conduct, propriety and ethics.
- ◆ Monitoring the operation of the Code of Conduct and Guide to the Rules and, where appropriate, proposing possible modifications of it to the Committee.
- ◆ Receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct and Guide to the Rules, and reporting his findings to the Committee.

In addition, the Commissioner's office is responsible for maintaining and monitoring the operation of the following registers and lists; providing advice about them; and receiving and investigating complaints about them:

- ◆ Register of All-Party Groups
- ◆ Approved List of All-Party Parliamentary Groups and Associate Parliamentary Groups
- ◆ Register of Interests of Members' Secretaries and Research Assistants
- ◆ Register of Journalists' Interests

The Commissioner presents an annual report to the House of Commons on the work of the office.

4.4.2 Scottish Parliament

The Scottish Parliament's Standards Commissioner (SPSC) is a statutory post and was created by the *Scottish Parliamentary Standards Commissioner Act 2002*. The SPSC is appointed by the SPCB, with the agreement of Parliament, for a three year term. The current incumbent has recently had his appointment renewed for a second three year term.³² The SPSC may be removed by the SCPB on the recommendation of Parliament following a resolution supported by more than two-thirds of MSPs voting.

The Commissioner investigates complaints that an MSP has broken the Code of Conduct for MSPs. This is carried out independently of Parliament and findings are reported to Parliament. The Code of Conduct gives guidance to MSPs on how to carry out their Parliamentary duties. Breaches of the Code cover things like not being accessible enough to constituents, not making known private interests that might conflict with work as an MSP, accepting rewards in return for promoting particular issues and giving favoured access to people who use lobbying firms.

Salary, allowances and expenses are paid for by the SCPB which also determines the terms and conditions of the office. The SPSC may appoint staff with the consent of the SPCB.

In carrying out functions the SPSC must comply with directions given by the Standards and Public Appointments Committee of the Scottish Parliament. However, he or she need not take direction on how a particular investigation is conducted.

The SPSC must lay an Annual Report before Parliament and report cases of non-compliance with the Code of Conduct by MSPs to the Parliament.

³² Scottish Parliamentary Standards Commissioner website. <http://www.spsc.co.uk/index.htm>

4.4.3 Northern Ireland Assembly

The Northern Ireland Assembly does not currently have a Standards Commissioner. It has a system of self regulation through the Committee on Standards and Privileges which is a Standing Committee of the Northern Ireland Assembly.³³ The Committee has power:

- ◆ to consider specific matters relating to privilege referred to it by the Assembly;
- ◆ to oversee the work of the Assembly Clerk of Standards;
- ◆ to examine the arrangement for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the Assembly, and to review from time to time the form and content of those registers;
- ◆ to consider any specific complaints made in relation to the registering or declaring of interests referred to it;
- ◆ to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches of any code of conduct to which the Assembly has agreed and which have been drawn to the Committee's attention;
- ◆ to recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.

In June 2000, the Committee conducted an inquiry into the possible appointment of an Assembly Commissioner for Standards who would be responsible for investigating complaints against Members of the Assembly. It concluded that it should recommend to the Assembly that a Commissioner for Standards be appointed to investigate complaints against Members of the Assembly and that that the primary role of the Commissioner should be to investigate complaints against Members.³⁴ The model proposed that complaints should be made in the first instance to the Assembly Clerk of Standards who would pass them on to the Commissioner. The Assembly Clerk of Standards would continue to advise Members on the registration of interests.³⁵ In 2001 the Standards and Privileges Committee of the Assembly asked the Assembly Ombudsman to provide an investigatory service to support the Committee in its consideration of complaints against members of the Northern Ireland Assembly.

³³ Established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Northern Ireland Assembly Standing Order Nos. 49 and 57

³⁴ Northern Ireland Assembly, Committee on Standards and Privileges, *Inquiry into the Possible Appointment of an Assembly Commissioner for Standards*, 2000. <http://www.niassembly.gov.uk/standards/reports/report1-00r.htm>

³⁵ Donovan McClelland MLA, Tom Frawley, NI Assembly Ombudsman, John MacQuarrie, Deputy Assembly Ombudsman and John Torney, Principal Assembly Clerk of Standards, Oral Evidence to Committee on Standards in Public Life, Eighth Inquiry on Standards in the House of Commons, 14 June 2002. http://www.public-standards.gov.uk/publications/reports/8th_report/report/oralevidence.pdf

5 The Children's Commissioner

The Children's Commissioner for Wales was established under Part V of the *Care Standards Act 2000*. *The Children's Commissioner for Wales (Appointment) Regulations 2000* make provision for the appointment of the Commissioner and the *Children's Commissioner Regulations 2001* make provision for the Commissioner's functions. *The Children's Commissioner for Wales Act 2001* broadened the post's remit and set out its principal aim, which is to safeguard and to promote the rights and welfare of children.

Unlike the Ombudsman, the Children's Commissioner has the power of review and the power to require information to be provided. Therefore, he or she is empowered to examine cases of particular children by means of a public inquiry if it involves an issue that has a more general application to the lives of children in Wales. The procedure for such examinations is provided for by Part III of the regulations and the publication of reports by Part VI of the regulations. For the purposes of such an examination the Commissioner has the same power as the High Court in respect of the attendance and examination of witnesses which includes administration of oaths and the examination of witnesses abroad, the provision of information, and the payment of expenses. However, the Children's Commissioner's powers are primarily of recommendation, followed by publication of non-compliance. The post has no power of enforcement through the courts, unlike similar posts such as the Disability Rights Commissioner.

The Commissioner's remit is limited by the devolution settlement. This means that areas such as youth justice, policing issues and the benefits system are excluded from his remit. However, the Commissioner does have the power to make representations to the National Assembly about any matter that affects a child in Wales.

The Commissioner is supported by four staff groups, each headed by an Assistant Commissioner.

5.1 *Appointment and Dismissal*

The Children's Commissioner is appointed by the First Minister of the National Assembly but is independent of it. Its sponsor department is the Department of Education, Life Long Learning and Skills (DELLS) in WAG. He or she is appointed for a non-renewable seven-year period. The appointment process involved input from children. The First Minister may relieve the Commissioner of office prior to the expiry of the term of office on the following grounds:

- ◆ at the request of the Commissioner,
- ◆ on the ground of misbehaviour, or
- ◆ on being satisfied that the Commissioner is incapable by reason of mental or physical infirmity of performing the Commissioner's functions.

In his evidence to the Assembly Committee on the UK Government's White Paper, *Better Governance for Wales*, the current Commissioner, Peter Clarke, argued that his appointment should be brought into line with that of the AGW and PSOW. He stated:

If the Children's Commissioner for Wales were to follow this model it would give me a similar capacity to "assist the Assembly in holding the Welsh Assembly Ministers to account." If the same model is not adopted, I can envisage no arrangements that

would give the same level of assurance "that appointments to these offices should be seen to be entirely independent of executive authority in Wales".³⁶

5.2 Accountability Arrangements

The *Children's Commissioner for Wales Regulations Part VI* require the Commissioner to make an annual report to the Assembly through the First Minister. The Commissioner cannot be instructed by any Minister to carry out an investigation, and the current Commissioner, Peter Clarke, considers this to be absolutely fundamental to the independence of the post.³⁷

5.3 Financing

The Children's Commissioner's budget is provided by DELLS. The Commissioner's budget for 2004-05 was approximately £1.5m to service the 650,000 children and young people in Wales. This amounts to about £2 per child.³⁸

5.4 Arrangements elsewhere in the UK

5.4.1 England

The Children's Commissioner for England was established via provisions in Part 1 of the *Children Act 2004*. The Commissioner came into post in July 2005 for a five year term and has a budget of £3m for a population of 11 million children. Original plans to provide a budget of £2.5m were criticised as not being sufficient. The Children's Commissioner for Wales commented that this sum would work out at 24p per child in England compared to £2 per child in Wales.³⁹

Unlike the Welsh, Scottish and Northern Irish Commissioners, who all have an explicit remit to promote the 'rights and welfare' of children and young people, the key concept underpinning the Children's Commissioner in England is 'well being'.

The Commissioner is appointed by the Secretary of State for Education and Skills and may be removed from office by the Secretary of State if he is satisfied that he or she has -

- ◆ become unfit or unable properly to discharge his functions; or
- ◆ behaved in a way that is not compatible with his continuing in office

The Commissioner must send an annual report to the Secretary of State for Education and Skills, who must then lay a copy before each House of Parliament. The Children's Commissioner is described in the Act as being 'a corporation sole' and is not to be regarded as the servant or agent of the Crown.

The powers contained within the *Children Act 2004* do not allow for the strengthening of the Welsh Commissioner's powers over non-devolved issues such as criminal justice and social security benefits. The English Commissioner must however, take account of the views of, and any work undertaken by, the Children's Commissioner for Wales.⁴⁰ The same provision is made in relation to the Children's Commissioners of Northern Ireland

³⁶ Children's Commissioner for Wales, Evidence to National Assembly for Wales, Better Governance Wales Committee, August 2005. <http://www.wales.gov.uk/keypubassembettergov/content/bgw2-ev25.pdf>

³⁷ House of Commons Welsh Affairs Committee, *The Powers of the Children's Commissioner for Wales*, Fifth Report of Session 2003-04, HC538 29 July 2004 Oral evidence from Peter Clarke, Ev 7.

³⁸ Ibid. Oral evidence Ev 13 Q. 74

³⁹ Ibid. Written Evidence Q74

⁴⁰ The *Children Act 2004*, S. 5 (3)

and Scotland. Many organisations expressed their disappointment that the Act did not give the Welsh Commissioner additional powers in relation to non-devolved matters.⁴¹

5.4.2 Scotland

The Scottish Commissioner for Children and Young People came into post in April 2004 under provisions in the *Commissioner for Children and Young People (Scotland) Act 2003*

Unlike the Commissioners for Wales and Northern Ireland, the Scottish Commissioner has no powers to carry out investigations in relation to individual children. The post is appointed by the Scottish Parliament but independent of the Parliament and the Executive and reports annually to the Scottish Parliament.

The Commissioner may be removed from office by the Monarch if -

- ◆ the Commissioner so requests; or
- ◆ the Parliament has passed a resolution for removal on the grounds that either that the Commissioner has breached the terms of appointment; or that the Parliament has lost confidence in the Commissioner's willingness, ability or suitability to carry out the functions of the office.

A resolution for removal of the Commissioner, if passed on a division, must be voted for by not less than two thirds of those voting.

A bid of £1.3m, which has been submitted by the Children's Commissioner for 2006-07, has caused some controversy. Questions were raised in relation to aspects of the Commissioner's budget for 2006-07 at the Scottish Parliament Finance Committee at its meeting on 15 November 2005 and the Commissioner, Kathleen Marshall, subsequently requested to give evidence to the Committee on this matter on 22 November 2005.⁴²

In a press report,⁴³ she defended her £1.3 million for the financial year 2006-7, saying it was an increase of only 4 per cent on the budget approved by the Scottish Parliament in 2002.

"I am now fully staffed and have established a modest office in Edinburgh as a welcoming place for children and young people to visit, learn about rights and responsibilities, and feel a sense of closeness to the parliament when they do not have a vote," she said.

5.4.3 Northern Ireland

The Children's Commissioner was established in Northern Ireland in October 2003 under provisions in the *Commissioner for Children and Young People (Northern Ireland) Order 2003*.⁴⁴

The Commissioner is appointed for a four year renewable period and has an annual budget of approximately £1.9m for 2005-06. The post is appointed by the First Minister

⁴¹ House of Commons Welsh Affairs Committee, *The Powers of the Children's Commissioner for Wales* Fifth Report of Session 2003-04 HC538 29 July 2004

⁴² All relevant papers and minutes can be accessed here:

<http://www.scottish.parliament.uk/business/committees/finance/2005.htm>

⁴³ "Cost of reaching for the 'tsars' revealed as £6m", *The Scotsman*, 16 November 2005

⁴⁴ The incumbent Commissioner, Nigel Williams, died on 28 March 2006.



and Deputy First Minister jointly.⁴⁵ The Commissioner must lay a copy of every report before the Assembly; and send a copy of every such report to the Secretary of State.

The Commissioner may resign the office at any time. The First Minister and Deputy First Minister acting jointly may remove the Commissioner if satisfied that he has -

- ◆ been convicted of a criminal offence; become bankrupt or made an arrangement or composition with his creditors;
- ◆ without reasonable excuse, failed to discharge his functions for a continuous period of 3 months; or
- ◆ become unfit or unable to exercise his functions.

⁴⁵ Although the decision to create a Children's Commissioner was made by the NI Assembly, the subsequent suspension of devolution meant that the post was created by an Order in Council at Westminster and the appointment made by...

6 Older People's Commissioner

A Commissioner for Older People in Wales has been created by the *Commissioner for Older People (Wales) Act* ⁴⁶ which has recently received Royal Assent.. The role of the Commissioner will be to safeguard and promote the interests of older people in Wales with powers and duties comparable to the Children's Commissioner in Wales. The policy originated in a recommendation of the Advisory Group on a *Strategy for Older People in Wales*. The Strategy was launched in 2003 and provides a framework for all public bodies in Wales to plan for an ageing society and to improve services to older people. In 2003 the Welsh Assembly Government also put together an Advisory Group of people with particular understanding of how a Commissioner might work in practice, or who represent organisations which work to make life better for older people.

The Advisory Group gave their backing to the idea of having a Commissioner and they suggested that he or she would play an important part in speaking up for older people and helping them to sort things out when they are unable to get the help they need from other bodies. He or she would also help to change other people's attitudes towards older people so that they are treated with respect, and as individuals with as much to offer to society as any other person. ⁴⁷

The Act allows the National Assembly for Wales to make Regulations around the appointment of and terms and conditions applying to the Commissioner, including the term of office and the circumstances in which the Commissioner would cease to hold office.

The Commissioner must report to the Assembly. The Act allows the Assembly to make Regulations about his or her reporting duties.

The Commissioner must submit accounts to the AGW. The Act allows the Assembly to make Regulations about the content of and methods used to prepare accounts.

The Act makes provision for the Commissioner for Older People to work collaboratively with the Public Services Ombudsman for Wales and with the Children's Commissioner for Wales where appropriate.

6.1 Commissioner for Older People in Scotland

Alex Neil MSP is proposing to bring forward a Member's Bill in the Scottish Parliament to establish an Older Peoples Commissioner for Scotland. ⁴⁸ A consultation exercise was undertaken in late 2004, early 2005. ⁴⁹ A final proposal for a *Commissioner for Older People (Scotland) Bill* to establish a Commissioner for Older People with duties to protect

⁴⁶ *Commissioner for Older People (Wales) Act 2006* (Chapter 30)

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060030_en.pdf

⁴⁷ Welsh Assembly Government, Older People's Commissioner, webpage.

<http://www.wales.gov.uk/subicommolderpeople/index.htm>

⁴⁸ There are two routes by which an individual MSP who is not a member of the Executive may seek to introduce a Bill. One is by encouraging a committee to make a proposal for a Committee Bill. The other is by lodging a proposal for a Member's Bill. Such a proposal is printed in the Business Bulletin for one month. If it attracts 11 supporters in that time, the member who lodged it has the right to introduce a Bill to give effect to that proposal at any time during the 4-year session. (As soon as the necessary degree of support has been obtained, the supporters' names appear in bold, though further names may be added during the remainder of the month.) If the proposal does not attract sufficient support within a month, it falls and no similar proposal may be introduced for a period of six months. The Bill in question attracted 18 supporters.

⁴⁹ Alex Neil MSP, *Commissioner for Older People (Scotland) Bill: Consultation Paper*, October 2004.

<http://www.scottish.parliament.uk/business/bills/pdfs/mb-consultations/Commissioner-for-Older-People-consultation.pdf>



and further their rights and interests was lodged on 13 April 2005. The Bill was introduced on 20 September 2006.⁵⁰

⁵⁰ *Commissioner for Older People (Scotland) Bill 2006* <http://www.scottish.parliament.uk/business/bills/71-CommOldPeople/index.htm>

7 Information Commissioner

The Information Commissioner's Office (ICO) is an independent supervisory authority reporting directly to the UK parliament. The ICO regulates and enforces the *Data Protection Act 1998*, the *Freedom of Information Act 2000*, the *Privacy and Electronic Communications (EC Directive) Regulations 2003* and the *Environmental Information Regulations 2004*. This post was established by the *Freedom of Information Act 2000*. The salary of the Information Commissioner is funded from the Consolidated Fund and he is appointed by the Monarch. A resolution of both Houses is also required under Schedule 5 of the 1998 Act to remove the Commissioner from office. No grounds are specified for removal.

The *Data Protection Act* and the *Privacy and Electronic Communications Regulations* give people the right to know what information is held about them, and set rules to ensure information is handled properly. The *Freedom of Information Act* and the *Environmental Information Regulations* give people the right to obtain information held by public bodies unless there are good reasons to keep it confidential. Reporting directly to Parliament, the Commissioner's powers include the ability to order compliance, using enforcement and decision notices, and prosecution.

The Information Commissioner is a UK post. However, Scotland has its own Information Commissioner covering devolved areas, who is appointed to interpret, promote and enforce the *Freedom of Information (Scotland) Act*. Nevertheless, access relating to data protection and personal data is not devolved so the UK Information Commissioner will deal with any complaints in this area.

The Scottish Information Commissioner was appointed in 2003 by the Monarch on the nomination of the Scottish Parliament. The appointment is for an initial term of 5 years. The role of the Commissioner is completely independent of the Scottish Executive or any other public authority. The Commissioner makes an annual report to the Scottish Parliament and accounts for the finances of the Office to the Scottish Parliament and to the AGS. The budget is submitted to the SPCB Funds are provided by the SPCB.

8 More constitutional watchdogs - the debate

As seen above, Wales has taken the lead in creating a Children's and an Older People's Commissioner. However, there has been debate in Westminster and in the Scottish Parliament about the pros and cons of creating new "Officers of Parliament", especially the arrangements for their independence and accountability. This is the subject of an inquiry by the Scottish Parliament's Finance Committee,⁵¹ and also is part of an inquiry into Ethics and Standards by the House of Commons Public Administration Committee.⁵²

8.1 The Public Appointments Commissioner

The House of Commons Select Committee on Public Administration recommended in its report on Patronage that the Office of the Public Appointments Commissioner (OCPA) become an Officer of Parliament. The position is currently funded and serviced by the Government. The Commissioner's role is to establish a Code of Practice for ministerial appointments to public bodies, and monitor the process to ensure that those appointments are made on merit after fair and open competition. The Commissioner's role is to regulate, monitor, report and advise on appointments made by UK Ministers and by Members of the National Assembly for Wales to the boards of around 900 national and regional public bodies. Some bodies within Northern Ireland also fall under OCPA's remit. Separate Public Appointments Commissioners have been set up in Scotland and Ireland. The Commissioner for Public Appointments is appointed by the Crown.

The Commissioner's Code of Practice covers all ministerial appointments to the boards of executive and advisory non-departmental public bodies, NHS bodies, public corporations, nationalised industries, and utility regulators. In Wales the Public Appointments Unit and the NHS Appointments Unit in the Welsh Assembly Government work to ensure compliance with the Commissioner's Code of Practice.

The Select Committee's Report stated:

The Cabinet Office currently funds OCPA and houses the Office. The London staff of eight officials is drawn from officials from the Lord Chancellor's Department, the Cabinet Office and other departments on secondment. We regard this as an unsatisfactory state of affairs that has potential practical consequences. The simple fact that the Commissioner and her Office are funded and serviced from Whitehall creates the impression that she works for and reports to ministers.

Just as independent assessors working in different departments should be truly independent of those departments, so too should the Office that assumes overall responsibility for the independence of the process in central government be independent of the executive. The Commissioner recognises that there are advantages in employing officials who are well versed in the ways of government departments, but she has long argued that OCPA should be funded and housed independently of the executive; and that she should have the power to appoint staff

⁵¹ Scottish Parliament, Finance Committee, Accountability and Governance Inquiry, Homepage. <http://www.scottish.parliament.uk/business/committees/finance/inquiries/actgov/fc-actgov-index.htm>. It is also being addressed in a review, established by the Scottish Executive, into complaints, audit and related procedures (Crerar Review): <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReview/>;

⁵² HC Public Administration Select Committee, Ethics and Standards Inquiry, Homepage. http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pascethics.cfm

permanently. If the Commissioner's office is to be independent of the executive, it should be rooted in Parliament.⁵³

As part of the *Public Appointments and Public Bodies etc (Scotland) Act 2003*, a separate Commissioner for Public Appointments in Scotland was established. The Commissioner is selected by a parliamentary selection panel for nomination to the Monarch. The budget is submitted to the SPCB; the Annual Report is laid before the Scottish Parliament.

On the one hand, Scotland is providing a model for a coherent approach to the appointment of officers of parliament in the form of open competition and a selection panel making a recommendation to Parliament as a whole. This is a model that Wales is following in regard to the AGW and PSOW. On the other hand, a recent article has highlighted the resource implications for involving Parliament in the appointment and support of such posts.

The workload is potentially considerable for the Parliament, both in terms of Committee and SPCB time, and for administrative services such as legal, information, procurement and personnel....The burden raises the questions about the extent to which it is practicable for the Parliament to be a substantial 'sponsoring body' for this growing cadre of public officers.⁵⁴

This has recently been highlighted in Scotland with regard to proposals to create a Scottish Human Rights Commissioner

8.2 The Scottish Human Rights Commissioner

The *Scottish Commissioner for Human Rights Bill* was introduced in the Scottish Parliament on 7 October 2005. The Bill proposes the establishment of a Scottish Commissioner for Human Rights (SCHR) (with scope for the appointment of up to two Deputy Commissioners). The length of tenure for the SCHR and his or her deputies, will be a maximum term of five years. Commissioners are eligible for reappointment for a second but not a third term.

The Bill was considered by the Justice 1 Committee as the lead committee for Stage 1 of the Bill.⁵⁵ It issued its Report in February 2006 which stated:

The Committee considers that there has been an uncoordinated escalation in the number of statutory commissions; commissioners and ombudsmen in recent years, with their separate offices spread across Scotland.

It seems to us that these public-facing organisations should, wherever possible, be seeking to adopt a one-stop-shop approach to create efficiencies in operational matters and also to best serve the public. Yet, the creation of a Scottish office of the CEHR plus the creation of this stand-alone Commissioner has the potential to add further to the public's confusion as to who does what and where.⁵⁶

⁵³ Public Administration Select Committee, Fourth Report, *Government by Appointment: Opening up the Patronage State*, HC 165, 2002-03, para.99, July 2003.

⁵⁴ Oonagh Gay, 'Time for Coherence: Parliament and the Constitutional Watchdogs', Phillip Giddings (ed). *The Future of Parliament: Issues for a New Century*, Palgrave 2005.

⁵⁵ Stage 1: Initially, a Bill is referred to the relevant subject committee (known as "the lead committee"), and if it includes provision to make subordinate legislation, to the Subordinate Legislation Committee, for consideration. The lead committee may take evidence at this stage. Other committees may be involved such as Equal Opportunities or Finance plus any other subject committee with an interest. These feed back into the lead committee and their views are included in the Report.

⁵⁶ Scottish Parliament, Justice 1 Committee, 1st Report, 2006 (Session 2): *Scottish Commissioner for Human Rights Bill*, February 2006, paras. 92,93.

<http://www.scottish.parliament.uk/business/committees/justice1/reports.htm>

The Scottish Parliament's Finance Committee also noted very serious concerns over potential gaps in accountability in respect of all parliamentary commissioners and ombudsman in its recent reports on the *Scottish Commissioner for Human Rights (Scotland) Bill* and the 2006-07 Budget. The latter stated:

The Committee recommends that there should be a review of the powers of direction in relation to the various parliamentary appointed commissioners and ombudsman in the legislation which set them up. On the assumption that there is a gap in the legislation with regard to budgetary control, then the necessary steps should be taken to strengthen the budgetary powers of the SPCB in relation to the bodies its funds.⁵⁷

The Finance Committee announced its intention to hold an Inquiry into the accountability and associated costs of Scotland's ombudsman and commissioners on 1 March 2006. The committee has found that funding for the five Parliamentary commissioners and ombudsmen established in Scotland since devolution is likely to be £6m for 2006/07⁵⁸.

The Committee's Convener Des McNulty MSP said:

Our committee is concerned that despite the potential remit overlaps and cost of these bodies, there are plans to establish more new commissions.

We want to find out if the necessary controls are in place to ensure that such bodies are accountable for the money they spend.

We have agreed that the time is right to look at the remits, budgets, and accountability of these and other similar bodies and to consider how financial control can be squared with independence.⁵⁹

The Inquiry consultation closed at the end of April and the committee took oral evidence in May and June. It will be drafting the Report after the summer recess. The Justice 1 Committee began its detailed Stage 2 scrutiny of the Bill in September.

⁵⁷ Scottish Parliament, Finance Committee Report, 5th Report, *Budget 2006/7*, SP Paper 471, 2005.

<http://www.scottish.parliament.uk/business/committees/finance/reports-05/fir05-05-01.htm#report>

⁵⁸ These are the SPSC, SPSO, Information Commissioner, Public Appointments Commissioner and the Children's and Young People's Commissioner.

⁵⁹ Scottish Parliament Finance Committee, Press Release, *Costs and accountability of commissioners to be investigated*, 1 March 2006.

<http://www.scottish.parliament.uk/nmCentre/news/news-comm-06/cfin06-001.htm>



9 Annex 1: Comparative Table of “Officers of Parliament” across the UK

Post	Wales	England/UK	Scotland	Northern Ireland
<p>Ombudsman</p> <p><i>The main function of these posts is the investigation of maladministration in public bodies. The role is reactive – i.e. it responds to complaints received.</i></p> <p><i>The Welsh and Scottish Public Services Ombudsmen provide “one stop shops” for complaints against public bodies. They deal with complaints directly from the public.</i></p> <p><i>In England the Parliamentary Ombudsman also acts as Health Ombudsman but the Local Government Ombudsmen are separate. The Parliamentary Ombudsman can only deal with complaints submitted by MPs (“the filter”). He or she also deals with non-devolved issues in Wales, Scotland and NI.</i></p> <p><i>The NI Ombudsman</i></p>	<ul style="list-style-type: none"> ◆ Public Services Ombudsman created by 2005 Act. ◆ Appointed by Monarch on recommendation of the Secretary of State (Assembly after 2007). ◆ Appointed for 7 years, non-renewable. Can be removed for misconduct. ◆ No power to enforce. ◆ Funded by Assembly (Welsh Consolidated Fund through the Assembly after 2007). ◆ Reports to Assembly and lays accounts. ◆ Deals with complaints direct from the public. ◆ Staff are not civil servants (40). 	<ul style="list-style-type: none"> ◆ Parliamentary Ombudsman created by 1968 Act. ◆ Appointed by the Crown. ◆ Appointment is permanent but can be removed for misconduct. Must retire at 65. ◆ No power to enforce but can compel witnesses to attend and require Minister and civil servants to produce documentation. ◆ Funded by departmental vote from Cabinet Office ◆ Reports to House of Commons Public Administration Committee. ◆ MP “filter” in place. ◆ Staff are civil servants. ◆ Deals with non-devolved issues in Wales, Scotland and Northern Ireland. 	<ul style="list-style-type: none"> ◆ Scottish Public Services Ombudsman created by 2002 Act. ◆ Appointed by Monarch on the recommendation of Parliament. ◆ Appointed for 5 years renewable but can be removed for misconduct. ◆ No power to enforce. ◆ Funded from Scottish Consolidated Fund ◆ Reports to Scottish Parliament. ◆ Deals with complaints direct from the public. ◆ Staff are not civil servants. 	<ul style="list-style-type: none"> ◆ NI Ombudsman encompasses two offices (one appointee): the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for complaints. Originally created by Order in 1969 but powers altered by subsequent Orders in 1996 and 1997. ◆ Appointed by the Crown. ◆ Appointment is permanent although can be removed for misconduct and must retire at 65. ◆ Power to enforce in regard to complaints about local government and health. ◆ Funded from NI Consolidated Fund. ◆ Reports to Northern Ireland Assembly ◆ Deals with complaints direct from the public (although complaints about Assembly Members must be directed to the Clerk of the Standards Committee). ◆ Staff are seconded from NI Civil Service.



Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil

<p><i>covers broadly the same areas as the Welsh and Scottish Ombudsmen but has additional powers, including investigation of personnel complaints, and legal enforcement of findings in local government and health service complaints.</i></p>		<ul style="list-style-type: none"> ◆ Local Government Ombudsman is separate. 		
<p>Auditor General</p> <p><i>The Auditor General and Comptroller was created by the Exchequer and Audit Departments Act 1866 and was given the new task of examining departmental accounts and reporting the results to Parliament.</i></p> <p><i>Audit and inspection rights are vested in the Comptroller and Auditor General but the National Audit Office carries out these tasks on his or her behalf in England and in relation to the UK. It audits the accounts of all government departments and agencies as well as a wide range of other public bodies, and reports to Parliament on the economy, efficiency and effectiveness with which government bodies have</i></p>	<ul style="list-style-type: none"> ◆ Auditor General Wales created by 1998 Act. ◆ Appointed by Monarch on recommendation of the Secretary of State (Assembly after 2007). ◆ Appointed for 5 years, renewable. Can be removed for misconduct. ◆ No power to enforce. ◆ Salary is funded by Assembly (Welsh Consolidated Fund through the Assembly after 2007). Other sources of funding eg. Fees from audited bodies ◆ Reports to Assembly and Parliament. Lays accounts before Assembly. ◆ Staff are not civil 	<ul style="list-style-type: none"> ◆ Auditor General & Comptroller. Modern powers date from 1866. ◆ Appointed by Monarch. 1983 Act requires the PM to propose a name and to consult with the chair of the Public Accounts Commission, a statutory parliamentary committee. ◆ No set retirement age. ◆ Salary and expenses come out of the Consolidated Fund. ◆ Reports to Parliament. ◆ Staff are not civil servants (National Audit Office). 	<ul style="list-style-type: none"> ◆ Auditor General Scotland created by 1998 Act. Powers expanded by 2000 Scottish Act. ◆ Appointed by Monarch on recommendation of the Parliament. ◆ Appointment is permanent but must retire at 65 and can be removed for misconduct. ◆ No power to enforce. ◆ Salary and expenses are funded by Scottish Parliament Corporate Body (SPCB). ◆ Reports to Scottish Executive which lays Accounts before Scottish Parliament. ◆ Staff are not civil servants (Audit Scotland). 	<ul style="list-style-type: none"> ◆ There has been an Auditor General & Comptroller for Northern Ireland since 1921. ◆ Appointed by Monarch on nomination by NI Assembly (or UK Parliament if suspended). ◆ Appointment is permanent but can be removed by two-thirds resolution of NI Assembly (or Parliament). ◆ Salary and expenses come out of the Consolidated Fund. ◆ Reports to Assembly or Parliament. ◆ Staff are not civil servants (NI Audit Office).



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<p><i>used public money.</i></p> <p><i>The Auditors General of Wales, Scotland and NI carry out the same functions and are supported by the Wales Audit Office, Audit Scotland and the NI Audit Office, respectively and report to their legislatures. As the NI Assembly is suspended the Reports are made to the UK Parliament.</i></p>	<p>servants (Wales Audit Office, 250).</p>			
<p>Standards Commissioner</p> <p><i>Following the Nolan Report on Standards in Public Life, a non-statutory Parliamentary Commissioner for Standards was created in Westminster.</i></p> <p><i>The new devolved bodies have sought to build Nolan principles into their internal structures but only Scotland has created a statutory Standards Commissioner.</i></p>	<ul style="list-style-type: none"> ◆ Non statutory ◆ Appointed by the Assembly. ◆ Appointed for 4 years ◆ Unsalaries ◆ Reports to Standards Committee ◆ Supported by APS staff. 	<ul style="list-style-type: none"> ◆ Parliamentary Commissioner for Standards was created in 1995. Non statutory. ◆ Appointed by a resolution of Parliament. ◆ Appointed for 6 years, renewable. ◆ Funded by Commons Vote. ◆ Reports to Standards and Privileges Committee. ◆ Cannot appoint staff. 	<ul style="list-style-type: none"> ◆ Scottish Parliamentary Standards Commissioner created by 2002 Scottish Act. ◆ Appointed by SPCB on recommendation of the Parliament. ◆ Appointed for 5 years, renewable but can be removed for misconduct. ◆ Salary and expenses are funded by SPCB. ◆ Reports to Scottish Parliament. ◆ Currently no staff but could appoint staff if required. 	<ul style="list-style-type: none"> ◆ No standards commissioner. ◆ Main system of regulation is the Standards and Privileges Committee. ◆ NI Ombudsman investigates complaints against Members which are reported to the Clerk of the Committee.
<p>Children's Commissioner</p> <p><i>Unlike posts such as the Ombudsman, Children's Commissioners are proactive in that they can</i></p>	<ul style="list-style-type: none"> ◆ Created by 2000 Act. Powers broadened in 2001 Act. ◆ Appointed by First Minister. ◆ Appointed for 7 years, 	<ul style="list-style-type: none"> ◆ Children's Commissioner for England was created by 2004 Act. ◆ Appointed by Secretary of State for 	<ul style="list-style-type: none"> ◆ Commissioner for Children and Young People created by 2003 Scottish Act. ◆ Appointed by Monarch on recommendation of the Parliament. 	<ul style="list-style-type: none"> ◆ Children and Young People's Commissioner for Northern Ireland was created by Order in 2003 while the Assembly was suspended. ◆ Appointed by the Secretary of



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<p><i>initiate investigations and inquiries.</i></p> <p><i>Wales was the first to create and appoint a Children's Commissioner, followed by NI, then Scotland. All these posts are concerned with the "rights" of the child as defined by the UN Convention on the Rights of the Child.</i></p> <p><i>The English Commissioner, however, is more concerned with the promotion of "well being". He or she also has powers over non-devolved issues but must take account of work undertaken in Wales, Scotland and NI.</i></p>	<p>non-renewable but can be dismissed for misconduct.</p> <ul style="list-style-type: none"> ◆ No power to enforce but does have power to review and to require information to be provided. ◆ Funded by Welsh Assembly Government (out of DELLS budget) ◆ Reports to First Minister. ◆ Staff are not civil servants (30). 	<p>Education & Skills.</p> <ul style="list-style-type: none"> ◆ Appointed for 5 years, renewable but can be dismissed for misconduct. ◆ No power to enforce but does have power to review and to require information to be provided although can only be able to carry out formal investigations with the approval of the relevant secretary of state. ◆ Funded by DfES. ◆ Reports to Secretary of State who lays Report before Parliament. ◆ First year of operation – staff seconded from NGOs and Department of Health. ◆ Has powers over non-devolved issues. 	<ul style="list-style-type: none"> ◆ Appointed for 5 years, renewable. Can be dismissed for misconduct. ◆ No power to enforce but does have power to review and to require information to be provided. Cannot conduct investigations relating to a single child. ◆ Salary and expenses are funded by SPCB. ◆ Reports to Scottish Parliament.. ◆ Can appoint staff with approval of SPCB. Staff are not civil servants. 	<p>State for Northern Ireland.</p> <ul style="list-style-type: none"> ◆ Appointed for 4 years, renewable. Can be dismissed for misconduct. ◆ No power to enforce but does have power to review and to require information to be provided. ◆ Funded by Northern Ireland Office. ◆ Reports to Secretary of State. ◆ Can appoint staff. Staff are not civil servants. ◆ Arrangements likely to change if devolution is restored.
<p>Information Commissioner</p> <p><i>The Information Commissioners promote access to official information and to protect personal information.</i></p> <p><i>They regulate and enforce</i></p>	<ul style="list-style-type: none"> ◆ Covered by the UK Commissioner. ◆ Assistant Commissioner based in Wales. 	<ul style="list-style-type: none"> ◆ Information Commissioner created by 2000 Act. ◆ Appointed by Crown letters patent and can be removed by a resolution of both Houses of Parliament. ◆ Appointed for 5 years, renewable. 	<ul style="list-style-type: none"> ◆ Scottish Information Commissioner created by 2002 Scottish Act. ◆ Appointed by Monarch on recommendation of the Parliament. ◆ Appointed for 5 years, renewable. ◆ Salary and expenses are funded by SPCB. 	<ul style="list-style-type: none"> ◆ Covered by UK Commissioner ◆ Assistant Commissioner based in Northern Ireland.



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<p><i>relevant legislation.</i></p>		<ul style="list-style-type: none"> ◆ Powers include the ability to order compliance, using enforcement and decision notices, and prosecution. ◆ Funded from Consolidated Fund. ◆ Reports to Parliament.. ◆ Staff are not civil servants. 	<ul style="list-style-type: none"> ◆ Reports to Scottish Parliament.. ◆ Staff are not civil servants. 	
<p>Older People's Commissioner</p>	<ul style="list-style-type: none"> ◆ Created by 2006 Act. ◆ Assembly can make regulations in regard to appointment and tenure. ◆ Power of Investigation and will be able to take on the cases of individuals and take court action if necessary. ◆ Funded by Assembly. ◆ Reports to Assembly. ◆ Deals with complaints direct from the public. ◆ Staff are not civil servants. ◆ Assembly will make regulations with the aim of having a Commissioner in place in 2007. 	<p>None</p>	<p>Private Member's Bill currently before Scottish Parliament.</p>	<p>None</p>