

Y Pwyllgor Safonau Ymddygiad

Dyddiad: 15 Gorffennaf 2008

Amser: 5:30pm

Lleoliad: Ystafell Bwyllgora 3

Teitl: Mesur Arfaethedig - Comisiynydd Safonau - ymatebion i'r ymgynghoriad

Cefndir

1. Mae'r papur hwn yn crynhoi ymatebion cyntaf i ymgynghoriad â rhanddeiliaid a rhai sydd â diddordeb, ar Fesur arfaethedig i wneud y Comisiynydd Safonau yn rôl sydd wedi'i sefydlu mewn statud.

2. Yn ei gyfarfod ar 3 Mehefin cytunodd y Pwyllgor i gynnal ymarfer ymgynghori ar rai cwestiynau sylfaenol am rôl ac annibyniaeth y Comisiynydd Safonau cyn drafftio Mesur arfaethedig (mae papur SOC(3)-02-08(p4) yn cyfeirio ato). Byddai'r ymatebion i'r ymarfer hwn yn galluogi'r Pwyllgor i gytuno ar gyfarwyddiadau drafftio i gyfreithwyr Gwasanaeth Seneddol y Cynulliad fel bod y Mesur, pan gaiff ei gyflwyno, yn adlewyrchu'r canlyniad polisi dymunol.

3. Cyhoeddwyd gwahoddiad i gyflwyno tystiolaeth ar 6 Mehefin i restr o randdeiliaid a rhai â diddordeb y cytunwyd arnynt. Gofynnwyd am y cyflwyniadau erbyn 4 Gorffennaf er mwyn caniatáu amser i'w hystyried am y tro cyntaf cyn diwedd tymor yr haf. Mae Atodiad 1 y papur hwn yn crynhoi'r ymatebion ac yn amlygu'r materion allweddol sy'n codi. Mae'r llythyr a'r rhestr o ymgynghoreion i'w gweld fel atodiadau 2 a 3.

4. Bydd yr ymgynghori cyhoeddus ar y Mesur arfaethedig yn parhau yn ystod yr haf a chaiff rhagor o faterion sy'n codi o hynny eu hystyried gan y Pwyllgor yn ystod tymor yr hydref.

Camau i'w cymryd

1. Gwahoddir y Pwyllgor i:

Ystyried yr ymatebion cyntaf a dderbyniwyd ac i nodi'r materion allweddol sy'n codi, fel y crynhowyd yn atodiad 1 y papur hwn.

Nodi unrhyw dystion yr hoffai'r Pwyllgor eu gwahodd i roi tystiolaeth lafar.

Gwasanaeth y Pwyllgorau

Annex 1

Responses to Consultation

1. Responses were received from the following:

Scottish Parliamentary Standards Commissioner

Scottish Parliament Committee on Standards, Procedures and Public Appointments

Standards in Public Office Commission - Ireland

Houses of the Oireachtas - Ireland

Public Services Ombudsman for Wales

Auditor General for Wales

Commissioner for Standards for Wales

First Minister of Wales

2. The Public Services Ombudsman for Wales (PSOW), Standards in Public Office Commission in Ireland and the Scottish Parliamentary Standards Commissioner have all indicated their willingness to give oral evidence should the Committee wish to ask them for further input.

3. The Northern Ireland Assembly's Committee on Standards and Privileges felt it inappropriate to comment at this time as it has plans to consider its own arrangements for the appointment and powers of a Standards Commissioner. The Parliamentary Commissioner for Standards in Westminster did not feel it appropriate to provide evidence but offered assistance with factual material should it be required. Whilst the Scottish Parliament's Standards, Procedures and Public Appointments Committee felt it may be inappropriate to comment on the policy matters under consideration, it drew attention to previous Scottish Parliament discussions in the context of the Standards Commissioner's Act. These may be of relevance to this Committee's consideration of general principles, for example amendments agreed at Stage 2 regarding handling of complaints that are subsequently withdrawn, powers to call and qualified privilege.

4. The Standards Commissioner for Wales has responded but given that he currently holds the role and is therefore a potential candidate for the role of Statutory Commissioner, has confined his response to focusing on the principles underpinning the establishment of a statutory Office, based on his experiences to date.

5. The First Minister has confined his response to question 14 (on the Standards Commissioner's role in relation to Ministers) as the only question which has a direct impact on the Welsh Assembly Government

6. Framework questions

In establishing the general principles of the Measure for Stage 1, the Committee consulted on the following framework questions:

2. Is there a need for an Assembly Measure to establish a statutory role of Commissioner for Standards?

3. What should be the role of the Commissioner for Standards?

4. What fundamental principles should underpin the establishment of the Office?

Key issues

7. The need for legislation and fundamental principles of the status of the Commissioner

Consultees who expressed a view supported the legislative approach.

The Auditor General for Wales (AGW) noted that whilst the current arrangements work well, a statutory post would provide greater protection and authority and ensure that properly defined arrangements were in place. He supported the application of the principles outlined in Professor Woodhouse's 2002 report "Review of the Standards of Conduct Regime of the National Assembly for Wales" to the office.

The Public Services Ombudsman for Wales (PSOW) likewise supports the post being established in law and to be, "insofar as is feasible, independent of the National Assembly for Wales."

The Scottish PSC said that all arrangements regarding the post should maximise the Commissioner's independence.

The AGW supports the model for his office and that of the Public Service Ombudsman as the preferred one, in particular for the Commissioner to enjoy the same statutory protection from being removed from office.

The Scottish Parliamentary Standards Commissioner (PSC) pointed to the benefits of a statutory basis for his role: in enhancing the status and the independence of the post; establishing a robust and open appointment procedure set out in the legislation; and giving the Commissioner independent powers to compel evidence and summon witnesses.. He also noted that arrangements for dismissal should protect the postholder from arbitrary action by those he/she holds under scrutiny.

The Standards in Public Office Commission in Ireland has been established in statute since 2001 and oversees the implementation of the Ethics in Public Office Acts of 1995 and 2001 (the Ethics Acts) in relation to both elected Members and senior public servants/office holders.

8. Role and responsibilities

Respondents were asked if the Commissioner should have a role in:

promoting a framework for high standards in public life

giving general advice on standards of conduct

advising Assembly Members on their conduct as well as investigating complaints

Responses indicated a broadly supportive view of a Commissioner having a role in the promotion of a framework for high standards in public life, and of giving general advice on standards of conduct. Both the PSOW and the AGW considered that promoting a framework of high standards in public life would be consistent with such a (high profile) role.

The PSOW noted that the Commissioner would have an overarching perspective on standards of conduct by Assembly Members that would make her/him well placed to undertake the function of issuing general advice on standards of conduct, and that there should also be provision for powers to issue statutory guidance.

Following the Woodhouse report principle of "Advice as Prevention", the Auditor General also considered that the Commissioner should be able to give both general advice and advice to Members on conduct, but both the request and response should be in writing.

Views on the question of advice given to Assembly Members on individual matters are more varied. The PSOW thought that should form a part of the duties of the Assembly Commission: "This would fit in with the Commission's aims of protecting the reputation of the Assembly and supporting Assembly Members in their work as elected representatives. It would also avoid conflict within the role of the Commissioner."

The Scottish PSC commended the arrangements for his role as an independent investigator of complaints about MSP conduct. There is a deliberate splitting of roles in the Scottish Parliament, with the Clerk to the Standards, Procedures and Privileges Committee advising Members in relation to the code of conduct, so that the Commissioner does not have to investigate a complaint about an issue on which they have previously given advice. The Scottish PSC noted there were some advantages in combining the roles, as in Westminster, but "I think the need for the Commissioner to be demonstrably independent from the Parliament or Assembly and unbiased and impartial in investigation persuades me that the separation of roles is preferable."

In Ireland the Standards Commission's principle functions include the provision of advice and guidelines on compliance with the Ethics Acts, the administration of disclosures of interests and tax clearance provisions, and investigations into possible contraventions, whether as a result of complaint or on its own initiative. They also publish and distribute of the Code of Conduct, which is drawn up by the appropriate Committees on Members' Interests, and by the Government for Office Holders, following statutory consultation with the Standards Commission)

9. Powers

Respondents were asked whether the Commissioner should have independent discretion to decide whether to investigate a complaint, and powers to call "people and papers" and conclusively agreed with both aspects.

The PSOW thought there should be independent discretion to decide whether or not a complaint merits investigation and to initiate an investigation: "From the experience of the office, some complaints are insufficiently serious to warrant an investigation and to do so would not be an appropriate use of public money."

The AGW noted that independent discretion to decide on investigating a complaint or initiating an investigation was common practice in other models and supported by the Woodhouse report.

The PSOW supported powers to summon persons, and require papers and records to be provided: "This would reflect the powers of the Ombudsman which have proven an indispensable aspect of the role. Without such powers, it would be difficult if not impossible to properly investigate allegations."

The AGW also felt that the Commissioner should not be reliant on the cooperation of Members or on the Standards of Conduct Committee to exercise its discretion in calling people or papers.

The Scottish PSC considers it very important to have independent powers to call and not rely on powers of the Committee or Assembly, even if those powers rarely need to be used. The Standards Commission in Ireland also has the power to call papers under the Ethics Acts.

10. Reporting

Consultees were asked whether the Commissioner should have the ability to make findings and conclusions public, and if he/she should report directly to the Assembly, or to the Standards of Conduct Committee.

The Auditor General considered that unless there is a compelling reason for confidentiality in a specific case the ability to make findings public is consistent with the principle of being open and transparent. (No examples of 'compelling reasons for confidentiality' were detailed in his response). The PSOW similarly supported this for reasons of transparency and public accountability.

The PSOW felt that the role should be accountable to the National Assembly as far as the use of public funds is concerned, but for administrative and practical purposes, was of the view that investigation reports should be submitted directly to the Standards of Conduct Committee.

The Standards Commission in Ireland holds public hearings and publishes investigation reports. It provides an annual report to the Minister for Finance which is laid before the Irish Parliament no more than two months later.

The Scottish PSC said that the Commissioner should be able to investigate complaints independently of the Committee and the Assembly prior to reporting to the Committee on Standards of Conduct.

11. Appointment

Respondents were asked how the Commissioner should be appointed and for how long.

The AGW suggested that as the UK Parliamentary Commissioner is appointed by resolution of the House of Commons and the Scottish PSC following an open recruitment by the corporate body and subsequent agreement of Parliament, that the Commissioner for Standards be similarly appointed by a resolution of the National Assembly. He also suggested that a period of 7 years, within the range of other similar offices, would allow the appointment to overlay the Assembly terms of 4 years. This would allow a maximum period of 28 years between occasions when the Commissioner was appointed at the start of an Assembly term.

The PSOW has given detailed consideration to appointment and taken the views of the British and Irish Ombudsman Association into account. He has concluded that in order to achieve the desired levels of objectivity and independence, the appointment should be for a term of five years or more.

The Scottish PSC felt strongly that appointments should not be subject to a re-appointment process but be for a single term, non-

renewable. The main justification being the "undesirable potential pressure on the independence and perceived independence of the postholder". He noted that The Committee on Standards in Public Life has also concluded this in relation to the equivalent post in Westminster, recommending that in future the PSC should have a single term of 5-7 years. The AGW also supports appointment on a non-renewable basis in line with evolving practice for other offices.

The legislation in Ireland provides that the Chairperson and ordinary members of the Standards Commission are appointed for a 6 year term and may be reappointed for a second or subsequent term.

12. Resourcing

Both the PSOW and the AGW said it would be preferable for the Commissioner to be paid/funded in the same way as their posts, ie directly from the Welsh Consolidated Fund, which works well. The Auditor General was also of the opinion that enshrining the funding arrangements of the Office in legislation would help ensure it was adequately resourced.

Consultees were asked if the Standards Commissioner should have dedicated staff be able to appoint those staff, or be supported by another organisation such as the office of the Public Services Ombudsman.

The PSOW pointed out that it already possesses the skilled investigative staff and appropriate case management systems necessary to investigate alleged breaches of standards, and its existing resources could be enhanced to support the work of a statutory Standards Commissioner: "This would avoid the expense of a new free-standing administration, especially given the likely episodic nature of the workload, and would also enhance the actual and perceived independence of the role."

The Auditor General also noted the merits of this approach in terms of reducing overall costs and administrative burden of a Commissioner's office, and for example in preventing the need for separate accounts to be prepared and audited. The secretariat of the Standards Commission in Ireland is provided by the Office of the Ombudsman, and the Commission is satisfied with the level of resource provided.

The current Commissioner for Standards is supported by Assembly Commission staff who also undertake other roles. He has provided the Committee with details of current arrangements, including providing standards-related advice to Members, processing complaints and dealing with correspondence and enquiries. In relation to handling complaints, the Commissioner emphasises that any role for staff has been limited to gathering evidence or clarifying facts and that it is for the Commissioner alone to consider that evidence.

The Commissioner notes that Assembly Commission staff have maintained the distinction between supporting his independent role as Commissioner and their responsibilities in regularly providing advice and guidance to Members in other roles, and that Assembly Members are also aware of the distinction between the two roles. His response recognises the need for further consideration of the way in which the Commissioner is supported in light of the proposed Measure, and that this presents an opportunity to create a properly resourced independent office in line with the revised role and enhanced profile. It is hoped that those elements that currently work well for the Commissioner in his non-statutory role will be continued and where necessary enhanced when support to the statutory Commissioner is considered.

13. Other issues

Consultees were asked if the Commissioner for Standards should have the same role relating to Ministers as for other Assembly Members.

The First Minister referred the Committee to his previous letter of 31 January 2008 to the Committee Chair, and set out that "The Ministerial Code covers every aspect of Ministerial practice with particular emphasis on those areas where potential difficulties and conflicts may arise. The code places a clear duty on the First Minister to ensure that Ministers comply with the Code. The fundamental principle is that investigations into the conduct of Ministers in the performance of their Ministerial duties must remain a matter for the First Minister."

In addition he highlighted that " "... The Ministerial Code provides clear lines of accountability in the context of the Government of Wales Act 2006 and any Measure, which proposes to establish a Commissioner for Standards, would need to consider the implications of any conflicts that could arise between the general standards of conduct expected of Assembly Members and the standards expected of Ministers when executing their functions."

The AGW saw no need to alter current arrangements in relation to the Ministerial Code and the ability for complaints to be made directly to the First Minister and suggested that "the role of the Commissioner for Standards be confined in the first instance to the conduct of Assembly Members rather than Ministers."

The PSOW said that the arrangements should apply in the same way for Ministers when they are acting in their capacity as Assembly Members; and recognised there are other mechanisms already in place with regard to Ministers' conduct in respect of their executive/administrative functions.

In Ireland the Standards Commission has a supervisory role under their Ethics Acts. The broad focus of the Ethics Acts is to provide for disclosure of interests, including any material factors which could influence a Government Minister or Minister of State, a member of the Houses of the Oireachtas or a public servant in performing their official duties. The legislation also requires the drawing up of codes of conduct for ordinary members of the Houses, for office holders (e.g. Ministers of the Government and Ministers of State) and for public servants.

Consultees were invited to consider the practicalities of making the system work and how the proposed Measure should make provision for these.

The Auditor General's view was that the legislation should require the Commissioner to cooperate with both the AGW and PSOW on matters that fall within their respective statutory remits.

The Scottish Parliament is prevented by legislation from directing the PSC on whether and how to investigate an individual complaint, but can give general directions about the conduct of investigations.

Full details of all responses received will be available on the Committee's web pages.

Annex 2

06 June 2008

Dear Colleague

Public Consultation: Assembly Measure To Establish A Statutory Role Of Commissioner For Standards - Invitation To Respond

The National Assembly for Wales' Committee on Standards of Conduct intends to propose an Assembly Measure to establish the office of a statutory Commissioner for Standards. I am writing, on behalf of the Committee, to invite you to submit evidence to them.

Background

The purpose of the Committee's work is to ensure that proper standards of conduct are upheld by Members of the Assembly. The Standards Commissioner is currently a non-statutory role. As part of the process of developing a proposed Measure, the Committee has decided to undertake a consultation exercise on some of the fundamental questions about the role and independence of the Commissioner for Standards. The purpose of the consultation is to inform the Committee's consideration of the general principles, and the drafting of the Measure.

The Committee has agreed the scope of its work with the following questions:

1. Is there a need for an Assembly Measure to establish a statutory role of Commissioner for Standards?
2. What should be the role of the Commissioner for Standards?
3. What fundamental principles should underpin the establishment of the Office?

In addition to the framework questions detailed above, the Committee has identified a number of more detailed questions that you may wish to answer. These are attached at annex 1 to this letter.

If you wish to contribute to the committee's work, submissions should be sent, preferably electronically by email or on disc, or otherwise in hard copy to:

Lara Date
Committee Service

National Assembly for Wales, Cardiff Bay, CF99 1NA.

Email: Standards@wales.gsi.gov.uk. (Please entitle the email Consultation Standards of Conduct Committee.)

The Committee welcomes contributions in English and Welsh and will consider responses to the written consultation during July to inform the initial drafting of the proposed Measure. The committee would therefore appreciate if you could make your submission by Friday 4 July 2008. Consultation with the general public will remain open during the summer.

When putting together your submission, please keep the following in mind:

Your response should be as succinct as possible. Please reference your response using the title applied above;

The National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed at Committee meetings. If you do not want your response or name published, it is important that you clearly specify this in your submission;

Please indicate whether you are responding on behalf of an organisation, or as an individual;

Please indicate whether or not you would be prepared to give oral evidence to the Committee.

If you have any queries, please contact the Second Clerk to the Committee, Lara Date on 029 2089 1821 or the Committee Clerk Sulafa Halstead on 029 2089 8238. Further information about the Committee on Standards of Conduct can also be found on the Assembly's website at www.assemblywales.org

Yours sincerely,

Letter - Annex 1

Consultation questions:

The proposed Measure relates to establishing a statutory Commissioner for Standards. Would it be better for the Assembly to tackle the issue in an alternative way?

The Auditor-General for Wales and the Public Service Ombudsman for Wales are "watchdog" bodies which are independent of the National Assembly for Wales and established in law. Should the status of the Commissioner for Standards be established in law in the same way?

The Auditor-General for Wales and the Public Service Ombudsman for Wales are currently appointed by the Monarch on the recommendation of the Assembly. How should the Commissioner for Standards be appointed?

The Commissioner for Standards is currently appointed for a 4 year period. The Auditor-General for Wales is appointed for 5 years and the Public Service Ombudsman for Wales for 7 years. The Scottish Standards Commissioner is appointed for 6 years and the Parliamentary Standards Commissioner of 5 years. How long should the Commissioner for Standards be appointed for?

The current Commissioner for Standards is paid an annual retainer and receives fees on a basis of days worked. The posts of Auditor-General for Wales and the Public Services Ombudsman for Wales are funded from the Welsh Consolidated Fund. How should the post of Commissioner for Standards be funded?

The Commissioner for Standards is currently supported by Assembly Parliamentary Service staff who are not appointed exclusively to support his work. Should the Standards Commissioner have dedicated staff and should he or she be able to appoint his/her own staff, or be supported by another organisation such as the office of the Public Services Ombudsman?

Should the Commissioner for Standards have a role in promoting a framework for high standards in public life?

Should the Commissioner for Standards be able to give general advice on standards of conduct?

Should the Commissioner for Standards advise Assembly Members on their conduct as well as investigating complaints?

Should the Commissioner for Standards have independent discretion to decide whether or not a complaint merits investigation or to initiate an investigation?

Should the Commissioner for Standards have the powers to be able to summon persons, and require papers and records to be provided?

Should the Commissioner for Standards have the ability to make findings and conclusions public?

Should the Commissioner for Standards report directly to the Assembly, or to the Standards of Conduct Committee?

Should the Commissioner for Standards have the same role relating to Ministers as for other Assembly Members?

What will be the practicalities of making the system work and how should the proposed Measure make provision for these?

Annex 3

List of Consultees

Standards Commissioner

Public Services Ombudsman for Wales

Welsh Local Government Association

The Parliamentary and Health Service Ombudsman

Scottish Public Services Ombudsman

Ombudsman for Ireland

Study of Parliament Group

Auditor General for Wales

Professor Diana Woodhouse

Committee for Standards in Public Life

Law Society for Wales

Cymru Yfory -Tomorrow's Wales

Institute of Welsh Affairs

The public (open call for views)

Both the PSOW and the AGW said it would be preferable for the Commissioner to be paid/funded in the same way as their posts, ie directly from the Welsh Consolidated Fund, which works well. The Auditor General was also of the opinion that enshrining the funding arrangements of the Office in legislation would help ensure it was adequately resourced.

Consultees were asked if the Standards Commissioner should have dedicated staff be able to appoint those staff, or be supported by another organisation such as the office of the Public Services Ombudsman.

The PSOW pointed out that it already possesses the skilled investigative staff and appropriate case management systems necessary to investigate alleged breaches of standards, and its existing resources could be enhanced to support the work of a statutory Standards Commissioner: ""This would avoid the expense of a new free-standing administration, especially given the likely episodic nature of the workload, and would also enhance the actual and perceived independence of the role." "

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Consultees were asked if the Commissioner for Standards should have the same role relating to Ministers as for other Assembly Members.

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Consultees were invited to consider the practicalities of making the system work and how the proposed Measure should make provision for these.

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06 June 2008

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PUBLIC CONSULTATION: ASSEMBLY MEASURE TO ESTABLISH A STATUTORY ROLE OF COMMISSIONER FOR STANDARDS - INVITATION TO RESPOND

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Background

The purpose of the Committee's work is to ensure that proper standards of conduct are upheld by Members of the Assembly. The Standards Commissioner is currently a non-statutory role. As part of the process of developing a proposed Measure, the Committee has decided to undertake a consultation exercise on some of the fundamental questions about the role and independence of the Commissioner for Standards. The purpose of the consultation is to inform the Committee's consideration of the general principles, and the drafting of the Measure.

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Committee Service

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Yours sincerely,

Sulafa Halstead

Clerk to the Committee on Standards of Conduct

Letter - Annex 1

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Auditor General for Wales

Professor Diana Woodhouse

Committee for Standards in Public Life

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Cymru Yfory -Tomorrow's Wales

Institute of Welsh Affairs

The public (open call for views)