

National Assembly for Wales

Public appointments in Wales and elsewhere November 2012

This paper sets out the public appointments which are currently made by Welsh Ministers to Welsh public bodies, the role of the Assembly in such appointments and the processes which those appointments are currently subject to.

The paper also provides examples of parliamentary involvement in the public appointments process both within the UK and elsewhere, namely in the Greater London Authority, the Scottish Parliament, the European Parliament, the Senate of the United States, and the Canadian Parliament.

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National Assembly for Wales

Public appointments in Wales and elsewhere
November 2012

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Public appointments in Wales and elsewhere

1. Introduction

Welsh Ministers are responsible for making senior appointments to numerous public bodies that regulate, provide advice and, in some cases, deliver services, across the Welsh public sector. These roles range from Chairs of statutory and advisory bodies to a host of regulators and commissioners.

The role of the National Assembly for Wales in considering and scrutinising such appointments however is currently limited. It is only required by law to be involved in the appointment of three senior posts, and Assembly Committees have only held pre-confirmation hearings in relation to such appointments twice. This is in contrast to the more developed appointments practices adopted in recent years by the UK Parliament and, to a lesser extent the Scottish Parliament, where committees conduct pre-appointment or confirmation hearings relating to a number of senior public offices before an official appointment is made.

The purpose of this paper is twofold. It first sets out some of the senior public appointments which are currently made by Welsh Ministers and those which are made, approved and nominated by the Assembly. Secondly, the paper sets out the procedures for the scrutiny of appointments by the UK Government at Westminster and provides examples of the comparable public appointments processes elsewhere, namely in the Greater London Authority, the Scottish Parliament, the European Parliament, the Senate of the United States, and the Canadian Parliament.

2. Welsh Government appointments

Most senior Welsh Government public appointments are for part-time posts and are made for fixed term periods. Details of the appointments which are currently made are set out by category of appointment below.

2.1. *Welsh Government Sponsored Bodies*

The Welsh Government's website includes a list of sixteen Welsh Government Sponsored Bodies ("WGSBs"),¹ whose lay members are appointed by the Welsh Ministers to serve on their management boards in non-executive capacities. The Assembly has no role in the appointment process for these bodies and its consent is not required prior to successful candidates taking up their posts.

Any appointment made by the Welsh Ministers to the WGSBs is regulated by the [Commissioner for Public Appointments in England and Wales](#). The Commissioner does not regulate all public appointments however. According to the Commissioner's website:

No public appointment will fall within the Commissioner's remit unless it is to a body listed in the Schedule to the relevant Public Appointments Order in Council or has been specified by the Minister for the Cabinet Office by Instrument in Writing as falling within his remit.²

A list of the WGSBs, along with available information about appointments made to date by Welsh Ministers is included below:

Advisory Panel on Substance Misuse: The current Chair is Dr Thomas Gwyn Roberts, who was appointed by the then Minister for Social Justice, Brian Gibbons AM, on 5 March 2009.³

Brecon Beacons National Park Authority: The Welsh Government may appoint 8 members to the Brecon Beacons National Park Authority, for four year terms up to a maximum of three terms. The current Welsh Government appointed members of the authority are: Martin Buckle, Julie James (the current Chair of the Authority),⁴ Professor Alan Lovell, Carys Howell, Edward John Evans, Margaret Underwood, Ian Rowat and Melanie Doel.⁵

Arts Council of Wales: The current Chair is Professor Dai Smith who was reappointed to the post for a further three year up until 31 March 2015 by the

¹ Welsh Government, [Public Bodies](#), 28 June 2012

² The Commissioner for Public Appointments, [The Commissioner's remit](#)

³ Welsh Government, [Press Release: New Chair and 'expert members' appointed to Substance Misuse Panel](#), 5 March 2009

⁴ Brecon Beacons National Park, [New Chairman unanimously elected to Brecon Beacons National Park Authority](#), 4 July 2011

⁵ Brecon Beacons National Park, [Brecon Beacons National Park Authority Members Contact Details 2012-13](#)

Minister for Housing, Regeneration and Heritage, Huw Lewis AM, on 21 June 2012.⁶ He has held the post since March 2010.

Care Council for Wales: The current Chair is Arwel Ellis Owen who was appointed in 2009 for a four year term by the Deputy Minister for Social Services, Gwenda Thomas AM.⁷

Countryside Council for Wales:⁸ The *Environment Protection Act 1990*⁹ states that the Welsh Ministers must appoint at least 8 and no more than 12 members of the council. The current Chair of the Council is Morgan Parry, who was appointed in March 2010.

Higher Education Funding Council for Wales: The current Chair is Roger Thomas, who was re-appointed in May 2011 for a three year period up until May 2014.¹⁰ He has held the post since May 2008.

Independent Appeal Panel for Farmers: The panel has 20 members which are appointed by the Welsh Ministers.¹¹

Local Government Boundary Commission for Wales: The current Chair, Robert Owen Watkin OBE DL, was appointed by the Minister for Local Government and Communities, Carl Sargeant, on 15 June 2012 for a three year term.¹²

National Library of Wales: The current President of the National Library's Board of Trustees is Sir Deian Hopkin whose term of office began on 1 December 2011 and will last four years. He was appointed on 2 November 2011 by the Minister for Housing, Regeneration and Heritage, Huw Lewis AM.¹³

National Museum of Wales: Elisabeth Elias was appointed as President of the National Museum of Wales by the then Minister for Heritage on 24 March 2011. Her term of office will run until 31 May 2015.¹⁴ Dr Haydn Edwards was subsequently appointed as Vice-President by the Minister for Housing, Regeneration and Heritage, Huw Lewis AM in October 2011. His term will last until 30 September 2015.¹⁵

Natural Resources Wales: This is a new body that will be fully operational by April 2013. The body will be an amalgamation of the Countryside Council for

⁶ Welsh Government, [Press Release: Reappointment for Arts Council Chair](#), 21 June 2012

⁷ Welsh Government, [Press Release: Chair and member appointments to the Care Council for Wales](#), 29 July 2009

⁸ At present, the Welsh Government has brought forward proposals to merge the Countryside Council, the Environment Agency and the Forestry Commission in Wales in order to create a single "Natural Resources Wales" body. The Countryside Council for Wales will therefore cease to exist and will be replaced by "Natural Resources Wales" on 1 April 2013.

⁹ [Environment Protection Act 1990](#) (Chapter 43)

¹⁰ Higher Education Funding Council for Wales, [HEFCW Council member biography, Roger Thomas](#)

¹¹ Details of all 20 members is available in *The Wales Yearbook 2013*, FBA, pages 464-465

¹² Welsh Government, [Press Release: Boundary Commission Appointments](#), 15 May 2012

¹³ Welsh Government, [Press Release: New President of the National Library of Wales appointed](#), 2 November 2011

¹⁴ Welsh Government, [Press Release: New President of Amgueddfa Cymru - National Museum Wales](#), 24 March 2011

¹⁵ Welsh Government, [Press Release: New Amgueddfa Cymru - National Museum Wales Vice President appointed](#), 11 October 2011

Wales, the Environment Agency and the Forestry Commission. The newly appointed Chair is Professor Peter Matthews who was appointed by the Minister for Environment and Sustainability, John Griffiths AM, on 1 August 2012.¹⁶

Pembrokeshire Coast National Park Authority: Six members of the Pembrokeshire Coast National Park Authority are appointed by the Welsh Ministers. The current appointed members are Christine Gwyther, Allan Archer, David Ellis, Ted Sangster, Gwyneth Hayward and Melinda Thomas.¹⁷

Royal Commission on the Ancient and Historical Monuments: Commissioners are appointed by the Monarch, on the advice of the Welsh Government and the Secretary of State for Wales, under a Royal Warrant. The current Chair of the Commission is Dr Eurwyn William.¹⁸

Snowdonia National Park Authority: Six members of the Snowdonia National Park Authority are appointed by the Welsh Ministers. The current appointed members are David Roberts, Iolo ap Gwynn, Denis McAteer, John Lewis Morgan, June Jones and Marian Wyn Jones.¹⁹

Sports Council for Wales: The current Chair of the Sports Council is Professor Laura McAllister who was appointed by the then Minister for Heritage, Alun Ffred Jones AM, in February 2010 for a period of three years.²⁰

Welsh Industrial Development Advisory Board: The current Chair is Valerie Barrett.²¹ The Minister for Business, Enterprise, Technology and Science, Edwina Hart AM, however announced on 8 May 2012 that an appointment process for members to the Board would be conducted in September 2012.²²

2.2. Health bodies

The Welsh Ministers, under powers conferred on them by the *Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009*²³ are empowered to appoint Chairs, Vice-Chairs and other non-officer members to each of the seven Welsh Local Health Boards. The current Chairs of each LHB are:²⁴

- **Abertawe Bro Morgannwg University Health Board:** Win Griffiths
- **Aneurin Bevan Health Board:** David Jenkins OBE
- **Betsi Cadwaladr University Health Board:** Professor Mervyn Jones

¹⁶ Welsh Government, [Press Release: Appointment of Chair for Wales' new natural resource body](#), 1 August 2012

¹⁷ Pembrokeshire Coast National Park Authority, [List of Members](#)

¹⁸ Royal Commission on the Ancient and Historical Monuments of Wales, [Commissioner Profiles](#)

¹⁹ Snowdonia National Park Authority, [Authority Members](#)

²⁰ Welsh Government, [Press Release: Former international footballer appointed as the new Chair of the Sports Council for Wales](#), 9 December 2009

²¹ *The Wales Yearbook 2013*, FBA, pages 478

²² Welsh Government, [Decision Report: Future membership of the Welsh Industrial Development Advisory Board](#), 24 May 2012

²³ [The Local Health Boards \(Constitution, Membership and Procedures\) \(Wales\) Regulations 2009](#) (SI 2009/779) (W.67)

²⁴ NHS Wales, [New Chairs to lead new Local Health Boards appointed](#), W09231-Hlt, 9 March 2009

- **Cardiff & Vale University Health Board:** Maria Battle
- **Cwm Taf Health Board:** Dr Chris Jones CBE
- **Hywel Dda Health Board:** Chris Martin
- **Powys Teaching Health Board:** Mel Evans

The 2009 regulations also enable the Welsh Ministers to appoint Chairs, Vice-Chairs and non-officer members NHS Trusts and special health authorities. The current Chairs of these bodies are:

- **The Welsh Ambulance Services NHS Trust:** Stuart Fletcher
- **Velindre NHS Trust:** Dr Rosemary Kennedy
- **Public Health Wales:** Professor Sir Mansel Aylward CB

In addition, the Welsh Ministers also appoints members to each Community Health Council in Wales.²⁵

As with appointments to the WGSBs, appointments made by the Welsh Ministers to these bodies are regulated by the Commissioner for Public Appointments in England and Wales. The Assembly however has no formal role in the appointment process.

2.3. Commissioners

Since devolution, the following three commissioners, specific to Wales, have been created by Acts or Measures made at both the UK Parliament and the Assembly. All three are formally appointed by the First Minister, who is required to take account of the views of certain specified persons before formally making the appointment. These appointments are not regulated by the Commissioner for Public Appointments in England and Wales:

Children’s Commissioner for Wales: The post of Children’s Commissioner for Wales was originally established by the *Care Standards Act 2000*²⁶ and the *Children’s Commissioner for Wales Act 2001*.²⁷ These Acts requires the Commissioner to be appointed by the First Minister for a non-renewable seven-year period. The first Commissioner, Peter Clarke, sadly died in January 2007 and his successor, Keith Towler, took up his post in January 2008.²⁸ Regulations made by the Assembly (as then constituted) in 2000²⁹ require that children and young people are consulted prior to the appointment being made.

²⁵ Community Health Councils, *CHC Members*, 28 July 2011

²⁶ *Care Standards Act 2000* (Chapter 14)

²⁷ *Children’s Commissioner for Wales Act 2001* (Chapter 18)

²⁸ Welsh Government, *Minister offers warm welcome to new Children’s Commissioner*, 3 January 2008

²⁹ See *The Children’s Commissioner for Wales (Appointment) Regulations 2000* (SI 2000/3121) (W.199)

Older People’s Commissioner for Wales: The Older People’s Commissioner for Wales was created by the *Commissioner for Older People Act 2006*.³⁰ The Act requires the Commissioner to be formally appointed by the First Minister for a four year term which may be renewed once. In making the appointment however, the First Minister is required to take into account the advice of any selection panel established for the purposes of the appointment and the views of selected older people resident in Wales as to the proposed appointment.³¹ The first Commissioner for Older People, Ruth Marks, took up her post in April 2008.³² She was replaced in April 2012 by Sarah Rochira.³³

Welsh Language Commissioner: The *Welsh Language (Wales) Measure 2011*³⁴ provides for the appointment of a Welsh Language Commissioner by the First Minister for a specified term. Part 2 of Schedule 1 of that Measure requires that the First Minister must take into account the recommendations made by the selection panel in relation to the appointment and the views of any other persons whom the First Minister thinks it is appropriate to consult, which could involve views expressed by Assembly Members, Assembly Committees, or the Assembly as a whole.

*The Welsh Language Commissioner (Appointment) Regulations 2011*³⁵ were approved by the Assembly on 28th June and provides that the selection panel must include: an Assembly Member nominated by a relevant committee of the Assembly; a member of staff of the Welsh Government; an independent appointments assessor; and a person with experience of promoting the use of Welsh and/or another language. The current Commissioner is Meri Huws who was appointed on 6 October 2011 for a seven year term.³⁶

2.4. Other appointments

The Welsh Government’s website also lists the following additional public appointments which are made by Welsh Ministers. Such appointments however are not regulated by the Commissioner for Public Appointments in England and Wales and the Assembly does not have a formal role in their appointment:

- Adjudication Panel for Wales
- Building Regulations Advisory Committee for Wales
- Capital Advisory Group
- CyMAL (museums, archives and libraries Wales) Advisory Committee

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

³¹ See *The Commissioner for Older People in Wales (Appointment) Regulations 2007* (SI 2007/396) (W.42)

³² Welsh Government, *New year, new voice for older people in Wales*, 7 January 2008

³³ Welsh Government, *Appointment of new Commissioner for Older People*, 3 April 2012

³⁴ *Welsh Language (Wales) Measure 2011* (nawm1)

³⁵ *The Welsh Language Commissioner (Appointment) Regulations 2011* (SI 2011/1593) (W.184)

³⁶ Welsh Government, *First Welsh Language Commissioner announced*, 6 October 2011

- Design Commission for Wales
- Economic Research Advisory Panel
- Flood Risk Management Wales
- Food Standards Agency: Welsh Food Advisory Committee
- General Teaching Council for Wales
- Governing Council of the Valuation Tribunal Service for Wales
- Hybu Cig Cymru
- Independent Chairs of the Retrospective Continuing Health Care Reviews
- Independent Remuneration Panel for Wales
- Ministerial Advisory Group for Education and Skills
- Public Transport Users Committee for Wales
- Residential Property Tribunal for Wales
- Regeneration Investment Fund for Wales Management Board
- Regulatory Board for Wales
- Sector Panels: Creative Industries; Advanced Materials and Manufacturing; Energy and Environment; Financial and Professional Services; ICT; Life Sciences
- Social Services Complaints Panels
- Special Educational Needs Tribunal Wales
- Upland Forum
- Welsh Committee of the Administrative Justice and Tribunals Council
- Welsh-medium Education Strategy Ministerial Advisory Group³⁷

³⁷ Welsh Government, [Public Bodies](#), 28 June 2012

3. Role of the Assembly in public appointments

The Assembly's current role in making appointments to public office is set out in Standing Order 10. It states that any "relevant appointment" (i.e. an appointment which is required to be made, approved or nominated by the Assembly) must be done through a resolution of the Assembly. In addition, the Standing Order enables an Assembly committee whose remit relates to the functions of the "relevant appointment" to take evidence from a candidate for appointment in order to consider whether the committee supports the appointment of the candidate.³⁸

The "relevant appointments" in practice only refers to the appointment of three senior public posts, details of which are provided below. None of these posts are regulated by the Commissioner for Public Appointments in England and Wales.

3.1. *Assembly-nominated appointments*

The Assembly is responsible for nominating persons to the posts of Auditor General for Wales and the Public Services Ombudsman for Wales.

Auditor General for Wales: The *Public Audit (Wales) Act 2004*³⁹ created a single public audit body for Wales, the Wales Audit Office ("the WAO"), to be headed by the Auditor General for Wales ("the AGW"). The AGW is appointed by the Monarch following nomination by the Assembly for five year terms, although the *Public Audit (Wales) Bill*,⁴⁰ introduced by the Welsh Government on 9 July 2012, proposes that the AGW may hold the office for an eight year non-renewable term.

Further provisions relating to the appointment of the AGW is set out in Schedule 8 to the *Government of Wales Act 2006* ("the 2006 Act").⁴¹ These provisions state that no nomination is to be made until the Assembly is satisfied that reasonable consultation has been undertaken with bodies that represent the interests of local government in Wales. The AGW can only be dismissed by the Monarch on grounds of misbehaviour, although the Assembly can recommend dismissal following a resolution passed by at least two thirds of all Assembly Members.

In respect of the AGW's relationship with Assembly Committees, the Public Accounts Committee is the only committee which the Assembly is required to have under the 2006 Act. Although it does not have a defined role in the appointment of an AGW, the Committee is required to examine reports prepared by the AGW on the audit of accounts and value for money investigations of the Welsh Government and other public bodies.

³⁸ National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, June 2012

³⁹ *Public Audit (Wales) Act 2004* (Chapter 23)

⁴⁰ *Public Audit (Wales) Bill*

⁴¹ *Government of Wales Act 2006* (Chapter 32)

The current AGW is Huw Vaughan Thomas who was nominated by the Assembly in plenary on 13 July 2010⁴² and formally appointed in October 2010. In proposing the motion for the nomination, the then Chair of the Assembly's Public Accounts Committee, Jonathan Morgan AM, provided an outline of the recruitment process undertaken prior to the nomination:

... a full and open recruitment process, conducted in line with the Nolan principles on standards in public life, was initiated, and the post was advertised nationally. I chaired a panel to assist with the process, and to assess the applicants for this role. Alongside me sat Assembly Members Bethan Jenkins and Jeff Cuthbert, John Purcell, a former comptroller and auditor general of the Republic of Ireland, Keith Bush, the chief legal adviser to the Assembly, Steve Thomas, the chief executive of the Welsh Local Government Association, and Wendy Burton, our independent assessor. We were supported at each stage by Assembly Commission staff, to whom I am extremely grateful, and by the executive search specialists, Odgers Berndtson. By including the chief executive of the WLGGA, we ensured that the requirement to consult with local government was satisfied. To that end, the legal requirements, as set out in the Act, have been satisfied.⁴³

He added that

The nomination of a person for appointment as auditor general is, in common with other appointments that are currently in the hands of the Assembly, a matter for the Assembly in Plenary. In the past, the Audit Committee—as it was then named—has taken a lead in considering and advising the Assembly on such matters. We believed that it was important that the Public Accounts Committee continued in this role, and, indeed, strengthened its ability to give informed advice. **That is why we decided to add a confirmation hearing to this process—an innovative development for making this key constitutional appointment. This hearing provided open and transparent scrutiny of the candidate who had been identified as the most suitable from the recruitment process, and offered the Public Accounts Committee, and, ultimately, the Assembly, additional confidence that the preferred candidate is suitable for nomination to Her Majesty for appointment [RS emphasis].**⁴⁴

This was the first time that a pre-appointment hearing had been conducted by an Assembly Committee prior to a formal nomination and appointment taking place.

The Public Services Ombudsman for Wales: The Public Service Ombudsman for Wales (“the PSOW”) was created by the *Public Services Ombudsman (Wales) Act 2005*⁴⁵ and formally came into being in April 2006. The PSOW is appointed for a seven year non-renewable term by the Monarch following nomination by the Assembly. The PSOW can also be subject to the dismissal by the Monarch on the grounds of misbehaviour, and the Assembly may also recommend the dismissal of the PSOW following a resolution passed by at least two thirds of all Assembly Members.

⁴² National Assembly for Wales, *RoP: Plenary*, 13 July 2010

⁴³ National Assembly for Wales, *RoP: Plenary*, 13 July 2010

⁴⁴ Ibid

⁴⁵ *Public Services Ombudsman (Wales) Act 2005* (Chapter 10)

The first incumbent was Adam Peat. Peter Tyndall was appointed as the second PSOW from April 2008. The Assembly's nomination for the appointment followed a formal recruitment process by a panel consisting of: the then Chair of the Finance Committee, Alun Cairns AM; Ann Abraham, the then Parliamentary and Health Services Ombudsman for England; Dianne Bevan, the then Chief Operating Officer to the National Assembly for Wales; and Vivienne Sugar, who was acting as the Independent Assessor.⁴⁶

3.2. *Assembly and Assembly Commission appointments*

The post of **Commissioner for Standards** was created by the *National Assembly for Wales Commissioner for Standards Measure 2009*,⁴⁷ which made provisions for the appointment of a Commissioner by the Assembly for a six year, non-renewable term. The current Commissioner is Gerard Elias QC who was appointed by the Assembly in plenary on 17 November 2010. In proposing the nomination, the then Chair of the Committee on Standards of Conduct, Jeff Cuthbert AM, gave an overview of the recruitment process, including details of a confirmation hearing that was held prior to the appointment:

The process of selecting Gerard Elias has been open and transparent. I chaired a selection panel that consisted of me, Claire Clancy, the Chief Executive and Clerk of the National Assembly, Stuart Allan, the Scottish Parliamentary Standards Commissioner, and Kathryn Bishop, who has extensive public and private sector experience as an independent assessor. We received a wide range of applications, and the panel unanimously recommended the appointment of Gerard Elias. Subsequently, Mr Elias attended a public confirmation hearing with the Committee on Standards of Conduct. This is only the second time that such a procedure has been followed in the National Assembly, and it enabled all committee members to question Mr Elias about his approach to the office. The committee unanimously confirmed the decision of the appointments panel, and recommended his appointment to the full Assembly.⁴⁸

The Assembly Commission also appoints persons to the **Independent Remuneration Body** which was established by the *National Assembly for Wales Remuneration Measure 2010*.⁴⁹ Its members are appointed by the Assembly Commission following arrangements for selection decided by the Clerk and Chief Executive of the Assembly. The current members of the Board, including its Chair, the Rt. Hon George Reid, were appointed by the Commission on 22 September 2010.⁵⁰ As the appointments are made directly by the Assembly Commission, they are not required to be subject to further consideration by Assembly Members before being formally made.

⁴⁶ National Assembly for Wales, Press Release: [Appointment of Public Services Ombudsman for Wales](#), 11 March 2008

⁴⁷ [National Assembly for Wales Commissioner for Standards Measure 2009](#) (nawm 4)

⁴⁸ National Assembly for Wales, [RoP: Plenary](#), 17 November 2010

⁴⁹ [National Assembly for Wales Remuneration Measure 2010](#) (nawm 4)

⁵⁰ National Assembly for Wales, Press Release: [National Assembly appoints Chairman and Members of the Remuneration Board](#), 22 September 2010

3.3. *Calls for change*

The role of the Assembly in the appointment of senior public officials was the subject of an article by Mark Drakeford AM which was published on the Click on Wales website on 21 September 2012. In the article, Mr Drakeford argued that “one significant way in which the Senedd now lags behind developments elsewhere in accountability and openness lies in the appointment of key public officials”.⁵¹ He added that:

Most notably in the House of Commons since 2008 relevant Select Committees have scrutinised the decisions of appointing Ministers ... The time is long overdue for Committees of the National Assembly to discharge the same oversight, and to provide the same guarantee of democratic legitimacy, as is now available in comparable circumstances elsewhere ...

What might this mean for Wales? The Welsh Government web-site lists sixteen major bodies, each of which has a publicly appointed chair. These include, for example, the Arts Council, the Care Council, the Higher Education Funding Council and the Sports Council. In addition, the Commissioners for Children, Older People and the Welsh Language are all major posts of the sort which, in Westminster, would involve a direct parliamentary stage in the appointment process.

... a system of scrutiny of public appointments is desirable and necessary for at least a smaller range of key posts. It seeks to bring the position here into line with the most modest steps in that direction which have already been achieved elsewhere and which, as a modern and progressive institution, the National Assembly would surely wish to incorporate into its own way of working.⁵²

In a supplementary article which appeared as a post on the Electoral Reform Society’s news blog on 17 October 2012, Mr Drakeford gave an insight into the feedback received to his ideas to date:

Since first making this suggestion I have been heartened by the support it has already gathered. Publicly scrutinised public appointments produce better outcomes, and that is a result which members of all political parties across the Assembly chamber are keen to bring about. On the parliamentary side, I believe that pre-appointment hearings could be accommodated within the current working arrangements for Assembly Committees, and that a willingness exists to help that to happen. The Welsh Government, I know, is also prepared to consider the proposal from the perspective of Ministers. I look forward to the results of that consideration so that the case below can be translated into a newly invigorated appointment process here in Wales.⁵³

⁵¹ Click on Wales, [Assembly should have say in choice of Quango chairs](#), 21 September 2012

⁵² Ibid

⁵³ Electoral Reform Society News Blog, [Committees need to take a democratic role in making public appointments](#), 17 October 2012

4. Public appointments and the UK Parliament

In contrast to the more recent developments relating to public appointments in Wales, the issue of whether Select Committees in the House of Commons should undertake pre-appointment hearings in relation to senior public appointments has been an on-going debate at Westminster for some time. The current arrangements in the House of Commons relating to public appointments can be traced back to the Green Paper on the *Governance of Britain*⁵⁴ that was published by the then Labour Government in July 2007. That document proposed that the House of Commons should have a bigger role in the selection of key public officials:

The Government, in consultation with the Liaison Committee, will prepare a list of appointments for which these hearings will apply. Where responsibility is devolved, it will be for the respective administration to consider the appointment.⁵⁵

Following the Green Paper's publication, the Chair of the then Statistics Board (later renamed the UK Statistics Authority) was subject to a pre-appointment hearing by the Treasury Select Committee which later informed a Commons debate that took place on 25 July 2007. The House agreed the appointment of the nominee, Sir Michael Scholar, without a division.⁵⁶ Similar processes were subsequently adopted for the appointment of members to the Monetary Policy Committee and the Financial Services Authority.⁵⁷

The Commons Public Administration Select Committee published a report in response to the UK Government's proposals and subsequent early developments in January 2008. Despite some reservations, the Committee welcomed the Green Paper's proposals for pre-appointment hearings. They also suggested a list of some "obvious candidates" that would be subject to such hearings in the future. These included:

- **Auditors:** the Comptroller and Auditor General (whose appointment is already subject to a vote in the House of Commons) and the Chair of the Audit Commission;
- **Ombudsmen and complaint investigators:** the Pensions Ombudsman and the Chair of the Independent Police Complaints Commission;
- **Regulators:** the Information Commissioner and the Chairman of the Committee on Standards in Public Life;
- **Inspectors:** HM Inspector for Education, Children's Services and Skills, and HM Inspector for Constabulary; and

⁵⁴ Ministry of Justice, *The Governance of Britain*, July 2007, Cm7170

⁵⁵ Ibid

⁵⁶ House of Commons Library, *Standard Note: Parliamentary involvement in public appointments*, SN/PC/04387, 2 March 2012, page 5

⁵⁷ Ibid

- **Appointers:** the Chair of the Appointments Commission (formerly the NHS Appointments Commission) and the Chair of the House of Lords Appointments Commission.⁵⁸

A final list of posts subject to pre-appointment hearings was published in March 2008 by the House of Commons' Liaison Committee (a committee of the Chairs of all the Commons' Select Committees). The list consisted of 29 posts which included public service ombudsmen, inspectors and regulators (the full list is included as an annex on page 24 of the [House of Commons Library's Standard Note on parliamentary involvement in public appointments](#)). The UK Government responded to the report in June 2008.

In February 2010, the Constitution Unit at University College London published a report prepared for the Liaison Committee and the Cabinet Office evaluating the pre-appointment scrutiny hearings to date.⁵⁹ The Liaison Committee considered the Constitution Unit's research in their 2008-2009 session annual report,⁶⁰ which the UK Government responded to in August 2010.⁶¹ Further research into the role of the UK Parliament in the public appointments process was published by the Institute for Government in March 2011.⁶² That document made a series of recommendations to the current system, including the proposal of an "effective veto power" for committees in relation to around 25 top tier public appointments.

Further developments in relation to pre-commencement hearings took place following the UK General Election and the formation of the Conservative-Liberal Democrat coalition government in May 2010. The coalition's programme for government stated that "We will strengthen the powers of Select Committees to scrutinise major public appointments".⁶³

No further details were provided at the time to indicate the extent of the UK Government's proposals, however provisions relating to the role of the Commons Treasury Committee in the appointment of members to the Office of Budget Responsibility were included in Schedule 1 of the *Budget Responsibility and National Audit Act 2011*,⁶⁴ which received Royal Assent on 22 March 2011.⁶⁵ These provisions stated that members to the Office of Budget Responsibility cannot be appointed without first obtaining the consent of the Treasury Committee.

⁵⁸ House of Commons, Public Administration Select Committee, [Parliament and Public Appointments: Pre-appointment hearings by select committees](#), 16 January 2008

⁵⁹ University College London, Constitution Unit, [Parliamentary Scrutiny of Senior Public Appointments](#), September 2009-January 2010

⁶⁰ House of Commons, Liaison Committee, [The Work of Committees in Session 2008-9](#), HC 426, 16 March 2010

⁶¹ House of Commons, Liaison Committee, [Government Response to the Committee's Second Report of Session 2009-10](#), HC 415, 2 August 2010

⁶² Institute for Government, [Balancing Act – The right role for parliament in public appointments](#), 7 March 2011

⁶³ Cabinet Office, [The Coalition: our programme for government](#), May 2010, page 21

⁶⁴ *Budget Responsibility and National Audit Act 2011* (Chapter 4)

⁶⁵ See House of Commons Library, [Standard Note: Parliamentary involvement in public appointments](#), SN/PC/04387, 2 March 2012, page 21

In light of these developments and following the evidence it had received from the UCL's Constitution Unit, the Institute for Government and the Minister for the Cabinet Office, the Rt. Hon Francis Maude MP, the Liaison Committee published another report on Select Committees and Public Appointments on 4 September 2011.⁶⁶ The report concluded that "The experiment has been a success and the procedure represents a modest step forward in securing democratic accountability of ministerial decision-making".⁶⁷ It did however recommend the refining of the list of posts to which the procedure applies in addition to the revising of the current guidance produced by the Committee and the Cabinet Office on pre-appointment hearings and the production of a single consolidated guidance document.⁶⁸

The UK Government provided a response to the Committee's report on 18 June 2012 which was incorporated into a further short report which the Committee published on 6 September 2012.⁶⁹ The report was highly critical of the UK Government's approach to the scrutiny of public appointments to date and deplored the nine months it took for a formal response to be issued by the UK Government.⁷⁰

4.1. The conduct of pre-appointment hearings at Westminster

The Liaison Committee's March 2008 report set out the following draft guidelines on how pre-appointment hearings should be conducted by Commons Select Committees.

Preparing for the session

The Committee should aim to give the witness at least a week's notice of the session. Standard briefing should be available to the candidate on what to expect from the session. The candidate should also be informed how long the session is likely to last.

During the session

The Chairman should ensure that Members are aware that their questions must remain relevant to the professional competence and personal independence of the candidate. Questions eliciting background information about the candidate's past career and about the selection process for the post are also normally acceptable.

The candidate will need to be able to withstand parliamentary and public scrutiny should they take up the post, and the purpose of the session is to test this. Questioning may

⁶⁶ House of Commons, Liaison Committee, *Select Committees and Public Appointments*, 4 September 2011

⁶⁷ See House of Commons Library, *Standard Note: Parliamentary involvement in public appointments*, SN/PC/04387, 2 March 2012, page 22

⁶⁸ *Ibid*, page 23

⁶⁹ House of Commons, Liaison Committee, *News Release: Select Committees and Public Appointments*, 6 September 2012

⁷⁰ House of Commons, Liaison Committee, *Select Committees and Public Appointments: the Government's response*, 6 September 2012

therefore be robust, and it may cover some areas that might not be appropriate at interview, such as party political allegiance. The Chairman should intervene, however, if questions are irrelevant, unduly personal, or discriminatory.

After the session

Immediately after the evidence session, the Committee should meet in private to agree a report to the House containing its views on the suitability of the candidate. This will ensure both that the evidence is fresh in Members' minds and that Members who were not present at the evidence do not influence the content of the report. It will also avoid unnecessarily prolonged speculation about a candidate's fate. The Committee may also wish to instruct the Chairman to write to the relevant Minister with any opinions that it prefers to express privately, to supplement the published report.

The Committee's report should be published as soon as possible after the evidence session. Reports should be subject to a 24 hour embargo to allow the candidate and the Minister to prepare a response to any negative comments. They should be provided under embargo only to the candidate and the Minister.⁷¹

This approach was subsequently endorsed by the UK Government and reproduced as an annex in their Guidance on Pre-Appointment Hearings by Select Committees which was published by the Cabinet Office in August 2009.⁷²

Details of all public appointments made by UK Government Ministers are available on the UK Public Appointments website which is supported by the [Cabinet Office](#).

4.2. Examples of candidates not approved by Commons Committees

Only a handful of favoured candidates have been rejected by Commons Committees since the introduction of pre-appointment hearings in 2007. These include the following instances:

- **Children's Commissioner for England (October 2009):** While the Commons Children, Schools and Families Committee were satisfied that the preferred candidate, Dr Maggie Atkinson, had demonstrated a high degree of professional competence, they felt that she should not be appointed as they would've liked to have seen "more sign of determination to assert the independence of the role, to challenge the status quo on children's behalf and to stretch the remit of the post, in particular, by championing children's rights".⁷³ The then Secretary of State for Children, Schools and Families, the Rt. Hon Ed Balls MP, however rejected the committee's recommendations and went ahead with the original appointment.

⁷¹ House of Commons, *Liaison Committee, Pre-appointment hearings by select committees*, HC 384, 5 March 2008

⁷² Cabinet Office, *Pre-appointment hearings by Select Committees: Guidance for departments*, August 2009

⁷³ House of Commons Library, *Standard Note: Parliamentary involvement in public appointments*, SN/PC/04387, 2 March 2012, page 13

- **HM Chief Inspector of Probation (June 2011):** The Justice Committee did not endorse the appointment of Diana Fulbrook as HM Chief Inspector of Probation as they had “reservations about Diana Fulbrook’s candidature in relation to the importance of reducing re-offending and the need for the Chief Inspector to be a driver for change within the probation system”.⁷⁴ As a result of the Committee’s recommendations, Diana Fulbrook was not appointed and Liz Calderbank was appointed to the post on a temporary basis from September 2011.⁷⁵
- **Chair of the UK Statistics Authority (July 2011):** Following a pre-appointment hearing conducted by the Commons Public Administration Select Committee, the successful candidate, Dame Janet Finch, withdrew her candidature for the post. The withdrawal took place before the Committee issued any report on the evidence session.⁷⁶
- **Director of Office for Fair Access (February 2012):** The Commons Business, Innovation and Skills Committee declined to endorse the appointment of Les Ebdon as the Director of Office for Fair Access as they “were not convinced by Professor Ebdon’s descriptions of the root causes of the obstacles to accessing universities”.⁷⁷ The Secretary of State for Business, Innovation and Skills, the Rt. Hon Vince Cable MP, however decided to proceed with the appointment.⁷⁸

⁷⁴ House of Commons Library, *Standard Note: Parliamentary involvement in public appointments*, SN/PC/04387, 2 March 2012, page 14

⁷⁵ Ibid

⁷⁶ Ibid, page 15

⁷⁷ Ibid, page 16

⁷⁸ Ibid

5. Parliamentary involvement in public appointments elsewhere

5.1. *Scottish Parliament*

The issue of parliamentary involvement in the appointment of public officials in Scotland was considered during the first years of the Scottish Parliament's existence. In 1999, the Scottish Labour and Scottish Liberal Democrat coalition agreement stated that the Scottish Executive (later renamed the Scottish Government) would:

... encourage the Parliament to review and monitor public appointments to ensure that the highest standards and accountability in public life and the accountability of the appointment...⁷⁹

By the following year however, in its consultation paper on *Appointments to Public Bodies in Scotland: Modernising the System*, the Scottish Executive made clear its opposition to pre-appointment parliamentary scrutiny of ministerial nominations for public bodies. The paper stated that:

The Executive does not believe that it would be appropriate to import anything resembling the highly confrontational Parliamentary confirmation hearing systems that operate in some countries. They believe that the introduction of a confirmation hearing system could deter many able candidates from applying for high profile public service. The Executive also has reservations about other forms of pre-appointment Parliamentary involvement for the same reason.⁸⁰

In addition, the Scottish Executive's analysis of the consultation stated that there had been "little support for pre-appointment parliamentary involvement, and not much more for standardised post-appointment parliamentary involvement".⁸¹

In 2001, a Member of the Scottish Parliament, Alex Neil MSP, introduced a Member proposed Bill that would require the Scottish Parliament to approve nominations made by Scottish Ministers for specified public appointments. The *Public Appointments (Parliamentary Approval) (Scotland) Bill*⁸² also included provisions that would have empowered the Parliament to veto candidates considered inappropriate or unsuitable. The Bill was defeated.

Despite the failure of early efforts to strengthen parliamentary oversight of Scottish Ministerial public appointments, the Scottish Parliament is currently responsible for nominating a number of senior public appointments, who are subsequently formally appointed by the Monarch. These include:

⁷⁹ Scottish Executive, *Partnership for Scotland: An agreement for the first Scottish Parliament*, May 1999 in House of Commons Library, [Research Paper 08/39: Parliamentary involvement in public appointments](#), 23 April 2008, page 45

⁸⁰ Scottish Executive, *Appointments to public bodies in Scotland: Modernising the system: Consultation Paper*, February 2000, paragraph 7.4 in House of Commons Library, [Research Paper 08/39: Parliamentary involvement in public appointments](#), 23 April 2008, page 46

⁸¹ Scottish Executive, *Public Bodies: Proposals for Change*, June 2001 in House of Commons Library, [Research Paper 08/39: Parliamentary involvement in public appointments](#), 23 April 2008, page 46

⁸² [Public Appointments \(Parliamentary Approval\) \(Scotland\) Bill](#) [as introduced]

- Auditor General for Scotland;
- Scottish Public Services Ombudsman;
- Scottish Information Commissioner;
- Scotland’s Commissioner for Children and Young People;
- Chair of the Scottish Human Rights Commission.

The appointment process for each post is conducted by a selection panel of MSPs which reflects the balance of political representation in the Parliament and is chaired by one of the Presiding Officers.⁸³ Details relating to these processes are outlined in the Scottish Parliament’s Standing Order 3.11.⁸⁴

The Scottish Parliament in addition endorses appointments of members to the Scottish Commission for Public Audit, which are made by the Scottish Parliament Corporate Body (the body which supports the work of the Parliament and its members).⁸⁵ The Parliament is also responsible for appointing the Public Standards Commissioner for Scotland, the Public Appointments Commissioner for Scotland and members of the Standards Commission for Scotland.⁸⁶

Reports made by the Public Appointments Commissioner in relation to ministerial appointments to public bodies in Scotland are also considered by the Scottish Parliament’s Standards, Procedures and Public Appointments Committee.⁸⁷ The Committee also considers reports from the Public Standards Commissioner for Scotland in relation to compliance with the Code of Conduct for MSPs and the interests of Members.

5.2. Greater London Authority

Schedule 4 of the *Greater London Authority Act 1999*⁸⁸ (as amended by the *Greater London Authority Act 2007*)⁸⁹ includes provisions to allow the London Assembly to hold confirmation hearings with candidates for the following key appointments to be made by the Mayor:

- Chairman, or Deputy Chairman, of Transport for London (except where the Mayor chooses to appoint him/herself);
- Chairman, or Deputy Chairman, of the London Development Agency;
- Chairman, or Vice Chairman, of the Metropolitan Police Authority (except where the Mayor chooses to appoint him/herself);
- Chairman of the London Fire and Emergency Planning Authority;

⁸³ Scottish Parliament, [About the Parliament: Officeholders](#)

⁸⁴ Scottish Parliament, [Standing Orders of the Scottish Parliament](#), October 2012

⁸⁵ Ibid, Rule 3.13

⁸⁶ Ibid, Chapter 3A

⁸⁷ Scottish Parliament, [Standards, Procedures and Public Appointments Committee: About the Committee](#)

⁸⁸ *Greater London Authority Act 1999* (Chapter 29)

⁸⁹ *Greater London Authority Act 2007* (Chapter 24)

- Chair of the Cultural Strategy Group;
- Chairman, or deputy chairman, of the London Pensions Fund Authority;
- Chair of the London Waste and Recycling Board (where the Mayor chooses not to appoint him/herself).⁹⁰

The Mayor must notify the Assembly when he wishes to make one of the above appointments, and the Assembly has three weeks to respond to him with a recommendation as to whether the appointment should be confirmed. The Assembly may request that a candidate attends a Confirmation Hearing to answer questions relating to the appointment before making a recommendation. Such hearings are considered by the Assembly's Confirmation Hearings Committee.⁹¹

The Mayor may choose to accept or reject the Assembly's recommendation and must notify the Assembly of his decision. The appointment cannot be made until the end of the confirmation process.

5.3. European Parliament

The European Parliament, under powers conferred on it by the [Treaty on the European Union](#) (which was last revised by the Lisbon Treaty in 2009), has a significant role in the appointment of the [25 European Commissioners](#) and the President of the Commission. The current President is Juan Manuel Barroso and the current Commission was appointed in 2010 for a four year term.

Although the President of the Commission is first nominated by the European Council (the name for summits or meetings of EU leaders) the appointment must be endorsed by the European Parliament before taking effect.

Once endorsed, the European Council, in common agreement with the President of the Commission, then adopts the list of persons which it proposes to appoint as members of the Commission. The appointment of each Commissioner is then subject to consideration by the European Parliament, who has the power to approve or reject the Commission collectively, although not individually.

The processes relating to the approval or rejection of the European Commission is set out in the European Parliament's Rules of Procedure, and includes provisions for the Parliament's Committees to hold public confirmation hearings. Rule 105 states that:

1. The President shall, after consulting the President-elect of the Commission, request the nominees proposed by the President-elect of the Commission and by the Council for the various posts of Commissioner **to appear before the appropriate committees according to their prospective fields of responsibility. These hearings shall be held in public** [*RS emphasis*].

⁹⁰ Greater London Authority, [How the GLA is organised: Protocol on Mayoral Appointments](#), paragraph 16

⁹¹ Greater London Authority, [The London Assembly: Confirmation Hearings Committee](#)

2. The President may invite the President-elect of the Commission to inform Parliament about the allocation of portfolio responsibilities in the proposed College of Commissioners in accordance with his or her political guidelines.

3. The appropriate committee or committees shall invite the Commissioner-designate to make a statement and answer questions. The hearings shall be organised in such a way as to enable Commissioners-designate to disclose to Parliament all relevant information. Provisions relating to the organisation of the hearings shall be laid down in an annex to these Rules of Procedure(1) .

4. The President-elect shall present the college of Commissioners and their programme at a sitting of Parliament which the President of the European Council and the President of the Council shall be invited to attend. The statement shall be followed by a debate.

5. In order to wind up the debate, any political group or at least 40 Members may table a motion for a resolution. Rule 110(3), (4) and (5) shall apply.

Following the vote on the motion for a resolution, Parliament shall elect or reject the Commission by a majority of the votes cast [RS emphasis].

The vote shall be taken by roll call.

Parliament may defer the vote until the next sitting.

6. The President shall inform the Council of the election or rejection of the Commission.

7. In the event of a substantial portfolio change during the Commission's term of office, the filling of a vacancy or the appointment of a new Commissioner following the accession of a new Member State, the Commissioners concerned shall be invited to appear before the committees responsible for the areas of responsibility in question in accordance with paragraph 3.⁹²

At the end of the parliamentary process, the European Council is responsible for appointing the Commission as a whole by qualified majority.

Once appointed, the Commissioners remain accountable to the European Parliament during their terms of office, which retains the power to dismiss the Commission as a whole at any time.⁹³ As with their initial appointment however, the Parliament does not have the power to dismiss each Commissioner individually.

The European Parliament also has a role in electing the European Ombudsman; a post established in 1995 is to investigate cases of maladministration by the EU

⁹² European Parliament, *Rule of Procedure: 7th parliamentary term*, July 2012

⁹³ EUROPA website, *European Commission*

institutions. Details of how the Ombudsman is elected are set out on the European Parliament's website:

The Ombudsman election procedure is supervised by the Petitions Committee, which checks that applications are admissible and that candidates fulfil all the conditions required for the post. EU rules establish, inter alia, that the Ombudsman must "offer every guarantee of independence". The Ombudsman is elected by Parliament in a secret vote at the start of each parliamentary term.⁹⁴

Nikiforos Diamandouros was re-appointed to the post in January 2010 for a five year term.⁹⁵

In addition, the Treaty states that the Parliament has the right to be consulted on appointments to the Court of Auditors and to the Executive Board of the European Central Bank. Appointments to these bodies are formally made following a recommendation by the Council of the European Union.⁹⁶

5.4. *United States Senate*

Article 2, Section 2 of the [Constitution of the United States](#) empowers the President to appoint a large number of posts including federal judges, specified officers in cabinet-level departments, the military services and diplomats.⁹⁷ These appointments amount to approximately 4,000 civilian and 65,000 military nominations which are submitted to the US Senate during each two year session of Congress.⁹⁸

The process that is usually adopted for judicial appointments and appointments to independent agencies is as follows:

- The nomination, along with the relevant background papers is referred to a Senate committee.
- The committee scrutinises the nominee by looking at background, suitability for the post, financial situation and likely influence.
- A hearing takes place at which the nominee testifies under oath in open session.
- The committee reports favourably or unfavourably in relation to the nominee and the Senate thereafter considers and confirms in appropriate cases.⁹⁹

⁹⁴ European Parliament, [Press Release: Nikiforos Diamandouros re-elected as European Ombudsman](#), 20 January 2010

⁹⁵ Ibid

⁹⁶ European Parliament, [Appointment procedures](#)

⁹⁷ United State Senate, [Nominations](#)

⁹⁸ House of Commons Library, [Research Paper 08/39: Parliamentary involvement in public appointments](#), 23 April 2008, page 48

⁹⁹ Scottish Parliament, [Policy Memorandum: Public Appointments \(Parliamentary Approval\) \(Scotland\) Bill](#), 3 September 2001, paragraph 29

According to a policy memorandum prepared by the Scottish Parliament in 2001 which accompanied the *Public Appointments (Parliamentary Approval) (Scotland) Bill*, criticisms have been directed at the US Senate system over the years:

It takes lengthy periods to confirm appointments, the average being 99.5 days. There is no time limit imposed on the committee to action the nomination. The other controversial aspect of the Senate system is the inquisitorial nature of the hearings and intrusive type of investigations held into the nominees. This is said to deter people from putting their names forward for nomination.¹⁰⁰

Since 1789, the Senate has explicitly rejected less than two per cent of all Cabinet nominations and nearly a quarter of all nominations have failed to be confirmed.¹⁰¹

5.5. *Canadian Parliament*

The Canadian Parliament currently has eight “Officers of Parliament” who carry out duties assigned by statute. These include the Auditor General, the Chief Electoral Officer, the Commissioner of Official Languages, the Information Commissioner, the Privacy Commissioner, the Conflict of Interest and Ethics Commissioner, the Commissioner of Lobbying and the Public Sector Integrity Commissioner.

Each officer is appointed by the Governor General in Council after consultation with the leader of every recognised party in the Canadian Senate and House of Commons and after approval of the appointment by the Senate and the House of Commons, apart from the Chief Electoral Officer who is appointed by resolution of the House of Commons only.¹⁰²

Since 1985, the parliament’s committees have been allowed to review both nominations and appointments made by the Governor in Council (“GIC”). In practice however, such reviews have been limited, as the following paper produced by the Canadian Parliamentary Information and Research Service in 2006 explains:

From 1989 to 2004, only 62 meetings out of a total of 12,783 committee meetings concerned GIC nominations or appointments.¹⁰³

The paper adds that although “allowing committees to potentially influence a GIC nomination or appointment could lead to increased attention being paid to these appointments ... it is unlikely that committees could integrate widespread review of GIC nominations or appointments into their already busy agendas”.¹⁰⁴ The paper suggests as a solution to this that:

¹⁰⁰ Ibid, paragraph 31

¹⁰¹ House of Commons Library, *Research Paper 08/39: Parliamentary involvement in public appointments*, 23 April 2008, page 48

¹⁰² Canada Library of Parliament, *Background Paper: Appointment of Officers of Parliament*, 6 February 2012

¹⁰³ Canada Library of Parliament, *Governor in Council appointments: Recent changes and suggestions for reform*, 17 May 2006, page 12

¹⁰⁴ Ibid

... a committee devoted entirely to reviewing GIC nominations and appointments could be set up to avoid burdening the other committees and distracting them from their other required agenda items, or committees might establish subcommittees on nominations and appointments”.¹⁰⁵

¹⁰⁵ Ibid