



Northern Ireland  
Assembly

## Research and Library Service Research Paper

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# Participation of Attorneys General in Parliamentary proceedings and duties relating to Members' Interests

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This research paper looks at the application of Codes of Conduct to the relevant law officers in the Scottish Parliament, National Assembly for Wales, the House of Commons and the Oireachtas.

**This paper should not be relied upon as legal or professional advice, or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.**

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## Key Points

- The Lord Advocate, Counsel General and Attorney General participate in the proceedings of the Scottish Parliament, National Assembly for Wales and the House of Commons respectively
- Standing Orders do not provide for the participation of the Attorney General of Ireland in proceedings of the Oireachtas
- The law officers in Scotland, Wales and England are not required to be elected representatives
- If they are elected representatives, they must abide by the Codes of Conduct of the relevant institutions when acting in this capacity.
- Even if they are not members, the Lord Advocate in Scotland and Counsel General in Wales are required to disclose relevant interests on the Register of Interests
- They are also bound by the respective Ministerial Codes, but these codes have no statutory basis
- The Attorney General of Ireland cannot be a member of government but can be an elected representative
- The Attorney General of Ireland is only bound by the Code of Conduct if he or she is an elected representative



## Executive Summary

The law officers in Scotland, Wales and England can participate in the proceedings of the Scottish Parliament, National Assembly for Wales and the House of Commons. The Standing Orders of the Scottish Parliament and National Assembly for Wales outline the extent to which the Lord Advocate (Scotland) and Counsel General (Wales) may participate. They also make clear that if the law officer is not an elected representative then they may not vote. The Standing Orders of the House of Commons do not make specific reference to the role of the Attorney general in proceedings of the House, although the post dates back several centuries and has evolved through custom and practice.

The Attorney General in Ireland is prohibited by the Constitution from being a member of the Government, although they can be a member of the Dáil or Seanad. The modern practice is for the Attorney General to attend cabinet meetings.

There is no requirement for the law officers in Scotland, Wales and England to be elected representatives. However, if they are then they must abide by the Codes of Conduct of their respective institutions. Whether they are elected or not, they must disclose relevant information to the Register of Members' Interests.

The Lord Advocate, Counsel General and Attorney General are required to observe the respective Ministerial Codes, although the Codes themselves have no statutory basis. The Attorney General for Ireland does not appear to be bound by a particular code of conduct in circumstances where he or she is not elected. For example the Code of Conduct for Office Holders applies to the Attorney General only in circumstances where they are also a member of the Oireachtas. However, the Ethics Act 1995 requires a non-elected Attorney General to provide the Taoiseach with an annual statement outlining his or hers material interests.



# Contents

- Key Points ..... 1
- Executive Summary ..... 3
- 1 Introduction ..... 7
- 2 Background to the offices and participation in proceedings ..... 7
- 3 Codes of Conduct ..... 12
- 4 Annex 1 ..... 18



## 1 Introduction

This briefing paper examines how Attorneys General and other relevant Law Officers in the UK participate in proceedings in the UK Parliament and the devolved administrations and how they are held to account by the various Codes of Conduct operating in the legislatures. In particular, it looks at the following:

- the ability of Attorneys General to participate in the proceedings of the legislature
- whether they are bound by Codes of Conduct
- how they are held to account in respect of their duties

It should be noted that Scotland does not have an Attorney General. The equivalent office is that of Lord Advocate. In Wales, the relevant office for the purpose of this paper is Counsel General. In addition, when policing and justice responsibilities were devolved to Northern Ireland in April 2010, the Attorney General for England and Wales assumed the new role of Advocate General for Northern Ireland, which carries significantly reduced responsibilities.

## 2 Background to the offices and participation in proceedings

### Scottish Parliament<sup>1</sup>

In Scotland, the Lord Advocate is the senior of the two Scottish Law Officers and the Solicitor General is the Lord Advocate's deputy. The Lord Advocate has four main roles:

- head of the systems of prosecution and investigation of deaths;
- principal legal adviser to the Scottish Government;
- representing the Scottish Government in civil proceedings;
- representing the public interest in a range of statutory and common law civil functions.<sup>2</sup>

In relation to criminal prosecutions and investigation of deaths, the Law Officers must act independently of other Ministers and, indeed, of any other person. That duty is expressly set out in Section 48(5) of the Scotland Act 1998.

Section 27 of the Scotland Act 1998 provides that if the Lord Advocate or Solicitor General for Scotland is **not** a member of Parliament he or she may participate in the proceedings of the Parliament to the extent permitted by Parliament, but may not vote – and Standing Orders may in other respects provide that they are to apply to him or her as if he or she were a member.

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<sup>1</sup> 'Participation of the Attorney General for Northern Ireland in Assembly Proceedings', Northern Ireland Assembly research paper, September 2010

<sup>2</sup> <http://www.scotland.gov.uk/About/Directorates/Services-Groups/LPS/rolelordadvocate> accessed September 2010

The Law Officers can, therefore, be questioned by MSPs about the exercise of their functions, although they may not be required to answer questions or produce documents relating to the operation of the system of criminal prosecution in any particular case if they consider that it might prejudice criminal proceedings or would otherwise be contrary to the public interest.

The Standing Orders provide that in the Scottish Parliament written questions about the operation of the systems of criminal prosecution and investigation of deaths are answerable only by the Law Officers, as are oral questions on those matters in all but exceptional circumstances.

**Table 1: Selected Standing Orders of the Scottish Parliament relating to the Lord Advocate**

Rule 4.5 Participation of the Scottish Law Officers in proceedings	<ol style="list-style-type: none"> <li>1. This Rule applies where the Lord Advocate or Solicitor General for Scotland ("the Scottish Law Officer") is not a member of the Parliament.</li> <li>2. The Scottish Law Officer may (subject always to the provision in section 27(1)(a) preventing him or her from voting) participate in any of the proceedings of the Parliament as fully as any member but he or she may not be appointed as a member of the Parliamentary corporation or the Parliamentary Bureau.</li> <li>3. These Rules shall apply to the Scottish Law Officer, when he or she is participating in any proceedings of the Parliament, as if he or she were a member of the Parliament.</li> <li>4. Paragraphs 2 and 3 are without prejudice to section 27(2) (application of rules regarding members' interests) and section 27(3) (questions and documents relating to operation of system of criminal prosecution).</li> </ol>
Rule 13.5 Written questions	<ol style="list-style-type: none"> <li>1. A written question concerning a matter for which the First Minister is alone responsible may be answered only by the First Minister. A written question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland may be answered only by the Lord Advocate or the Solicitor General for Scotland. Other written questions may be answered by any member of the Scottish Executive or by a junior Scottish Minister.</li> </ol>
Rule 13.7 Oral Questions in the Chamber	<ol style="list-style-type: none"> <li>1. An oral question concerning a matter for which the First Minister is alone responsible shall normally be answered by the First Minister but may exceptionally be answered by any other member of the Scottish Executive. An oral question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Executive. Other oral questions may be answered by any member of the Scottish Executive or a junior Scottish Minister. An oral question selected for answer at First Minister's Question Time shall normally be answered by the First Minister but may, if the</li> </ol>

	First Minister is unable to attend First Minister's Question Time or any part of it, be answered by another member of the Scottish Executive.
Rule 13.8 Emergency Questions	3. An emergency question concerning a matter for which the First Minister is alone responsible shall normally be answered by the First Minister but may exceptionally be answered by any other member of the Scottish Executive. An emergency question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Executive. Other emergency questions may be answered by any member of the Scottish Executive or a junior Scottish Minister

### National Assembly for Wales

Section 49 of the Government of Wales Act 2006 provided for the appointment of a Counsel General to the Welsh Assembly Government to act as its legal adviser and representative in the courts. It is important to note that the Attorney General retains general oversight of all prosecutions in Wales.

The 2006 Act put the position of Counsel General on a statutory footing, which had previously been a senior civil service post, and made the post a political appointment. Under section 67 of the 2006 Act the Counsel General, as the representative of the Welsh Ministers in the Courts, can initiate, defend or appear in any legal proceedings relating to matters with respect to any functions exercisable by the Welsh Assembly Government, provided the Counsel General considers it appropriate to do so for the promotion or protection of the public interest. Other responsibilities of the Counsel General include:

- the formulation and introduction of the Government's Annual Legislative Programme.
- relations with the Law Officers elsewhere;
- responding to consultations on non-devolved legal matters on behalf of the Welsh Assembly Government; and
- where appropriate, expressing a view on issues pertaining to legal issues

The Counsel General does not have to be a Member of the Assembly, although an Assembly Member could, and currently does, serve as Counsel General (the First Minister, Ministers and Deputy Ministers cannot serve as Counsel General). The office has ministerial status but the office holder is not one of the Welsh Ministers.

Standing Orders make it clear that the Counsel General will be treated the same as Welsh Ministers in Assembly Proceedings, with the exception that a Counsel General who is not an Assembly Member cannot vote. However, whether an Assembly Member or not, the Counsel General is expected to answer oral and written questions and to make oral or written statements.

**Table 2: Selected standing Orders of the National Assembly for Wales relating to the Counsel General**

Participation in proceedings	5.3 Subject to the provisions of the (2006) Act, the Counsel General may do anything under these Standing Orders which may be done by a Welsh Minister 5.4 If the Counsel General is not a Member, the Standing Orders apply to the Counsel General as they apply to Members and the Counsel General may participate in Assembly proceedings but may not vote
Oral questions	7.46 Members may table oral questions to the First Minister, to each Welsh Minister or to the Counsel General, about any matters relating to his or her responsibilities
Written questions	9.1 Members may table questions for written answer by: (i) the First Minister, a Welsh Minister or the Counsel General, on any matter relating to his or her responsibilities

Section 34 of the 2006 Act also includes a provision enabling the Counsel General to refuse to provide documents or answer questions about particular criminal cases if he or she considers that doing so might prejudice the proceedings in that case or would otherwise be contrary to the public interest<sup>3</sup>.

### House of Commons

The role and office of the Attorney General has evolved over several centuries, dating back to the thirteenth century. His original place in place in Parliament was in the House of Lords, but as the Commons gained importance it became more appropriate for the Attorney General to be able to explain to the House of Commons the implications of Government measures<sup>4</sup>. Currently the Attorney General:

- is Chief Legal Adviser to the Crown (primarily to the Government but on some issues to the Queen and to Parliament)
- is a Minister of the Crown with responsibility for superintending the Crown Prosecution Service, Serious Fraud Office, Revenue and Customs Prosecution Service, the Army, Royal Navy and Royal Air Force prosecuting authorities, HM CPS Inspectorate and (with the Home Secretary and Secretary of State for Justice) the Office of Criminal Justice Reform). The Attorney General is also, with the Home Secretary and Justice Secretary, responsible for criminal justice policy.
- has a number of independent public interest functions relating to certain kinds of legal proceedings

<sup>3</sup> National Assembly for Wales quickguide, '*The Constitution: The Counsel General*', May 2007

<sup>4</sup> 'The Governance of Britain: a consultation on the role of the Attorney General' <http://www.official-documents.gov.uk/document/cm71/7192/7192.pdf> , 2007

The role of Attorney General has developed from being the legal representative of the sovereign to being an important figure within the Government to finally being a salaried Minister. There is no legal requirement for the Attorney General to be a Member of Parliament but this has usually been the case. It was therefore unusual that the three Attorneys General who held the post prior to the current office holder were not MPs. No Attorney General since 1928 has been a member of Cabinet but they are usually invited to attend meetings.

As with other Ministers, the Attorney General is accountable to Parliament for the exercise of his or her functions and those of the Law Officers' (Attorney General and Solicitor General) departments. This includes answering oral and written Parliamentary questions and he is occasionally called upon to explain decisions of the prosecuting authorities, as well as wider questions of prosecution policy. Furthermore, Attorneys General may appear before Committees of both Houses.

### **Oireachtas**

Article 30 of the Constitution of Ireland provides for the Attorney General and states that he or she will be appointed by the President on nomination of the Taoiseach. The Attorney General is part of the Office of the Attorney General, which comprises a number of different offices and has four key legal functions:

- the provision of legal advice (Advisory Counsel)
- legislative drafting (Parliamentary Counsel)
- the provision of litigation, conveyancing and other transactional services (Chief Solicitor's Office)
- Statute Law Revision and Consolidation (Statute Law Revision Unit)

Article 30(4) of the Constitution prohibits the Attorney General from being a member of the Government, although the modern practice is for the Attorney General to attend all Cabinet meetings. The Attorney general does not necessarily have to be a member of the Oireachtas and in the last 38 years only two Attorneys General have been TDs.

The Attorney general has no executive responsibilities other than for the management of his or her own office. The Minister for Justice, Equality and Law Reform is responsible for prisons, policing, the courts and law reform.

There is no provision in Standing Orders for the Attorney General to participate in proceedings and the Taoiseach answers Parliamentary questions relating to the role and functions of the Attorney General.

### 3 Codes of Conduct

The status of the law officers in Scotland, Wales and England varies. Section 44 of the Scotland Act 1998 states that:

There shall be a Scottish Executive, whose members shall be—

- (a) the First Minister,
  - (b) such Ministers as the First Minister may appoint under section 47, and
  - (c) the Lord Advocate and the Solicitor General for Scotland.
- (2) The members of the Scottish Executive are referred to collectively as the Scottish Ministers.

Section 45 of the Government of Wales Act 2006 states:

- (1) There is to be a Welsh Assembly Government whose members are—
- (a) the First Minister (see sections 46 and 47),
  - (b) the Welsh Ministers, appointed under section 48,
  - (c) the Counsel General to the Welsh Assembly Government (see section 49) (referred to in this Act as “the Counsel General”), and
  - (d) the Deputy Welsh Ministers (see section 50).
- (2) In this Act and in any other enactment or instrument the First Minister and the Welsh Ministers appointed under section 48 are referred to collectively as the Welsh Ministers.

Schedule 2 of the House of Commons Disqualification Act 1975 lists the Attorney General as a Ministerial Office.

#### **Ministerial Codes of Conduct**

The relevant law officers in the Scottish, Welsh and UK governments are expected to comply with the respective Ministerial Codes of Conduct. Unlike the Northern Ireland Ministerial Code, the Codes are not statutory but are accepted as guidelines by which Ministers must abide, although there has been debate about the desirability of putting the Ministerial Code of the UK government on a statutory footing<sup>5</sup>.

The following table outlines the relevant sections of the Ministerial Codes as they relate to the respective law officers. The Ministerial Code published by the Cabinet Office does not make explicit reference to the Attorney General, but as a Ministerial appointment, he is bound by the Code.

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<sup>5</sup> House of Commons research paper ‘The Ministerial Code’  
<http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-03750.pdf> September 2010

In 2007 the new SNP Government removed the Lord Advocate from the cabinet, a move which was seen as an attempt to depoliticise the post at a time when there was controversy over the combined political and legal role of the Attorney General in the UK Government.

**Table 3: References to the Lord Advocate and Counsel General in the Ministerial Codes of the Scottish Government and Welsh Assembly Government respectively**

Scottish Government	Welsh Assembly Government
2.1 The Scottish Government consists of the First Minister, other Scottish Ministers appointed by the First Minister under section 47 of the Scotland Act 1998 (and) the Lord Advocate.	1.6 This Ministerial Code applies to all Ministers and Deputy Ministers. It also applies to the Counsel General as it applies to Ministers. Unless otherwise stated, the term “Minister” in this Code encompasses all of these.
2.26 The (Lord Advocate has) Ministerial responsibility for the provision of legal advice to the Scottish Ministers on all matters relating to the law of Scotland.	

The three Codes contain similar provisions and procedures outlining how Ministers and other persons to which the code applies should deal with private interests. On appointment to each new office, Ministers must provide their Permanent Secretary with a full list in writing of all interests, including financial, which might give rise to a conflict. The list should cover interests of their spouse or partner and other close family. If necessary, the Minister will meet with the Permanent Secretary to discuss how to handle potential conflicts of interest and any decision taken must be put in writing by the Minister and a copy of the record should be sent to the Permanent Secretary.

### Codes of Conduct for Members

Unlike the Ministerial Codes, there is no uniform approach to how Codes of Conduct for Members should apply to Ministers. The table below outlines what the respective codes in the Scottish Parliament, National Assembly for Wales and the House of Commons say about the application of the codes to Ministers:

**Table 4: Application of Codes of Conduct to Members with Ministerial responsibilities**

Scottish Parliament	National Assembly for Wales	House of Commons
1.3 It is important to note that these volumes relate to the conduct of all members in relation to duties connected to being a Member of the Scottish Parliament. It does not cover the activities of members in other circumstances, for example:	1. The purpose of this Code of Conduct is to provide guidance for all Members of the National Assembly on the standards of conduct expected of them in the discharge of their Assembly and public duties  2. This Code applies to all Members	2. The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.  3. The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of

<p>members' private and family life; members expressing their political views (in their capacity as a member of a political party or organisation); members who are Ministers, when they are acting in their capacity as Ministers of the Scottish Executive and carrying out functions of the Scottish Executive covered by the Ministerial Code</p>	<p>of the National Assembly who have not taken leave of absence</p>	<p>the House and the rulings of the Chair, and to those which apply to Members falling within the scope of the Ministerial Code.</p>
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**Breaches of the Codes of Conduct**

There are formal procedures and mechanisms in place for investigating alleged breaches of the Codes of Conduct for members in the Scottish Parliament, National Assembly for Wales and the House of Commons via Standards Commissioners. However, breaches of the Ministerial Code fall under the remit of the First Ministers (in Scotland and Wales) and the Prime Minister and it is largely at their discretion whether a Minister continues to serve. In both Scotland and Wales, the First Ministers can recommend to the Monarch the removal of the Lord Advocate and Counsel General respectively, but only with the agreement of the legislatures. The Prime Minister may ask for the resignation of the Attorney General at any time.

**Codes of Conduct for members and their application to non-elected law officers<sup>6</sup>**

The following table outlines the legislative provisions and standing orders related to the application of the Codes of Conduct to the respective law officers. It should also be noted that Section 43 of the Northern Ireland Act 1998 (c 47) (interests of members of Assembly) applies to the Attorney General for Northern Ireland as if he were a member of the Assembly.

**Table 5: legislation and standing orders applying the Codes of Conduct to the Lord Advocate in Scotland and Counsel General in Wales**

<p><b>Section 27 of the Scotland Act 1998</b> Participation of the Scottish Law Officers. — (1) If the Lord Advocate or the Solicitor General for Scotland is not a member of the Parliament— (a) he may participate in the proceedings of the Parliament to the extent permitted by standing orders, but may not vote, and (b) standing orders may in other respects provide that they are to apply to him as if he were such a member.</p>	<p><b>Section 34 of the Government of Wales Act 2006 – Participation of the Counsel General</b> (2) And the standing orders may in other respects provide that they are to apply to the Counsel General if not an Assembly member as to an Assembly member.</p> <p><b>Section 36 of the Government of Wales Act - Integrity</b> (1)The standing orders must include provision— (a)for a register of interests of Assembly members, and (b)for the register to be published and made available for</p>
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<p><b>Section 39 of the Scotland Act 1998 – Members’ Interests</b></p> <p>(1) Provision shall be made for a register of interests of members of the Parliament and for the register to be published and made available for public inspection.</p> <p>(2) Provision shall be made—</p> <p>(a) requiring members of the Parliament to register in that register financial interests (including benefits in kind), as defined for the purposes of this paragraph,</p> <p>(b) requiring that any member of the Parliament who has a financial interest (including benefits in kind), as defined for the purposes of this paragraph, in any matter declares that interest before taking part in any proceedings of the Parliament relating to that matter.</p> <p>8(b) references to members of the Parliament include references to the Lord Advocate and the Solicitor General for Scotland, whether or not they are such members.</p>	<p>public inspection.</p> <p>(11) In this section—</p> <p>(a) references to an Assembly member (apart from those in subsection (6)) include the Counsel General, if not an Assembly member</p>
<p><b>Rule 4.5 Participation of the Scottish Law Officers in proceedings</b></p> <p>1. This Rule applies where the Lord Advocate or Solicitor General for Scotland ("the Scottish Law Officer") is not a member of the Parliament.</p> <p>2. The Scottish Law Officer may (subject always to the provision in section 27(1)(a) preventing him or her from voting) participate in any of the proceedings of the Parliament as fully as any member but he or she may not be appointed as a member of the Parliamentary corporation or the Parliamentary Bureau.</p> <p>3. These Rules shall apply to the Scottish Law Officer, when he or she is participating in any proceedings of the Parliament, as if he or she were a member of the Parliament.</p>	<p><b>Standing Order 5.4</b></p> <p>If the Counsel General is not a Member, the standing orders apply to the Counsel General as they apply to Members and the Counsel General may participate in proceedings but may not vote.</p>
<p><b>Section 20 of the Scottish Parliamentary Standards Commissioner Act 2002 – Interpretation</b></p> <p>“member of the Parliament” includes—</p> <p>a Scottish Law Officer even where that officer is not a member of the Parliament</p>	<p><b>Section 1 of the National Assembly for Wales Commissioner for Standards Measure 2009 – The Commissioner</b></p> <p>(1) There is to be a National Assembly for Wales Commissioner for Standards (in this Measure referred to as “the Commissioner”).</p> <p>(2) The Commissioner is to be appointed by the Assembly.</p> <p>(3) A person is not eligible to be appointed as the Commissioner if that person—</p> <p>(a) is an Assembly Member,</p> <p>(b) has been an Assembly Member at any time during the period of 2 years prior to the date when the appointment is to take effect,</p> <p><b>Section 20 of the Measure - Interpretation</b></p> <p>(1) In this Measure—</p> <p>“the Act” (“y Ddeddf”) means the Government of Wales Act 2006 (c. 32);</p> <p>“Assembly Member” (“Aelod Cynulliad”) includes—</p> <p>(a)</p>

	for the purposes of section 1(3)(a) and (b) only, the Counsel General even where that officer is not an Assembly Member, and (b) except for the purposes of section 1(3)(a) and (b), a former Assembly Member,
<p><b>Section 18 of the Interests of Members of the Scottish Parliament Act 2006</b></p> <p>Scottish Law Officers</p> <p>(1) The following modifications of this Act shall apply in relation to a Scottish Law Officer who is not a member of the Parliament.</p> <p>(2) Any reference in this Act to the date on which a member was returned shall be construed, in relation to such a Scottish Law Officer, as—</p> <p>(a) in the case where there is a general election and a person who was a Scottish Law Officer before that election continues in the same office after that election, the date of the poll at that election; or</p> <p>(b) in any other case, the date when that Scottish Law Officer was appointed to that office, and any reference in this Act to “being returned as a member” shall be construed accordingly.</p> <p>(3) For the purposes of subsection (2)(a), a Scottish Law Officer shall be regarded as continuing in office after an election if no other person is appointed to that office within 28 days after the date of the poll at that election.</p> <p>Section 3(4) shall not apply and, for the purposes of section 3(3), the relevant date, in relation to such a Scottish Law Officer, is the date which is 60 days after the date mentioned in subsection (2)(a) or the date which is 30 days after the date mentioned in subsection (2)(b), according to whichever applies.</p> <p>(5) Section 9(5) shall not apply but the Clerk shall delete the entry relating to such a Scottish Law Officer, on the date when that person either ceases to be appointed to, or ceases to be deemed to continue in, that office.</p>	
<p><b>Section 19 of the Interests of Members of the Scottish Parliament Act 2006</b></p> <p>“member” means a member of the Scottish Parliament and, subject to section 18, includes a Scottish Law Officer where that officer is not a member of the Parliament</p>	

In addition, the Code of Conduct for the House of Commons states that “Ministers of the Crown who are Members of the House of Commons are subject to the rules of registration and declaration in the same way as all other Members<sup>7</sup>”.

### Republic of Ireland

Section 10 of the Standards in Public Office Act 2001 allowed for the introduction of Codes of Conduct which set out the standards of conduct and integrity expected of public servants in the performance of their official duties.

The Standards in Public Office Commission (SIPO) is responsible for the publication and distribution of Codes of Conduct. The Codes themselves are drawn up by other parties, following consultation with SIPO. The Codes of Conduct for Members of Dáil Éireann and for Members of Seanad Éireann were drawn up by the appropriate Committees on Members' Interests while the Code of Conduct for Office Holders was drawn up by the Government.

The Code of Conduct for Office Holders (in accordance with the terms of the Ethics in Public Office Acts, 1995 & 2001 (Ethics Acts) applies to the following office holders (list is not exhaustive):

- the Taoiseach
- the Tánaiste
- a Minister
- a Minister of State
- an Attorney General **who is a member** of Dáil Éireann or Seanad Éireann

The 2001 Act also introduced a requirement whereby elected members of both Houses of the Oireachtas and appointees to senior office in the public service (including Attorneys General who are not members of the Oireachtas) are required to furnish evidence of tax compliance.

Although there does not appear to be a specific code of conduct that applies to Attorneys General who are not members of the Oireachtas, section 16 of the Ethics Act 1995 states that the Attorney General must prepare for the Taoiseach an annual statement outlining their ‘material’ interests and those of their spouse or partner or children. This legislation does **not** apply in circumstances where the Attorney General is a member of the Dáil or the Seanad.

Section 22 of the Ethics in Public Office Act 1995 (the 1995 Act) allows certain categories of person to make complaints to the Standards in Public Office Commission (the Standards Commission) about alleged contraventions of the 1995 Act by different classes of person who have obligations under that Act. Therefore, a member of Dáil Éireann or of Seanad

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<sup>7</sup> House of Commons Code of Conduct for Members  
<http://www.publications.parliament.uk/pa/cm200809/cmcode/735/73503.htm#a8> , June 2009, retrieved 26 October 2010

Éireann can complain about: the Attorney General (if not a member of Dáil Éireann or of Seanad Éireann)<sup>8</sup> about an alleged contravention of the disclosure provisions of the 1995 Act.

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<sup>8</sup> <http://www.sipo.gov.ie/en/Complaints/ComplaintsProcedures/InvestigationofcomplaintsundertheEthicsActsandElectoralActs>

## Annex 1

**Overview of duties relating to the relevant Law Officers in the Scottish Parliament, National Assembly for Wales, House of Commons and the Oireachtas**

	<b>Elected representative</b>	<b>Participation in proceedings</b>	<b>Codes of Conduct</b>	<b>Register of Members' Interests</b>
Scottish Parliament	Is not required to be an MSP	Yes, but if not an MSP may not vote	Ministerial Code of Conduct which includes requirement to declare interests which might give rise to a conflict of interest.  Code of Conduct for members applies in their role as MSP	Required to declare registerable whether or not an MSP
National Assembly for Wales	Is not required to be an AM	Yes, but if not an AM may not vote	As above  Code of Conduct for members applies in their role as AM	Required to declare registerable interests whether or not an AM
Westminster	Not a legal requirement but rare that Attorney General is not an MP	Yes	As above  Code of Conduct for members applies in their role as MP	Required to declare registerable interests if an MP
Oireachtas		No, Taoiseach answers questions for Attorney General in the Dáil	Code of Conduct for Office Holders applies only to Attorneys General who are members of the Oireachtas (therefore this does not apply to the incumbent). Under the Ethics Act, Attorneys General who are not members must prepare and send to the Taoiseach an annual statement of their material interests	N/A



