

Y Pwyllgor Safonau Ymddygiad

SOC(3)-03-09 Paper 1

Ymgynghoriad Cynulliad Gogledd Iwerddon – Ymateb drafft

Cefndir

1. Mae Pwyllgor Safonau a Braint Cynulliad Gogledd Iwerddon yn cynnal ymchwiliad i benodi Comisiynydd Safonau ar gyfer y Cynulliad, i gynnal Cod Ymddygiad ac i ymdrin â thorri honedig ar amodau'r cod hwnnw.

2. Maent wedi ysgrifennu i wahodd Pwyllgor Safonau Ymddygiad Cynulliad Cenedlaethol Cymru i gyflwyno tystiolaeth ysgrifenedig ar y mater hwn. Mae copi o'r cais i'w weld yn amgaeedig yn Atodiad A.

3. Nod yr ymchwiliad yw sefydlu'r dull mwyaf priodol o gynnal Cod Ymddygiad ac o ymdrin â thorri honedig ar amodau'r cod hwnnw.

4. Mae nifer o'r materion dan sylw'n cysylltu'n agos â'r gwaith a wnaed gan y Pwyllgor hwn yn ddiweddar pan gynigiodd y Mesur Comisiynydd Safonau Cynulliad Cenedlaethol Cymru. Paratowyd ymateb drafft yng ngoleuni'r gwaith hwnnw, ac mae i'w weld yn amgaeedig yn Atodiad B.

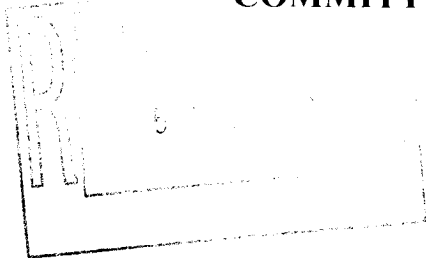
Argymhellion

5. Gwahoddir y Pwyllgor i drafod yr ymateb drafft fel sydd wedi'i atodi yn Atodiad B.

**Gwasanaeth y Pwyllgorau
Rhagfyr 2009**

**Northern Ireland
Assembly**

COMMITTEE ON STANDARDS AND PRIVILEGES



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Mr Jeff Cuthbert AM
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Standards of Conduct
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28 October 2009

Dear Mr Cuthbert

COMMITTEE INQUIRY

The Northern Ireland Assembly Committee on Standards and Privileges has agreed to carry out an Inquiry on the appointment of an Assembly Commissioner for Standards, on maintaining the Northern Ireland Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members (the Code of Conduct), and on handling alleged breaches in relation to the Code of Conduct. I write on behalf of the Committee to invite you to submit written evidence on the issue, as per the attached issues paper.

I would be grateful if you could submit your response to me by Friday 18 December 2009.

Please feel free to pass this on to other individuals or organisations that may have an interest in the subject.

Should you require any further clarification please do not hesitate to contact me.

Yours sincerely

Paul Gill
Clerk of Standards

Northern Ireland Assembly

COMMITTEE ON STANDARDS AND PRIVILEGES

INQUIRY ON THE APPOINTMENT OF AN ASSEMBLY COMMISSIONER FOR STANDARDS, ON MAINTAINING THE NORTHERN IRELAND ASSEMBLY'S CODE OF CONDUCT AND GUIDE TO THE RULES RELATING TO THE CONDUCT OF MEMBERS (THE CODE OF CONDUCT), AND ON HANDLING ALLEGED BREACHES OF THE CODE OF CONDUCT

ISSUES PAPER

The Northern Ireland Assembly Committee on Standards and Privileges has agreed to carry out an Inquiry on the appointment of an Assembly Commissioner for Standards, on maintaining the Code of Conduct and on handling alleged breaches in relation to it.

Terms of Reference

The Aim of the Inquiry is to establish the most appropriate means of maintaining the Code of Conduct and handling alleged breaches in relation to it.

In doing so the Committee will consider:

- What the role, responsibilities and powers of an Assembly Commissioner for Standards should be;
- whether the position of an Assembly Commissioner for Standards should be placed on a statutory basis;
- how an Assembly Commissioner for Standards should be appointed;
- what the terms and conditions of any appointment might be;
- what the role of the Committee on Standards and Privileges should be in dealing with alleged breaches of the Code of Conduct; and
- what the role of the Assembly should be in dealing with alleged breaches of the Code of Conduct.

Current Position

The Northern Ireland Assembly's new Code of Conduct came into effect on 12 October 2009. A copy is enclosed for your information. As per the existing arrangements, the new Code of Conduct was consulted upon and drafted by the Committee on Standards and Privileges before having been put to and agreed by the Assembly. The new Code of Conduct sets out, inter alia, the process which allows for the Interim Commissioner for

Standards to investigate complaints, the Committee on Standards and Privileges to determine whether breaches have occurred and, where they have, for the Assembly to impose sanctions. The role of Interim Commissioner for Standards is fulfilled by the Northern Ireland Ombudsman, Mr Tom Frawley CBE.

The Committee now needs to formalise its arrangements in relation to a Commissioner for Standards but believes that in doing so it should also give consideration to the respective roles that the Commissioner, Committee and Assembly should fulfil, both in terms of maintaining the Code of Conduct and in terms of handling alleged breaches of it.

The respective roles of the Commissioner, Committee and Assembly are set on in detail in the Assembly's Standing Orders 57 and 69 to 69C (also enclosed) and the Code of Conduct. However, broadly speaking, the respective roles in relation to maintaining the Code of Conduct and handling alleged breaches of it are as set out below:

The Commissioner for Standards has responsibility for:

- Receiving complaints;
- Investigating admissible complaints;
- Recommending to the Committee on Standards and Privileges that complaints are inadmissible;
- Making reports to the Committee on Standards and Privileges on admissible complaints with a recommendation on whether or not the conduct complained represents a breach of the Code of Conduct; and
- Recommending the use of the rectification procedure (where appropriate)

The Committee on Standards and Privileges has responsibility for:

- Recommending modifications to the Code of Conduct;
- Dismissing complaints brought to its attention by the Commissioner which it considers to be inadmissible;
- Considering reports on admissible complaints from the Assembly Commissioner for Standards and, further to this, determining whether breaches of the Code of Conduct have occurred;
- Recommending to the Assembly that specific sanctions be imposed upon Members who have breached the Code of Conduct; and
- Allowing for the use of the rectification procedure (where appropriate).

The Northern Ireland Assembly has responsibility for:

- Agreeing modifications to the Code of Conduct (further to recommendations from the Committee on Standards and Privileges); and
- Imposing sanctions upon Members who have breached the Code of Conduct (further to reports from the Committee on Standards and Privileges).

Issues for Consideration

The Committee would welcome any comments or opinions from interested parties in respect of the terms of reference. Particular issues that respondents may wish to comment on include the following:

In terms of modifying and maintaining the Code of Conduct:

- Are the current respective roles and duties of the Committee on Standards and Privileges and the Assembly appropriate?
- Should there be any formal role for others in terms of maintaining and modifying the Code of Conduct?

In terms of handling alleged breaches of the Code of Conduct:

- Are the current respective roles and duties of the Commissioner for Standards, the Committee on Standards and Privileges and the Assembly appropriate?
- Should there be any formal role for others in terms of handling alleged breaches of the Code of Conduct?
- Should consideration be given to introducing any sort of appeals procedure in relation to decisions reached by the Committee?

In terms of appointing an Assembly Commissioner for Standards

- What should the role, responsibilities and powers of an Assembly Commissioner for Standards be?
- Existing Standing Orders state that the Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly. Is this appropriate?
- Existing Standing Orders say that the Commissioner shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the support of a number of members which equals or exceeds two-thirds of the total number of seats in the Assembly. Is this appropriate?
- Should the position of an Assembly Commissioner for Standards be placed on a statutory basis?
- Should an Assembly Commissioner for Standards have statutory powers?
- How should an Assembly Commissioner for Standards be appointed?
- What should be the eligibility criteria of any such appointment?
- What should be the terms and conditions of any appointment?
- Are there any other relevant issues which should be brought to the Committee's attention in relation to the aim of the inquiry and its terms of reference?

DRAFT Response to issues for consideration from Committee on Standards and Privileges, Northern Ireland Assembly

Inquiry on the appointment of an Assembly Commissioner for Standards, on maintaining the Northern Ireland Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members (The Code of Conduct), and on handling alleged breaches of the Code of Conduct.

Response by the NAW Committee on Standards of Conduct ("the Committee") to issues for consideration

The National Assembly for Wales is in the process of implementing similar proposals to those being consulted upon by the Northern Ireland Assembly Committee on Standards and Privileges. For that reason the response provided refers to the work that the National Assembly for Wales' Committee on Standards of Conduct has undertaken in bringing forward the National Assembly for Wales Commissioner for Standards Measure 2009.

The overarching purpose of the Measure is to ensure that the Commissioner for Standards is able to promote high standards of public life amongst Assembly Members, has the powers to enable him or her to investigate complaints rigorously, and, is, and is seen to be, totally independent of the Assembly and therefore able to act with complete objectivity. The Committee regards these as being of great significance to the ability of the people of Wales to have confidence in their elected representatives.

Annex 1 to this letter provides a summary of the Purpose of the Measure and its key provisions.

Annex 2 provides a copy of the Measure (as passed) and the Explanatory Memorandum.

Electronic versions can be found at:
(Proposed) National Assembly for Wales Commissioner for Standards Measure:
http://www.assemblywales.org/proposed_naw_sc_measure_as_amended_at_s3-e201009.pdf

Explanatory Memorandum:
<http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=145738&ds=10/2009>

Background

Details of the deliberations of the Committee in working towards the proposals for legislation can be found on the Website of the National assembly for Wales at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-std-home.htm>

The current position with regard to the role of the Commissioner for Standards, the Committee on Standards of Conduct, detail of the Code of Conduct and the Complaints Procedure can be found via the web pages of the National Assembly for Wales Commissioner for Standards:

<http://www.assemblywales.org/memhome/mem-commissioner-standards.htm>

NATIONAL ASSEMBLY FOR WALES COMMISSIONER FOR STANDARDS MEASURE 2009

Purpose of the Proposed Measure

- (1) Creates a statutory Commissioner for Standards;
- (2) Ensures that the Commissioner, once appointed, is seen to be totally independent of the Assembly and therefore able to investigate complaints against Assembly Members with complete objectivity;
- (3) Provides the Commissioner with powers to enable him/her to investigate complaints rigorously, including the power to require third parties to provide relevant information; and
- (4) Contributes to the maintenance of high standards of public life in the conduct of the Assembly's business.

Measure's key provisions

Long Title

"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".

Section 1 Commissioner

- Appointed by NAW
- Eligibility
- Term of appointment
- Resignation / Removal
- Termination

Section 2 Principal aim

".....to promote, encourage, and safeguard high standards of conduct in public office of Assembly Member".

Section 3 Further Provision

- Schedule makes further provisions about
- Appointment
- Corporation Sole

- Documents
- Financial
- Staff, goods, and services
- Financial information

Section 4 Appointment of Acting Commissioner

- Office of Commissioner is vacant or unable to act
- Commissioner / Acting Commissioner can act concurrently in different cases
- Eligibility

Section 5 Independence of the Commissioner

Not under the direction or control of the Assembly

Section 6 Functions of the Commissioner

- To receive any complaint that the AM's conduct at a relevant time, failed to comply with a requirement of a relevant provision;
- To investigate any complaint;
- To report to Assembly the outcome of any investigation;
- Other functions contained in section 7

Section 7 Further Functions

To give advice to the Assembly

- (i) on any matter of general principle relating to the relevant provisions or to standards of conduct of AM's
- (ii) on procedures for investigating complaints that AM's have failed to comply with requirements of relevant provisions
- (iii) any other matter relating to promoting, encouraging, and safeguarding high standards of conduct in public life of an AM.

Section 8 Ministerial Code

Commissioner cannot express a view / comment on

- provisions of standards of conduct contained in a Welsh Ministerial Code,
- any allegation of conduct of any person was in breach of a provision of a Welsh Ministerial Code, standards of conduct in other offices,
- effectiveness of any provision contained in a Welsh Ministerial Code

Section 9 Duty of the Clerk of the Assembly

Clerk under a duty to refer a matter to the Commissioner if she has reasonable grounds for suspecting AM's conduct at the relevant time failed to comply with a relevant provision **and** that conduct is relevant to the Clerks function *as the principal accounting officer* for the Commission.

Section 10 Investigation of Complaints

- Must investigate complaints,
- Must report to Assembly on the outcome of investigation (subject to dismissing the complaint without reporting)
- To decide when and how to undertake an investigation and report on its outcome
- Ability to dismiss the complaint without reporting
- Reports to the Assembly on the outcome of an investigation – can not recommend sanction to impose on AM
- If becomes aware of issues or practice relevant to Clerk's function as principal accounting officer – must write notifying the Clerk

Section 11 Power to call witnesses and documents

Can require any person to attend to give evidence before the Commissioner and produce documents relating to matters relevant to the investigation

Section 12 Witnesses and documents: notice

- Power to call triggered by Commissioner giving person notice in writing
- Time and place, nature of evidence
- Documents to be produced

Section 13 Oaths and affirmations

Require and administer oaths or affirmations

Section 14 Privilege and public interest immunity

Provides witnesses with safeguards against being compelled to disclose privileged (etc.) information.

Section 15 Offences

Person sent a notice commits a summary offence if:-

- Refuses or fails without reasonable excuse to attend / produce documents
- Failure without reasonable excuse to take oath or affirm
- Intentionally alters, suppresses, conceals,

Fine not exceeding £5000

3months imprisonment or both

Section 16 Restriction on disclosure of information

Protects confidentiality of investigations.

Section 17 Protection from defamation actions

Provides immunity against defamation claims for the Commissioner and those making complaints.

Section 18 Transitional Provisions

Section 19 Annual Reports

Section 20 Interpretation

Section 21 Short title and Commencement