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Proposed National Assembly for Wales Commissioner for Standards Measure

[AS PASSED]

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Schedule

Proposed National Assembly for Wales Commissioner for Standards Measure

[AS PASSED]

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.

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 Commissioneris 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 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 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.