



**Northern Ireland  
Assembly**

**AUDIT COMMITTEE**

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Chairperson of the Ad Hoc Committee on the Public Services Ombudsperson Bill  
Room 276  
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22 May 2015

The Audit Committee is grateful for the opportunity to comment on the Public Services Ombudsperson Bill.

The Committee's comments are set out at appendix 1.

Please let me know if you require any further clarification.

Yours sincerely,

**Danny Kinahan MLA**  
**Chairperson**  
**Audit Committee**

**Comments of the Audit Committee on the Public Services Ombudsperson Bill.**

1. The Audit Committee is grateful for the opportunity to comment on the Public Services Ombudsperson (NIPSO) Bill.

**Schedule 1, paragraph 17.**

2. The Audit Committee notes that paragraph 17 of Schedule 1 provides that the NIPSO must, for each financial year (other than the first), prepare an estimate of the use of resources by that office and submit that estimate to the Committee. That estimate must, subject to any modifications agreed between the Committee and the NIPSO, be laid before the Assembly by the Committee.
3. This provision is intentionally similar to the existing arrangements in relation to the Comptroller & Auditor General (C&AG) and the estimate of the Northern Ireland Audit Office (NIAO). The Explanatory and Financial Memorandum (EFM) explains that this provision avoids any appearance of a conflict of interest which might arise where a body which the NIPSO can investigate has responsibility for approving the NIPSO's expenses.
4. The Audit Committee is content that it should have responsibility for agreeing the estimate of the NIPSO and laying it before the Assembly. However, given the policy intention underpinning it, the Committee must caution that paragraph 17 of schedule 1 may not provide the NIPSO with sufficient protection from the Executive controlling or directing its access to resources.

**Position in respect of the estimate of the Northern Ireland Audit Office**

5. Article 6(2) of the Audit (Northern Ireland) Order 1987 provides for the C&AG to prepare for each financial year an estimate of the use of resources by the NIAO.
6. Section 66 of the Northern Ireland Act 1998, and Standing Order 58 (1), provide for the Assembly's Audit Committee (in place of the Department of Finance and Personnel (DFP)) to lay that estimate before the Assembly. The Committee may agree modifications to the estimate with the C&AG before it is laid before the Assembly. In carrying out this function the Committee has regard to the advice of the Assembly's Public Accounts Committee (the PAC) and DFP.
7. The Audit Committee's experience is that, despite it having this statutory function, DFP and the Executive have nonetheless sought to direct what the NIAO's budget should be.

8. Although the Audit Committee agrees the estimate of the NIAO and lays it before the Assembly, this does not mean that the legislative process for providing the NIAO with resources has concluded. Only a Budget Act provides legislative authority for appropriating sums or authorising use of resources.
9. It is the Finance Minister who brings forward each year the Main Estimates and a Budget Bill [on behalf of the Executive]. Regrettably, the Committee has not always been assured that previous Finance Ministers would include in the Main Estimates and Budget Bill the amount for the NIAO set out in the estimate agreed by the Committee and laid before the Assembly.
10. The Committee believes that a decision by a Finance Minister not to take account of or faithfully reflect the estimate agreed by the Audit Committee in the Main Estimates or Budget Act could in principal be subject to legal challenge. Thankfully, however, such a scenario has never previously arisen.
11. The Committee is seeking to resolve this issue through a protocol with DFP and has urged the Minister to agree the proposed Memorandum of Understanding between the Assembly and the Executive on the Budget Process where such a protocol could be included. However, the Committee is not aware that such a resolution is imminent.
12. It is likely that as currently drafted, or without additional legislative provision, paragraph 17 of schedule 1 would allow for similar issues to arise in respect of the NIPSO and the budget of the NIPSO's office.

#### **Other issues**

13. The Committee notes that, **in the section of the EFM dealing with Financial Accountability**, OFMdfM Committee has noted the Memorandum of Understanding which the Audit Committee and the C&AG have agreed. OFMdfM Committee says this not only provides a useful framework for settling the C&AG's estimate but also provides for the Audit Committee to be briefed on the C&AG's corporate plan. It would welcome a similar approach in relation to the NIPSO.
14. The Audit Committee is content that, in addition to agreeing to the estimate of the NIPSO, it shall undertake other ancillary functions. These would include, inter alia, considering the NIPSO's corporate plan, monitoring the NIPSO's financial performance and scrutinising the NIPSO's annual report and accounts. The Committee is content to consider setting out such matters in an MoU similar to that which it has agreed with C&AG.
15. The Committee notes that **paragraph 6 of schedule 1** makes provision in relation to the NIPSO's salary.

16. The Ad Hoc Committee may wish to note that, in order to protect the independence of the C&AG, section 65(6) of the Northern Ireland Act 1998 provides that the Assembly shall not have power to pass at any time a resolution which reduces the salary payable to a person holding the office of Comptroller and Auditor General for Northern Ireland at that time
17. The Committee notes that the NIAO is included in **Schedule 3** as a listed authority and therefore the new NIPSO may investigate alleged maladministration through action taken by the NIAO.
18. The Audit Committee is committed to strengthening the accountability of the NIAO and therefore welcomes the inclusion of the NIAO in this schedule.

**Audit Committee**  
**22 May 2015**