

**Standards Commissioner
Annual Report 2011–12**

**UPHOLDING
REPUTATIONS**



**SAFEGUARDING
STANDARDS**



**ADDRESSING
CONCERNS**



The main duties of the Standards Commissioner are to receive and investigate complaints about the conduct of Assembly Members, report to the Assembly about his investigations and advise Assembly Members and the public about the complaints procedures.

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Introduction

1. In my first full year as Commissioner for Standards I am pleased to be able to report that there were no complaints against Assembly Members which justified a reference to the Committee. I believe that this demonstrates both that the culture of high standards has taken root in Wales and that the value of a transparent system of scrutiny of standards which is fair, robust and proportionate, bears fruit.
2. Although there were thus no admissible complaints which moved to the second stage investigation, complaints came in all shapes and sizes. By far the largest group of inadmissible complaints were those which raised questions about the “performance” of an Assembly Member – for example, those which referred to an alleged failure to respond to a constituent adequately or at all.
3. Without wishing to suggest that performance could never become a standards issue, I am clear that for the most part, issues of how an Assembly Member performs his or her role are ultimately matters for the electorate at the ballot box. For a Commissioner to intervene in this area runs the very real risk of stepping into the democratic arena, which I should not do.
4. However, as with all inadmissible complaints, I do not simply dismiss them but almost invariably seek to ameliorate the complainant’s position. Not infrequently, I choose to meet with a complainant to explain why I cannot take the matter further. Sometimes a complaint is simply a manifestation of some wider issue and although I may deem it inadmissible, I am able to point the complainant in another direction which may bring either satisfaction, or, at the least, a genuine appreciation that the matter has been properly considered.
5. All of this, I have no doubt, assists the main aim which is the constant improvement of the reputation of the National Assembly and its Members.
6. As I said last year, my role also involves ensuring that the public have access to a complaints mechanism which calls to account where necessary and which deals with matters in a user friendly and efficient manner. In this regard, and becoming effective as I write, there is a new procedure for dealing with complaints against Assembly Members which provides a more streamlined system but continues appropriately to

balance the rights of Members against the public expectation that a robust investigation will follow any serious allegation. I give more detail below.

7. Stage two of the process of review which the Committee approved late last year is now well under way and, following the production of the new complaints procedure, will focus upon the adequacy of the Assembly's Code of Conduct and Standing Orders, to include reconsideration of the sanctions available to the National Assembly when a Member is found to be in breach of some aspect of them. This is a wide ranging task which will inevitably take some months of consultation and debate before any proposals can be forthcoming.
8. I am pleased to record that I have continued to receive wholehearted support from all Party Leaders, the Presiding Officer and Assembly Members and to reiterate that I am always available to help or discuss matters with any Member, or their support staff, in confidence where appropriate.

Complaints

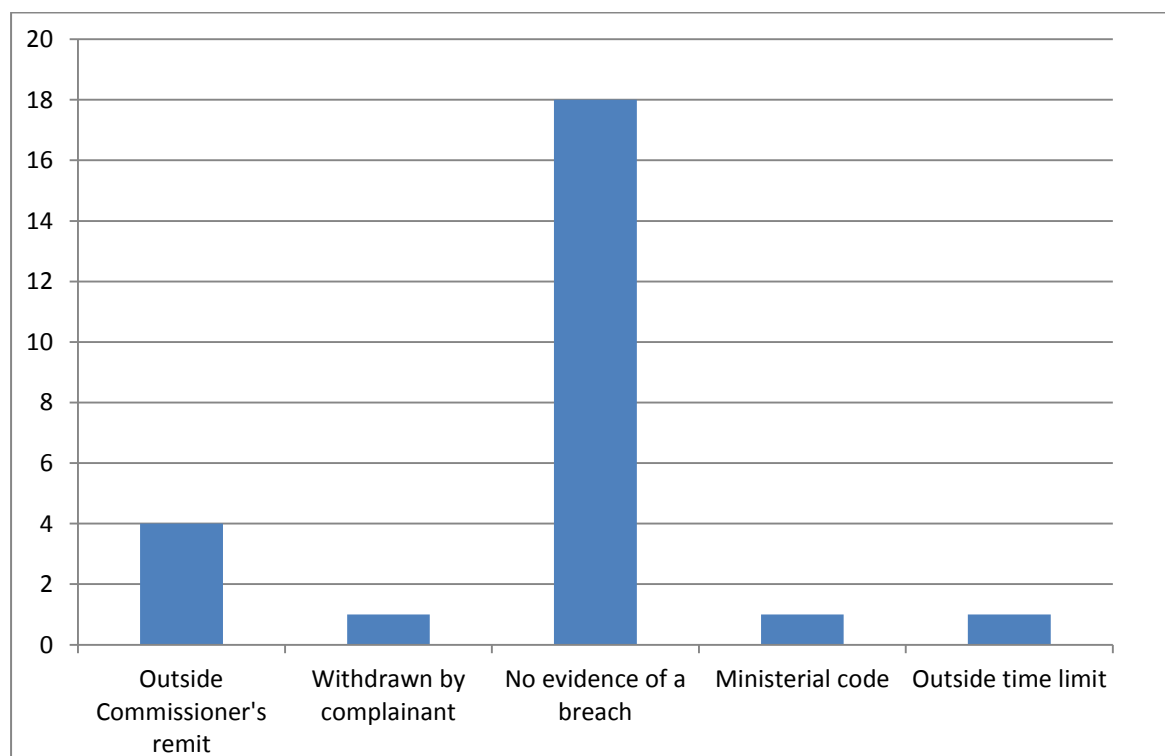
1 April 2011 to 31 March 2012

9. Between 1 April 2011 and 31 March 2012, 20 complaints were received. There were also 7 complaints carried forward from 2010-11. Twenty five of the complaints were deemed to be inadmissible, including one complaint that was withdrawn by the complainant. I will report on the 2 complaints carried forward in my annual report next year.
10. Table 1 shows the complaints received between April 2011 and March 2012.

Table 1 Complaints received (April 2011-March 2012)

Complaints b/f from 2010-11	Complaints received	Admissible complaints	Inadmissible complaints	Complaints c/f into 2012-13
7	20	0	25	2

11. The diagram below provides a breakdown of the categories relating to the inadmissibility of the complaints.



By way of explanation of the above,

- The Measure which appoints the Commissioner prevents him from dealing with breaches of the Ministerial Code – they are in practice referred on to the Office of the First Minister;

- Complaints made more than 12 months after an event are generally not admissible;
- “No evidence of a breach” denotes no, or no sufficient evidence of a breach of any relevant Code or Standing Order.

Other activities

12. During 20011-12 I commenced my review of the Code of Conduct and the relevant Standing Orders of the National Assembly for Wales. My initial piece of work in this area was a review of the National Assembly’s Procedure for dealing with Complaints against Assembly Members. The overall aim of the review was to update, streamline and expedite procedures, without compromising the need for openness and natural justice to prevail. In addition my intention was to make the procedure less complex and easier to understand, both for Members and the general public.
13. I sought the views of all party leaders and individual Assembly Members, the Presiding Officer and the Assembly Clerk on the Complaints Procedure. I also consulted with counterparts in other legislatures, notably the UK Parliament, Scottish Parliament, Northern Ireland and Ireland to identify best practice procedures, and I am very grateful to them for their very helpful contributions. The updated procedure forms part of this report and has come into effect from the end of June 2012.

Expenditure

14. Under the terms of the National Assembly for Wales (Commissioner for Standards) Measure 2009, the Commission is responsible for ensuring that the salary and allowances agreed in the terms and conditions of my appointment, and any reasonable liabilities incurred in the course of my duties, for example in directly employing staff, securing the provision of goods or services, or paying allowances or expenses of any persons giving evidence or producing documents, are charged on the Welsh Consolidated fund. Table 2 sets out this expenditure for the period April 2011 to March 2012.

Table 2 Expenditure (April 2011 to March 2012)

Month	Hours worked	Total cost of hours worked (£)	Annual retainer (£)	Total pay per month (£)	Travel & Subsistence ¹ (£)	Total cost per month (£)
Apr11	11.5	552	425	977	0	977
May11	9.5	456	425	881	0	881
Jun-11	10.5	504	425	929	0	929
July-11	20	960	425	1385	0	1385
Aug-11	25.5	1224	425	1649	0	1649
Sep-11	30.5	1464	425	1889	0	1889
Oct-11	23.75	1140	425	1565	0	1565
Nov-11	28.5	1368	425	1793	217.20	2010.20
Dec-11	24.5	1176	425	1601	0	1601
Jan-12	15	720	425	1145	0	1145
Feb-12	20	960	425	1385	0	1385
Mar-12	25.5	1224	425	1649	0	1649

15. My office receives confidential administrative and logistical support from staff of the Assembly Commission, provided as part of the duties of two staff members. All time spent providing support to my office is logged separately. Table 3 shows the cost of this support.

Table 3 Staff support received (April 2011 to March 2012)

Month	Hours of staff time	Total cost of hours worked ² (£)	Travel & subsistence (£)
Apr-11	3.25	63	0
May-11	5	106	0
Jun-11	4.5	87	0
Jul-11	7	135	0
Aug-11	12	238	0
Sep-11	9.5	183	0
Oct-11	21	415	0
Nov-11	18.25	365	0
Dec-11	9.75	208	0
Jan-12	5.5	160	0
Feb-12	7	364	0
Mar-12	5.5	160	0
Total cost		2484	£0

¹ Travel and subsistence is reimbursed in accordance with the Finance Manual of the National Assembly for Wales.

² Staff on-costs are included.

16. The total expenditure for the office of Commissioner for Standards in 2011-12, excluding the cost of staff support, was £17,065. The total including support staff costs was £19,549.
17. As Table 4 shows, the expenditure by the Commissioner for Standards' office in 2011-12 shows a decrease to that of the previous year, though it should be noted that part of the staff costs for 2010-11 were based on estimated time rather than recorded time.

Table 4 Annual expenditure

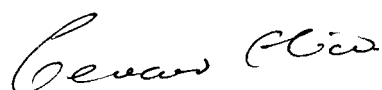
	Expenditure (2010-11)	Expenditure (2011-12)
Excluding staff costs	£23,844	£17,490
Including staff costs	£31,037 ³	£19,549

Standards Committee

18. I am extremely grateful to the Committee on Standards of Conduct, and particularly to the Chair, Mick Antoniw AM, and the clerk, Lara Date, for the very real assistance given to me and particularly in ensuring that when there is a need for expedition, the Committee is able and prepared to respond flexibly.

Miscellaneous

19. I am grateful to the Commission for ensuring that, despite changes in personnel, the office and administrative arrangements necessary to perform my functions have been provided at a level of expertise and efficiency which continue to ensure that the Commissioner's Office provides a timely and friendly response to complainants and Assembly Members alike.
20. Jonathan Thomas, provides administrative support on a part time basis and has brought common sense along with comprehensive assistance to me since January and I am pleased to offer sincere thanks to him for that and for his work on this Report.



Gerard Elias

**Standards Commissioner
June 2012**

National Assembly for Wales: Code of Conduct for Assembly Members

Purpose of the Code

1. The purpose of this Code of Conduct is:

(a) to provide guidance for all Members of the National Assembly on the standards of conduct expected of them in the discharge of their Assembly and public duties;

(b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the National Assembly perform their Assembly and public duties.

2. This Code applies to all Members of the National Assembly who have not taken leave of absence.

General standards of conduct

Personal conduct

3. Members of the Assembly:

(a) must comply with the Code of Conduct for Assembly Members;

(b) should act always on their personal honour;

(c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;

(d) must not vote on any Order or motion, or ask any question in plenary or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).

4. Members of the Assembly should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:

(a) **Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Assembly Members should avoid conflict between personal and public interests and resolve any conflict between the two at once and in favour of the public interest.

(b) **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Assembly Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and refrain from any action which would bring the Assembly, or its Members generally, into disrepute. Members should not ask civil servants to act in any way which would compromise the political impartiality of the Civil Service or conflict with the Civil Service Code.

(c) **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

(d) **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

No improper use shall be made of any payment or allowance made to Assembly Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

(e) **Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions, and restrict information only when the wider public interest clearly demands.

Assembly Members must not prevent any person from gaining access to information which that person is entitled to by law, but must not disclose confidential information, including confidential information from Assembly Committees, without consent unless required to do so by law. Any such confidential material received by Members in the course of their Assembly duties should only be used in connection with those duties and must never be used for the purpose of financial gain. In any activities in relation to, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as

informal meetings and functions, Members must always bear in mind the need to be open and frank with other Assembly Members, and with officials.

(f) **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(g) **Leadership:** Holders of public office should promote and support these principles by leadership and example.

Specific standards of conduct

Registration of interests

5. Members of the Assembly must register in the Register of Members' Interests all relevant interests defined in the Annex to Standing Order 31, in order to make clear what are the interests that might reasonably be thought to influence their actions.

6. The categories of registrable interests (as set out in the Annex to Standing Order 31) are as follows:

- Directorships held by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, in public and private companies, including those which are individually unremunerated but where remuneration is paid through another company in the same group.
- Employment, office, trade, profession or vocation (apart from membership of the Assembly) for which the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, is remunerated or in which the Member has any pecuniary interest.
- The names of clients, when the interests referred to above include services by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which arise out of, or are related in any matter to his or her membership of the Assembly.
- Gifts, hospitality, material benefits or advantage above a value specified in any resolution of the Assembly received by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, from any company, organisation or person and relating to or arising out of membership of the Assembly.

- Any remuneration or other material benefit which a Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, receives from any public or private company or other body which has tendered for, is tendering for, or has, a contract with the Assembly.
- Financial sponsorship (i) as a candidate for election to the Assembly, where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (ii) as a Member of the Assembly by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage.
- Subject to any resolution of the Assembly, overseas visits made by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, relating to or arising out of membership of the Assembly where the cost of any such visit has not been wholly borne by the Member or by public funds.
- Any land and property, of the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which has a substantial value as specified in any resolution of the Assembly or from which a substantial income is derived other than any home used for the personal residential purposes of the Member or the Member's partner or any dependent child of the Member.
- The names of companies or other bodies in which the Member has, either alone or with or on behalf of the Member's partner or any dependent child, a beneficial interest or in which, to the Member's knowledge, the Member's partner or a dependent child has a beneficial interest in shareholdings of a nominal value greater than one per cent of the issued share capital, or less than one per cent but more than an amount specified in any resolution of the Assembly.
- Paid or unpaid membership or chairmanship by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, of any body funded in whole or in part by the Assembly.

Declaration of registrable interests

7. Members of the Assembly must declare, before taking part in any Assembly proceedings, any interest which is a relevant interest, under Standing Order 31, in the context of the debate or the matter under discussion. A declaration must relate to a decision to be made at the meeting in question. It must concern a matter where the Member (or their

partner or dependent children) might gain a financial advantage from such a decision, where that advantage would be greater than that which other persons generally affected by their decision might receive. This is necessary in order that their audience may form a balanced judgement of their arguments.

Prohibition of voting in relation to registrable interests

8. A Member is prohibited from voting in any proceedings of the Assembly if, in relation to any interest which is required to be registered, a particular decision of the Assembly or a Committee might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally.

Use of Assembly resources

9. Members are required to comply with the *Guidance for Members on the Use of Assembly Resources* and any guidance on the use of Assembly resources specifically relating to an election campaign.

Public access to information

10. The principles under which the National Assembly for Wales provides information are detailed in the *Code of Practice on Public Access to Information* which has been approved by the Assembly Commission. Assembly Members seeking information are required to comply with the Code by making a request in writing to the Access to Information Advisor, Corporate Unit, National Assembly for Wales. The Code is published on the NAW website at <http://www.assemblywales.org/abthome/abt-foi/abt-foi-cop-pub.htm>.

Relationships between Assembly Members and Assembly staff

11. All staff of the National Assembly for Wales (Assembly Commission staff) are bound by Staff Code of Conduct, whilst Welsh Assembly Government Staff continue to be bound by the Civil Service Code. Members should at all times, in their dealings with the staff of these bodies, respect the principles of both Codes. Relationships between Members and staff should be professional and based on mutual respect, and Members should have regard to the duty of staff to remain politically impartial when carrying out their duties.

Members' salaries and allowances

12. Members are required to comply with *The National Assembly for Wales (Assembly Members and Officers) (Salaries, Allowances etc.) Determination* as approved by the National Assembly.

13. The Determination sets out the salaries and allowances which Members are entitled to as a result of the discharging of their Assembly duties.

Duties in respect of the Commissioner for Standards and the Committee on Standards of Conduct

14. Members shall cooperate, at all stages, with any investigation into their conduct by the Commissioner for Standards in accordance with Standing Order 33; or by the Committee on Standards of Conduct in accordance with Standing Order 16.1(i).

15. No Member shall lobby a member of the Committee on Standards of Conduct in a manner calculated or intended to influence their consideration of a complaint of a breach of any matter encompassed under Standing Orders 16.1(i).

16. No Member shall misrepresent any recommendation made by the Committee on Standards of Conduct in relation to any complaint it has considered under the *National Assembly for Wales' Procedure for Dealing with Complaints against Assembly Members*.

Enforcement of the Code of Conduct

17. Any allegations of non-compliance with this Code will follow the process set out in the *National Assembly for Wales' Procedure for Dealing with Complaints against Assembly Members*, as approved by the National Assembly Committee on Standards of Conduct.

18. Information on the role of the Commissioner for Standards, including contact details can be found on Assembly's web-site (www.assemblywales.org) or from the Commissioner's office.

National Assembly for Wales procedure for dealing with complaints against Assembly Members

Approved by the Committee on Standards of Conduct on 24 April 2012

Enquiries: Lara Date, Clerk to the Committee on Standards of Conduct

1. GENERAL PROVISIONS

Administrative Arrangements

- 1.1 Complaints should be made to the Commissioner for Standards (“the Commissioner”), who is an independent statutory officer appointed under the National Assembly for Wales Commissioner for Standards Measure 2009 (“the Measure”). The Commissioner’s Office will log the correspondence and send a letter to acknowledge receipt to the complainant. The letter will explain that this does not necessarily mean that the complaint is admissible and that the complaint can only be considered formally if the complainant is prepared for the details to be released to the Committee and the Member complained of.

Investigations

- 1.2 Investigations under this procedure must be conducted by the Commissioner in accordance with the Measure.
- 1.3 When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Assembly may appoint a person as an Acting Commissioner to discharge the functions of that office. Further provisions on the appointment of an Acting Commissioner are set out in Section 4 of the Measure.

Stages

- 1.4 There are two possible stages to any investigation by the Commissioner into a complaint:

Preliminary Investigation Stage which consists of investigating and determining whether a complaint is admissible; and

if the complaint be admissible, **Formal Investigation stage** which consists of further investigation of the complaint, and reporting upon it to the Committee on Standards of Conduct.

Conduct of Investigations

- 1.5 Subject to the provisions of the procedure, it is for the Commissioner to decide when and how to carry out any investigation at each stage.
- 1.6 Each stage of an investigation into a complaint must be conducted in private. However the Commissioner may at any time make a report to the Committee as to the progress of an investigation into a complaint and must do so if the formal investigation has not been completed within six months of the Commissioner finding that the complaint is admissible.
- 1.7 If investigation of a complaint is on-going at the start of an Assembly election period, it will be suspended and will re-commence at the end of that election period. Consideration of a complaint against a Member who is re-elected will be concluded in accordance with this procedure. In the case of a Member who is not re-elected the sanctions which can be applied in the case of a finding of a breach are restricted and the Committee may take that into account when considering what action to take in relation to any report by the Commissioner on the complaint.

2. PRELIMINARY INVESTIGATION STAGE

- 2.1 At this stage, the Commissioner must investigate and determine whether a complaint is admissible within the terms of paragraph 3 below. The Commissioner may contact the complainant to elicit more details and to ascertain whether or not he or she is willing for his or her name to be released to the Member complained of and the Committee. The Commissioner may also, at his/her discretion, contact the Member complained of if the Commissioner believes that it is necessary to do so in order to decide whether the complaint is admissible.
- 2.2 If the Commissioner considers that the complaint is admissible, the Commissioner must proceed to a Formal Investigation into the complaint.

2.3 If the Commissioner considers that the complaint is inadmissible, the Commissioner must dismiss the complaint and must inform the complainant together with the reasons for that view.

3. ADMISSIBILITY OF COMPLAINTS

3.1 A complaint is admissible under this procedure if:

- i. it is in writing^{*},
- ii. it is about the conduct of an Assembly Member;
- iii. it is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her;
- iv. it clearly identifies the Assembly Member complained of;
- v. it is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about; and
- vi. it appears that there is enough substance to justify further investigation (i.e. there is enough evidence to suggest that the conduct complained about may have taken place, and if proved might amount to a breach of any of the matters encompassed within Standing Order 22.2(i).

4. FORMAL INVESTIGATION STAGE

4.1 At this stage, the Commissioner must investigate an admissible complaint with a view to:

- i. establishing the facts in relation to whether the Member concerned has committed the conduct complained about; and
- ii. reaching a conclusion as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 22.2(i).

^{*} Where the complainant is unable to make a complaint in writing, facilities will be made available through the Commissioner's office so that he or she can agree the terms of a written statement.

- 4.2 When a formal investigation into a complaint has been completed, the Commissioner must make a report to the Committee on Standards of Conduct. The report must include:
- i. details of the complaint;
 - ii. details of the investigation carried out by the Commissioner;
 - iii. the facts found by the Commissioner in relation to whether the Member concerned has committed the conduct complained about, and any facts provided by the Police, Crown Prosecution Service or the Courts in the case of evidence having been referred (see section on Criminal Offences);
 - iv. the conclusion reached by the Commissioner as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 22.2(i); but
 - v. may not include any comment or recommendation as to what sanction, if any, should be imposed on the Member in question.
 - vi. whether, in the Commissioner's view, the complaint raises any issues of general principle.

If, in the course of carrying out an investigation, the Commissioner becomes aware of any circumstances which give rise to issues of general principle or of general practice relevant to the Clerk's functions under Section 138 of the Act as principal accounting officer, or could, upon further consideration by the Clerk give rise to a duty on the Clerk under Section 9, the Commissioner must also separately communicate those circumstances in writing to the Clerk.

- 4.3 No report, concluding that a Member has breached one of the matters within Standing Order 22.2(i) may be made to the Committee unless the Member and the complainant have been given a copy of the draft report and an opportunity to comment on factual accuracy. If there is any comment that is not accepted by the Commissioner the report to the Committee must include details of those disputed facts.
- 4.4 Copies of the Commissioner's final report to the Committee of a formal investigation must be made available to the complainant and

the Member complained of at the same time that it is provided to the Committee.

- 4.5 The Member complained of will be informed by the Committee that he or she has the right to:
- i. make written representations to the Committee within a specified time; and
 - ii. to make oral representations at an oral hearing of the Committee.
- 4.6 The Commissioner's report remains confidential until the Committee has concluded its consideration of the complaint. Those sent copies of the report will be asked to respect this confidentiality.

5. CO-OPERATION OF MEMBERS

- 5.1 This procedure is based on the principle that Assembly Members will co-operate fully with any investigation into a complaint. Members are expected at all times to respond in person to any request from the Commissioner. If at any stage in the consideration of a complaint the Commissioner has reason to believe that any Member is not co-operating, the Commissioner may, having first given notice of the intention to do so to the Member complained of, report this view to the Committee on Standards of Conduct who may arrange for the report to be published and laid before the Assembly as soon as may be.
- 5.2 The making of such a report does not prevent the Commissioner or the Committee from continuing to consider the complaint in line with this procedure.

6. CRIMINAL OFFENCES

- 6.1 If at any stage in the consideration of a complaint:
- (i) evidence arises of conduct which could involve a breach of section 36(7) of the Government of Wales Act 2006 the Commissioner must inform the Clerk immediately. The Clerk must refer the papers concerned to the Police in accordance with

the protocol agreed with the Police and Crown Prosecution Service.

- (ii) evidence arises of conduct which could involve the commission of any other criminal offence, subject only to the expectation that such evidence will usually be referred to the Police, the Commissioner shall use his/her discretion in determining if, when, and by what mechanism the matter may be referred to the Police.

6.2 In such circumstances all consideration of the complaint under this procedure will be suspended until such time as the final outcome of any investigation of the matter by the Police, Crown Prosecution Service or the Courts is known.

7. CONSIDERATION BY THE STANDARDS COMMITTEE

Initial Consideration

- 7.1 The Committee will meet first in private to consider the details of the complaint, **but will make no findings of substance on the complaint at this stage**. The purpose of the private meeting will be to consider whether, in the light of the Commissioner's report, and any other written evidence that it considers appropriate:
 - (a) any witnesses should be invited to give evidence to the Committee at an oral hearing; and
 - (b) the Committee should consider the complaint in public or private.
- 7.2 The Committee may also consider how it proposes that the Member or witnesses should be questioned.
- 7.3 The Commissioner for Standards may not attend this initial private meeting unless invited by the Committee.
- 7.4 In accordance with Standing Order 22.5, where a Committee Member is subject to a complaint he or she may take no part in any consideration of the complaint by the Committee. In such circumstances, another Member from the same political group may

replace that member in accordance with the arrangements set out in Standing Orders.

Oral Hearing

7.5 The Committee will meet in private - unless it has decided, having taking into consideration the circumstances of the case and any advice received from the Commissioner for Standards or on behalf of the Assembly Clerk, that it should meet in public - to consider:

- i. any oral or written evidence or representations that the Member complained of wishes the Committee to consider; and
- ii. any oral or written evidence from witnesses.

The Commissioner may be invited to give evidence at the meeting at the discretion of the Chair.

7.6 At any oral hearing, the Member complained of, or any witnesses who choose to give evidence, may be accompanied by an adviser.

7.7 A verbatim transcript of the proceedings of any oral hearing will be provided. The general presumption is that the Committee will only ask questions of the Member or witnesses to clarify matters of fact. The Member or any witnesses would have the right to ask and have answered factual questions about procedural or technical matters; they do not have the right to question the Commissioner or the Committee about other matters.

7.8 If the Member or witnesses are accompanied, the chair may give permission for that person to make oral representations and the same rules would apply.

Committee's Consideration of its Decision

7.9 Following any oral hearing, the Committee will meet in private to consider whether the Member is in breach of one of the matters

encompassed within Standing Order 22.2(i) and what action if any it should advise the Assembly to take if a breach is found.

7.10 In order for the committee to take a decision to make a recommendation, as detailed at 7.11, a clear majority must exist in favour of the recommendation.

Committee's Recommendations

7.11 The Committee may take a decision:

- i. that no breach has been found and that the complaint is dismissed;
- ii. that a breach has been found but that it is a failure of such a minor nature that the complaint should be dismissed;

Or the Committee may decide, pending any appeal by the Member concerned, to recommend to the Assembly:

- iii. that a breach has been found but that no further action should be taken;
- iv. that a breach has been found and that the Member should be "censured" under Standing Order 22.10; or
- v. that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time in accordance with Standing Orders.

8. REPORTING AND APPEAL PROCEDURE

8.1 As soon as may be following the Committee's decision the Member complained of must be provided with a copy of the Committee's report, which must be treated in confidence by all parties. In those cases where the Committee has considered the complaint in private, and where there is no breach or the case is dismissed, the Committee must arrange for the report to be anonymised.

Where a Member has been found in breach by the Committee, and the Committee does not recommend that the complaint be dismissed, the Member complained of may, **within 10 working days of being provided with the Committee's report**, appeal to the Presiding Officer.

The Committee must publish the report of its considerations and lay it before the Assembly along with the Commissioner's report to the Committee. Where the Presiding Officer informs the Committee that an appeal has been made, the Committee may not publish its report or lay it before the Assembly until consideration of the appeal has concluded.

If a complaint is referred back to the Committee under paragraph 8.5 i. the Committee must, at the conclusion of its further consideration of the complaint, prepare a revised report. Paragraph 8.1 will then apply to the revised report instead of to the original report.

Appointment of a Person to Consider an Appeal

- 8.2 The Presiding Officer must on each occasion appoint an independent legally qualified person to decide the appeal. The person appointed, who may not be an Assembly Member or a member of the Assembly's staff, must have been nominated, at the request of the Presiding Officer, by the senior Presiding Judge of the Wales circuit.
- 8.3 Following nomination and prior to appointment of the legally qualified independent person, the Presiding Officer shall afford the Member complained of an opportunity to make representations in writing as to any ground for the non appointment of such person, within five working days of being informed of the name of the nominee. In the event that the Presiding Officer accepts any such ground as valid and determines not to appoint the nominated person, he/she shall seek another nomination as in paragraph 8.2.

Consideration of Appeals

- 8.4 Appeals will only be considered on the following grounds:
- i. that the Committee's conclusions are based on significant factual inaccuracies which, had they been known, might have led to the Committee finding differently;

- ii. that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.
- 8.5 The independent legally qualified person appointed to decide the appeal will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. That person will not conduct oral hearings or consider representations from any other source.
- 8.6 The person appointed to decide the appeal must prepare, and provide to the Member and to the Committee, a report of his or her consideration of the appeal and must either:
- i. if the grounds of appeal are established, uphold the appeal and refer the complaint back to the Committee for further consideration; or
 - ii. dismiss the appeal.
- 8.7 The Committee must lay before the Assembly the report of the person appointed to decide the appeal, together with the report of the Commissioner and the report or (if the matter has been referred back to the Committee under paragraph 8.6 i.) revised report of the Committee itself.

In those cases where the Committee has considered the complaint in private, and where the Committee has, after it has been referred back to the Committee by the person appointed to decide the appeal, dismissed the complaint, the Committee must arrange for its revised report and that of the person appointed to decide the appeal, to be anonymised.

9. CONSIDERATION BY THE ASSEMBLY

Where there is no appeal or an appeal is unsuccessful.

- 9.1 Where an appeal is unsuccessful or where no appeal is made to the Presiding Officer and where the Committee does not decide on dismissal, the Chair of the Standards Committee must table a motion calling on the Assembly to endorse the Committee's

recommendations. Such motions will not be subject to amendment. Time to debate the motion must be made available as soon as may be.

10. WHERE BREACH RECTIFIED OR COMPLAINT DISMISSED

- 10.1 Where, at any stage of an investigation, the facts are not disputed and the Member immediately rectifies or apologises satisfactorily for a failure of a minor nature the Commissioner may recommend to the Chair of the Standards Committee that the investigation should not be pursued. If the Chair agrees, the Commissioner shall inform the Member and the complainant that although a breach has been found no further action will be taken against the Member.
- 10.2 If the Chair is the subject of such a complaint, the Commissioner may make the recommendation to a member of the Committee on Standards of Conduct who has been nominated by the Committee to act in this respect. The Clerk to the Committee will ensure that a Committee member is so nominated.
- 10.3 In these circumstances, the Commissioner need not report to the Standards Committee except to recommend any action that may be needed to clarify or interpret rules for future reference. Where the Commissioner does choose to report in this way, the name of the Member and complainant need not be identified.

National Assembly for Wales Commissioner for Standards Measure 2009

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 14 October 2009 and approved by Her Majesty in Council on 9 December 2009, enacts the following provisions:-

The National Assembly for Wales Commissioner for Standards

1 The Commissioner

(1) There is to be a National Assembly for Wales Commissioner for Standards (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,

(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,

(e) is a member of the staff of the Welsh Assembly Government, or

(f) has been a member of the staff of the Welsh Assembly Government 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 not 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,

(b) is appointed as, or designated to exercise the functions of, the Counsel General under section 49 of the Act, or

(c) is appointed to be a member of the staff of the Assembly or of the Welsh Assembly Government.

2 Principal aim of the Commissioner

The principal aim of the Commissioner in exercising functions under this Measure is to promote, encourage and safeguard high standards of conduct in the public office of Assembly Member.

3 Further provision about the Commissioner

The Schedule makes further provision about the Commissioner.

4 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(8)(a), (b) and (c),

(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.

5 Independence of the Commissioner

Subject to section 19, 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

6 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,

(d) to advise Assembly Members and members of the public about the procedures for making and investigating complaints to which paragraph (a) applies, and

(e) the further functions conferred by section 7.

(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 Act.

(4) It is irrelevant whether a relevant provision came into force before or after this section comes into force.

7 Further functions of the Commissioner

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 other matter relating to promoting, encouraging and safeguarding high standards of conduct in the public office of Assembly Member.

8 Ministerial Code

(1) Nothing in this Measure authorises the Commissioner to express any view on-

- (a) any provision relating to standards of conduct which is contained in a Welsh Ministerial Code,
- (b) any provision relating to standards of conduct which could be contained in a Welsh Ministerial Code,
- (c) any allegation that the conduct of any person was in breach of a provision relating to standards of conduct contained in a Welsh Ministerial Code, or
- (d) the effectiveness of any provision contained in a Welsh Ministerial Code whether in relation to any specific conduct or generally.

(2) For the purposes of this section-

(a) a "Welsh Ministerial Code" means any document (however that document is described) containing provisions relating to standards of conduct-

- (i) which has been promulgated by or under the authority of the First Minister,
 - (ii) which applies to the First Minister, Welsh Ministers, Deputy Welsh Ministers and Counsel General or to any of them,
 - (iii) which relates to standards of conduct in those offices, and
 - (iv) which seeks to apply standards of conduct different from or additional to those which apply to Assembly Members generally, and
- (b) a provision relating to standards of conduct is one which could be contained in a Welsh Ministerial Code if that provision satisfies the requirements of paragraph (a)(ii), (iii) and (iv).

Functions of the Clerk

9 Duty of the Clerk to refer a matter to the Commissioner

If the Clerk has reasonable grounds for suspecting-

- (a) that the conduct of an Assembly Member has, at a relevant time, failed to comply with a requirement of a relevant provision, and

(b) that the conduct in question is relevant to the Clerk's functions under section 138 of the Act (Clerk to be the principal accounting officer for the Commission), the Clerk must communicate those grounds in writing to the Commissioner and the Commissioner must treat the communication as a complaint to which section 6(1)(a) applies.

Investigation of Complaints

10 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) The Commissioner may, in such circumstances as may be prescribed by rules referred to in subsection (1)(b), dismiss a 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.

(5) If, in the course of carrying out an investigation, the Commissioner becomes aware of any circumstances which–

(a) give rise to issues of principle or of general practice relevant to the Clerk's functions under section 138 of the Act (Clerk to be the principal accounting officer for the Commission), or

(b) could, upon further consideration by the Clerk, give rise to a duty on the Clerk under section 9, the Commissioner must communicate those circumstances in writing to the Clerk.

Investigatory Powers of the Commissioner

11 Power to call for witnesses and documents

(1) The Commissioner may, in accordance with section 12, 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.

12 Witnesses and documents: notice

(1) A requirement under section 11 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.

13 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.

14 Privilege and public interest immunity

(1) A person is not obliged by any requirement imposed under section 11(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 section 11(1) to answer any question or to produce any document concerning the operation of the system of criminal prosecution in any particular case if that person (or, if subsection (3) applies, the Counsel General) 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.

(3) This subsection applies if the proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General.

15 Offences

(1) A person to whom a notice has been given under section 12(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 14.
- (3) Any person who, without reasonable excuse, refuses to take an oath or make an affirmation when required to do so under section 13 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.

16 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,

(b) enabling the Commissioner to comply with any duty imposed on the Commissioner by or under any other enactment, or

(c) the investigation or prosecution of any offence or suspected offence.

17 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).

18 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, under rules referred to in section 10(1)(b).

(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

19 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 the 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.

(4) The Commissioner must, subject to subsection (5), comply with any requirement imposed by the Committee on Standards of Conduct-

(a) to attend before that committee,

(b) to provide the committee with such information as it may reasonably require in relation to any matter contained in a report which has been laid before the Assembly under subsection (1) or which was required to be contained in such a report.

(5) The Commissioner need not comply with a requirement under subsection (4)-

(a) if it is not reasonably practicable to do so, and

(b) except in the case of a requirement under subsection (4)(b) which is made orally to the Commissioner at a meeting of the committee, unless the requirement is in writing.

20 Interpretation

(1) In this Measure-

"the Act" ("y Ddeddf") means the Government of Wales Act 2006 (c.32);

"Assembly Member" ("Aelod Cynulliad") includes-

(a) for the purposes of section 1(3)(a) and (b) only, 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,

"the Clerk" ("y Clerc") means the Clerk of the Assembly,

"the Commission" ("y Comisiwn") means the National Assembly for Wales Commission,

"Counsel General" ("Cwnsler Cyffredinol") means the Counsel General to the Welsh Assembly Government,

"the Committee on Standards of Conduct" ("y Pwyllgor Safonau Ymddygiad") means 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 a relevant provision, and

"Standing Orders" ("Rheolau Sefydlog") 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, 4, 6(3)(b), (c) and (d) and the Schedule, the Committee on Standards of Conduct.

21 Short title and commencement

(1) This Measure may be referred to as the National Assembly for Wales Commissioner for Standards Measure 2009.

(2) This Measure comes into force as follows-

(a) this section and sections 1, 3 (including the Schedule) and 20 come into force on the day after that on which this Measure is approved by Her Majesty in Council, and

(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

(introduced by Section 3)

The National Assembly for Wales Commissioner for Standards

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 the Committee on Standards of Conduct or to the staff of the Assembly and such arrangements may include the involvement of persons independent of the Assembly.

Corporation sole

3 The person for the time being holding office as National Assembly for Wales Commissioner for Standards 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.

Financial

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 benefits

as 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 goods or 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, goods and services

6 (1) The Commissioner may, on such terms as the Commissioner may determine, appoint such staff or secure the provision of such goods or 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.

(3) The Commissioner must, when exercising powers under sub-paragraphs (1) and (2) or under section 11(3), have regard to the responsibilities of the Clerk, as principal accounting officer for the Commission, under section 138(3)(a) of the Act.

(4) The Commissioner must, in relation to any liability which the Commission may be required to discharge under paragraph 5(3), consult the Clerk and must do so-

(a) if reasonably practicable to do so, before incurring the liability in question,

(b) if not, as soon thereafter as is reasonably practicable.

(5) The Commissioner must have regard to any representations which the Clerk may make when consulted under sub-paragraph (4).

(6) The Commissioner's duty to consult the Clerk under sub-paragraph (4) may be discharged in relation to a particular liability either-

(a) by providing the Clerk with particulars of the liability in question, or

(b) by notifying the Clerk that liabilities of a specified description up to a specified total amount may be incurred, provided that, where (b) applies, the particular liability in question falls within the description notified and does not, when taken together with any other liabilities to which that notification relates, exceed the total amount notified.

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 Act.

