

APPOINTMENTS TO POLICE OVERSIGHT BODIES

OCTOBER 2008

INTRODUCTION

1. This briefing paper has been prepared following proposals for research presented to the Assembly and Executive Review Committee. The paper outlines the current statutory procedures relating to the appointment of the Police Ombudsman for Northern Ireland, and provides comparative analysis with similar bodies in the UK and Ireland. The relevant posts covered in the paper are:

- Police Ombudsman for Northern Ireland
- Independent Police Complaints Commission
- Police Complaints Commissioner for Scotland
- Garda Síochána Ombudsman Commission

BACKGROUND

2. The paper seeks to facilitate discussion in relation to recommendation 30 of the Assembly and Executive Review Committee's Report on the Inquiry into the Devolution of Policing and Justice Matters stated that:

*'The Committee recommends that the matters relating to the Office of the Police Ombudsman should be examined by the political parties, initially, before the devolution of policing and justice matters.'*¹

SUMMARY

3. Appointments to police oversight bodies in England, Wales and Northern Ireland are made by the Queen, and in the Republic of Ireland by the President. All appointments are made on the recommendation of Government. Scotland differs in that the Police Complaints Commissioner for Scotland is appointed by Scottish Ministers. The Police Ombudsman for Northern Ireland is the only post where reappointment is not possible. There are no limitations as to who can be appointed as Police Ombudsman for Northern Ireland. In other parts of the UK, and in Ireland, holding elected office or having been previously employed by a police force or in a policing-related role are automatic bars to appointment.

THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

4. The post of Police Ombudsman was created by section 51 of the Police (Northern Ireland) Act 1998, which also abolished its predecessor, the Independent Police Complaints Commission for Northern Ireland.

¹ Assembly and Executive Review Committee (March 2008) Report of the Inquiry into the Devolution of Policing and Justice Matters, page 23.

5. Schedule 3 of the Police (Northern Ireland) Act 1988 outlines the appointment and removal of the Police Ombudsman. The Ombudsman is appointed by Her Majesty for a seven-year term or until the incumbent reaches 70 years of age, whichever is the sooner. Re-appointment for a further term is not permitted.
6. A person may resign at any time by writing to the Queen. Paragraph (7) of Schedule 3 details the Secretary of State's powers to call upon the Ombudsman to retire. These are in the interests of efficiency and effectiveness, or if the Ombudsman has been convicted of a criminal offence or has become bankrupt or made a composition of arrangement with his creditors.

EFFECTS OF DEVOLUTION

7. The Northern Ireland Office publication 'Devolving Policing and Justice in Northern Ireland: A Discussion Paper'² outlined the possible effects that the devolution of policing and justice could have on the appointments process for the Police Ombudsman. The paper stated that the role of the Prime Minister and Secretary of State in advising the Crown on the appointment would transfer to a Northern Ireland Minister for policing or to the First Minister and deputy First Minister acting jointly. The powers enabling the Secretary of State to call on the Ombudsman to resign would transfer to Northern Ireland Ministers.³

INDEPENDENT POLICE COMPLAINTS COMMISSION

8. The Independent Police Complaints Commission (IPPC), which replaced the Police Complaints Authority, was created by the Police Reform Act 2002 and deals with complaints in relation to police forces in England and Wales only. The IPPC is headed by a chairman and deputy chairman, with 13 Commissioners, each of whom has special responsibility for a particular police force. The body became operational on 1 April 2004.
9. Section 9 of the Police Reform Act 2002 provides for the composition of the IPCC. The Commission comprises a chairman, who is appointed by the Queen on the recommendation of the Home Secretary, and a minimum of 10 other members, who are appointed by the Home Secretary.⁴
10. Section 9(3) outlines the limitations on appointment to the IPPC, which cover a range of policing-related roles including serving and former police constables⁵ and members of the National Criminal Intelligence

² <http://cain.ulst.ac.uk/issues/politics/docs/nio/nio160206.pdf>

³ Northern Ireland Office (November 2006) Devolving Policing and Justice in Northern Ireland: A Discussion Paper, page 29.

⁴ Currently, 13 Commissioners have been appointed to the IPCC, each of whom is responsible for a specific police force.

⁵ Anyone who has served under a chief constable in Scotland or Northern Ireland is also excluded from appointment to the IPCC.

Service or National Crime Squad, for example. Any appointments made contrary to the list of excluded posts would have no effect.

11. In addition to the limitations detailed in section 9(3), no one who has been sentenced for a term of imprisonment of three months or more can be appointed as chairman for a period of five years from the date of their sentence.
12. Schedule 2 to the 2002 Act deals with the appointment of the chairman and other members of the Commission, among other issues. A person can serve as chairman of the IPCC for a period of a maximum of five years, although there is a provision of reappointment. Removal from office is by the Queen, either at the chairman's own request or under a range of specified grounds.⁶
13. Paragraph 3 of Schedule 2 permits the Home Secretary to appoint no more than two Commission members as deputy chairmen. Resignation from the post of deputy chairman is by written notice to the Home Secretary.
14. Ordinary members of the Commission, as they are termed in the legislation, are also appointed for a five-year term, with the possibility of reappointment. The five-year period between imprisonment for three months or more and appointment to the Commission also applies to ordinary members. As ordinary members of the Commission are appointed by the Home Secretary, arrangements in relation to resignation and removal rest with her or him. A Commission member can resign at any time in writing to the Home Secretary, who may also remove a person from office on a range of specified grounds. These are essentially the same grounds as apply to the removal of the chairman.

POLICE COMPLAINTS COMMISSIONER FOR SCOTLAND

15. The role of Police Complaints Commissioner for Scotland (PCCS) was created by section 33 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. The current incumbent, Jim Martin, was appointed by Scottish Ministers in January 2007 and took up post on 1 April of that year.
16. The PCCS is appointed by Scottish Ministers for a three-year period, after which they are not eligible for reappointment. However, there is a provision in paragraph (4) of Schedule 4 where a reappointment can be made for two years, with the conditions that the person has not previously been reappointed, and that Scottish Ministers consider the reappointment desirable in the public interest 'by reason of special circumstances'.

⁶ For the full list of grounds for removing the chairman of the Independent Police Complaints Commission, please refer to the Appendix on page 6.

17. Certain limitations on the appointment include anyone who is a serving or former Member of the Houses of Parliament, the Scottish Parliament or the European Parliament. Furthermore, Schedule 4 to the 2006 Act lists a range of policing roles that disbar a person from becoming Commissioner, ensuring that the Commissioner will have had no previous professional connection to the police in Scotland or the UK.
18. Resignation from the post of PCCS is by written notice to Scottish Ministers, who also have the power to remove a person from office under a range of specified grounds.⁷
19. Schedule 4 also contains a provision whereby Scottish Ministers can appoint an acting Commissioner to carry out the functions of the PCCS when a vacancy arises. An acting Commissioner may resign at any time by written notice to Scottish Ministers, who may also dismiss an acting Commissioner at any time.

GARDA SÍOCHÁNA OMBUDSMAN COMMISSION

20. The Garda Síochána Ombudsman Commission (GSOC) was created by the Garda Síochána Act 2005. The GSOC is a three-person body, one of whom is appointed as chairperson. Under section 65(3), both genders must be represented on the body. Appointment to the GSOC is made by the President on the nomination of Government, subject to resolutions recommending their appointment being passed by Dáil Éireann and Seanad Éireann. The duration of appointments to the GSOC Commission is no less than three and no greater than six years; the exact duration of appointment is determined by the Government at the time of appointment. The 2005 Act permits reappointment for a second term.
21. Members of both Houses of the Oireachtas, the European Parliament and local authorities, and current or former Gardaí, are disbarred from nomination or appointment to the GSOC. Similarly, an Ombudsman Commissioner who is elected to parliamentary or council office during their tenure would cease to be a member of the GSOC upon election.
22. The resignation procedure is outlined in section 68 of the 2005 Act. An Ombudsman Commissioner may resign by letter to the President, copied to the Minister of Justice, Equality and Law Reform, and a resignation takes effect on the date of the receipt of the letter. Removal from the GSOC is within the power of the President, only for reasons of 'stated misbehaviour' or incapacity. Resolutions calling for a Commissioner's removal must be passed by both Houses of the Oireachtas.
23. The quorum for a meeting of the GSOC is two members, although there is a provision in section 66 of the 2005 Act enabling the

^{7 7} For the full list of grounds for removing the Police Complaints Commissioner for Scotland, please refer to the Appendix on page 6.

Commission to act where a vacancy exists. Where a member of the Commission is appointed to fill a vacancy, whether through the resignation, removal or death of an incumbent member, will hold office for the remaining term of the member whom they replaced.

DISCUSSION

24. The procedure for appointments to oversight bodies and ombudsmen roles in Northern Ireland differ, with royal appointment covering bodies such as the Northern Ireland Ombudsman, the Commissioner for Public Appointments in Northern Ireland, the Prisoner Ombudsman and the Comptroller and Auditor General. The Secretary of State is responsible for appointments to the Equality Commission, the Human Rights Commission and the Parades Commission, among others. The First Minister and deputy First Minister, acting jointly, are responsible for appointing the Commissioner for Children and Young People.
25. Similarly, police oversight bodies in the UK and Ireland differ in appointment procedures and in membership. However, appointments to all such bodies are made at the highest levels of government. The Committee may wish to consider the appointment of the Police Complaints Commissioner in Scotland, who is appointed by Scottish Ministers, as perhaps the closest comparator to Northern Ireland as a devolved region.
26. The Committee may also wish to consider in further detail the limitations on appointment to police oversight bodies in GB and Ireland, as there are no equivalent restrictions for appointment as Police Ombudsman.
27. Furthermore, the Committee may wish to consider the implications that the devolution of the appointment of Police Ombudsman to a Northern Ireland Minister or Ministers may have on an incumbent's removal from office. The Committee may wish to consider whether removal from office should fall to the Minister or Ministers responsible for the appointment or whether removal should require a resolution to be passed by the Assembly.⁸

⁸ For example, the power to remove from office the Northern Ireland Ombudsman and the Comptroller and Auditor General rests with the Queen. However, this is only following an address by the Assembly, in the case of the Ombudsman, or a resolution passed by a two-thirds majority of the Assembly.

APPENDIX

1. The grounds for the removal from office of the chairman of the IPCC are contained in sub-paragraph 1(5) of Schedule 2 to the Police Reform Act 2002.
 - (a) Failure to carry out, without reasonable excuse, the functions of office for a continuous period of three months;
 - (b) Instances where the chairman falls within one of the excepted roles outlined in section 9(3);
 - (c) Where the chairman has been sentenced to a term of three months' imprisonment or more since their appointment;
 - (d) Where the chairman has had a bankruptcy order made against him, where his estate has been sequestrated, or where a composition or agreement has been made between the person and his creditors;
 - (e) Where the chairman has been the subject of a disqualification order under the Company Directors Disqualification Act 1986 or under Part 2 of the Companies (Northern Ireland) Order 1989; or an order made under section 429(2)(b) of the Insolvency Act 1986;
 - (f) Where the chairman has acted improperly in relation to his duties;
 - (g) Where the chairman is otherwise unable or unfit to perform his duties.

2. The grounds for removal of office for the Police Complaints Commissioner for Scotland are listed in sub-paragraph 3(5) of Schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006.
 - (a) Failure, without reasonable excuse to carry out the functions of the office for a continuous period of three months;
 - (b) Where a person falls within one or more of the limitations of appointment (essentially, elected office or membership of a police force or policing-oriented body);
 - (c) Where a person has been convicted of a criminal offence since their appointment;
 - (d) Where a person's estate has been sequestrated or they have been declared bankrupt or they have made an arrangement with creditors or has granted a trust deed for creditors or a composition contract;
 - (e) Where a person has been the subject of a disqualification order under the Company Directors Disqualification Act 1986 (c. 46) or under Part 2 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18));
 - (f) Where a person has acted improperly in relation to their duties as PCCS;
 - (g) Where a person is otherwise unable or unfit to perform their duties.