



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Pwyllgor Deddfwriaeth Rhif 1
Legislation Committee No. 1**

**Dydd Mercher, 24 Mehefin 2009
Wednesday, 24 June 2009**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mohammad Asghar	Plaid Cymru The Party of Wales
Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Rosemary Butler	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Ann Jones	Llafur Labour
Huw Lewis	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Jeff Cuthbert	Aelod Cynulliad, Llafur Assembly Member, Labour
Yr Arglwydd/Lord Dafydd Elis-Thomas	Aelod Cynulliad, Plaid Cymru (Llywydd y Cynulliad a Chadeirydd Comisiwn y Cynulliad) Assembly Member, Plaid Cymru (The Presiding Officer of the Assembly and Chair of the Assembly Commission)

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Sarah Beasley	Clerc Clerk
Keith Bush	Cyfarwyddwr, Gwasanaethau Cyfreithiol Director of Legal Services
Adrian Crompton	Cyfarwyddwr Busnes y Cynulliad Director of Assembly Business
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Cynghorydd Cyfreithiol Legal Adviser
Liz Wilkinson	Clerc Clerk

Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Rosemary Butler:** Good morning, everyone. I welcome you to this meeting of Legislation Committee No. 1. I remind committee members that the committee operates bilingually, and that the headsets can be used to listen to a translation of the Welsh contributions or as an induction loop to hear the proceedings more clearly. Channel 0 on the headsets will provide the verbatim broadcast and channel 1 provides the translation.

[2] I remind you to turn off all mobile phones, pagers and other electronic devices that are not essential to your health, as they interfere with the broadcasting and translation systems. If there is a fire alarm, the ushers will escort you from the room. I remind you that there is no need to touch the microphones, as they are operated automatically.

9.31 a.m.

**Mesur Arfaethedig Comisiynydd Safonau Cynulliad Cenedlaethol Cymru—
Cyfnod 2: Ystyried Gwelliannau
Proposed National Assembly for Wales Commissioner for Standards Measure—
Stage 2: Consideration of Amendments**

[3] **Rosemary Butler:** The purpose of today's meeting is to undertake Stage 2 proceedings on the Proposed National Assembly for Wales Commissioner for Standards Measure. I welcome to this morning's meeting, Jeff Cuthbert, Chair of the Committee on Standards of Conduct and the Member in charge of the proposed Measure. Jeff is accompanied by Keith Bush, director of legal services. Lord Dafydd Elis-Thomas AM is also here, accompanied by Adrian Crompton, director of Assembly business. We have had a discussion about whether you are the Presiding Officer or Dafydd Elis-Thomas this morning, so I think that we will decide on Presiding Officer.

[4] **The Presiding Officer:** I think that I am Chair of the Assembly Commission.

[5] **Rosemary Butler:** Yes, we know that, but I believe that the amendments are in your name of Dafydd Elis-Thomas.

**Gwaith y Comisiynydd—Cyngor am y Gweithdrefnau ar gyfer Cwyno ac Ymchwilio i
Gwynion (Gwelliant 7)
Functions of the Commissioner—Advice on Procedures for Making and Investigating
Complaints (Amendment 7)**

[6] **Rosemary Butler:** We have all been through Stage 2 proceedings before. The lead and only amendment in this first grouping of amendments is amendment 7, on page 1 of the marshalled list. Presiding Officer, would you like amendment 7 in your name to be moved?

[7] **The Presiding Officer:** Yes, Chair.

[8] **Rosemary Butler:** I formally move amendment 7 in the name of Dafydd Elis-Thomas. I call on the Presiding Officer to speak to amendment 7.

[9] **Y Llywydd:** Nid yw'r gwelliant hwn ynddo'i hun yn newid sylwedd darpariaethau'r Mesur arfaethedig. Yn hytrach, mae'n symud yr isadran dan sylw o adran 6 i adran 5. Mater o ddrafftio mwy rhesymegol yw hwn o ran gosod swyddogaethau'r comisiynydd o dan adran 5. Os edrychwch ar yr adran honno, gwelwch fod pob pwynt yn ymwneud â chwynion penodol. Os gwneir yr ad-drefniant hwn, o dan adran 6, bydd pob pwynt o hyn allan yn ymwneud â rhoi cyngor mwy cyffredinol i'r Cynulliad Cenedlaethol. Felly, ar un lefel,

The Presiding Officer: This amendment does not in itself alter the substance of the provisions of the proposed Measure. What it does is to move the sub-section in question from section 6 to section 5. This is a matter of more logical drafting in terms of setting out the commissioner's functions under section 5. If you look at that section, you will see that every point relates to specific complaints. If this alteration is made, every point under section 6 will, from now on, deal with more general advice to the National Assembly. Therefore, on one level, it is a

mater o ddrafftio mwy rhesymegol ydyw, ond mae'r ffaith ein bod yn gwahaniaethu rhwng y ddwy swyddogaeth sy'n bwysig i waith y comisiynydd yn golygu y byddwn yn gallu rhoi mwy o amlygrwydd yn y Mesur arfaethedig i swyddogaeth y comisiynydd o hybu, annog a diogelu safonau ymddygiad uchel ar gyfer Aelodau'r Cynulliad. Efallai y byddai'n hwylus imi ddweud mwy am hynny, gyda'ch caniatâd chi, Gadeirydd, mewn perthynas â gwelliannau 6, 8 a 9. Fodd bynnag, mae'r ad-drefnu'r ffordd yr ydym yn gosod y swyddogaethau, drwy welliant 7, yn rhoi mwy o amlygrwydd i'r mater pwysig hwn y byddwn yn ei drafod yn y gwelliannau sy'n dilyn.

matter of more logical drafting, but the fact that we differentiate between the two functions that are important to the commissioner's work means that we will be able to give greater prominence in the proposed Measure to the commissioner's function of promoting, encouraging and safeguarding high standards of conduct by Assembly Members. Perhaps it would be appropriate for me to say more about that, with your permission, Chair, in relation to amendments 6, 8 and 9. However, this alteration to how we lay out the commissioner's functions, through amendment 7, gives more prominence to this important issue that we will discuss in the amendments that follow.

[10] **Rosemary Butler:** Thank you. Do any Members wish to speak?

[11] **Jeff Cuthbert:** I am quite content with this amendment, and I believe it to be in the spirit of the work of the Committee on Standards of Conduct. Therefore, I am supportive.

[12] **Rosemary Butler:** Presiding Officer, do you want to reply to the debate?

[13] **Y Llywydd:** Na. Yr wyf yn croesawu cefnogaeth Jeff Cuthbert fel Cadeirydd y pwyllgor yn fawr, a'ch parodrwydd i ganiatáu i mi siarad i'm gwelliannau. Yr wyf yn dechrau mwynhau fy hun, ac yn deall beth yr wyf i fod i'w wneud.

The Presiding Officer: No. I very much welcome Jeff Cuthbert's support as Chair of the committee, and your willingness to allow me to speak to my amendments. I am starting to enjoy myself, and to understand what my role is.

[14] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 7 or withdraw it?

[15] **The Presiding Officer:** I wish to proceed to a vote, Chair.

[16] **Rosemary Butler:** The question is that amendment 7 be agreed to. I call for a vote.

*Gwelliant 7: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 7: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 7.
Amendment 7 agreed.*

**Darpariaeth mewn Perthynas â Swyddfa'r Cwnsler Cyffredinol (1 a 2)
Provisions in Relation to the Office of the Counsel General (1 and 2)**

[17] **Rosemary Butler:** The lead amendment in this group is amendment 1 on page 2 of

the marshalled list. Jeff, would you like amendment 1 in your name to be moved?

[18] **Jeff Cuthbert:** Yes, please.

[19] **Rosemary Butler:** I move amendment 1 in the name of Jeff Cuthbert. I call on Jeff Cuthbert to speak to amendment 1, and the other amendment in the group.

[20] **Jeff Cuthbert:** Essentially, these amendments are technical in nature and relate to the functions of the Counsel General. At the moment, the office is held by an Assembly Member, but the Government of Wales Act 2006 allows for someone who is not an Assembly Member to be appointed to that post. Such a person would be able to take part in Assembly proceedings by answering questions, for example, but could not vote. As the Counsel General is able to participate in proceedings in those circumstances, some, but not all, of the provisions of the Act apply to such a person. The requirements that apply are those in section 36 of the Act—that Members must register relevant interests, must declare interests before taking part in proceedings, and must not advocate particular causes for reward. Other than in relation to those specific requirements, the Act does not impose on a Counsel General who is not an Assembly Member the disciplinary regime that applies to elected Members, although such a person would be subject to the ministerial code, which is outside the scope of this proposed Measure. It follows that, were this proposed Measure to provide for the commissioner to investigate complaints against a Counsel General who was not an elected Member, other than those relating to the requirements of section 36, this would be outside the legislative competence of the Assembly. These two amendments are intended to avoid this result by restricting the complaints that the commissioner will be able to investigate against a Counsel General who is not an elected Member to those that arise under the relevant provisions of section 36 only.

[21] **Rosemary Butler:** Do any other Members wish to speak?

[22] **Ann Jones:** I am sorry that we did not have a Stage 1 debate on this. There are quite a few issues that I would have liked to tease out, but I cannot, because we are discussing the amendment specifically, rather than the subject as a whole. I feel that we have missed out on a debate around some of the issues, so I am at a loss as to understand all that you are saying; I just have to accept that that is the case. I find it quite sad that we did not have a Stage 1 debate.

[23] **Rosemary Butler:** We discussed this, and I wrote to the Presiding Officer with your comments. No doubt we will have a reply in due course. Do any other Members wish to speak? I see not. There is no debate, Jeff, but you are welcome to reply if you want.

[24] **Jeff Cuthbert:** On that point, I can assure Members that the Committee on Standards of Conduct during its work—this is the first Assembly Measure proposed by a committee—went into these matters quite thoroughly, but the lawyers drew our attention to this issue, and the purpose of these amendments is simply to clarify the type of investigation that could be carried out on the Counsel General in the event of that person not being an Assembly Member, which could well be the case in the future.

[25] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 1 or withdraw it?

[26] **Jeff Cuthbert:** I wish to proceed to a vote, Chair.

[27] **Rosemary Butler:** The question is that amendment 1 be agreed to. I call for a vote.

*Gwelliant 1: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 1: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 1.
Amendment 1 agreed.*

[28] **Rosemary Butler:** We now come to dispose of amendment 2, in accordance with the marshalled list. Would you like amendment 2 in your name to be moved, Jeff?

[29] **Jeff Cuthbert:** Yes, Chair.

9.40 a.m.

[30] **Rosemary Butler:** I move amendment 2 in the name of Jeff Cuthbert. The question is that amendment 2 be agreed to. I call for a vote.

*Gwelliant 2: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 2: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 2.
Amendment 2 agreed.*

**Prif Nod y Comisiynydd (Gwelliannau 8, 9 a 6)
Principal Aim of the Commissioner (Amendments 8, 9 and 6)**

[31] **Rosemary Butler:** The lead amendment is amendment 8 in the name of Dafydd Elis-Thomas, which is grouped with amendments 9 and 6. Presiding Officer, would you like amendment 8 in your name to be moved?

[32] **The Presiding Officer:** Yes, Chair.

[33] **Rosemary Butler:** I move amendment 8 in the name of Dafydd Elis-Thomas. I call on the Presiding Officer to speak to amendment 8 and the other amendments in the group.

[34] **Y Llywydd:** Nod y gwelliannau hyn, fel yr awgrymais wrth drafod y grŵp blaenorol, yw pwysleisio pwysigrwydd rôl y Comisiynydd Safonau, nid yn unig i ymchwilio i gwynion ond hefyd i hybu, annog a diogelu safonau ymddygiad uchel ar gyfer Aelodau'r Cynulliad yn eu swyddi cyhoeddus. Yr wyf yn ddiolchgar iawn i Gadeirydd y pwyllgor—er na wn beth y bydd yn ei ddweud mewn munud—am y cyfle hwn

The Presiding Officer: These amendments, as I suggested with the previous group of amendments, are intended to stress the importance of the role of the Commissioner for Standards, not just to investigate complaints but also to promote, encourage and safeguard high standards of conduct for Assembly Members in relation to their public office. I am very grateful to the committee Chair—although I do not know what he will

i gyflwyno'r gwelliannau hyn, fel y soniais ar y dechrau, yn rhinwedd fy swydd fel Cadeirydd Comisiwn y Cynulliad. Dyma'r corff sy'n gyfrifol am ddarparu adnoddau ar gyfer Aelodau, fel y gwyddoch, a'r cyfan sy'n ymwneud â gwaith y Cynulliad fel corff democrataidd.

say in a few moments—for this opportunity to introduce these amendments, as I mentioned earlier, in my capacity as the Chair of the Assembly Commission. This is the body responsible for providing resources to Members, as you know, and all aspects of the work of the Assembly as a democratic body.

[35] Yr ydym yn trafod y materion hyn pan ddaw rhyw gysgod o rywle arall—neu gwmwl neu storm—ar ein traws. Felly, credaf ei bod yn bwysig ein bod, yn y broses o weithio ar y Mesur arfaethedig a'i ddiwygio, yn manteisio yn y Mesur arfaethedig ar y cyfle sydd gennym o fewn y pwerau a'r cymhwysedd a roddir inni gan Atodlen 5 Deddf Llywodraeth Cymru a mater 13, sydd ar lech fy nghalon, Gadeirydd. Mae'r mater yn y maes hwnnw yn ein cyfeirio'n benodol tuag at ddulliau o ymdrin â chwynion. Gan fod cyfeiriad at faterion cysylltiol hefyd o fewn y mater hwnnw, yr ydym yn manteisio ar y cyfle hwnnw i geisio gwella'r Mesur arfaethedig hwn yn ôl y gwelliannau ger eich bron er mwyn pwysleisio ein bod yn rhoi braint uchel iawn ar ddyletswydd Aelodau'r Cynulliad yn eu swyddi cyhoeddus i ddilyn safonau ymddygiad uchel.

We are discussing these issues at a time when a shadow is cast over us from another place—or a cloud or storm. Therefore, I believe that it is important that we, in the process of working on the proposed Measure and amending it, take advantage in this proposed Measure of the opportunity that we have within the powers and competence given to us through Schedule 5 of the Government of Wales Act and matter 13—which is inscribed on my very soul, Chair. The matter in that field refers us specifically to methods of dealing with complaints. As there is reference to other related issues within that matter, we take this opportunity to try to amend this proposed Measure according to the amendments laid before you in order to emphasise that we place a very high value on the duty of Assembly Members in their public roles to follow the highest standards of conduct.

[36] Mae gwelliannau 8 a 9 yn cryfhau'r hyn a oedd gynt yn adran 6(1)(c) drwy bwysleisio bod y swyddogaeth a nodir yno yn ychwanegol at yr hyn a nodir yn adran 6(1)(a) drwy egluro bod rôl y Comisiynydd Safonau, wrth gynghori Aelodau'r Cynulliad ar faterion y mae'n cyfeirio atynt, yn ymwneud ag annog a diogelu safonau uchel yn ogystal â'u hybu. Nodwn yn gwbl glir bod y swyddogaeth hon o arddel a chynnal safonau uchel o ran 'annog a diogelu' yn ganolog i swydd y Comisiynydd Safonau. Disgwylir felly i'r person a benodir roi sylw sylweddol i'r agwedd yma ar y gwaith.

Amendments 8 and 9 strengthen what was section 6(1)(c) by emphasising that the function set out within it is additional to that set out in 6(1)(a) and by making it clear that the role of the Commissioner for Standards, in advising Assembly Members on the matters to which it refers, relates not only to encouraging and safeguarding high standards but also to promoting those standards. We make it entirely clear that this function of assuming and upholding high standards, in relation to 'encouraging and safeguarding', is central to the role of the Commissioner for Standards. The individual appointed will therefore be expected to address this aspect of the work.

[37] Mae gwelliant 6 yn mynd â hyn gam ymhellach drwy nodi'n glir ar ddechrau'r Mesur arfaethedig mai prif nod y Comisiynydd Safonau, wrth arfer swyddogaethau o dan y Mesur arfaethedig, fydd 'hybu, annog a diogelu' safonau ymddygiad uchel yn eu swyddi cyhoeddus.

Amendment 6 takes this a step further by including, at the beginning of the proposed Measure, a clear statement that the principal aim of the Commissioner for Standards, in exercising functions under the proposed Measure, will be to 'promote, encourage and safeguard' high standards of conduct in

Gyda'i gilydd, bydd y gwelliannau hyn yn egluro na fydd rôl y comisiynydd yn un gul, sydd wedi'i chyfyngu i ymchwilio i gŵyn benodol, heb ystyried materion ehangach.

public office. Taken together, these amendments will make it clear that the role of the commissioner will not be restricted, nor confined to investigating particular complaints, with no concern for wider issues.

[38] Yn hytrach, caiff rôl y comisiynydd ei mynegi'n glir o ran safonau uchel mewn bywyd cyhoeddus. Mae hyn yn bwysig iawn. Gan ein bod yn gwneud hyn, ac yn ei wneud ar yr adeg hon, fel y cyfeiriais yn gynnil yn gynharach, bydd y cyhoedd yn gallu gweld ei bod yn ofynnol i'r comisiynydd weithredu er budd y cyhoedd ac nid er ein budd ni fel Aelodau'r Cynulliad. Bydd rôl y comisiynydd hefyd wedi'i seilio'n gadarn ar yr egwyddor bod atal camymddwyn yn well nag unioni achosion o gamymddygiad ymhlith Aelodau'r Cynulliad.

Instead, the commissioner's role will be clearly expressed in relation to high standards in public life. This is very important. Due to the fact that we are doing this, and doing it now, as I mentioned subtly earlier, the public will be able to see that the commissioner is required to act in the public interest and not in our interests as Assembly Members. The commissioner's role will also be firmly based on the principle that, in relation to misconduct on the part of Members, prevention is better than cure.

[39] **Rosemary Butler:** Do any Members wish to speak?

[40] **Ann Jones:** May I have some guidance on amendment 8, where we are altering the word 'any' to 'other'? Is that necessary? Surely it should read, 'any matter', because 'other matter' could mean anything. I do not see why there is a need to put 'other' in there rather than 'any'. I accept what you have said, but I just do not know about this. Is it just a matter of style or is there something different that you are trying to get at?

[41] **The Presiding Officer:** I would not say that it is significantly different semantically, but I am advised that it is better drafting.

[42] **Rosemary Butler:** Is it a matter of style?

[43] **The Presiding Officer:** No, I would not say that it is style; style is also content.

[44] **Rosemary Butler:** Yes, but I mean the 'drafting style', which we have referred to previously. Are you content with that, Ann?

[45] **Ann Jones:** Yes, that is fine.

[46] **Rosemary Butler:** Does anyone else wish to speak?

[47] **Jeff Cuthbert:** Again, as the Chair of the Committee on Standards of Conduct, I believe that this amendment is compatible with our work and, as such, I am supporting it.

[48] **The Presiding Officer:** To reply to another point made by Ann Jones earlier, if I may, the Business Committee has considered the whole question of Stage 1—this is the process issue that you referred to—as the Chair of the committee has already indicated. I do not think that I am letting any cats out of the Business Committee's bag by saying that, in the discussion that we had, we were very favourably disposed towards the idea that there should always be a Stage 1 report that had come from a committee. If that is satisfactory, Ann, there are no other points to reply to.

[49] **Rosemary Butler:** Presiding Officer, do you wish to proceed to a vote on amendment 8 or withdraw it?

[50] **The Presiding Officer:** I wish to proceed to a vote, Chair.

[51] **Rosemary Butler:** The question is that amendment 8 be agreed to. I call for a vote.

*Gwelliant 8: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 8: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 8.
Amendment 8 agreed.*

[52] **Rosemary Butler:** We now come to dispose of amendment 9 in the name of Dafydd Elis-Thomas; this has already been debated with amendment 8. Presiding Officer, would you like amendment 9 in your name to be moved?

[53] **The Presiding Officer:** Yes.

[54] **Rosemary Butler:** I move amendment 9 in the name of Dafydd Elis-Thomas. The question is that amendment 9 be agreed to. I call for a vote.

*Gwelliant 9: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 9: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 9.
Amendment 9 agreed.*

**Dyltyswydd y Clerc i Gyfeirio Mater at y Comisiynydd (Gwelliannau 11 a 10)
Duty of the Clerk to Refer a Matter to the Commissioner (Amendments 11 and 10)**

[55] **Rosemary Butler:** The lead amendment is amendment 11 in the name of Dafydd Elis-Thomas, which is grouped with amendment 10. Presiding Officer, would you like amendment 11 in your name to be moved?

[56] **The Presiding Officer:** Yes, please, Chair.

[57] **Rosemary Butler:** I move amendment 11 in the name of Dafydd Elis-Thomas. I call on the Presiding Officer to speak to amendment 11 and the other amendment in the group.

[58] **Y Llywydd:** Nod y gwelliannau hyn yw cryfhau'r dulliau diogelu yn erbyn achosion o gamymddwyn gan Aelodau'r Cynulliad mewn perthynas â defnyddio cyllid
The Presiding Officer: These amendments are intended to strengthen safeguards against misconduct by Assembly Members in relation to the use of public funds. There is

cyhoeddus. Does dim rhaid imi, yn y fan hon, gyfeirio at y storm y cyfeiriaais ati yn gynharach a'r pryder penodol sydd gan y cyhoedd—pryder hollol briodol yn fy marn i—ynglŷn ag unrhyw gwestiwn o gamymddwyn a chamddefnydd o gyllid cyhoeddus gan bersonau etholedig.

no need for me, at this point, to refer to the storm to which I referred earlier and the specific concerns of the public—in my opinion, a wholly appropriate concern—about any kind of misconduct and misuse of public funds by elected persons.

[59] Mae gwelliant 11 yn gosod ddyletswydd ar y Comisiynydd Safonau i ddwyn i sylw Clerc y Cynulliad—fel y swyddog cyfrifyddu ar gyfer cyllid a gaiff ei drin gan y comisiwn—unrhyw amgylchiadau sy'n dod i'r amlwg yn ystod ymchwiliad a allai fod yn berthnasol i ddyletswydd y Clerc o dan yr adran newydd a gyflwynwyd gan welliant 10. Byddaf yn dweud mwy am y ddyletswydd hon ar ôl egluro effaith gwelliant 10.

Amendment 11 places a duty on the Commissioner for Standards to bring to the attention of the Clerk of the Assembly—as accounting officer for funds administered by the commission—any circumstances which come to light in the course of an investigation which could trigger the Clerk's duty under the new section introduced by amendment 10. I will say more about this duty when I have explained the impact of amendment 10.

9.50 a.m.

[60] Bydd y ddyletswydd o dan yr adran newydd a gyflwynwyd gan welliant 10 yn ddyletswydd gadarnhaol i'r Clerc, fel prif weithredwr y Cynulliad, gyflwyno tystiolaeth i'r Comisiynydd Safonau o achosion ymddangosiadol o gamymddwyn gan Aelod o'r Cynulliad sy'n berthnasol i swyddogaeth y Clerc fel y swyddog cyfrifyddu—hynny yw, tystiolaeth o achosion o gamddefnyddio cronfeydd cyhoeddus. Lle y bydd tystiolaeth o achos o gamymddwyn o'r fath yn dod i sylw aelodau o staff y Cynulliad Cenedlaethol, bydd y prif weithredwr, wrth gwrs, yn gallu sicrhau eu bod yn cyfeirio materion o'r fath at y prif weithredwr a'r Clerc, a bydd hithau wedyn yn gyfrifol am ddwyn y mater i sylw'r Comisiynydd Safonau o dan yr adran hon. Caiff y mater ynghylch y camau y dylai staff eu cymryd pan fyddant yn dod ar draws tystiolaeth o anghysondeb ariannol posibl ar ran Aelodau ei ddatrys drwy osod gweithdrefnau priodol o fewn staffio Comisiwn y Cynulliad—nid yw hwnnw'n fater i mi nac yn fater uniongyrchol i'r Mesur arfaethedig, fe dybiwn, ond bydd yn fater i'r swyddog cyfrifyddu a'r prif weithredwr weithredu yn ei gylch. Ar yr amod bod digon o dystiolaeth i roi sail resymol dros amau, bydd yn ofynnol, yn ôl y gyfraith, gyfeirio'r mater at y comisiynydd iddo ymchwilio iddo.

The duty under the new section introduced by amendment 10 will be a positive duty on the Clerk, as the Assembly's chief executive, to report to the Commissioner for Standards evidence of apparent misconduct by an Assembly Member that is relevant to the Clerk's function as accounting officer—in other words, evidence of misuse of public funds. Where evidence of such misconduct comes to the attention of staff of the National Assembly, the chief executive will, of course, be able to ensure that staff refer such matters to the chief executive and the Clerk, and she will then be responsible for reporting the matter to the Commissioner for Standards under this section. The question of what action staff should take when they come across evidence of potential financial irregularity on the part of Members will be resolved by setting the appropriate procedures in place with the Assembly Commission's staffing—that is not a matter for me or for the proposed Measure directly, I suppose, but it will be a matter that requires action on the part of the accounting officer and the chief executive. Provided there is sufficient evidence to give reasonable grounds for suspicion, it will be required, by law, to refer the matter to the commissioner for investigation.

[61] Byddwch wedi nodi, Gadeirydd, fod

You will have noticed, Chair, that

gwelliant 11 wedi'i eirio yn y fath fodd fel nad mater i'r comisiynydd fydd cychwyn ymchwiliad pan fo deunydd, a all fod yn dystiolaeth o gamwedd ariannol, yn dod i'r amlwg yn ystod ymchwiliad. Mae hwn wedi bod yn destun ystyriaeth ac, yn wir, mae Cadeirydd y pwyllgor a minnau wedi ei drafod o'r blaen. Byddai'r gwelliant yn sicrhau nad y Comisiynydd Safonau ei hun fyddai'n gyfrifol am gychwyn ymchwiliad, gan osgoi sefyllfa sydd, mi wn, wedi bod yn destun trafodaeth yn y pwyllgor hwn o'r blaen, wrth i'r Mesur arfaethedig gael ei baratoi. Byddai'n amhriodol i'r Comisiynydd Safonau weithredu fel barnwr ac erlynydd yn yr un achos, megis. Yn hytrach, o dan y gwelliant hwn, bydd rhaid cyfeirio unrhyw ddeunydd a allai arwain at achos rhesymol dros amau at y Clerc i'w ystyried ymhellach. Dim ond os bydd y Clerc, wedi ystyried y mater, yn credu bod sail resymol dros amau achos o gamwedd ariannol y caiff y mater ei gyfeirio'n ffurfiol at y comisiynydd.

[62] Mae'n werth nodi, mewn achos o'r fath, pe bai'r comisiynydd, ar ôl cychwyn y broses, yn teimlo am unrhyw reswm nad oedd yn gallu cyflawni'r ymchwiliad heb i bobl amau ei natur ddiuedd, byddai adran 3 o'r Mesur arfaethedig yn galluogi penodi comisiynydd dros dro i edrych i mewn i'r gŵyn benodol honno.

[63] Gyda'i gilydd, bydd y ddau welliant hyn yn sicrhau cydbwysedd rhwng sicrhau natur ddiuedd a gwrthrychol swydd y Comisiynydd Safonau ar y naill law, ac ar y llaw arall sicrhau bod achosion o gamymddwyn ariannol yn destun ymchwiliad trylwyr os bydd sail gadarn dros amau bod hynny wedi digwydd. Diben hyn oll, sef gosod dyletswydd ar y prif weithredwr, yw sicrhau bod cyfundrefn o 'ganu'r chwiban'—os mai dyna'r term cywir—fydd yn cael ei sefydlu o dan ofal prif weithredwr y Cynulliad fel y bydd staff y Cynulliad yn teimlo'n hyderus i adrodd unrhyw dystiolaeth o gamymddwyn honedig. Bydd hynny wedyn yn dilyn y trywydd soniais amdano, gan roi diogelwch a hyder i'r cyhoedd ein bod yn benderfynol o gadw ein tŷ mewn trefn ac o warchod cyllid cyhoeddus rhag unrhyw awgrym o gamymddwyn.

amendment 11 has been worded in such a way that the commissioner will not have a role in instigating an investigation when material, which could be evidence of financial wrongdoing, is brought up during an investigation. This has been the subject of consideration and, indeed, the committee Chair and I have discussed it previously. The amendment would ensure that it would not be the Commissioner for Standards who would be responsible for initiating an investigation, thereby avoiding a situation that I know has been the subject of debate in this committee previously, as the proposed Measure was being prepared. It would be inappropriate for the Commissioner for Standards to act as judge and prosecutor in the same case, as it were. Rather, this amendment would require any material that could lead to reasonable grounds for suspicion to be directed to the Clerk for further consideration. Only if the Clerk, having considered the matter, deems there to be reasonable grounds for suspicion of financial irregularity will the matter be formally referred to the commissioner.

It is worth mentioning that if, in such a case, the commissioner, having triggered the process, were to feel for any reason unable to carry out the investigation without people doubting his impartiality, section 3 of the proposed Measure would enable an acting commissioner to be appointed to look into that particular complaint.

Taken together, these two amendments will ensure a balance between maintaining the impartiality and objectivity of the office of the Commissioner for Standards on one hand and, on the other, ensuring that cases of financial misconduct are subjected to rigorous investigation if there are firm grounds for suspecting that to be the case. The purpose of all this, namely placing a duty on the chief executive, is to ensure that the 'whistleblowing arrangements'—if that is the correct term—are established under the supervision of the Assembly's chief executive so that Assembly staff feel confident in reporting any evidence of alleged misconduct. The matter will then proceed along the lines that I mentioned, thereby giving the public the reassurance and confidence in our determination to keep our house in order and to safeguard public

finances against any suggestion of misconduct.

[64] **Rosemary Butler:** Does any Member wish to speak?

[65] **Eleanor Burnham:** Nid wyf yn siŵr a wyf wedi deall yn union pam bod eisiau dau gam. A allwch egluro hynny? Yr wyf yn meddwl yn ôl i'r adeg yr oeddwn ar y fainc fel ynad heddwch i dynnu rhyw gymhariaeth. Pam bod eisiau dwy rôl mewn mater fel hwn? Os yw'r comisiynydd yn gomisiynydd annibynnol, pam na ddylai ef neu hi arwain yr achos o'r cychwyn ac mynd ag ef drwy'r holl broses, yn y cyd-destun, fel y bu ichi ddweud gynnau, ein bod o dan gwmwl du oherwydd rhywle arall?

Eleanor Burnham: I am not sure that I have understood exactly why two stages are needed. Can you clarify that? I am thinking back to the time when I was on the bench as a magistrate to draw some kind of comparison. Why are two roles required in a matter such as this? If the commissioner is an independent commissioner, why should he or she not lead the case from the outset and take it through the whole process, in the context, as you mentioned previously, that we are under a cloud because of another place?

[66] **Ann Jones:** I have listened very carefully, but I am still struggling—there were many issues that I would have asked questions about during Stage 1. Are we being asked to vote on the lead amendment in this group before we vote on whether there will be a new section on the functions of the clerk? Is that not putting the cart before the horse? How can we vote for an amendment that will refer to a new section when we have not voted and agreed on the new section? Are we just assuming that all of these amendments will be agreed? If there is a proposed new section, should it not be voted on first before we amend other sections? Are you not asking us to vote on something that does not exist? We are referring to the duty of the clerk, but we have not put that on the face of the proposed Measure at the moment. I cannot understand why we are putting the cart before the horse.

[67] **Rosemary Butler:** The process is that we vote on new sections at the end.

[68] **Ann Jones:** Amendment 11 refers clearly to the new section, which is proposed by amendment 10, but I cannot understand how we can vote to amend the proposed Measure in this way when we have not put in that new section. I understand what you are saying, but I feel that we should put the new section in first and then have amendment 11 afterwards. It might just be me, but I cannot put the cart before the horse.

[69] **Rosemary Butler:** That is what we have done previously, and that is the procedure. Someone may need to look at that, but we have dealt with such issues in a previous meeting. It is a bit confusing, but that is the procedure, Ann.

[70] **Jeff Cuthbert:** When I was driving in this morning, I heard the reporters from Radio Wales refer to our discussions on *Good Morning Wales* and they said that the commissioner would be 'proactive'. The commissioner would certainly be proactive in terms of the promotion of high standards—we have already dealt with that. It is also important to make clear in this regard that the purposes of these amendments are not to require the commissioner to go looking for issues that could lead to complaints against Assembly Members, because if the commissioner initiated such action then he or she, as outlined earlier by the Presiding Officer, could not be a fair judge and jury—you cannot be the prosecutor and the judge. So, it is very important that we safeguard the impartiality of the commissioner.

[71] In the event of an investigation revealing potential evidence that might imply wrongdoing by another Assembly Member, the amendments and the new section would enable matters to be referred to the clerk as the principal accounting officer. Provided it falls within his or her functions, it would then be for the clerk to decide whether or not it warranted

a complaint, and then to refer the matter back to the commissioner. So, the duty on the commissioner to receive complaints, as opposed to initiate complaints, remains unaltered as a result of these amendments. I think that they are within the spirit of our work—it is a logical role for the clerk as principal accounting officer to perform in terms of safeguarding Assembly resources, so I support the amendments.

[72] **The Presiding Officer:** In response to Ann Jones's point, if amendment 11 were agreed at this stage without amendment 10, we would have to return to this during Stage 3. As the Chair has already explained, it is a way of proceeding procedurally, as it were. Therefore, one is consequent upon the other. The order in which we take amendments is governed by our Standing Orders and our practice. If Ann Jones is asking us to consider this procedurally, I am sure, Chair—I am also looking at your clerk—that you might consider drafting me another of your nice letters.

10.00 a.m.

[73] **Rosemary Butler:** We would have to discuss it first, Presiding Officer, and then we might write to you.

[74] **The Presiding Officer:** I will leave that there.

[75] Ynglŷn â phwynt Eleanor Burnham am dynnu cymhariaeth â'i phrofiad fel ynad, yr wyf wedi darllen bod y pwyllgor wedi trafod diogelu annibyniaeth y Comisiynydd Safonau, pwy bynnag fydd ef neu hi. Cafodd y mater hefyd ei drafod gyda'n Comisiynydd Safonau presennol, Richard Penn, pan oedd drafft o'r Mesur yn cael ei baratoi. Yr oedd ef hefyd o'r farn ei fod yn bwysig diogelu annibyniaeth y comisiynydd wrth sicrhau bod gan y comisiynydd y gallu a'r gefnogaeth fewnol o ran staffio—sydd yn fater i ni fel Comisiwn y Cynulliad ac i minnau fel Cadeirydd y comisiwn—i ddelio gyda'r materion hyn yn drwyadl. Felly, y pwynt i'w wneud, gan ddefnyddio'r enghraifft o ynad heddwch, yw pe bai Eleanor Burnham, pan oedd hi'n eistedd ar y fainc, yn dod ar draws tystiolaeth o gamymddwyn, nid hi fyddai'n ymchwilio i mewn i'r camymddwyn hynny, am wn i. Fodd bynnag, pwy a wŷr yn achos yr ynad arbennig hwnnw? Mater i'w gyfeirio at yr heddlu fyddai—byddai'r heddlu'n dod i mewn yma hefyd pe bai unrhyw awgrym o drosedd yn codi. Fodd bynnag, mae'r cyfrifoldeb cyntaf o ymchwilio o safbwynt safonau gan brif weithredwr y Cynulliad. Mae hynny'n golygu nad yw'r comisiynydd yn cychwyn yr achos ond y gall ddyfarnu arno, gan arbed sefyllfa'n codi lle ymddengys bod y comisiynydd yn cymysgu swyddogaethau.

With regard to Eleanor Burnham's point about drawing a comparison with her experiences as a magistrate, I have read that the committee has discussed safeguarding the independence of the Commissioner for Standards, whoever he or she may be. That issue was also discussed with our current Commissioner for Standards, Richard Penn, when the draft of the Measure was being prepared and he was also of the opinion that it was important to safeguard the independence of the commissioner while ensuring that the commissioner had the ability and internal support in terms of staff—which is an issue for the Assembly Commission and for me as the Chair of the commission—to deal with these matters thoroughly. Therefore, the point to be made, taking the example of magistrate, is that had Eleanor Burnham, when she was on the bench, come across evidence of misconduct, she would not be the one to investigate that misconduct, as far as I know. However, who can tell in the instance of that particular magistrate? It would be a matter to refer to the police—the police would come in here also were there any suggestion of an offence. However, the first responsibility to investigate in relation to standards should lie with the Assembly chief executive. That means that the commissioner does not initiate the case but can adjudicate on it, preventing a situation arising in which it could appear that the commissioner was mixing functions.

[76] **Rosemary Butler:** Do you wish to proceed to a vote on amendment 11, Presiding Officer?

[77] **The Presiding Officer:** Yes please, Chair.

[78] **Rosemary Butler:** The question is that amendment 11 be agreed to. I call for a vote.

*Gwelliant 11: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 11: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 11.
Amendment 11 agreed.*

**Cyfyngu ar Ryddhau Gwybodaeth (Gwelliannau 3 a 4)
Restriction of Disclosure of Information (Amendments 3 and 4)**

[79] **Rosemary Butler:** The fifth grouping of amendments to consider this morning is in relation to the restriction of disclosure of information, and amendments 3 and 4. The lead amendment in the group is amendment 3 in the name of Jeff Cuthbert on page 3 of the marshalled list. Jeff, would you like amendment 3 in your name to be moved?

[80] **Jeff Cuthbert:** Yes, please.

[81] **Rosemary Butler:** I move amendment 3 in the name of Jeff Cuthbert, and I call on him to speak to amendment 3 and the other amendment in that group.

[82] **Jeff Cuthbert:** It has been argued that these amendments are perhaps not necessary, in the sense that, of course, the commissioner must work within the framework of the law of the land. However, section 13 is designed to preserve, as far as possible, the confidentiality of information gathered by the commissioner when investigating a complaint. That duty cannot be absolute; there could well be a duty on the commissioner, for example, to co-operate with the police or the Crown Prosecution Service if an alleged crime is being considered, so that the evidence can form part of an investigation or potential prosecution. There could be other instances where the law may require the commissioner to disclose information: for example, under the Data Protection Act 1998 or if there are civil legal proceedings. The purpose of these two amendments is to make that clear on the face of the proposed Measure, and they do not override any duty to disclose other information. There are also occasions when information given to the Commissioner for Standards would form part of a report by the Committee on Standards of Conduct if it were to investigate a case more fully. So, these two amendments merely clarify the situation.

[83] **Rosemary Butler:** I see that no Member wishes to speak on this. Do you wish to proceed to a vote on amendment 3?

[84] **Jeff Cuthbert:** Yes, Chair.

[85] **Rosemary Butler:** The question is that amendment 3 be agreed to. I call for a vote.

Gwelliant 3: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 3: For 4, Abstain 0, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

Derbyniwyd gwelliant 3.
Amendment 3 agreed.

[86] **Rosemary Butler:** We now come to dispose of amendment 4, on page 3 of the marshalled list. Jeff, would you like amendment 4 to be moved in your name?

[87] **Jeff Cuthbert:** Yes, please.

[88] **Rosemary Butler:** I move amendment 4 in the name of Jeff Cuthbert. The question is that amendment 4 be agreed to. I call for a vote.

Gwelliant 4: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 4: For 4, Abstain 0, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

Derbyniwyd gwelliant 4.
Amendment 4 agreed.

Dehongli (Gwelliant 5) **Interpretation (Amendment 5)**

[89] **Rosemary Butler:** The last grouping of amendments to consider this morning is group 6, in relation to interpretation. The only amendment in the group is amendment 5, which is on page 3 of the marshalled list. Jeff, would you like amendment 5 in your name to be moved?

[90] **Jeff Cuthbert:** Yes please, Chair.

[91] **Rosemary Butler:** I move amendment 5 in the name of Jeff Cuthbert and I call on Jeff to speak to the amendment.

[92] **Jeff Cuthbert:** Section 17(2) defines references in the proposed Measure to ‘the Assembly’ in a way that includes, where appropriate, the Committee on Standards of Conduct. This approach enables the Assembly as a whole to delegate various functions relating to the commissioner to that committee. However, there are some provisions of the proposed Measure that can relate only to the Assembly in Plenary session. This amendment, which can properly be described as technical in nature, makes it clear that the codes and resolutions to be enforced, with the assistance of the commissioner, must all have been approved by the Assembly in Plenary. Resolution of the Committee on Standards of Conduct

cannot count as relevant provisions, and the amendment merely makes this clear.

[93] **Rosemary Butler:** I see that no Member wishes to speak on this amendment. Jeff, do you wish to proceed to a vote on amendment 5 or withdraw it?

[94] **Jeff Cuthbert:** I wish to move to a vote, please.

[95] **Rosemary Butler:** The question is that amendment 5 be agreed to. I call for a vote.

*Gwelliant 5: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 5: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 5.
Amendment 5 agreed.*

[96] **Rosemary Butler:** In accordance with the marshalled list, we now come to dispose of amendment 6, which was debated earlier as part of group 3 in relation to the principal aim of the commissioner. Presiding Officer, would you like amendment 6 in your name to be moved?

[97] **The Presiding Officer:** Yes please, Chair.

[98] **Rosemary Butler:** I move amendment 6 in the name of Dafydd Elis-Thomas. The question is that amendment 6 be agreed to. I call for a vote.

*Gwelliant 6: O blaid 4, Ymatal 0, Yn erbyn 0.
Amendment 6: For 4, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw

*Derbyniwyd gwelliant 6.
Amendment 6 agreed.*

[99] **Rosemary Butler:** We now come to dispose of amendment 10, which was debated earlier as part of group 4 in relation to the duty of the clerk to refer a matter to the commissioner. Presiding Officer, would you like amendment 10 in your name to be moved?

[100] **The Presiding Officer:** I would, Chair.

[101] **Rosemary Butler:** I move amendment 10 in the name of Dafydd Elis-Thomas. The question is that amendment 10 be agreed to. I call for a vote.

*Gwelliant 10: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 10: For 5, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Asghar, Mohammad
Burnham, Eleanor
Jones, Ann
Lewis, Huw
Ramsay, Nick

*Derbyniwyd gwelliant 10.
Amendment 10 agreed.*

[102] **Rosemary Butler:** All sections and Schedules of the proposed Measure are deemed to have been agreed by the committee under Standing Order No. 23.40. If a proposed Measure is amended during Stage 2 proceedings so as to insert a section or Schedule or substantially alter any existing provision, the committee considering Stage 2 proceedings may request that the Member in charge prepare a revised explanatory memorandum. I consider that the amendments agreed by this committee have substantially altered some existing provisions. As such, do Members agree that the Member in charge should prepare a revised explanatory memorandum? I see that you do. In accordance with Standing Order No. 23.42, Stage 3 begins tomorrow, which is 25 June, and the deadline for tabling amendments will be notified to Members in due course and will also be published in the business notice.

[103] **Ann Jones:** Before you close the meeting, I would like to take up the offer that the Presiding Officer kindly mentioned, and which we said we would discuss. I find it strange to put the cart before the horse, and I would like to look at a way of taking this through in a spirit of openness. If we have new sections to insert, we should consider those first. It seems silly to have to go to Stage 3 and amend something on a technicality. I would prefer that that were done openly and then debated. I would like us to discuss that.

[104] **Rosemary Butler:** I had planned to put that on the agenda for the next meeting. The clerk will provide a paper on that so that we can have a discussion. If we feel that there should be a change, we can write to the Presiding Officer. I remind Members that there is a meeting on 1 July. I declare the meeting closed.

*Daeth y cyfarfod i ben am 10.10 a.m.
The meeting ended at 10.10 a.m.*