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Assembly Members (Independent Financial Review and Standards) Bill

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This paper provides commentary on the Assembly Members (Independent Financial Review and Standards) Bill. The Bill seeks to establish a statutory independent body to determine Members' pay and allowances. It will also create a statutory Standards Commissioner to investigate breaches of the Code of Conduct. Where appropriate, it draws comparisons with equivalent legislation in Scotland and Wales and provides an overview of practices in the House of Commons and Houses of the Oireachtas.

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Key Points

- The Assembly Members (Independent Financial Review and Standards) Bill will create a Financial Review Panel and an Assembly Standards Commissioner
- The Panel will determine salaries and allowances payable to Assembly Members
- The Commissioner will investigate and report on allegations of breaches of the Code of Conduct for Assembly members
- The National Assembly for Wales (NAfW) and the Scottish Parliament have established statutory independent Standards Commissioners, and the NAfW has recently established a remuneration Board to determine Members' pay and expenses
- The Assembly Standards Commissioner will have the power to initiate investigations and call for witnesses and documents
- The determinations reached by the Panel will be binding on the Assembly

Executive Summary

The Assembly Members (Independent Financial Review and Standards) Bill consists of three parts and five schedules. This paper provides commentary on the clauses contained in the Bill.

The Bill will, if passed, create a Financial Review Panel and an Assembly Standards Commissioner. The Panel will determine salaries and allowances payable to Assembly Members and the Commissioner will investigate and report on allegations of breaches of the Code of Conduct for Assembly members.

Independent Financial Review Panel

The decision to establish the Panel followed a recommendation contained in a report by the Senior Salaries Review Body, which stated that the Assembly should consider the establishment of an independent body to set and monitor members' pay and allowances. The provisions contained in Part 1 of the Bill relating to the Panel largely mirror those in the National Assembly for Wales (Remuneration) Measure 2010, which created the Remuneration Board for the National Assembly for Wales (NAfW).

The Panel will be appointed by the Assembly Commission and will be required to make only one determination in respect of members' salaries during each mandate, except in exceptional circumstances. The paper draws on the debate on the NAfW Board, during which issues relevant to the Northern Ireland Panel were discussed.

Northern Ireland Assembly Commissioner for Standards

Part 2 of the Bill allows for the Northern Ireland Assembly Commissioner for Standards and gives that office significant statutory powers, such as the ability to carry out and report on investigations and the power to call for witnesses and documents. Standards Commissioners already exist in the NAfW and the Scottish Parliament and Part 2 of the Bill reflects the equivalent legislation in Scotland and Wales in many respects. The paper highlights key issues raised in the Committee on Standards and Privileges Report on the creation of the Standards Commissioner and explores both similarities and differences with the Scottish and Welsh legislation. Reference is also made to the House of Commons and Houses of the Oireachtas, which operate different systems for the investigation of complaints against Members.

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1 Introduction

This paper provides information in relation to the Northern Ireland Assembly Members (Independent Financial Review and Standards) Bill which provides for the establishment of the Assembly's Independent Financial Review Panel and the Northern Ireland Assembly Commissioner for Standards. Although the Panel and the Commissioner are distinct and each undertakes separate functions, the roles are complementary and therefore it is logical that they are legislated for in the same Bill. It is worth noting, for example, that in the debate over the establishment of the equivalent body in Wales (National Assembly for Wales Remuneration Board), the then Standards Commissioner highlighted those occasions when he had investigated abuse of allowances or expenses. In these instances, he foresaw his office working in co-operation with the Board on those matters.

2 The Independent Financial Review Panel

Background to the proposal

Until recently, section 47 of the Northern Ireland Act 1998, which provided for the Northern Ireland Assembly to determine and pay Members' salaries and allowances, explicitly prevented the Assembly from delegating the function of making a determination.

On 4 May 2007, prior to the restoration of devolution, the Secretary of State wrote to the Chairman of the Review Body on Senior Salaries (SSRB) seeking its agreement to conduct a review of the existing structure for salaries, expenditure and pension benefits payable to Members and Office Holders of the Northern Ireland Assembly.

In 2008, the SSRB published its review of pay, pensions and allowances in the Northern Ireland Assembly. The review, which included a recommendation that, whilst the pay of Members of the Assembly should continue to be recommended by an independent body such as the Review Body on Senior Salaries, Members of the Assembly should consider the option of committing themselves to accepting the outcome of the independent reviews of their pay without modification.

After considering the SSRB report, the Northern Ireland Assembly Commission, in line with the views expressed by Assembly parties, supported the recommendation raised by the SSRB and agreed at a meeting in June 2009 that the Commission should consider an independent mechanism for the future determination of salaries, pensions and financial support for Members.

To take this forward, the Northern Ireland Assembly Commission recommended that an amendment to the Northern Ireland Act 1998 should be made to enable the Northern Ireland Assembly to delegate the function of determining salaries, pensions and financial support to an independent statutory body.

The Northern Ireland Assembly Members Act 2010, which received Royal Assent on the 8th April 2010, amends sections 47 and 48 of the Northern Ireland Act 1998 and allows the Northern Ireland Assembly to continue to determine salaries and allowances or to delegate that function for example, by resolution, to the Northern Ireland Assembly Commission or, by an Act of the Assembly, to an independent body.

Other Jurisdictions

In the last few years the House of Commons and the devolved legislatures across the UK have all undertaken reviews or commissioned independent reviews of their pay and/or allowances schemes. The House of Commons and the National Assembly for Wales have decided that responsibility for pay and allowances should be vested in independent bodies. The Oireachtas recently took steps to reduce long service payments to members and reduce Ministerial pensions.

House of Commons

The Parliamentary Standards Act 2009, which received Royal Assent in July 2009, provided for the establishment of the Independent Parliamentary Standards Authority¹ (IPSA) and gave it the responsibility for paying Members' salaries and allowances; and for preparing a scheme under which allowances are paid. The Constitutional Reform and Governance Act 2010, which received Royal Assent on 8th April 2010, includes a provision that also transfers responsibility for determining the amount of Members' salaries from the House of Commons to IPSA.

Houses of the Oireachtas

The Review Body on Higher Remuneration in the Public Sector² (the Review Body) is a standing body in the Republic of Ireland whose primary function is to advise the Government on the general levels of remuneration appropriate to certain top public service posts. These include members of the Houses of the Oireachtas; members of the Government, Ministers of State, the Attorney General and the Chairman and Deputy Chairman of Dail Éireann and Seanad Éireann; the Judiciary; and certain grades of civil servants and local authority officers.

In its Report No 38 Sixth General Review, published in September 2000, the Review Body compared the role of an 'average' TD with a sample of civil services post and recommended an appropriate link which would in the future provide for the automatic review of the remuneration of Dail Deputies and Senators. On this basis, the Review Body recommended that their remuneration, therefore, should no longer form part of the remit of general reviews. Following the approval by the Government of the recommendations of the Review Body in its

¹ <http://www.ipsa-home.org.uk/>

² <http://www.reviewbody.gov.ie/>

report, the salaries of members of the Houses of the Oireachtas are no longer considered by the Review Body (the remuneration of political office holders is still covered).

The Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Act 2009 amended the Ministerial and Parliamentary Offices Acts 1938 to 2001 and the Oireachtas (Allowances to Members) Act 1938. It ends the payment of Long Service Increments (LSIs) following the next general election for all members of the Houses of the Oireachtas and withholds LSIs for those members who would normally have qualified for them before the next general election. It also provides that Ministerial pensions paid to members of the Oireachtas and the European Parliament will be reduced by 25 percent after the next elections to those institutions.

The Houses of the Oireachtas Commission, which came into existence on 1st January 2004 under the Houses of the Oireachtas Commission Act 2003, is responsible for overseeing the expenditure of the Houses, paying all salaries and expenses for members and staff, and keeping and publishing annual accounts³. The Minister for Finance is the statutory officer in relation to members pay with responsibility for legislation relating to members pay.

National Assembly for Wales

In August 2008, the National Assembly for Wales Commission set up the Independent Review Panel⁴ in order to look at all aspects of financial support available to Assembly Members including: salaries, allowances for travel, pensions, accommodation, constituency offices and support staff.

A key recommendation made by the Independent Review Panel in their report published in July 2009 entitled "Getting It Right for Wales"⁵ was that the automatic link between the pay of Assembly Members and that of Members of Parliament should be broken and that a statutory Independent Review Body should be established to set future salary levels and to monitor and review other financial support including allowances for travel, pensions and office support.

The Commission accepted this along with all other recommendations and on 9th November 2009 introduced a Proposed Measure to establish an independent board to determine all aspects of financial support for Assembly Members, including the setting and reviewing of Assembly Members' salaries, allowances and pensions. The National Assembly for Wales (Remuneration) Measure 2010 received Royal Approval on 21st July 2010.

The National Assembly's independent Remuneration Board⁶ (the Board) held its first meeting on 1st October 2010. Items on the agenda included:

- consideration of role, responsibilities and workload of Members;

³ <http://www.oireachtas.ie/parliament/about/commission> retrieved 9 November 2010

⁴ <http://www.assemblywales.org/memhome/mem-allow-pay-pensions/independentreviewpanel.htm>

⁵ <http://www.assemblywales.org/irp-reportjuly09-e.pdf>

⁶ <http://www.assemblywales.org/memhome/mem-allow-pay-pensions/members-remunerationboard.htm>

- consideration of Assembly budgetary issues 2011-2014;
- strategic objectives and capacity in the Assembly;
- Methodology and working practice of the Board
- Forward work plan

On 14th October 2010, the Board held its first meeting with Assembly Members and their staff as part of what Board Chairman George Reid called an “open and ongoing dialogue” in ensuring a fair and transparent remuneration system for Members.⁷

The Northern Ireland model contained in the Bill is closely modelled on the Welsh legislation. The following table provides a comparison between the Welsh legislation and the Northern Ireland Bill, including commentary on the policy behind some of the provisions contained in the Welsh legislation.

Table 1: Comparison between the proposed Northern Ireland Independent Financial Review Panel and the National Assembly for Wales Remuneration Board

<p>1. Establishment and membership of the Panel The Panel will consist of the Chair and two other members.</p>	<p>1. National Assembly for Wales Remuneration Board The Board consists of the Chair and four other members and the quorum of the Board is three.</p>
<p>2. Functions of the Panel Clause 2 outlines the functions of the Panel. It largely reflects the Welsh legislation which states that the Panel should exercise these functions with ‘probity, accountability and value for money’.</p> <p>See commentary on clause 12 for how holders of dual mandates will be accounted for in determinations of the Panel.</p>	<p>3. Functions of the Board Section 3(1) states that the functions of the Board are conferred on it by sections 20, 22 and 23 of the Government of Wales Act 2006. The question was raised as to why section 21 of the 2006 Act, which deals with members who hold dual mandates, was omitted. In response, Legal Counsel advised:</p> <p>‘The answer is that the Assembly has no power to amend by Measure section 21 of the Government of Wales Act 2006. When the Act was passed, it provided that Measures could not amend certain key constitutional Acts of Parliament, one of which was the Government of Wales Act 2006 itself.’</p> <p>Section 3(4) of the Measure states that ‘The Board may, from time to time, consider any other matter which is relevant to the discharge of its functions on its own initiative or at the written request of the Clerk’.</p> <p>In evidence to the Committee the Presiding Officer was asked to explain what was meant by ‘any other matter which is relevant to the discharge of its functions’. He replied: ‘The obvious ones that come to my mind would be that there was some issue relating to hyperinflation or circumstances in the economy that affected a judgment that the panel had made earlier—because we are talking here about a four-year timescale of judgment in relation to</p>

⁷ <http://www.assemblywales.org/newhome/new-news-third-assembly.htm?act=dis&id=199969&ds=10/2010>

	<p>salaries.’</p> <p>It was further explained by Legal Counsel that: ‘It (the Board) might want to take a step back and look at some general principles. For example, it may want to compare the overall structure of salaries and allowances in the Assembly with those of similar bodies elsewhere⁸.’</p>
<p>3. Independence and openness</p> <p>Clause 3 ensures that the Panel shall not be subject to the direction or control of the Assembly or the Commission.</p> <p>No reference is made to consulting those likely to be affected by the decisions of the Panel, for example Assembly Members or their staff.</p>	<p>2. Independence, openness and inclusiveness</p> <p>The Board is not subject to the direction or control of the Assembly or the Commission.</p> <p>The Board must, before exercising any of its functions, consult those of the following who are likely to be affected:</p> <ul style="list-style-type: none"> • Assembly members • Staff employed by Assembly members (or by groups of Assembly members) • Relevant trade unions • Such other persons as it considers appropriate
<p>4. Appointments to the Panel</p> <p>Clause 4 replicates the NAFW Measure, with the Commission appointing members of the Panel, rather than the Assembly.</p>	<p>6. Appointments to the Board</p> <p>The Chair and other members are appointed by the Assembly Commission and are to hold office for a fixed term of five years from the date of their respective appointments.</p> <p>No person may be appointed a member of the Board if they have already served two terms.</p> <p>The then Commissioner for Standards stated in evidence that it would be beneficial for the Assembly to have the final say on the appointments, rather than the Commission, in the interests of transparency.</p> <p>The point was also made that the Act establishing the Independent Parliamentary Standards Authority required the Authority to include a member who has held a high judicial office, a qualified auditor from the National Audit Office and a former Member of the House of Commons.</p> <p>No such provisions were included in the Welsh Measure, with the subsequent advertisement for the Board stating that:</p> <p>‘To become a member of the Remuneration Board, you will need: the ability to consider matters of remuneration, audit and good governance and to make sound recommendations on the basis of analysis; the ability to demonstrate good judgment, consistency and firmness in dealing with sensitive and important matters such as those that may arise from remuneration; a thorough understanding of the issues surrounding the public debate</p>

⁸ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-ic1-agendas.htm?act=dis&id=157612&ds=12/2009>

	on standards in public life; excellent communications skills; the track record, presence and personal integrity needed to command the trust and respect of Assembly Members and the general public’.
<p>5. Disqualification from membership of the Panel</p> <p>Schedule 1 of the Bill is more restrictive compared both to the Welsh legislation and Schedule 3 of the Northern Ireland Bill which deals with disqualification from being the Standards Commissioner.</p> <p>As well as obvious exclusions such as Assembly members and Assembly staff, Schedule 1 excludes family members, former family members, former Assembly members and former members of staff of the Assembly.</p>	<p>Schedule 1 – Disqualification from membership of the Board</p> <p>During oral evidence to the Committee, the Presiding Officer was asked if consideration had been given to excluding family members of Assembly members from membership of the Board. The Presiding Officer responded by explaining:</p> <p>‘There are difficulties... in this field of trying to define what a family member is. If family members are to be disqualified, decisions would need to be taken as to how widely to define family members, I am advised. Now, obviously, candidates to be a member of the board would include all relevant information, including any affiliations they had, I would think, in their application, and that would be given due consideration by the appointments panel’.</p> <p>Legal Counsel expanded on this: ‘A major issue is the clarity of the definition. As the person responsible for the drafting, my feeling was that to try to define which family members would be disqualified would be quite difficult. You would have to do that; you would have to define what the relationship was. You also, of course, would then immediately run into issues such as, if the husband or wife of an Assembly Member is disqualified, what about a person who is co-habiting with an Assembly Member but is not married to him or her? You begin to get into increasingly difficult areas of definition, and the thing would very rapidly, in my professional judgment, grow out of proportion to the nature of the problem⁹.’</p> <p>The then Commissioner for Standards at the NAFW voiced concerns that appointing five members with the relevant expertise might be difficult, due to the fact that the legislation disqualified so many people from membership of the Board, including former Assembly members, who are the only people with experience of what is like to undertake the work of an Assembly member¹⁰.</p>
<p>6. Termination of membership of the Panel</p> <p>The Northern Ireland Bill allows the Commission to terminate membership of the Panel, without recourse to an Assembly resolution.</p>	<p>7. Termination of membership of the Board</p> <p>The Chair or Board member ceases to hold office if they resign, become disqualified from being a member of the Board, their term expires or if the Assembly, following a proposal by a member of the Assembly Commission, passes a resolution by a two-thirds majority that a person should be removed from the Board</p>
<p>7. Code of Conduct for Panel Members</p>	N/A

⁹ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc1-agendas.htm?act=dis&id=157612&ds=12/2009>

¹⁰ <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc1-agendas.htm?act=dis&id=162104&ds=1/2010>

<p>This clause places a duty on the Panel to issue a code of conduct for its members, incorporating the Nolan principles and including provision about the disclosure of interests by Panel members.</p>	
<p>8. Administration and finance Clause 8 reflects the Welsh Measure.</p>	<p>9. Administrative support This section states that the Assembly Commission must provide the Board with such administrative support as the Board reasonably requires to enable it to discharge its functions.</p> <p>During oral evidence, the Presiding Officer expanded on what he defined as 'reasonably requires':</p> <p>'What we want to do here is ensure that the demands of the board are not excessive, for example, meeting too frequently because that sometimes occurs. The Commission would then have a right, in that situation, to withdraw its administrative support.</p> <p>At present, Assembly staff are perfectly capable of undertaking this work as part of their other duties, but it is a point that may be well worth considering, because, obviously, one meeting per annum or possibly more often would not be a huge additional drain on the resources of the Assembly Commission.'</p>
<p>9. Annual report The Panel must provide the Commission with an annual report on its activities, including its use of resources.</p>	<p>11. Annual report The Board is required to lay before the Assembly an annual report on its activities, including its use of resources.</p> <p>This provision was not contained in the original draft of the Bill when it was introduced, but the Finance Committee raised concerns that the lack of an annual report would have made it more difficult to monitor the financial activities and workload of the Board.</p>
<p>10. Meetings of the Panel Subject to Clause 11, Clause 10 allows the Panel to determine its own procedure and when meetings are to be held.</p> <p>Unlike Wales, the Clerk/Chief Executive of the Assembly cannot ask the Board to convene.</p>	<p>10. Meetings of the Board The Board is required to meet at least once a year. The Clerk of the Assembly may ask the Board to meet to consider a matter relevant to its functions. This provision followed a recommendation in 'Getting It Right for Wales' that 'The Chief Executive and Clerk of the National Assembly, as Principal Accounting Officer, should have the ability to call a meeting of the Independent Review Body (the Board) at any time.'</p>
<p>11. Exercise of functions Clause 11 allows the Panel to make only one determination in respect of each Assembly mandate.</p> <p>This Clause largely replicates the equivalent provisions in the Welsh legislation, for example by allowing the Panel to meet more than once in exceptional circumstances.</p>	<p>13. Exercise of functions of the Board The Board may not make more than one determination relating to the payment of salaries of members or Ministers during each term of the Assembly, except in exceptional circumstances.</p> <p>This was a recommendation in 'Getting It Right For Wales' and during evidence to the Committee it was argued that: 'If you move to an independent situation, you place the responsibility wholly on other people, but you are also saying that it is necessary to do this only once each time.'</p>

	<p>This gives people greater confidence and people will know that that will be the salary if they stand for the job and are elected, and it will not be possible to change that.’</p> <p>Exceptional circumstances were defined as including overly excessive decisions made by the Board or circumstances where Members were required to undertake substantial new work.</p>
<p>12. Contents of determinations: salaries and allowances</p> <p>This Clause outlines what must happen when the Panel is making a determination that will affect Members who also hold office in either House of the UK Parliament or the European Parliament.</p> <p>It takes into account changes introduced by the Northern Ireland Assembly Members Act 2010 which reduced the salary of Assembly Members to zero if they also sit in one of the institutions mentioned above and removed the salary payable to ordinary Members from Ministers and other office holders in circumstances where they hold a dual mandate.</p>	N/A
<p>13. Contents of determinations: pensions, gratuities and allowances</p> <p>This Clause allows the Panel to include in its determinations provisions for pensions, gratuities and allowances. It also allows for the establishment of and administration of one or more pension schemes.</p>	N/A
<p>14. Availability of determinations</p> <p>Every determination made by the Panel must be in writing and be communicated to the Commission which then must publish it in full.</p>	<p>12. Determinations</p> <p>Similar to the Northern Ireland Bill.</p>

3 The Northern Ireland Assembly Commissioner for Standards

Background

In May 2010 the Committee on Standards and Privileges published its *Report on the Committee Inquiry on Enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the Appointment of an Assembly Commissioner for Standards*. The report contained a number of recommendations, one of which was that “The Assembly should pass a Bill to create a statutory Assembly Commissioner for Standards during this current mandate”. In its report, the Committee concluded that:

Broadly speaking, the principles of the existing system, whereby the Northern Ireland Assembly regulates its own affairs and ultimately takes decisions on complaints that have been made against its own members is an appropriate, reasonable and workable system. However, while the principles are sound there is important work that can and should be done in order to ensure that in practice the system is more robust, and is seen to be both fairer and more transparent. The most significant aspect of this is that the Assembly should have its own Commissioner for Standards whose role would be to carry out independent, objective investigations into complaints against Members and to present his or her findings to the Committee on Standards and Privileges¹¹.

The current arrangements

During the first Assembly mandate the Committee held an inquiry into the possible appointment of a Standards Commissioner with the subsequent report recommending the appointment of a Commissioner to investigate complaints against Assembly members. The Committee also agreed interim arrangements to allow the Northern Ireland Assembly Ombudsman to carry out investigations in the intervening period, given his skills and experience. After having asked the Ombudsman to act as the interim Commissioner, the Committee later decided that rather than carrying out a recruitment process, the position should be placed on a statutory footing. A Bill was subsequently introduced by the Committee which reached second stage before falling as a result of suspension.

Scotland and Wales

The Scottish Parliament and National Assembly for Wales already have statutory standards commissioners by virtue of the Scottish Parliamentary Standards Commissioner Act 2002 and the National Assembly for Wales Commissioner for Standards Measure 2009. Both of these offices were created following inquiries and consultation processes carried out by the relevant standards committees.

Since the publication of the Committee's report in 2010, the Scottish Parliament has passed the Scottish Parliamentary Commissions and Commissioners Act etc. 2010. The Act established a new standards body which will be known as the 'Commission for Ethical Standards in Public Life in Scotland', which encompasses the functions of the Scottish Parliamentary Standards Commissioner, the Chief Investigating Officer¹² (CIO), and the Commissioner for Public Appointments. The roles of the SPSC and CIO are combined into one role, with the result that one member of the Commission will be responsible for carrying out the functions of the SPSC and CIO, while the other Commissioner will carry out the functions currently undertaken by the Commissioner for Public Appointments.

¹¹ Northern Ireland Assembly Committee on Standards and Privileges *Report on the Committee Inquiry on Enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the Appointment of an Assembly Commissioner for Standards* May 2010

¹² The CIO is appointed by the Scottish Ministers to investigate and report on complaints alleging a breach of the Code of Conduct for Councillors and the Code of Conduct for members of devolved public bodies.

In November 2010 Gerard Elias QC was appointed as the new Standards Commissioner for the National Assembly for Wales, following approval by the Assembly.

Part 2 of the Bill establishes a Northern Ireland Assembly Commissioner for Standards and places the post on a statutory footing. There are clauses relating to the functions of the Commissioner, the appointments process, persons disqualified from being the Commissioner, the procedure for investigating complaints and the investigatory powers of the Commissioner.

House of Commons

Complaints against a Member of Parliament are investigated by the Parliamentary Commissioner for Standards. Although the procedures followed by the Commissioner in Westminster are similar to those followed in Wales and Scotland, the Parliamentary Commissioner for Standards does not have the weight of an independent, statutory appointment. Rather, the Commissioner's powers and responsibilities are set out in Standing Order 150 of the House of Commons. The Commissioner cannot, for example, compel witnesses to appear before a hearing or produce requested documentation for the purposes of carrying out an investigation.

Houses of the Oireachtas

The principal functions of the Standards Commission are to provide advice and guidelines on compliance with the Ethics Acts, to administer the disclosure of interests and tax clearance regimes and to investigate and report on possible contraventions of the legislation. These functions of the Standards Commission apply to office holders and to public servants and, in relation to tax compliance measures, to all members of the Houses. Apart from matters relating to tax clearance, the Committees on Members' Interests of both Houses have functions similar to those of the Standards Commission in relation to members of the Houses who are not office holders.

Part 2 of the Bill has been drafted along similar lines to that of the equivalent legislation in Scotland and Wales.

Table 2: Comparison between the proposed Northern Ireland Assembly Commissioner for Standards and standards commissioners in Scotland and Wales

<p>16. Establishment of the Commissioner This clause allows for a Northern Ireland Assembly Commissioner for Standards.</p>	<p>Scotland and Wales There are similar provisions in Scotland and Wales.</p>
<p>17. Functions of the Commissioner This section sets out the Commissioner's functions to receive and investigate complaints. The Committee recommended that the Commissioner should have the power to initiate an investigation into the conduct of Members without having first received a complaint. This is different to the situation in Scotland and Wales where the Commissioner must be in receipt of a complaint before</p>	<p>Scotland and Wales The Commissioners in both Scotland and Wales must be in receipt of a complaint before taking forward an investigation. The Explanatory Note to the Scottish Act states that: "This provision ensures that the Commissioner's role is limited to complaints that are made direct to him or her. For example, in the absence of a specific complaint, the Commissioner would not be able to investigate an allegation that had</p>

<p>proceeding. Section 16 reflects evidence given to the Committee by the Chair of the Committee on Standards in Public Life (CSPL). During evidence, Sir Christopher Kelly said:</p> <p>‘The view that a commissioner ought to be able to investigate on his or her own initiative is not my personal view but one that the Committee on Standards in Public Life has taken under previous Chairmen. One of the reasons for the Commissioner having that power can be best illustrated by the fact that, at times, the Parliamentary Commissioner for Standards at Westminster has come under criticism for appearing to do nothing when public criticism of a Member of Parliament appears in the press. He has had to say that he cannot do anything because no-one has made a complaint for him to investigate...it is important that you create circumstances in which the commissioner does not appear to have one arm tied behind his back’¹³.</p> <p>In evidence to the Committee, the Committee on Standards of Conduct at the National Assembly for Wales stated that “although we want to give as much power and authority as we can to the standards commissioner, it is not the job of the standards commissioner to initiate complaints”¹⁴. (10 February 2010)</p> <p>The Northern Ireland Human Rights Commission raised the question as to what would constitute a proper threshold for initiating an investigation, and that it would call into question the Commissioner’s judgment “whenever he or she decided not to investigate on foot of a report”.</p> <p>The Committee noted the concerns about the practicalities of how a Commissioner might choose to initiate an investigation, but stated that it was “not acceptable that where there are significant, legitimate and evidential concerns in relation to the conduct of Members but where no formal complaint has been made that no investigation should be carried out”. It went on to say that such an investigation should only be carried out “where the Commissioner is satisfied that there is a prima facie evidential basis to carry out such an investigation”¹⁵.</p>	<p>appeared in the press”¹⁶.</p> <p>Section 9 of the Welsh legislation places a duty on the Clerk, in his role as Chief Executive and Principal Accounting Officer, of the Assembly to report to the Commissioner any Assembly Member who he believes to have misused public funds.</p> <p>The Committee heard evidence that this would ‘ensure that it would not be the Commissioner who would be responsible for initiating such an investigation...it would be inappropriate for the Commissioner...to act as judge and prosecutor in the same case.’</p>
<p>18. Independence of the Commissioner</p> <p>This section makes clear the independence of the Commissioner, subject to the requirement to comply with directions given by the Assembly (see section 24).</p>	<p>Scotland</p> <p>No explicit reference is made to the independence of the Commissioner in the legislation.</p> <p>Wales</p> <p>The Commissioner is not subject to the direction or control of</p>

¹³ Northern Ireland Assembly Committee on Standards and Privileges *Report on the Committee Inquiry on Enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the Appointment of an Assembly Commissioner for Standards* May 2010

¹⁴ As above

¹⁵ As above

	the Assembly, outside of the requirement to submit an annual report.
<p>19. Appointment of the Commissioner</p> <p>This section allows for the appointment of a Commissioner for a term of five years following an open competition. The appointment must be confirmed by a resolution of the Assembly. The Commissioner may not be reappointed and this was in line with a recommendation from the Commissioner for Public Appointments Northern Ireland.</p> <p>The Committee's view was that the "one-off term of appointment is an important feature of the Commissioner's independence. A Commissioner who has to carry out an investigation into a Member who he or she may later rely upon in order to seek reappointment could be perceived to be a Commissioner who has a vested interest in concluding that the Member has not breached the Code"¹⁷.</p>	<p>Scotland</p> <p>In Scotland, the current Commissioner is appointed for a five year term and may be reappointed for one further term. This followed guidance produced by the Commissioner for Public Appointments¹⁸.</p> <p>Wales</p> <p>The tenure of the Commissioner is similar to that proposed in the Northern Ireland Bill. In Wales, the Commissioner is appointed for a single term of six years, which was seen as securing the independence of the Commissioner. Responses received in the consultation process varied between recommendations of five and seven years.</p>
<p>20. Disqualification from being appointed or serving as the Commissioner</p> <p>Schedule 3 of the Bill sets out the terms under which a person is disqualified from being the Commissioner. They are not as restrictive as those set out under Schedule 1, which deals with disqualification from membership of the Panel. For example, section 1(a) of Schedule 1 states that a "family member of a Member or former Member of the Assembly" may not be Panel members, whereas Schedule 3 lists only family members of current Members.</p> <p>Schedule 1 also goes significantly further by disqualifying former Members and former members of Assembly staff from serving on the Panel. Schedule 3 allows former Members and Assembly staff to apply for appointment as Standards Commissioner once a period of time has elapsed.</p>	<p>Scotland and Wales</p> <p>The Scottish and Welsh legislation places fewer restrictions on who may be appointed Commissioner. No reference is made to family members, council membership or membership of a political party.</p>
<p>21. Termination of the Commissioner's appointment</p> <p>Existing Standing Orders say that the Commissioner shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the support of a number of members which equals or exceeds two-thirds of the total number of seats in the Assembly.</p> <p>The Committee believed that it was important that there was a statutory safeguard in place so the Commissioner could not easily be dismissed. The absence of such a safeguard could, in the view of the Committee, be perceived as a threat to the ability of the Commissioner to reach unpopular conclusions.</p>	<p>Scotland and Wales</p> <p>The terms of dismissal are the same as those in the Northern Ireland Bill.</p>

¹⁷ Northern Ireland Assembly Committee on Standards and Privileges *Report on the Committee Inquiry on Enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the Appointment of an Assembly Commissioner for Standards* May 2010

¹⁸ The Commissioner for Public Appointments' Guidance on Appointments to Public Bodies, Office of the Commissioner for Public Appointments, July 1998

<p>22. Further provision about the Commissioner</p> <p>Schedule 4 makes further provision about the Commissioner in relation to the administration of the office including: terms and conditions, support and accommodation, goods and services, financial prudence and financial information.</p>	<p>Scotland and Wales</p> <p>Similar provisions exist in the Scottish and Welsh legislation.</p>
<p>23. Appointment of an Acting Commissioner</p> <p>This clause allows the Assembly to appoint an Acting Commissioner to discharge any or all of the Commissioner's functions in circumstances where the Commissioner is unable to do so.</p> <p>This could apply, for example, where a conflict of interest meant that it was inappropriate for the Commissioner to investigate a particular case.</p> <p>As an Acting Commissioner may have to be appointed in urgent circumstances (for example where the Commissioner was ill), the Clause delegates to the Commission the appointments process, but the Assembly retains the right to appoint an Acting Commissioner.</p>	<p>Scotland</p> <p>The process followed is broadly similar to that outlined in the Northern Ireland Bill, except that the agreement of the Parliament to the appointment is not required.</p> <p>Wales</p> <p>Similar to the Northern Ireland Bill.</p>
<p>24. Directions to the Commissioner</p> <p>This section requires the Commissioner to comply with directions issued by the Assembly. This may include the procedure to be followed by the Commissioner in the exercise of his or her functions, requiring the Commissioner to comply with principles, codes of conduct or other statements of standards and ethics as the Assembly may specify and to register financial and other interests as the Assembly may require. However, no direction may be given regarding the process by which the Commissioner will carry out an investigation.</p> <p>In its report, the Committee noted that "all respondents agreed that the Commissioner should not be subject to the direction or control of the Assembly...It is important to explain what is meant by the Committee in respect of the Commissioner's independence and freedom from the direction and control of the Assembly". The report goes on to explain that the Committee would have particular expectations of how investigations should be carried out, and that it would retain the right to ask the Commissioner to clarify or establish certain points relating to a report.</p> <p>The Commissioner for Public Appointments Northern Ireland made clear in her submission to the inquiry that "to demonstrate true independence for the Assembly the Commissioner must be free from direction or control of the Assembly and this must be clearly demonstrated in legislation as well as in practice"¹⁹.</p>	<p>Scotland</p> <p>Section 4 of the Scottish Parliamentary Standards Commissioner Act 2010 states that the "Commissioner shall...comply any directions given by the Parliament. Directions may be given in relation to the procedure the Commissioner must follow while conducting an investigation generally (i.e. these would apply to all investigations).</p> <p>Furthermore, the Scottish Parliament can make different provision in the directions to cover different classes of complaints. It might, for example, "be considered appropriate to make different procedural provision to deal with unusual types of complaints, such as those that are made anonymously or those in which a Member is not named"²⁰.</p> <p>Wales</p> <p>Section 5 of the National Assembly for Wales Commissioner for Standards Measure 2009 makes clear the independence of the Commissioner. It says that the Commissioner is not subject to the direction or control of the Assembly except for the purposes of producing an annual report and, if practicable to do so, appear before the Standards Committee and provide information about matters that should be included in the annual report.</p>

¹⁹ Northern Ireland Assembly Committee on Standards and Privileges *Report on the Committee Inquiry on Enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the Appointment of an Assembly Commissioner for Standards* May 2010

²⁰ Scottish Parliamentary Standards Commissioner Bill, Research briefing, Scottish Parliament Information Centre February 2002

<p>25. Investigations by the Commissioner</p> <p>The Northern Ireland Bill gives the Commissioner wide discretion regarding the procedure for carrying out investigations.</p> <p>A report produced by the Commissioner may not recommend the imposition of a sanction. This remains the responsibility of the Assembly and mirrors the equivalent Scottish and Welsh legislation. However, although section 25(2) of the Bill precludes the Commissioner recommending a sanction, it allows his or her report to “otherwise make such recommendations as the Commissioner thinks fit”. (Bill)</p> <p>The rationale for this can be found in the Committee’s report which said:</p> <p>‘In practice the Commissioner can already indicate the seriousness of a breach through the use of language to describe the conduct. The Committee is therefore content that the Assembly Commissioner for Standards should be able to include in any report an indication of the seriousness of any breach as a guide to what might be an appropriate sanction²¹.’</p>	<p>Scotland and Wales</p> <p>The SPSC Act 2002 provides greater detail than the National Assembly for Wales Measure and the Northern Ireland Bill as to the process by which a complaint is to be investigated, covering the admissibility of complaints and the steps to be taken by the Commissioner upon receipt of a complaint.</p>
<p>26. Further investigations</p> <p>Clause 26 allows the Assembly, upon receipt of a report from the Commissioner, (in practice the Committee on Standards and Privileges) to ask the Commissioner to carry out further investigation on an issue. The clause allows the Commissioner to either carry out further investigation or to inform the Committee that further work is unnecessary.</p>	<p>Scotland and Wales</p> <p>The provisions in the Northern Ireland Bill lie somewhere between the Scottish and Welsh legislation. In Scotland, once directed to undertake further investigation, the Commissioner may not conclude that this would be unnecessary.</p> <p>In Wales, the Committee may not direct the Commissioner to undertake further investigation once he has submitted his report.</p>
<p>27. Reports</p> <p>The Commissioner’s report cannot make recommendations regarding the imposition of sanctions – this remains the remit of the Assembly. However, the report can make other ‘recommendations as the Commissioner thinks fit’.</p> <p>This section also makes clear that the Assembly is not bound by the facts presented or conclusions reached in the report.</p>	<p>Scotland</p> <p>If a report finds that a member was in breach of a relevant provision, that member must be given a draft of the report and an opportunity to make representations on it.</p> <p>The Commissioner cannot recommend the imposition of a sanction.</p> <p>Wales</p> <p>Similar to the provisions in the Northern Ireland Bill.</p>
<p>28. Power to call for witnesses and documents</p> <p>This section provides statutory powers for the Commissioner comparable to those available to the Assembly under section 44 of the 1998 Act.</p> <p>In its report, the Committee noted that it: ‘was advised of</p>	<p>Scotland and Wales</p> <p>The equivalent provisions in Scotland and Wales are largely similar to the provisions in the Northern Ireland Bill.</p>

²¹ As above

<p>some of the specific statutory powers that an independent Commissioner should have. These included the power to call for witnesses and documents; statutory protection from defamation (privilege); power to secure the provision of goods and services; and protection from the requirement to disclose information...Most important of these is the power to call for witnesses and documents. It should be an offence not to cooperate with an investigation of the Commissioner.'</p> <p>Section 28(3) protects a person from answering any question or producing any document that they would not have to answer or produce in court proceedings.</p>	
<p>29. Witnesses and documents: notice This section outlines the process by which the Commissioner shall call a person to give evidence</p>	<p>Scotland and Wales The relevant provisions are largely similar to the NIAM Bill.</p>
<p>30. Witnesses: oaths This clause gives the Commissioner power to administer an oath to any person giving evidence and requires that person to take an oath.</p>	<p>Scotland and Wales The relevant provisions are largely similar to the NIAM Bill.</p>
<p>31. Offences Clause 31 makes it an offence not to give evidence, produce a document or take an oath. Maximum penalties for failure to comply are a fine of up to £5,000 or three months imprisonment.</p>	<p>Scotland and Wales The equivalent provisions are largely similar to the NIAM Bill.</p>
<p>32. Protection from defamation actions This clause provides that for the purposes of the law of defamation, statements by the Commissioner are protected by absolute privilege and statements to the Commissioner will have qualified privilege.</p> <p>Providing only qualified privilege to a person giving evidence to the Commissioner may dissuade that person from making deliberately false or malicious claims.</p>	<p>Scotland The Commissioner has absolute privilege and those giving evidence have qualified privilege. During consideration of the Bill in plenary, it was explained that:</p> <p>'After lengthy discussion, the Standards Committee agreed that some protection should be offered to complainers and others making statements to the commissioner to allow all stages of the investigation process to be carried out without the threat of legal action for defamation. We agreed that it would be sufficient to grant qualified privilege because that would protect those with genuine complaints while providing the possibility of recourse against those whose defamatory statements during the investigation process were motivated by malice or an intent to injure'²².</p> <p>Wales Both the Commissioner and those giving evidence have absolute privilege.</p>
<p>33. Restriction on disclosure of information This clause prohibits the Commissioner from disclosing information provided to him or her except in the discharge of their functions.</p>	<p>Scotland and Wales The clauses in the Scottish and Welsh legislation are similar to those in the NIAM Bill.</p>

²² <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-02/sor0627-02.htm#Col13122> retrieved 18 November 2010

