

## **Standards Committee**

### **SOC(3)-05-08 Paper 3**

# **Proposed National Assembly for Wales Standards Commissioner Measure 2008**

A MEASURE of the National Assembly for Wales to establish a Commissioner to investigate complaints about the conduct of Assembly Members and to report to the Assembly on the outcome of such investigation; and for connected purposes.

**This Measure, passed by the National Assembly for Wales on [       ] and approved by Her Majesty in Council on [       ], enacts the following provisions:-**

*The National Assembly for Wales Standards Commissioner*

**1 The Commissioner**

- (1) There is to be a National Assembly for Wales Standards Commissioner (in this Measure referred to as “the Commissioner”).
- (2) The Commissioner is to be appointed by [the Assembly].
- (3) A person is not eligible to be appointed as the Commissioner if that person -
  - (a) is an Assembly Member,
  - (b) has been an Assembly Member at any time during the period of 2 years prior to the date when the appointment is to take effect,
  - (c) is a member of staff of the Assembly, or
  - (d) has been a member of the staff of the Assembly at any time during the period of 2 years prior to the date when the appointment is to take effect.
- (4) The Commissioner is to be appointed for a term of 6 years.
- (5) A person who has held office as the Commissioner may be appointed for a further term (whether consecutive or not).
- (6) A person who has been appointed as the Commissioner may at any time –
  - (a) resign by notice given to the [Assembly], or
  - (b) be removed from office by the [Assembly].
- (7) A person may not be removed from office as the Commissioner under subsection (6)(b) unless –
  - (a) the Assembly so resolves, and
  - (b) if the resolution is passed on a vote, the number of votes cast in favour of the resolution is not less than two thirds of the total number of votes cast.
- (8) The appointment of a person as Commissioner ceases if that person –
  - (a) becomes a candidate to be an Assembly Member for an Assembly constituency or an Assembly electoral region, or
  - (b) is appointed to be a member of the staff of the Assembly.

## **2 Further provision about the Commissioner**

The Schedule makes further provision about the Commissioner.

## **3 Appointment of an Acting Commissioner**

- (1) When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the [Assembly] may appoint a person to discharge the functions of that office either generally or in relation to such case or class of cases, and until such time, as may be specified by the terms and conditions of such appointment; and a person so appointed is referred to in this section as the “acting Commissioner”.
- (2) The Commissioner and the acting Commissioner may each discharge the functions of the office of the Commissioner at the same time but in relation to different cases.
- (3) A person who is not eligible to be appointed as the Commissioner is not eligible to be appointed as the acting Commissioner.
- (4) A person appointed as the acting Commissioner –
  - (a) may at any time resign by notice given to the [Assembly];
  - (b) may at any time be removed from office by the [Assembly];
  - (c) ceases to hold office in the circumstances specified in section 1(a) and (b);
  - (d) in other respects, holds office on such terms and conditions as the [Assembly] may determine; and
  - (e) while holding that appointment is to be treated for all purposes (except those of section 1) as the Commissioner.

## **4 Independence of the Commissioner**

The Commissioner is not, in the exercise of any functions, to be subject to the direction or control of the Assembly.

### *Functions of the Commissioner*

## **5 Functions of the Commissioner**

- (1) The functions of the Commissioner are –
  - (a) to receive any complaint that the conduct of an Assembly Member has, at a relevant time, failed to comply with a requirement of a relevant provision;

- (b) to investigate any such complaint in accordance with the provisions of this Measure;
  - (c) to report to the Assembly the outcome of any such investigation; and
  - (d) the further functions conferred by section 6.
- (2) A “relevant time” means a time when the requirement in question was in force but it is irrelevant whether the conduct in question is alleged to have taken place before or after this section comes into force.
- (3) A “relevant provision” means –
- (a) any provision of the Standing Orders relating to –
    - (i) the registration or declaration of financial or other interests,
    - (ii) the notification by Assembly Members of their membership of societies;
    - (iii) the registration or notification of any other information relating to Assembly Members or to persons connected to Assembly Members.
  - (b) any resolution of the Assembly relating to the financial or other interests of Assembly Members;
  - (c) any Code of Conduct approved by the Assembly relating to standards of conduct of Assembly Members;
  - (d) any resolution of the Assembly relating to standards of conduct of Assembly Members; and
  - (e) any provision included in the Standing Orders (or in any code or protocol made under them) in accordance with section 36(6) of the Government of Wales Act 2006 (c.32).
- (4) It is irrelevant whether a relevant provision came into force before or after this section comes into force.

## **6 Further functions of the Commissioner**

- (1) The Commissioner may (and if requested by the Assembly to do so must) give advice to the Assembly –
- (a) on any matter of general principle relating to relevant provisions or to standards of conduct of Assembly Members generally,
  - (b) on procedures for investigating complaints that Assembly Members have failed to comply with the requirements of relevant provisions,

- (c) on any matter relating to the promotion of high standards of conduct in public life.
- (2) The Commissioner may give advice to Assembly Members and to members of the public about the procedures for making and investigating complaints to which this Measure applies.

*Investigation of Complaints*

**7 Investigation of Complaints by the Commissioner**

- (1) The Commissioner must investigate complaints and must, subject to subsection (3), report to the Assembly on the outcome of investigations, in accordance with –
  - (a) the provisions of the Standing Orders; and
  - (b) any rules relating to the consideration of complaints against Assembly Members which have been adopted by the Assembly under the Standing Orders.
- (2) Subject to subsection (1), it is for the Commissioner to decide when and how to carry out an investigation and to report on its outcome.
- (3) If, upon investigating a complaint, it appears to the Commissioner that –
  - (a) the complaint does not comply with the requirements of any procedure prescribed by the Assembly for dealing with complaints against Assembly Members,
  - (b) the complaint is not supported by sufficient evidence to justify further investigation,
  - (c) the conduct complained of would not, if established, amount to a breach of a relevant provision, or
  - (c) the complaint is trivial in nature,the Commissioner may dismiss the complaint summarily without reporting on it to the Assembly but must instead notify in writing the Assembly Member in question and the person who made the complaint, giving reasons for the dismissal.
- (4) A report by the Commissioner to the Assembly on the outcome of an investigation may not include any recommendation as to what sanction, if any, should be imposed on the Assembly Member in question.

*Investigatory Powers of the Commissioner*

**8 Power to call for witnesses and documents**

- (1) The Commissioner may, in accordance with section 9, require any person—
  - (a) to attend before the Commissioner for the purpose of giving evidence, or
  - (b) to produce to the Commissioner documents in the possession or under the control of that person,  
concerning any matter relevant to an investigation which the Commissioner is carrying out under this Measure.
- (2) For the purposes of this section,
  - (a) a person will be taken to comply with a requirement to produce a document if that person produces a copy of the document or an extract of the relevant part of, the document;
  - (b) “document” means anything in which information is recorded in any form; and
  - (c) references to producing a document are to producing the information recorded in it in a visible and legible form.
- (3) The Commissioner may pay such reasonable allowances and expenses to persons giving evidence before the Commissioner, or producing documents to the Commissioner, as the Commissioner may determine.

## **9 Witnesses and documents: notice**

- (1) A requirement under section 8 may only be imposed on a person by the Commissioner giving the person in question notice in writing specifying—
  - (a) the time and place at which the person is to attend and the particular subjects concerning which the person is required to give evidence;
  - (b) the documents, or types of documents, which the person is to produce, the date by which and the person to whom they are to be produced and the particular subjects concerning which they are required.
- (2) Notice under subsection (1) is to be given—
  - (a) in the case of an individual, by sending it in accordance with subsection (3) addressed to the person at the person's usual or last known address or, where the person has given an address for service of the notice, at that address, or
  - (b) in any other case, by so sending it addressed to the person at the person's registered or principal office,

- but may only be given if the address in question is in Wales or in England.
- (3) A notice is sent in accordance with this subsection if it is sent –
- (a) by a registered post service (within the meaning of the Postal Services Act 2000 (c.26)), or
  - (b) by postal service which provides for its delivery by post to be recorded.

## **10 Oaths and affirmations**

The Commissioner may –

- (a) administer an oath or affirmation to any person giving evidence to the Commissioner, and
- (b) require that person to take an oath or make an affirmation.

## **11 Privilege and public interest immunity**

- (1) A person is not obliged by any requirement imposed under section 8(1) to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Wales or England.
- (2) A person acting as prosecutor in criminal proceedings is not obliged under this section to answer any question or to produce any document concerning the operation of the system of criminal prosecution in any particular case if the appropriate officer –
- (a) considers that answering the question or producing the document might prejudice criminal proceedings in the case or would otherwise be contrary to the public interest, and
  - (b) has authorised the person to decline to answer the question or produce the document on that ground.
- (3) In subsection (4) “the appropriate officer” means –
- (a) the Counsel General if the proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General, and
  - (b) otherwise, the Attorney General.

## **12 Offences**

- (1) A person to whom a notice has been given under section 9(1) commits an offence if that person –

- (a) refuses or fails without reasonable excuse to attend before the Commissioner as required by the notice;
  - (b) refuses or fails without reasonable excuse, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice;
  - (c) refuses or fails without reasonable excuse to produce any document required to be produced by the notice; or
  - (d) intentionally alters, suppresses, conceals or destroys any such document.
- (2) Subsection (1) is subject to section 11.
- (3) Any person who, without reasonable excuse, refuses to take an oath or make an affirmation when required to do so under section 10 commits an offence.
- (4) If a person charged with an offence under subsection (1)(a),(b) or (c) or under subsection (3) adduces evidence of a reasonable excuse for the refusal or failure, it is for the prosecution to prove that the person did not have such an excuse.
- (5) A person guilty of an offence under this section is liable on summary conviction –
- (a) to a fine not exceeding level 5 on the standard scale,
  - (b) to imprisonment for a period not exceeding three months, or
  - (c) both.
- (6) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
- (7) In subsection (6) “director”, in the case of a body corporate whose affairs are managed by its members, means a member of the body corporate.

### **13 Restriction on disclosure of information**

- (1) Except as permitted by subsection (2), the Commissioner or the staff of, or any other person appointed by, the Commissioner must not disclose any



information contained in the complaint or any information which is furnished to or obtained by them in the course of, or for the purposes of, an investigation into that complaint.

- (2) Such information may be disclosed for the purpose of—
- (a) enabling or assisting the Commissioner to discharge any functions imposed or conferred on the Commissioner by virtue of any provision in this Measure, or
  - (b) the investigation or prosecution of any offence or suspected offence.

#### **14 Protection from defamation actions**

- (1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Measure—
- (a) by the Commissioner; or
  - (b) to the Commissioner
- is absolutely privileged.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c 31).

#### **15 Transitional provision**

- (1) The Assembly may require the Commissioner to undertake an investigation into any complaint which, on the day when this section comes into force, has been received, or is under investigation, by the Assembly.
- (2) Any such requirement may direct the Commissioner to take into account any information in connection with the complaint which is specified in the direction.
- (3) Subject to any such requirement, any complaint which the Commissioner is directed to investigate is to be treated in the same way as any other complaint which is made to the Commissioner.

#### *General*

#### **16 Annual report**

- (1) The Commissioner must, as soon as possible after the end of each financial year, lay before the Assembly an annual report on the performance of the functions of the Commissioner throughout that year.

- (2) Subject to subsection (3) the report must contain a concise statement of information relating to the financial affairs and transactions of Commissioner in the performance of those functions during that year.
- (3) The Commissioner must comply with any requirement imposed by the Assembly as to the form of the annual report and as to any specific information or class of information which it must contain.

## **17 Interpretation**

- (1) In this Measure –
  - “Assembly Member” includes –
    - (a) the Counsel General even where that officer is not an Assembly Member; and
    - (b) except for the purposes of section 1(3)(a) and (b), a former Assembly Member and a former Counsel General;
  - “the Clerk” means the Clerk of the Assembly;
  - “the Commission” means the National Assembly for Wales Commission;
  - “Counsel General” means the Counsel General to the Welsh Assembly Government; and
  - “Standing Orders” means the Standing Orders of the Assembly.
- (2) Any reference in this Measure to “the Assembly” is a reference to –
  - (a) the National Assembly for Wales, or
  - (b) other than in sections 1 and 3, any committee or subcommittee of the Assembly to which there have been delegated, by or under the Standing Orders, functions relating to complaints that Assembly Members have failed to comply with the requirements of relevant provisions.

## **18 Short title and commencement**

- (1) This Measure may be referred to as the National Assembly for Wales Standards Commissioner Measure 2008.
- (2) This Measure comes into force as follows –
  - (a) this section and sections 1, 2 (including the Schedule) and 17 come into force on the day after that on which this Measure is approved by Her Majesty in Council, and

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**Revised Draft KB 16.10.08 (2)**

- (b) the remaining provisions of this Measure come into force on the day after that on which notice under subsection (3) is published.
- (3) The Clerk must, as soon as is reasonably practicable after the first appointment of a Commissioner under this Measure takes effect, cause to be published, in at least one newspaper circulating in Wales, notice of –
  - (a) the fact that the appointment in question has taken effect, and
  - (b) the fact that by reason of the publication of the notice all provisions of this Measure (other than those already in force) will come into force on the day after the day on which it is published.

## SCHEDULE

### Section 2

#### THE NATIONAL ASSEMBLY FOR WALES STANDARDS COMMISSIONER

##### *Appointment*

- 1 The Assembly must make arrangements for –
  - (a) ensuring that any person to be appointed as Commissioner has been identified by fair and open competition, and
  - (b) settling the terms on which such appointment, when made, is to have effect.
- 2 Arrangements referred to in paragraph 1, (but not the appointment of the person so identified,) may be delegated by the Assembly, in whole or in part, to the Commission, to a committee of the Assembly or to the staff of the Assembly and may include the involvement in such arrangements of persons independent of the Assembly.

##### *Corporation sole*

- 3 The person for the time being holding office as National Assembly for Wales Standards Commissioner is to be, by the name of that office, a corporation sole.

##### *Documents*

- 4 (1) The application of the seal of the Commissioner is to be authenticated by the signature of –
  - (a) the Commissioner, or
  - (b) any person authorised by the Commissioner for that purpose.
- (2) A document purporting to be duly executed under the seal of the Commissioner or to be signed on the Commissioner's behalf may be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.

##### *Remuneration*

- 5 (1) The Commission must –
  - (a) pay the Commissioner such salary and any such allowances, and

- (b) make any such payments towards the provision of superannuation benefits for or in respect of the Commissioner, as may be provided for by or under the terms of the Commissioner's appointment.
- (2) The Commission must pay to or in respect of a person who has ceased to hold office as Commissioner such amounts (if any) by way of –
  - (a) pension or gratuities, or
  - (b) provision for those benefitsas may have been provided for by or under the terms of the Commissioner's appointment.
- (3) The Commission must discharge such reasonable liabilities as the Commissioner has lawfully incurred –
  - (a) in employing staff,
  - (b) in securing the provision of services, and
  - (c) in relation to the allowances and expenses of persons giving evidence or producing documents.
- (4) Sums required for the making of payments under sub-paragraphs (1) and (2) are to be charged on the Welsh Consolidated Fund.

*Staff and services*

- 6 (1) The Commissioner may, on such terms as the Commissioner may determine, appoint such staff or secure the provision of such services as the Commissioner considers necessary for assisting in the exercise of the Commissioner's functions.
- (2) The Commissioner may enter into arrangements with any public body or office holder, upon such terms as the Commissioner and such body or office holder may agree, for the provision by that body or office holder of such services as the Commissioner considers necessary for assisting in the exercise of the Commissioner's functions.

*Financial Information*

- 7 The Commissioner must provide the Commission with such information about the Commissioner's financial affairs and transactions as the Commission may reasonably require for the purpose of enabling it to comply with any requirement imposed on the Commission by a direction given to the Commission in relation to the Commissioner under section 137(1) and (2) of the Government of Wales Act 2006 (c.32).