

**National Assembly for Wales**  
Legislation Committee No. 1

Proposed National Assembly for Wales  
(Remuneration) Measure

Stage 1 Committee Report  
March 2010



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## **Legislation Committee No. 1**

Legislation Committee No. 1 was established by the National Assembly for Wales to consider and report on legislation introduced to the Assembly primarily by individual Assembly Members, committees and the Assembly Commission. The Committee is also able to consider and report on government legislation, as appropriate.

### **Powers**

The Committee was established on 26 November 2008 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly Standing Order 10, 22 and 23. These are available at [www.assemblywales.org](http://www.assemblywales.org)

## Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Rosemary Butler (Chair)	Labour	Newport West
Eleanor Burnham	Welsh Liberal Democrats	North Wales
Chris Franks	Plaid Cymru*	South Wales Central
Ann Jones	Labour	Vale of Clwyd
Val Lloyd	Labour	Swansea East
Nick Ramsay	Welsh Conservative Party	Monmouth

\* As a member of the Assembly Commission, Chris Franks AM absented himself from meetings at which the proposed National Assembly for Wales (Remuneration) Measure was discussed. Bethan Jenkins AM, Plaid Cymru was the permanent substitute for the duration of the Committee's Stage 1 consideration of the proposed Measure.

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## **The Committee's Recommendations**

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The Committee's recommendations to the Member in charge of the proposed Measure are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

### **General principles**

We agree there is a need for a statutory independent Board and support the general principles of the proposed Measure.

[Paragraph 57]

We recommend a statement be included in the proposed Measure to make clear the Board is independent of the Assembly in the exercise of its functions and that the Presiding Officer brings forward an amendment at Stage 2 to this effect. [Paragraph 59]

We note there is no provision within the proposed Measure and limited information in the Explanatory Memorandum in respect of accountability arrangements and therefore we recommend the Presiding Officer address this issue as a priority. [Paragraph 60]

We recommend the proposed Measure places an annual reporting requirement on the Board and that the Presiding Officer brings forward an amendment at Stage 2 to this effect. [Paragraph 60]

We believe the proposed Measure should make explicit the intention that the Board will operate in an open and transparent manner and we recommend a duty be placed on the Board in this regard.

[Paragraph 61]

We believe it is important to make clear from the outset that the Board, in its own right, will be subject to provisions within the *Freedom of Information Act 2000* and we recommend the proposed Measure be amended to provide for this. [Paragraph 62]

### **Section 1**

We recommend the Presiding Officer give further consideration to the title of the Board with a view to avoiding the use of the term 'remuneration'. [Paragraph 66]

We are content with the size of the Board provided for in section 1(2). [Paragraph 72]

## **Section 2**

In view of our support for the establishment of the Board we are also content with the conferral of these functions on it. [Paragraph 86]

We are content the objectives set out in section 2(2) are both appropriate and reasonable. [Paragraph 87]

We recommend the proposed Measure includes a requirement on the Board to consult interested parties before making determinations. This consultation must extend beyond Assembly Members to include Assembly Members' support staff, relevant trade unions and other parties who are likely to be affected by the Board's determinations. [Paragraph 88]

## **Section 3**

We are content with the disqualification of members of the former Independent Review Panels provided for in Schedule 1, paragraph 1(l). [Paragraph 99]

We recommend that elected members of other parliamentary bodies be disqualified from membership of the Board, and that the Presiding Officer brings forward an amendment at Stage 2 to this effect. [Paragraph 100]

We recommend the proposed Measure include provision to allow for Schedule 1 to be amended in line with the approach taken in section 5 of the *House of Commons Disqualification Act 1975*. [Paragraph 101]

## **Section 4**

We recommend that, once adapted and agreed, the procedure for the selection of candidates for appointment to the Board should be published on the Assembly's website. [Paragraph 125]

We do not believe it is appropriate or desirable for the proposed Measure to prescribe categories of persons to be represented on the Board, or to stipulate qualifying criteria for candidates. [Paragraph 126]

We are satisfied that the responsibility for appointing the Chair and members of the Board lies with the Assembly Commission and, as such we are content with Section 4(1)(a) as drafted. [Paragraph 127]

We recommend that reappointment of the Chair and members of the Board are not permitted and that the Presiding Officer brings forward an amendment to section 4(2) to this effect. [Paragraph 134]

We also recommend that the Presiding Officer gives consideration to providing for rotating membership with a view to ensuring some continuity. [Paragraph 134]

### **Section 5**

We acknowledge and accept the need to provide for the termination of membership of the Board and are content that the approach set out in section 5 is both appropriate and reasonable. [Paragraph 139]

### **Sections 7 & 8**

We seek further assurance that there will be sufficient capacity within the existing Assembly Commission staff complement to meet any additional administrative support requirement which exceed the estimate provided. [Paragraph 151]

### **Section 10**

We are content that the Board is limited to making a single determination in respect of payment of salaries to Assembly Members during each term of the Assembly. [Paragraph 156]

### **Section 12**

We are content with section 12. [Paragraph 166]

### **Other issues**

We recommend a formal protocol be developed between the Board and Commissioner for Standards setting out how any potential cross-over between their work will be managed. This should be done in conjunction with the Commissioner for Standards and the Assembly Commission, and be agreed as soon as is reasonably practicable. [Paragraph 170]

# 1. Introduction

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## *Background*

1. On 15 October 2009, Dafydd Elis-Thomas AM, Presiding Officer, as Chair of the Assembly Commission laid before the Assembly the proposed National Assembly for Wales (Remuneration) Measure<sup>1</sup> ('the proposed Measure') and accompanying Explanatory Memorandum.<sup>2</sup>
2. At its meeting on 13 October 2009, the Business Committee agreed to refer the proposed Measure to Legislation Committee No.1 ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 23.21.<sup>3</sup> The Business Committee subsequently agreed that the Committee must report on the proposed Measure no later than 12 March 2010.

## *Terms of scrutiny*

3. At our meeting on 26 November 2009, we agreed the following framework within which to work in scrutinising the proposed Measure:

To consider –

- (i) the need for an independent National Assembly for Wales Remuneration Board to make decisions on all aspects of financial support for Assembly Members;
- (ii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objective of providing an open and transparent process for determining Assembly Members' salaries which will instil public confidence;
- (iii) the practical and financial implications of the proposed Measure; and
- (iv) whether the proposed Measure can achieve its overall objective.<sup>4</sup>

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<sup>1</sup> Proposed National Assembly for Wales (Remuneration) Measure.

<sup>2</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1.

<sup>3</sup> National Assembly for Wales, Business Committee, BC(3)26-09, 13 October 2009.

<sup>4</sup> National Assembly for Wales, Legislation Committee No.1, LC1(3)-19-09, 26 November 2009.

### *Committee's approach*

4. We issued a general 'call for evidence' and invited written submissions from interested parties to inform our work. A list of consultation responses is available at the end of this report.
5. We also took oral evidence from a number of witnesses. A list of these is available at the end of this report.
6. The following report and recommendations represent the conclusions we have reached on the evidence received during the course of our work. We would like to thank all those who contributed to the report.

## 2. Background

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7. The power enabling the Assembly to make the proposed Measure is contained in Matter 13.3 of Schedule 5 to the Government of Wales Act 2006.

### *Matter 13.3*

*Provision for and in connection with the payment of salaries, allowances, pensions and gratuities to or in respect of Assembly members, the First Minister, any Welsh Minister appointed under section 48, the Counsel General and any Deputy Welsh Minister.*

8. The Explanatory Memorandum accompanying the proposed Measure explains that a key recommendation of the Independent Review Panel on financial support for Assembly Members<sup>5</sup> (‘the Independent Review Panel’) was:

“...that the automatic link between the pay of Assembly Members and that of Members of Parliament should be broken and a statutory Independent Review Body should be established to set future salary levels and to monitor and review other financial support including allowances for travel, pensions and office support.”<sup>6</sup>

9. In addition, the Independent Review Panel recommended that the Assembly Commission “should prepare and bring forward an Assembly Measure as soon as practicable, to establish such a statutory Independent Review Body to make decisions in respect of all aspects of financial support for Assembly Members”.<sup>7</sup>

10. The proposed Measure seeks to give effect to the above recommendation. Its purpose, as stated in the Explanatory Memorandum is:

“...to establish an independent National Assembly for Wales Remuneration Board (“the Board”), to transfer to the Board the

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<sup>5</sup> In August 2008, the Assembly Commission set up the Independent Review Panel in order to look at all aspects of financial support available to Assembly Members. Further details can be found on <http://www.assemblywales.org/memhome/mem-allow-pay-pensions/independentreviewpanel.htm>

<sup>6</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 1.3.

<sup>7</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 1.4.

functions of making determinations in relation to remuneration of Assembly Members, the First Minister, Welsh Ministers, the Counsel General and Deputy Welsh Ministers, and for connected purposes. These functions include the setting and review of Assembly Members' salaries, allowances and pensions. This would remove the responsibility for these functions from the National Assembly for Wales and which are currently conferred on the Assembly Commission.

The Board will also make determinations in relation to the remuneration of additional office holders...for example, the Presiding Officer, Deputy Presiding Officer, Assembly Commissioners, leaders of opposition parties and committee chairs.”<sup>8</sup>

11. The Explanatory Memorandum also states “the objective of creating such a body is to establish “an open and transparent process” for determining Assembly Members’ salaries which will “instil public confidence”.”<sup>9</sup>

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<sup>8</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 3.3- 3.4.

<sup>9</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 3.6.

### 3. General principles of the proposed Measure and need for legislation

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#### Need for an independent Board

##### *Evidence from consultees*

12. There was broad support in both oral and written evidence for the establishment of an independent Board to make decisions on all aspects of financial support for Assembly Members.

13. Reasons given in support of an independent Board included as follows:

- the ability of elected politicians to determine their own financial support ‘lacks public credibility’;
- the need to overcome negative public perceptions that have come about as a result of recent events in Westminster in relation to MPs expenses; and
- following the end of the direct link between salaries of Assembly Members and MPs there was a need to establish an alternative, appropriate mechanism to determine Assembly Members’ pay and other financial support.

14. In evidence, Mr Richard Penn, National Assembly for Wales Commissioner for Standards and Chair of the Independent Remuneration Panel for Wales stated:

“The great advantage in establishing an independent board or panel for this purpose is that it takes the decision-making process on remuneration out of the political field. It has been one of the anachronisms of British democracy that politicians in the past have been able to set their own levels of pay.”<sup>10</sup>

15. Mr Penn also pointed to “negative publicity associated with MP’s expenses and allowances” as having “served to strengthen the argument in favour of decisions on these matters being removed from elected politicians”.<sup>11</sup>

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<sup>10</sup> Written evidence, NAWRM3.

<sup>11</sup> *Ibid.*

16. Linked to this, Professor Laura McAllister, University of Liverpool, stated:

“Whilst there is no suggestion that AMs were as culpable as some MPs in the scandals over expense claims, one would expect the instilling of greater independence in the system used to remunerate and support them to have a positive impact on restoring public confidence in elected politicians generally. This is of particular significance in Wales’ young democracy (where longitudinal polling has shown greater public trust in Assembly politicians and ministers than for those at Westminster).”<sup>12</sup>

17. Similarly, Dr Jonathan Bradbury, Swansea University stated:

“Where control over the setting of remuneration is still in the hands of Parliamentarians there remain distinct problems with respect to agreeing remuneration packages that inspire public confidence.”<sup>13</sup>

18. Sir Roger Jones OBE, Chair of the former Independent Review Panel emphasised the need to overcome the public’s “distrust of people who award their own salaries”<sup>14</sup> and felt strongly that the establishment of an independent Board was the only way to achieve this.

19. There was specific support from both Professor McAllister and Sir Roger Jones for the end of the direct link between salaries of Assembly Members and MPs. Sir Roger Jones felt the link was “inappropriate”.<sup>15</sup> Professor McAllister suggested that continuing the link would “generate more problems than benefits”. She believed the work of both Independent Review Panels on financial support for Assembly Members had “created an opportunity for Wales to renew its system of salaries and support and to aspire to the international best practice models identified in ‘Getting it Right for Wales’”.<sup>16</sup>

20. In contrast to Professor McAllister and Sir Roger Jones’ view, Dr Bradbury raised concern about ending the link between Assembly Members and MPs salaries and stated:

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<sup>12</sup> Written evidence, NAWRM4.

<sup>13</sup> Written evidence, NAWRM9.

<sup>14</sup> RoP, para 6, Legislation Committee No.1, 21 January 2010.

<sup>15</sup> RoP, para 10, Legislation Committee No.1, 21 January 2010.

<sup>16</sup> Written evidence, NAWRM4.

“Indeed in a highly integrated British public space, where media comment and public perceptions are not separated between British and Welsh level political discussion of these issues, it is a highly pertinent point that remuneration packages at different levels are likely to fall into disrepute if they are not seen to be, if not automatically linked, proportionate across the levels.”<sup>17</sup>

21. In evidence, Mr Barry Winetrobe, Parliamentary and Constitutional Consultant expressed reservations about how the independent Board will be constituted. He felt that legislatures should be “largely self-regulating” so as to preserve the necessary degree of autonomy “to enable them to carry out effectively [their] democratic functions on behalf of the public”.<sup>18</sup> Mr Winetrobe stated:

“...modern conditions require a new form and culture of self-regulation, where it can, where appropriate, be carried out ‘at arm’s length’ for, and on behalf of, the parliament, or with the cooperation of, external bodies and persons. This exceptional form of organisational regulation must include robust and comprehensive accountability provisions to ensure that it is being operated transparently and, in all senses, responsibly, and is not being abused.”<sup>19</sup>

22. Notwithstanding the above, Mr Winetrobe accepted the proposed Measure had been brought forward by the Assembly Commission, and as such partly conformed, “in principle”, to “proper institutional design”.<sup>20</sup> He also acknowledged the Board provided for in the proposed Measure was similar in some ways to the “arm’s length” body he advocated, and that it provided the “skeleton of a potentially robust design”.<sup>21</sup> However, Mr Winetrobe remained concerned that the emphasis on promoting the Board’s independence had detracted from the need to ensure that it was effective, and meant that insufficient consideration had been given to equally important elements such as accountability, and openness and transparency.<sup>22</sup> These issues are explored in further detail in paragraphs 32 to 47, and 48 to 55.

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<sup>17</sup> Written evidence, NAWRM9.

<sup>18</sup> Written evidence, NAWRM2.

<sup>19</sup> *Ibid.*

<sup>20</sup> RoP, para 155, Legislation Committee No.1, 21 January 2010.

<sup>21</sup> RoP, para 197, Legislation Committee No.1, 21 January 2010.

<sup>22</sup> RoP, para 152 - 155, Legislation Committee No.1, 21 January 2010.

23. Finally, in commenting on a potential alternative to the independent Board, Mr Winetrobe stated:

“...there is an argument for an all-embracing parliamentary financial support body setting allowances for the whole UK and its constituent Parliaments and Assemblies.”<sup>23</sup>

24. However, he accepted there was no political will currently to consider this as an option.<sup>24</sup>

*Evidence from Member in charge*

25. The Explanatory Memorandum accompanying the proposed Measure states that a “key recommendation” of the Independent Review Panel is:

“...that the automatic link between the pay of Assembly Members and that of Members of Parliament should be broken and a statutory Independent Review Body should be established to set future salary levels and to monitor and review other financial support including allowances for travel, pensions and office support.”<sup>25</sup>

26. It goes on:

“The Panel’s report also recommends that the Assembly Commission should prepare and bring forward an Assembly Measure as soon as practicable, to establish such a statutory Independent Review Body to make decisions in respect of all aspects of financial support for Assembly Members.”<sup>26</sup>

27. The Presiding Officer explained that, prior to the *Government of Wales Act 2006*<sup>27</sup> (‘the 2006 Act’) the remuneration of Members had been determined by using the Senior Salaries Review Body. The 2006 Act conferred on the Assembly Commission functions of making determinations in relation to remuneration of Assembly Members. The Presiding Officer argued strongly that, now the Assembly was a parliamentary body, “it would no longer be appropriate” for the Senior Salaries Review Body to be involved in the setting of Assembly

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<sup>23</sup> RoP, para 191, Legislation Committee No.1, 21 January 2010.

<sup>24</sup> RoP, para 191 and 224, Legislation Committee No.1, 21 January 2010.

<sup>25</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 1.3.

<sup>26</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 1.4.

<sup>27</sup> The *Government of Wales Act 2006*, c.32.

Members' salaries because "it is a UK body that is accountable and answerable to the United Kingdom Government".<sup>28</sup> He went on to assert:

"[the SSRB] has no real understanding of the nature of the work of Assembly Members as compared with the work of Members of Parliament, in relation to which it is obviously experienced."<sup>29</sup>

28. The Presiding Officer explained that, having accepted the recommendation made by the Independent Review Panel to establish a statutory independent body (or, in the case of the proposed Measure, the Board) the Assembly Commission, using powers contained in Schedule 5 of the 2006 Act, was now seeking to give effect to that recommendation.<sup>30</sup>

29. The Presiding Officer outlined developments in other parts of the UK, including the establishment of the Independent Parliamentary Standards Authority (IPSA) by the UK Government and recommendations made by the Committee on Standards in Public Life in relation to IPSA's future statutory responsibilities; and the pursuit of greater independence in the remuneration of Members in both the Scottish Parliament and the Northern Ireland Assembly.<sup>31</sup>

30. In commenting further on the need to establish an independent Board, the Presiding Officer stated:

"The principle here is simple. It is [the Assembly Commission's view] that it is inappropriate for elected Members to determine their own salaries. Public confidence, particularly in a new democracy in Wales, depends on there being perceived, independent and clear decision-making powers in these matters. The public does not accept that elected Members should determine their own salaries and financial support; and in these matters, the public is right."<sup>32</sup>

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<sup>28</sup> RoP, para 3 - 4, Legislation Committee No.1, 28 January 2010.

<sup>29</sup> RoP, para 15, Legislation Committee No.1, 10 December 2009.

<sup>30</sup> RoP, para 3 - 4, Legislation Committee No.1, 28 January 2010.

<sup>31</sup> RoP, para 4, Legislation Committee No.1, 28 January 2010.

<sup>32</sup> *Ibid.*

## Principles underlying the Board

31. A number of those giving evidence identified key principles underpinning the Board as those of independence, accountability, and openness and transparency.

### *(i) Independence and Accountability*

#### *Evidence from consultees*

32. The need for the Board to operate independently and to be free from the influence of the Assembly and Assembly Members came through strongly in evidence. In addition, evidence suggested it was equally important to ensure that robust accountability arrangements were put in place.

33. In supporting the establishment of an independent Board, Professor McAllister stated:

“There is a wealth of international evidence to suggest that the fundamental principles that should underpin any system of remuneration and support for elected politicians are independence and accountability.”<sup>33</sup>

34. In evidence, Mr Penn emphasised the need to ensure the Board’s independence and was content that the proposed Measure provided adequately for this. He stated:

“The proposed Measure does provide for that independence by having members appointed by the Assembly – or by the Commission in this case – who will, from that point on, reach their decisions independently of any influence from elected members. No Assembly Members, by definition, can be involved in the work of the new board, and that seems to me to be a good way of approaching it.”<sup>34</sup>

35. Notwithstanding the above, Mr Penn suggested that including an explicit statement of independence in the proposed Measure, similar to that contained in the National Assembly for Wales Commissioner for

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<sup>33</sup> Written evidence, NAWRM4.

<sup>34</sup> RoP, para 12, Legislation Committee No.1, 14 January 2010.

Standards Measure 2009, may “promote greater public confidence in the independence of the Board”.<sup>35</sup>

36. The need to achieve a proper balance between independence and accountability was a central theme in Mr Winetrobe’s evidence.<sup>36</sup> In drawing comparisons between the Board and ‘constitutional watchdogs’, such as Ombudsmen and Standards Commissioners, Mr Winetrobe stated:

“...the most complex and sensitive issue is achieving the proper balance between ‘independence’ and ‘accountability’ in a body’s structure, governance and operation...”<sup>37</sup>

37. Mr Winetrobe suggested that independence and accountability were interdependent. He argued if a body, in this case the Board, is to be independent, it would be vital to put in place robust accountability arrangements. He made the distinction between “operational” and “governance” accountability and stated:

“You have to distinguish between say, for the sake of simplicity, operational accountability and governance accountability. In other words, with a board like this, there is a difference between Members, committees and the Assembly as a whole having an interest, on the one hand, in what the board determines as levels or types of support and pay, which is where independence should kick in at its strongest, and on the other hand, having an interest in its governance accountability...”<sup>38</sup>

38. He raised concern that insufficient consideration had been given to this issue; questioned how accountability arrangements would work, in practice; and highlighted some of the unintended consequences that could arise if clear lines of accountability and appropriate scrutiny arrangements were not identified from the outset.

#### *Evidence from Member in charge*

39. The principle that the Board would be independent of the Assembly came through strongly in evidence from the Presiding Officer.

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<sup>35</sup> Written evidence, NAWRM5; and RoP, para 14, Legislation Committee No.1, 14 January 2010.

<sup>36</sup> Written evidence, NAWRM2.

<sup>37</sup> *Ibid.*

<sup>38</sup> RoP, para 163, Legislation Committee No.1, 21 January 2010.

Throughout his evidence, he emphasised that the key provisions within the proposed Measure, in particular those relating to the disqualification from membership of the Board, the appointment of members of the Board, and the termination of membership of the Board, had been drafted so as to ensure the Board's independence.

40. The Presiding Officer asserted that the proposed Measure "makes it clear that Assembly Members should not be capable of having any direct input and cannot be board members."<sup>39</sup> He went on to state:

"The board is independent of the Assembly, therefore, in our view, it is not appropriate for the board or for those appointing the board to be Assembly Members, or to be influenced by Assembly Members. That arises from the philosophical premise that we set at the outset, which emanates from the recommendation of the 'Getting it Right for Wales' panel, namely that this should be an independent [Board] without having any link between it and Assembly Members."<sup>40</sup>

41. In commenting on the provision in relation to the termination of membership of the Board, the Presiding Officer emphasised it was the "only direct link" between the Assembly and the Board and that it would be applied purely in exceptional circumstances.<sup>41</sup>

42. In responding to the suggestion that the proposed Measure should contain an explicit statement of independence, the Presiding Officer stated:

"We thought the independence of the independent remuneration [board] was clear in the way we had set out its terms of reference and in the general application of its functions and so on."<sup>42</sup>

43. Notwithstanding the above, he agreed to consider this issue further, subject to the Committee's recommendations.<sup>43</sup>

44. When initially questioned about accountability arrangements, the Presiding Officer asserted:

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<sup>39</sup> RoP, para 125, Legislation Committee No.1, 10 December 2009.

<sup>40</sup> RoP, para 130, Legislation Committee No.1, 10 December 2009.

<sup>41</sup> RoP, para 128, Legislation Committee No.1, 10 December 2009.

<sup>42</sup> RoP, para 160, Legislation Committee No.1, 28 January 2010.

<sup>43</sup> RoP, para 163, Legislation Committee No.1, 28 January 2010.

“The board will be independent and therefore not accountable to the Assembly. This is a fundamental principle.”<sup>44</sup>

45. He subsequently made clear that audit and accountability arrangements would be put in place in relation to the governance of the Board.<sup>45</sup> In expanding on these arrangements, the Presiding Officer explained the Board would have a budget expenditure line within the Assembly Commission budget, which would be subject to scrutiny by the Finance Committee as part of the budget setting process. Indeed, it was suggested that the Chair of the Board could give evidence to the Finance Committee in this regard, if requested.<sup>46</sup>

46. In commenting on auditing arrangements, Dianne Bevan, Chief Operating Officer explained the Board’s accounts would only be subject to external audit insofar as they formed part of the Assembly Commission accounts, which were audited by the Auditor General for Wales.<sup>47</sup> She went on to clarify that the Board’s expenditure “would be readily identifiable” from the Assembly Commission’s accounts “and could, therefore, be scrutinised”.<sup>48</sup>

47. Linked to the above, the Presiding Officer explained the Public Accounts Committee “would have the authority to raise questions” in relation to the Board’s governance.<sup>49</sup> He also envisaged the Board would report annually to the Assembly.<sup>50</sup> The Presiding Officer agreed to give further consideration to including a reporting requirement, and specific provision in relation to scrutiny and accountability arrangements, subject to the Committee’s recommendations.<sup>51</sup>

## ***(ii) Openness and transparency***

### *Evidence from consultees*

48. A number of those giving evidence emphasised the need to ensure the principles of openness and transparency underpin the Board and its operations.

49. In evidence, Professor McAllister stated:

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<sup>44</sup> RoP, para 87, Legislation Committee No.1, 10 December 2009.

<sup>45</sup> RoP, para 129, Legislation Committee No.1, 28 January 2010.

<sup>46</sup> RoP, para 129 – 141, Legislation Committee No.1, 28 January 2010.

<sup>47</sup> RoP, para 141, Legislation Committee No.1, 28 January 2010.

<sup>48</sup> *Ibid.*

<sup>49</sup> RoP, para 154, Legislation Committee No.1, 28 January 2010.

<sup>50</sup> RoP, para 135, Legislation Committee No.1, 28 January 2010.

<sup>51</sup> RoP, para 142 – 144 and para 158, Legislation Committee No.1, January 28 2010.

“...it is acknowledged (and, in any case, is common sense assertion) that there is a direct correlation between the degree of openness and accessibility surrounding pay and expenses for politicians and wider public trust in holders of public office.”<sup>52</sup>

50. Mr Penn suggested there was an expectation on the Board to operate in an open and transparent manner, for instance, to create and maintain an accessible public website, publish agendas, papers and minutes of meetings.<sup>53</sup> In making this point more strongly, Mr Winetrobe advocated a requirement be placed on the Board in this regard.<sup>54</sup> On a related point, he questioned whether the Board would be subject to the provisions of the *Freedom of Information Act 2000*.<sup>55</sup>

#### *Evidence from Member in charge*

51. It was clear from the Presiding Officer’s evidence that he envisaged the Board would operate in an open and transparent manner.<sup>56</sup> He explained he was not in favour of placing a duty on the Board and stated:

“I believe that bodies should have functions, and that the delivery of those functions should be a matter for them...I would, therefore, expect that the people who decide to apply for public appointment – which is what this is – would be people who understand the way in which a democratic and open public sector works, and that they were expected to operate in this way.”<sup>57</sup>

52. In addition, Keith Bush, Director of Legal Services explained that section 2(2)(c) required the Board to exercise its functions with a view to ‘ensuring probity, accountability, value for money and transparency with respect to the expenditure of public funds’. He stated:

“I interpret that as applying not just to the use of funds by Assembly Members and others, but the way in which the board itself uses public resources.”<sup>58</sup>

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<sup>52</sup> Written evidence, NAWRM4.

<sup>53</sup> RoP, para 32, Legislation Committee No.1, 14 January 2010.

<sup>54</sup> Written evidence, NAWRM2.

<sup>55</sup> *Ibid.*

<sup>56</sup> RoP, para 21, Legislation Committee No.1, 28 January 2010.

<sup>57</sup> RoP, para 23, Legislation Committee No.1, 28 January 2010.

<sup>58</sup> RoP, para 25 - 27, Legislation Committee No.1, 28 January 2010.

53. In commenting on whether the Board would be subject to the *Freedom of Information Act 2000*, Mr Bush explained:

“At the moment the Board does not fall directly under requirements of the Freedom of Information Act 2000. That could be achieved by an amendment to the proposed Measure, but whether it is necessary to do that relates to this question of how far the records of the board would, in any event, be accessible. The board will not have an independent administrative structure – it will depend upon the staff of the Commission to provide that. Any records relating to the activities of the board will be in the possession of the Commission, and the Assembly is subject to the Freedom of Information Act 2000.”<sup>59</sup>

54. However, Mr Bush went on to acknowledge that potential issues could arise as to whether the Board’s records were being held by the Assembly Commission on behalf of the Board, which he believed was “something that calls for reflection”.<sup>60</sup>

55. In view of the above, the Presiding Officer agreed to give further consideration to whether requests for information under the *Freedom of Information Act 2000* should be able to be made directly to the Board.<sup>61</sup>

#### *Our view*

56. In undertaking our consideration of the general principles of the proposed Measure and in seeking to identify whether there was a need for legislation, we were conscious that a decision had already been taken by the Assembly Commission to accept the recommendations of the Independent Review Panel to break the link between Assembly Members’ salaries and those of MPs in Westminster, and to establish a statutory independent review body to make decisions on all aspects of financial support for Assembly Members. However, we agreed from the outset that this decision should not influence our work in any way, and we did not deviate from our standard approach to scrutiny. The conclusions which we have reached are based solely on the evidence received.

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<sup>59</sup> RoP, para 30, Legislation Committee No.1, 28 January 2010.

<sup>60</sup> *Ibid.*

<sup>61</sup> RoP, para 32, Legislation Committee No.1, 28 January 2010.

57. We acknowledge the broad support in evidence for the establishment of a statutory independent Board and note the Presiding Officer's view that it is the most appropriate mechanism for making decisions in respect of financial support for Assembly Members. We also note the Presiding Officer's assertion that it is no longer appropriate for the Senior Salaries Review Body to be involved in determining the salaries of, and other financial support available to Assembly Members. On this point, some Members expressed concern that insufficient consideration had been given to the viability of continued use of the Senior Salaries Review Body. Notwithstanding this, and in view of the evidence received, **we agree there is a need for a statutory independent Board and support the general principles of the proposed Measure.**

58. We note that reasons given in support of the establishment of an independent Board include the need to overcome negative perceptions that have arisen as a result of recent events in Westminster. While we were mindful of this in drawing our conclusions, we wish to make clear it was not our sole consideration. We recognise that the Independent Review Panel was established in the summer of 2008, well before the pay and allowances of MPs in Westminster became a major topic of public debate. We believe significant progress had been made since the inception of the Assembly in gaining the trust of the public. It is important that the Assembly, as an institution, and Assembly Members, as elected representatives, continue to build on this trust. We feel the proposed Measure and the establishment of an independent Board to determine financial support for Assembly Members provides an opportunity to do this.

59. We acknowledge the evidence received which emphasises strongly the need to ensure the Board is independent of the Assembly. We believe it is important to make clear from the outset that the Assembly Commission, and to a lesser extent the Assembly itself by virtue of section 5, will have some involvement in the governance of the Board insofar as it is required to formally appoint Board members and provide financial and administrative support. We accept that the level of involvement provided for is both reasonable and necessary and are content that it will not undermine the key principle that the Board will operate independently of the Assembly in the exercise of its functions. Notwithstanding this, we believe there is merit in making explicit the Board's independence for the purpose of providing absolute clarity

and as a means of enhancing public trust. To this end, and in view of the evidence received, **we recommend a statement be included in the proposed Measure to make clear the Board is independent of the Assembly in the exercise of its functions and that the Presiding Officer brings forward an amendment at Stage 2 to this effect.**

60. Linked to the above, we recognise the need to ensure that an appropriate balance is achieved between independence and accountability. We note from the Presiding Officer's evidence his intention to put in place arrangements to ensure the Assembly Commission could be held to account for decisions made in respect of the Board's governance, and the potential for scrutiny of this by the Finance Committee and Public Accounts Committee. However, we remain concerned that insufficient consideration has been given to principles of accountability and how these would work in practice. **We note there is no provision within the proposed Measure and limited information in the Explanatory Memorandum in respect of accountability arrangements and therefore we recommend the Presiding Officer address this issue as a priority.** Linked to this, and in order to further enhance transparency, **we recommend the proposed Measure places an annual reporting requirement on the Board and that the Presiding Officer brings forward an amendment at Stage 2 to this effect.** However, this should not limit the Assembly's discretion to request additional reports as and when it considers it appropriate.

61. We note the Presiding Officer's assertion that the Board will be expected to operate in an open and transparent manner, and that this is implicit in the objective provided for in section 2(2)(c). While this may be the case, we remain unconvinced that the proposed Measure, as drafted, makes adequate provision in this regard. We recognise from those giving evidence the importance of ensuring the Board operates openly and that its work is publicly accessible. We believe this will be crucial in helping develop wider understanding of, and ensuring public confidence in the Board's work. On this basis, **we believe the proposed Measure should make explicit the intention that the Board will operate in an open and transparent manner and we recommend a duty be placed on the Board in this regard.**

62. Linked to the above, we note the proposed Measure, as drafted, does not provide for the Board to be subject to provisions within the

*Freedom of Information Act 2000* ('the 2000 Act'). We acknowledge the Board will be reliant on the Assembly Commission for its administrative support; that its records will be held by the Commission, and by virtue of this, will be subject to requirements under the 2000 Act. Notwithstanding this, **we believe it is important to make clear from the outset that the Board, in its own right, will be subject to provisions within the *Freedom of Information Act 2000* and we recommend the proposed Measure be amended to provide for this.**

## 4. Specific comments on sections

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### Section 1 – National Assembly for Wales Remuneration Board

#### *Title of the Board*

63. Section 1(1) provides for the establishment of the ‘National Assembly for Wales Remuneration Board’.

64. In evidence, Mr Winetrobe suggested further consideration should be given to the title of the Board since the term ‘remuneration’ was largely “equated in the public mind with pay or salary”, did not accurately reflect the totality of financial support to Assembly Members, and had negative connotations.<sup>62</sup>

#### *Evidence from Member in charge*

65. The Presiding Officer explained the term ‘remuneration’ reflected that used in the *Government of Wales Act 2006* (‘the 2006 Act’).<sup>63</sup> He was content that the term encompassed all types of financial support about which the Board would make determinations. However, the Presiding Officer agreed to give further consideration to the title of the Board, subject to the Committee’s recommendations.<sup>64</sup>

#### *Our view*

66. We note the suggestion in evidence that further consideration be given to the title of the Board. We acknowledge the reasons given by the Presiding Officer for using the term ‘remuneration’. However, we remain concerned that the title of the Board does not contribute to public understanding of its role. To this end, **we recommend the Presiding Officer give further consideration to the title of the Board with a view to avoiding the use of the term ‘remuneration’.**

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<sup>62</sup> Written evidence, NAWRM2.

<sup>63</sup> RoP, para 9, Legislation Committee No.1, 28 January 2010.

<sup>64</sup> *Ibid.*

### *Size of the Board*

67. Section 1(2) provides for a Board of five members, i.e. a Chair and four other members.

68. In evidence, Mr Penn emphasised the need to ensure that members of the Board had relevant expertise.<sup>65</sup> He raised concern that finding five Board members with the necessary expertise would be difficult and suggested a smaller Board of three or four “could work quite adequately”.<sup>66</sup>

69. Linked to the above, Professor McAllister stated:

“In view of the extensive evidence collected by the two independent panels (which each had four members) and those set up elsewhere in the UK, the settled schedule of annual or bi-annual meetings and the terms of reference suggested in the explanatory memorandum, I would regard four members, including a Chair, as being a manageable size for the Board.”<sup>67</sup>

70. Sir Roger Jones was content with the size of the Board provided for in the proposed Measure.<sup>68</sup>

### *Evidence from Member in charge*

71. In commenting on the size of the Board, the Presiding Officer asserted a Board of five members was optimum and “workable”.<sup>69</sup> He made clear he was not in favour of boards with an even number of members; however he did not qualify this further.<sup>70</sup> He suggested a smaller Board could give rise to operational constraints in instances where one or more members were absent.<sup>71</sup>

### *Our view*

72. We note the suggestion in evidence that a Board with fewer than five members (including the Chair), as provided for in section 1(2), would suffice. While we accept it would be possible for a smaller Board

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<sup>65</sup> Written evidence, NAWRM3; and RoP, para 49 – 51, Legislation Committee No.1, 14 January 2010.

<sup>66</sup> RoP, para 56, Legislation Committee No.1, 14 January 2010.

<sup>67</sup> Written evidence, NAWRM4.

<sup>68</sup> RoP, para 30 – 32, Legislation Committee No.1, 21 January 2010.

<sup>69</sup> RoP, para 15, Legislation Committee No.1, 28 January 2010.

<sup>70</sup> *Ibid.*

<sup>71</sup> RoP, para 15, Legislation Committee No.1, 28 January 2010.

to undertake this work, we agree with the Presiding Officer that such a Board would be more likely to be subject to operational constraints. To this end, **we are content with the size of the Board provided for in section 1(2).**

## **Section 2 – Functions of the Board**

73. Section 2(1) provides that the functions of the Board are those conferred on it by sections 20, 22, 24, 53 and 54 of the 2006 Act, as amended by the proposed Measure. Sections 20 to 22 and 53 and 54 of the 2006 Act govern the current arrangements for the remuneration of Assembly Members and Welsh Ministers respectively. Section 24 of the 2006 Act requires the payment to or in respect of political groups for the purpose of assisting members of those groups to perform their functions.

74. Section 2(2) sets out the objectives the Board must seek to achieve when exercising its functions.

### *Evidence from consultees*

75. There were limited references in the evidence we received about the main functions of the Board as provided for in section 2(1). Given that the purpose of the Board is to make decisions in respect of all aspects of financial support for Assembly Members, it can be assumed that those who support the establishment of the Board are also content with the conferral of functions on it.

76. In commenting on the objectives provided for in section 2(2), Welsh Liberal Democrat Assembly Members' Support Staff (AMSS) emphasised the need to ensure that the Board understands fully the responsibilities of Assembly Members as employers, and that "staff responsibilities and wage structures should not just be an afterthought".<sup>72</sup>

77. In acknowledging the Board would make decisions in respect of financial support to Assembly Members for the cost of employing staff, and that it would have the ability to change the pay structure and terms and conditions of those staff, Labour AMSS stated:

“... the measure [should] include a duty for the proposed Board to consult staff formally and negotiate with their Trade Union

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<sup>72</sup> Written evidence, NAWRM6.

representatives before it makes any determination which would require AMs (and Party Leaders) to make staff redundant or change their terms and conditions.”<sup>73</sup>

78. In addition, Labour AMSS emphasised the need to ensure that resources made available to Assembly Members for employment of staff allowed members to carry out effectively their scrutiny and representative roles, without the need to depend upon Group Office and Assembly Commission staff. They went on to suggest it would be important to ensure Assembly Members “can continue to recruit and retain good quality staff to assist them in their work for their constituents and Wales as a whole”.<sup>74</sup>

79. Linked to the above, Professor McAllister stated:

“...any package of support enables politicians to properly fulfil their legislative, representative and scrutiny duties and does not deter talented individuals (from other professions especially) from seeking election to public office.”<sup>75</sup>

80. This was expressed in general terms as opposed to being specifically linked with the objectives provided for in section 2(2).

81. It was unclear from Sir Roger Jones’ evidence whether he was content that the objectives provided for in section 2(2) adequately reflected the Independent Review Panel’s recommendations. However, in commenting on section 2(2), he underlined the need for the Board to ensure, when making determinations, that the level of Assembly Members’ remuneration was “fair” in the context of the wider employment market in Wales; that it achieved ‘value for money’; and that Assembly Members were not financially disadvantaged as a result of their roles as elected politicians.<sup>76</sup>

82. Mr Penn emphasised the importance of having “clear objectives” and seemed content that the proposed Measure provided adequately for this.<sup>77</sup>

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<sup>73</sup> Written evidence, NAWRM8.

<sup>74</sup> *Ibid.*

<sup>75</sup> Written evidence, NAWRM4.

<sup>76</sup> RoP, para 45, Legislation Committee No.1, 21 January 2010.

<sup>77</sup> RoP, para 68, Legislation Committee No.1, 14 January 2010.

*Evidence from Member in charge*

83. In evidence, the Presiding Officer explained the objectives were “derived from the report of the independent panel”, and reflected the recommendations contained in the report, in particular recommendations 1, 2 and 12.<sup>78</sup>

84. The Presiding Officer acknowledged that measuring the extent to which the Board had met the objectives provided for in section 2(2) was “a very difficult issue”. He went on to state:

“There are audit and corporate governance recommendations in chapter 12 of the panel’s report, which will ensure that these standards will be maintained and that the objectives of section 2(2) in particular are met. There is also provision in the proposed Measure for the board, either of its own volition or requested by the Clerk and Chief Executive of the Assembly, to review its decisions, and that will ensure that the objectives are measured self-critically by the board itself, as well as by public reaction.”

85. The Presiding Officer explained the Board would be expected to consult Assembly Members, AMSS and relevant trade unions before making determinations. He was not in favour of placing a requirement on the Board to consult, although he agreed to give further consideration to this, subject to the Committee’s recommendations.

*Our view*

86. We are conscious that few of those giving evidence provided detailed comments on the functions of the Board as set out in section 2(1). However, we note that the purpose of section 2(1) is to confer functions on the Board of making determinations in respect of all aspects of financial support for Assembly Members. **In view of our support for the establishment of the Board we are also content with the conferral of these functions on it.**

87. It was clear from evidence that the most important considerations for the Board when making determinations would be the need to ensure levels of remuneration are such that they enable Assembly Members effectively to carry out their roles (central to which is the recruitment and retention of staff); do not deter potential candidates

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<sup>78</sup> RoP, para 33, Legislation Committee No.1, 10 December 2009.

from standing for election; are fair and provide value for money; and hold up to public scrutiny. With this in mind, **we are content the objectives set out in section 2(2) are both appropriate and reasonable**, and are confident they provide a suitable framework within which these needs can be met.

88. We note from the Presiding Officer's evidence that the Board will be expected to consult interested parties during the course of its work. We believe effective consultation by the Board will be key to ensuring that the objectives provided for in section 2(2) are met. We feel strongly that consultation by the Board prior to making determinations is not only desirable, but that it is essential. In view of this, and the evidence received, **we recommend the proposed Measure includes a requirement on the Board to consult interested parties before making determinations. This consultation must extend beyond Assembly Members to include Assembly Members' support staff, relevant trade unions and other parties who are likely to be affected by the Board's determinations.**

### **Section 3 – Disqualification from membership of the Board**

89. Section 3 introduces Schedule 1, which contains a list of persons who are disqualified from membership of the Board. The majority of those disqualified are directly associated with the Assembly. However, Schedule 1, paragraph 1(l) provides for the disqualification of members of the former Independent Review Panels.

90. Those who commented were generally supportive of the list of persons disqualified from being members of the Board. In evidence, Mr Penn stated:

“The proposed disqualifications from membership of the Board appear to be properly focussed. It eliminates the possibility of anyone with a direct or potential identifiable interest in the decisions of the Board being a member, while still allowing the possibility of elected members of bodies other than the National Assembly for Wales becoming Board members.”<sup>79</sup>

91. Notwithstanding the above, a number of those giving evidence, including Mr Penn, questioned the disqualification of members of the

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<sup>79</sup> Written evidence, NAWRM3.

former Independent Review Panels provided for in Schedule 1, paragraph 1(l). In commenting on this disqualification, Professor McAllister stated:

“I would have thought it more desirable for decisions about appointments to be made with regard to general suitability and overall mix of Board membership. This should include expertise, specific knowledge of this and related fields, and practical experience of what is likely to remain the thorny topic of politicians’ remuneration.”<sup>80</sup>

92. Sir Roger Jones felt the disqualification of members of the former Independent Review Panels was “churlish and inappropriate”<sup>81</sup> and Mr Penn questioned whether “it was a worthwhile exclusion”.<sup>82</sup>

93. In evidence, Mr Winetrobe queried why members or former members of other parliaments and assemblies in the UK were not included in the list of disqualifications. He suggested that the possibility of “cross-membership” among parliamentary remuneration bodies “should be removed, as it could affect public confidence”.<sup>83</sup>

#### *Evidence from Member in charge*

94. In explaining the rationale behind the list of persons disqualified from membership of the Board, Mr Bush asserted it included those “who would be affected or might be seen as being affected by the determinations of the board, and other people who hold certain public offices and district roles”.<sup>84</sup>

95. The Presiding Officer explained that the proposed Measure provided for the disqualification of members of the former Independent Review Panels:

“...to make it clear that anybody who had taken a public stance or expressed a view, or, in this case, produced a report in this area should not be involved in the work of the [Board], because that would mean that it was not truly independent.”<sup>85</sup>

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<sup>80</sup> Written evidence, NAWRM4.

<sup>81</sup> Written evidence, NAWRM7.

<sup>82</sup> RoP, para 136, Legislation Committee No.1, 14 January 2010.

<sup>83</sup> Written evidence, NAWRM2.

<sup>84</sup> RoP, para 76, Legislation Committee No.1, 28 January 2010.

<sup>85</sup> RoP, para 91, Legislation Committee No.1, 10 December 2009.

96. However, he acknowledged the concerns raised in evidence that the disqualifications may limit the field of potential candidates, and agreed to give further consideration to the extent of the disqualifications, subject to the Committee's recommendations.<sup>86</sup>

97. In commenting on the suggestion that former members and members of other parliamentary bodies should be disqualified from membership of the Board, Mr Bush stated:

“...we did not really think that it was an issue that was likely to arise in practice and, therefore, one can probably say that it falls into the category of situations where those who select members of the board for appointment – it seems to me – would be extremely unlikely to think that a Member of the Northern Ireland Assembly, a Member of Parliament or whatever, with their own commitments, would be a suitable person to serve on the board. We think that it is a matter for the selection process rather than having an unnecessary disqualification that, really, will not arise in practice.”<sup>87</sup>

98. In responding to a question about provision for making amendments to Schedule 1, Mr Bush explained that, since the proposed Measure was concerned with functions of the Assembly, it would be inappropriate to delegate powers to Welsh Ministers to amend the Schedule by Statutory Instrument. As such, any amendments of this kind would require “an amendment Measure”.<sup>88</sup> However, in an Advice Note provided at the request of the Committee, Mr Bush subsequently stated:

“There is one provision on the statute book which deals with a somewhat similar situation. Section 5 of the House of Commons Disqualification Act 1975 provides a mechanism for amending Schedule 1 to the Act (which sets out the offices whose holders are disqualified from membership of the House of Commons). A Statutory Instrument is required (in the form of an Order in Council) but this can only be made in accordance with a resolution of the House of Commons. So the House resolves that Schedule 1 to the Act be amended and then a Statutory Instrument is made giving legislative effect to that.

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<sup>86</sup> RoP, para 69, Legislation Committee No.1, 28 January 2010.

<sup>87</sup> RoP, para 76, Legislation Committee No.1, 28 January 2010.

<sup>88</sup> RoP, para 79, Legislation Committee No.1, 28 January 2010.

(Naturally, the amending SI does not require Parliamentary approval because it is giving effect to the will of the House of Commons.)

“If it were felt that a mechanism is needed so as to enable the Assembly to amend Schedule 1 to the Measure without the need for an amending Measure, I am confident that this could be achieved by a provision similar to that in Section 5 of the House of Commons Disqualification Act 1975.”<sup>89</sup>

### *Our view*

99. We note those giving evidence were generally supportive of the list of persons disqualified from membership of the Board provided for in Schedule 1. We acknowledge the comments made in evidence in relation to the disqualification of members of the former Independent Review Panels provided for in Schedule 1, paragraph 1(I), in particular the concern that this may limit the potential field of candidates. While we recognise the work of the former Independent Review Panels, we accept the reasons put forward by the Presiding Officer for the disqualification. Given the limited number of potential candidates affected by this particular disqualification, we are content that it will not impact significantly on the ability to appoint those with relevant expertise to the Board. To this end, **we are content with the disqualification of members of the former Independent Review Panels provided for in Schedule 1, paragraph 1(I).**

100. We note the suggestion in evidence that allowing elected members of other parliamentary bodies to serve on the Board may cast doubt on its independence, which could in turn undermine public confidence. While we agree with the Presiding Officer that this is unlikely to occur in practice, for the sake of certainty, **we recommend that elected members of other parliamentary bodies be disqualified from membership of the Board, and that the Presiding Officer brings forward an amendment at Stage 2 to this effect.**

101. We recognise that, as drafted, the proposed Measure contains no provision to amend Schedule 1 and that, as such, a further Measure would be required to alter the list of persons disqualified from

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<sup>89</sup> Note from Keith Bush, Director of Legal Services supplementing oral evidence to Legislation Committee No.1 on 28 January 2010.

membership of the Board, which we believe would be cumbersome. To this end, **we recommend the proposed Measure include provision to allow for Schedule 1 to be amended in line with the approach taken in section 5 of the *House of Commons Disqualification Act 1975*.**

## **Section 4 – Appointment of the members of the Board**

### ***Selection of candidates for appointment as Chair and other members of the Board and formal appointment by the Assembly Commission***

102. Schedule 2, introduced by section 4, requires the Clerk of the Assembly to make arrangements for selecting candidates for appointment as members of the Board. In doing so, the Clerk must have due regard to the principle that there should be equality of opportunity for all people.

103. The Explanatory Memorandum states:

“[The Independent Review Panel] considered that selection by the Chief Executive and Clerk of the Assembly (as Principal Accounting Officer), the Auditor General and a Commission Independent Adviser would be an appropriate approach.”<sup>90</sup>

104. Schedule 2, paragraph 3 requires the Assembly Commission to appoint as Chair, or as a member of the Board, any person selected as a candidate for appointment by the Clerk of the Assembly unless it appears that the person in question is disqualified from membership of the Board. While the proposed Measure provides for persons who are disqualified from membership of the Board (see paragraphs 89 to 101) it does not provide any qualifying criteria.

### *Evidence from consultees*

105. Those who commented were generally content with the approach provided for in relation to appointment of members to the Board.

106. In evidence, Sir Roger Jones confirmed he was content that the proposed Measure was less prescriptive in defining an appropriate

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<sup>90</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 4.4.9.

selection panel than the Independent Review Panel had been in its recommendation.<sup>91</sup>

107. In commenting on how the selection arrangements provided for Schedule 2 would work in practice, Claire Clancy, Chief Executive and Clerk of the Assembly (‘the Clerk’) explained she currently had responsibility “for making or overseeing the arrangements for a number of selection procedures”, e.g. the Auditor General for Wales and the Public Services Ombudsman for Wales. She suggested the arrangements for selecting candidates for appointment as members of the Board “would not require a new approach to that which is already applied as a matter of good practice”.<sup>92</sup>

108. The Clerk went on to explain that, in order “to increase transparency”, work was being undertaken to agree a standard appointment procedure for appointments made by, or on the nomination or recommendation of the Assembly, which, with suitable modifications could be extended to apply to appointments to the Board.<sup>93</sup>

109. Linked to the above, Mr Winetrobe emphasised the need to publish procedures adopted by the Assembly in relation to the selection of candidates for appointment to the Board to enhance openness and transparency, and to ensure “potential candidates, AMs and the wider public have confidence in them”.<sup>94</sup>

110. In evidence, Dr Bradbury raised concern that the proposed Measure “appear[s] to leave a good deal of discretion to the Assembly Commission as to who is to be appointed to the board and how they are to be appointed”.<sup>95</sup> He went on to suggest that the provisions in relation to the selection of candidates and the appointment of Board members should be “bolstered” to ensure “that a truly independent board would be set up”. Dr Bradbury felt that consideration should be given to setting out in Schedule 2 “what qualifies potential members”,

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<sup>91</sup> RoP, para 84, Legislation Committee No.1, 21 January 2010.

<sup>92</sup> Written evidence, NAWRM1.

<sup>93</sup> *Ibid.*

<sup>94</sup> Written evidence, NAWRM2; and RoP, para 242 – 246, Legislation Committee No.1, 21 January 2010.

<sup>95</sup> Written evidence, NAWRM9.

drawing on the Nolan principles and experience in comparator states, for example the Canadian provinces.<sup>96</sup>

111. Linked to the above, Mr Penn suggested “it might be beneficial” for the proposed Measure to provide specifications in relation to categories of persons to serve on the Board, for instance, a former Assembly Member.<sup>97</sup>

112. On a related point, Sir Roger Jones stated he hoped that the private sector, in their role as “wealth creators”, would be properly represented on the Board differentiating between these and “wealth destroyers”.<sup>98</sup>

113. In commenting specifically on the formal appointment of the Chair and other members of the Board by the Assembly Commission, Mr Penn stated:

“This is inconsistent with the approach taken for the appointment of the statutory Commissioner for Standards, in that it is the Assembly itself that appoints the Commissioner – not the [Assembly] Commission.”<sup>99</sup>

114. He went on to suggest “it would be seen as more open and transparent (as well as consistent)” if appointment of the Board was by the Assembly in Plenary.<sup>100</sup>

115. Similarly, Mr Winetrobe stated:

“...I would prefer the commission to make a recommendation on which the Assembly voted formally.”<sup>101</sup>

116. However, he acknowledged that this may not be seen to be feasible given the emphasis placed on the need for the Board to be independent of the Assembly.<sup>102</sup>

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<sup>96</sup> Written evidence, NAWRM 9.

<sup>97</sup> RoP, para 87, Legislation Committee No.1, 14 January 2010.

<sup>98</sup> Written evidence, NAWRM7; and RoP, para 90, Legislation Committee No.1, 21 January 2010.

<sup>99</sup> Written evidence, NAWRM5.

<sup>100</sup> *Ibid.*

<sup>101</sup> RoP, para 227, Legislation Committee No.1, 21 January 2010.

<sup>102</sup> *Ibid.*

### *Evidence from Member in charge*

117. In evidence, the Presiding Officer explained he did not think it was necessary for the proposed Measure to be as prescriptive as the Independent Panel had been in defining an appropriate selection panel.<sup>103</sup>

118. In commenting on the rationale behind the arrangements for the selection of candidates, the Presiding Officer explained that, traditionally, legislation which makes provision for public and crown appointments, for example, the *Public Service Ombudsman (Wales) Act 2005*, had not included provision in relation to the process by which candidates are identified for appointment.<sup>104</sup> In addition, Mr Bush stated:

“There is, increasingly, a move away from that to at least lay down some basic criteria, or to identify some general rules, as to how the procedure is to go ahead. That is what [Schedule 2, introduced by section 4] does – it makes it clear that a candidate for appointment as a member of the board will not emerge by some magical process, but rather that there will be an individual, namely the Clerk, responsible for putting together a process based on equality of opportunity, which will identify a person whom the Commission must then appoint.”<sup>105</sup>

119. In addition, the Presiding Officer explained that a standard procedure for selection of candidates for appointments made by the Assembly, or for crown appointments made on the nomination or recommendation of the Assembly was currently being consulted on and would be made publicly available, once agreed.<sup>106</sup> He stated he was “confident” that the arrangements for selecting candidates for appointment, along with this procedure, “will result in a clear, publicly available and understood framework of how appointments are derived”.<sup>107</sup>

120. The Presiding Officer believed it was unnecessary to include “legal qualifying criteria for candidates”.<sup>108</sup> He provided an assurance that a detailed job specification would be drawn up by the Clerk of the

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<sup>103</sup> RoP, para 111, Legislation Committee No.1, 10 December 2009.

<sup>104</sup> RoP, para 115, Legislation Committee No.1, 10 December 2009.

<sup>105</sup> RoP, para 116, Legislation Committee No.1, 10 December 2009.

<sup>106</sup> RoP, para 111, Legislation Committee No.1, 10 December 2009.

<sup>107</sup> RoP, para 123, Legislation Committee No.1, 10 December 2009.

<sup>108</sup> RoP, para 102, Legislation Committee No.1, 28 January 2010.

Assembly, in conjunction with Assembly Commission independent advisers.<sup>109</sup>

121. In commenting on the difference in the formal appointment procedure for the Chair and members of the Board and the Commissioner for Standards, the Presiding Officer explained that the latter, along with Auditor General for Wales, the Chief Executive and Clerk of the National Assembly for Wales, and the Public Services Ombudsman for Wales, were “national officers who discharge a national duty”.<sup>110</sup> The Presiding Officer explained he wanted to “reinforce the principle” that the Board was independent of the Assembly and “there is no way in which [the Assembly has] a direct influence on its constitution and its making”.<sup>111</sup> He emphasised that, in appointing the Chair and members of the Board, the Assembly Commission would be “merely acting as a board to ratify the decision of the [selection] panel”.<sup>112</sup>

122. In addition, Mr Bush explained that formal appointment of the Chair and members of the Board by the Assembly in Plenary “would not have any practical effect on who would be appointed” and went on to outline some of the practical implications of appointing in this way, for example, appointments to the Board could not take place during recess.<sup>113</sup>

123. In responding to the suggestion that appointment by the Assembly in Plenary would be perceived as more open and transparent than by the Assembly Commission, the Presiding Officer stated:

“...the idea that the Commission is somehow less transparent than the rest of the Assembly is totally unfair, because all its papers and discussions are published.”<sup>114</sup>

### *Our view*

124. We note that the majority of those giving evidence supported the approach taken in relation to the arrangements for selecting candidates for appointment to the Board. We acknowledge and are content that Schedule 2 provides for the Clerk of the Assembly to

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<sup>109</sup> RoP, para 102, Legislation Committee No.1, 28 January 2010.

<sup>110</sup> RoP, para 84, Legislation Committee No.1, 28 January 2010.

<sup>111</sup> RoP, para 87, Legislation Committee No.1, 28 January 2010.

<sup>112</sup> RoP, para 96, Legislation Committee No.1, 28 January 2010.

<sup>113</sup> RoP, para 87 – 88, Legislation Committee No.1, 28 January 2010.

<sup>114</sup> RoP, para 96, Legislation Committee No.1, 28 January 2010.

make these arrangements. In addition, we are satisfied that Schedule 2 makes clear that no person who could be affected by the exercise of the Board's functions can be involved in these arrangements. We believe this will be important in ensuring public confidence in the selection process and that it reinforces the principle of independence.

125. We welcome the agreement by the Assembly Commission of the National Assembly for Wales Procedure for selection of candidates for Appointments made by the Assembly or by Her Majesty on the nomination or recommendation of the Assembly. We note this procedure could be adapted and applied to the selection of members of the Board and we would welcome this approach. In view of the evidence received, and to aid transparency and understanding of the selection process, **we recommend that, once adapted and agreed, the procedure for the selection of candidates for appointment to the Board should be published on the Assembly's website.**

126. We note the suggestion in evidence that Schedule 2 should prescribe qualifying criteria for candidates in order to strengthen the selection and appointment process. We feel strongly that selecting candidates with the necessary skills and expertise will be essential in order to secure the confidence of the public and others in the Board. We welcome the assurance given by the Presiding Officer in evidence that a detailed job description will be drawn up, which will facilitate the selection process. We believe that this, along with the provisions provided for in Schedule 2 supplemented by an agreed procedure for the selection and appointment of members to the Board will make for a robust selection process, which will ensure that the most suitable candidates are appointed. In view of this, **we do not believe it is appropriate or desirable for the proposed Measure to prescribe categories of persons to be represented on the Board, or to stipulate qualifying criteria for candidates.**

127. We note the suggestion made in evidence that the formal appointment of the Chair and members of the Board should be by the Assembly in Plenary. While we acknowledge the reasoning behind this, we share the concern expressed by the Presiding Officer that appointment by the Assembly may be seen to undermine the independence of the Board. In view of this, **we are satisfied that the responsibility for appointing the Chair and members of the Board lies with the Assembly Commission and, as such we are content with Section 4(1)(a) as drafted.**

### ***Term of office and re-appointment***

128. Section 4(1)(b) provides that the Chair and members of the Board ‘are to hold office for a fixed term of five years’.

129. Section 4(2) provides that ‘No person may be appointed to be a member of the Board if that person has already been appointed to be a member of the Board on two occasions’.

### ***Evidence from consultees***

130. In evidence, Mr Winetrobe explained “current thinking and practice” was moving away from reappointment to public offices towards longer, single term appointments and that research had shown public appointees favoured this approach.<sup>115</sup> He suggested that longer term appointments with the removal of the prospect of reappointment were a better guarantee of appointees’ independence.<sup>116</sup>

131. In commenting on ‘rotating membership’, Mr Winetrobe felt it could be beneficial but acknowledged it may be difficult to work in practice.<sup>117</sup>

### ***Evidence from Member in charge***

132. The Presiding Officer explained that a five year term of appointment had been chosen because it would allow for the Board to extend over two Assembly terms, which would provide “useful continuity”.<sup>118</sup> Notwithstanding this, he suggested he would give further consideration to the length of appointment of the Chair and members of the Board, subject to the Committee’s recommendations.<sup>119</sup>

133. The Presiding Officer implied he would be willing to consider making provision for rotating membership.<sup>120</sup>

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<sup>115</sup> Written evidence, NAWRM2; and RoP, para 232, Legislation Committee No.1, 21 January 2010.

<sup>116</sup> RoP, para 232, Legislation Committee No.1, 21 January 2010.

<sup>117</sup> RoP, para 236, Legislation Committee No.1, 21 January 2010.

<sup>118</sup> RoP, para 104, Legislation Committee No.1, 28 January 2010.

<sup>119</sup> *Ibid.*

<sup>120</sup> RoP, para 115, Legislation Committee No.1, 28 January 2010.

### *Our view*

134. We note the evidence received in relation to longer, single term appointments. However, we acknowledge the Presiding Officer's evidence that a fixed term of five years is provided to enable the tenure of the Board to extend over two Assembly terms, and we are content that this is both reasonable and appropriate. Following on from this, we note that section 4, as drafted, provides for reappointment, which would allow members of the Board to serve continuously for a ten year period. We believe this is excessive. To this end, **we recommend that reappointment of the Chair and members of the Board are not permitted and that the Presiding Officer brings forward an amendment to section 4(2) to this effect.** We are conscious that, in practice, this would result in a newly formed Board every five years. For this reason, **we also recommend that the Presiding Officer gives consideration to providing for rotating membership with a view to ensuring some continuity.**

### **Section 5 – Termination of membership of the Board**

135. Section 5(d) provides that a motion to propose the termination of membership of the Board must be proposed on behalf of the Assembly Commission by a member of the Commission, and that termination requires the approval of the Assembly on a vote with two-thirds majority.

#### *Evidence from consultees*

136. Both Mr Winetrobe and Mr Penn pointed out that while the proposed Measure provides for appointment of members of the Board by the Assembly Commission, termination of membership requires the approval of the Assembly in Plenary.<sup>121</sup>

#### *Evidence from Member in charge*

137. In commenting on the provision in relation to the termination of membership of the Board, the Presiding Officer stated:

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<sup>121</sup> RoP, para 227, Legislation Committee No.1, 21 January 2010; and Written evidence, NAWRM5, and RoP, para 84 – 85, Legislation Committee No.1, 14 January 2010.

“There must be some way to terminate membership of any public body, in case unexpected circumstances arise.”<sup>122</sup>

138. He suggested this was standard practice in legislation that makes provision for public appointments, in order to “safeguard the nature of public appointments”. The Presiding Officer emphasised that termination of membership from the Board was expected to happen only “in extremely exceptional circumstances”, for instance if serious ill-health meant a member of the Board was incapable of tendering a resignation.<sup>123</sup>

#### *Our view*

**139. We acknowledge and accept the need to provide for the termination of membership of the Board and are content that the approach set out in section 5 is both appropriate and reasonable.**

### **Sections 7 and 8 – Administrative support; and Meetings of the Board**

140. Section 7 requires the Assembly Commission to provide the Board with ‘such administrative support as the Board reasonably requires to enable it to discharge its functions’.

141. Section 8 requires the Board to meet at least once in every calendar year, and at the written request of the Clerk of the Assembly.

142. The Explanatory Memorandum assumes the Board will hold eight meetings in the first year and two meetings a year in subsequent, non-election years; Board members will require two days input per meeting; and two days administrative support will be required per day input by the Board.<sup>124</sup>

#### *Evidence from consultees*

143. In evidence, Mr Penn suggested it was likely the Board would need to meet more frequently than set out in the Explanatory Memorandum and that the time commitment from Board members and the administrative support requirement had been underestimated.<sup>125</sup>

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<sup>122</sup> RoP, para 127, Legislation Committee No.1, 10 December 2009.

<sup>123</sup> RoP, para 127, Legislation Committee No.1, 10 December 2009.

<sup>124</sup> Proposed National Assembly for Wales (Remuneration) Measure, Explanatory Memorandum, ACPM-13-EM-S1, para 9.8 – 9.12.

<sup>125</sup> RoP, para 91, Legislation Committee No.1, 14 January 2010.

Professor McAllister suggested three days preparation per Board member per meeting was a more accurate estimate.<sup>126</sup>

144. Sir Roger Jones emphasised the need to ensure the Board had the necessary flexibility to meet when required and implied he was content the proposed Measure provided for this.<sup>127</sup>

145. In providing an estimate of the level and nature of support the Board would require over a typical 4-year cycle, the Clerk stated:

“Support will be required to make the necessary administrative arrangements, including recording issues discussed, decisions made and future actions agreed. In addition, it will be necessary to provide the Board with research and analytical advice.

[...]

“It is anticipated that, every four years in advance of an election, the Board will require 15 person days administrative support and 10 person days research/analytical support. In non-election years, the required support will be about half of these levels.”<sup>128</sup>

146. The Clerk went on to state she was “content there is sufficient capacity and expertise within the current complement of staff” to provide the necessary level of support to the Board.<sup>129</sup>

147. Professor McAllister suggested the estimated level of support for the Board provided in the Explanatory Memorandum was “reasonable”. However, she went on to state:

“...it is vital that the Board has adequate support, including professionally conducted research and comparative information gathering and that this is provided without interference from elected politicians or the Commission.”<sup>130</sup>

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<sup>126</sup> Written evidence, NAWRM4.

<sup>127</sup> RoP, para 134 – 136, Legislation Committee No.1, 21 January 2010.

<sup>128</sup> Written evidence, NAWRM1.

<sup>129</sup> *Ibid.*

<sup>130</sup> Written evidence, NAWRM4.

### *Evidence from Member in charge*

148. The Presiding Officer explained the figures provided in the Explanatory Memorandum in relation to the number of meetings, time commitment for Board members and levels of administrative support were minimum estimates.<sup>131</sup>

149. He went on to assure the Committee that, although the Board would decide the frequency and number of meetings there would be “reasonable oversight” of its budget. Furthermore, audit and accountability arrangements would help ensure the Board operated effectively.<sup>132</sup>

### *Our view*

150. We acknowledge that, subject to certain requirements, the proposed Measure provides for the Board to determine the frequency of its meetings and we accept that this level of flexibility is required.

151. We note the suggestion in evidence received that the number of meetings of the Board, time commitments for Board members, and the administrative support requirement set out in the Explanatory Memorandum may have been underestimated. If so, we are conscious that the ongoing cost of the Board may be more than originally anticipated and that additional administrative support may be required. We accept the Presiding Officer’s evidence that accountability arrangements will provide reasonable oversight in relation to the cost of the Board. Notwithstanding this, **we seek further assurance that there will be sufficient capacity within the existing Assembly Commission staff complement to meet any additional administrative support requirement which exceed the estimate provided.**

## **Section 10 – Exercise of functions in relation to salaries**

152. Section 10(3) provides for the Board to make no more than one determination in respect of the payment of salaries to Assembly Members, the First Minister, Welsh Ministers, the Counsel General and Deputy Welsh Ministers during each term of the Assembly.

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<sup>131</sup> RoP, para 165, Legislation Committee No.1, 28 January 2010.

<sup>132</sup> RoP, para 167, Legislation Committee No.1, 28 January 2010.

153. In her evidence on the workload of the Board, Professor McAllister stated:

“I fully agree that there should be an imperative to make any decisions relating to salaries and support lasting, sustainable and robust. Evidence from elsewhere suggests that well thought out systems are easily sustained without regular reappraisals of the fundamentals.”<sup>133</sup>

154. In commenting on potential implications of the proposed Measure in relation to her work as Principal Accounting Officer, the Clerk stated:

“The new arrangements will simplify the budget planning process, as Members’ salaries will be fixed for the 4-year Assembly term.”<sup>134</sup>

#### *Evidence from Member in charge*

155. The Presiding Officer explained that the requirement on the Board to make a single determination in respect of the payment of salaries to Assembly Members derived from a recommendation of the Independent Review Panel. He suggested it would provide greater certainty for potential candidates for election about salaries they could expect to receive.

#### *Our view*

156. In view of the evidence received from the Presiding Officer and others, **we are content that the Board is limited to making a single determination in respect of payment of salaries to Assembly Members during each term of the Assembly.**

### **Section 12 – Exercise of functions: general**

157. Section 12(1) places a requirement on the Board to ‘have regard to’ the Independent Review Panel’s recommendations on the first occasion on which it proposes to make a determination in relation to any matter, so far as those recommendations are relevant to that matter.

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<sup>133</sup> Written evidence, NAWRM4.

<sup>134</sup> Written evidence, NAWRM1.

158. Section 12(4) provides for the Board, when it proposes to make successive determinations, to ‘have regard to’ those recommendations ‘insofar as they appear to the Board to continue to be relevant to that matter’.

*Evidence from consultees*

159. Those who commented on this matter expressed varying levels of support for the section 12(1) requirement.

160. In evidence, Mr Winetrobe stated:

“...if the issue is the extent to which a purportedly independent board is being circumscribed by too much detail in the direction in which it is being pointed, that raises issues about its independence and the value of its work. If it is told to have regard to the report, its general principles and so on, in principle, that is fair enough, but if it is told to do nothing more than implement that report, in effect, turning it into a set of rules, I do not suppose that the board would find that a congenial or worthwhile job to do.”<sup>135</sup>

161. Dr Bradbury expressed reservations about “binding the Independent Remuneration Board to leave out of consideration what ‘Getting it Right’ wanted left out of consideration”. He went on to state:

“Generally, I would like to see written into the Measure in section 12 some wording that stiffens the independence of the Remuneration Board, and gets a better balance between its need to take account of a review endorsed by Assembly debate and its own autonomy to consider issues regarding remuneration and raise issues for Assembly and the public consideration.”<sup>136</sup>

162. Sir Roger Jones emphasised the need to ensure the Board understood the intention behind the Independent Review Panel’s report, which was restoring “the confidence of the electorate in Wales”.<sup>137</sup> However, he did not comment directly on the section 12 requirement.

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<sup>135</sup> RoP, para 209, Legislation Committee No.1, 21 January 2010.

<sup>136</sup> Written evidence, NAWRM9.

<sup>137</sup> RoP, para 123, Legislation Committee No.1, 21 January 2010.

*Evidence from Member in charge*

163. In evidence, the Presiding Officer stated:

“Section 12 gives the opportunity for the board to exercise its functions in an independent way, making its own judgements, while emphasising the importance of the work of the panel.”<sup>138</sup>

164. He asserted the section 12(1) requirement, was a means “of giving the independent remuneration board a clear agenda and steer, while also ensuring that it was independent” and went on to state:

“It would be contrary to the independent panel’s recommendations that there should be an independent board if all it did was implement the work of the panel.”<sup>139</sup>

165. In addition, Mr Bush explained the provision was:

“...a practical means of dovetailing the work of the panel with the work of the board, making it clear that the board is free to depart from the panel’s recommendations provided that it has a good reason for doing so, which it has to state and, of course, subject to the fact that that only applies the first time that the board considers something. As one goes forward, the board will be freer, as it were, to depart from the panel’s recommendations. In addition to that, developing circumstances will mean that it will inevitably break new ground and take its own decisions. So, in a sense, that is a compromise between those two requirements.”<sup>140</sup>

*Our view*

166. We note the evidence received questioning the extent to which the requirement on the Board to have regard to recommendations made by the Independent Review Panel will impact on the Board’s independence. We accept the reasons given by the Presiding Officer for including this requirement and acknowledge that the recommendations of the Independent Review Panel will provide a basis for the initial work of the Board. Finally, we are satisfied that the provision, as drafted, achieves an appropriate balance between the need to ensure the Board takes account of the work of the

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<sup>138</sup> RoP, para 119, Legislation Committee No.1, 28 January 2010.

<sup>139</sup> *Ibid.*

<sup>140</sup> RoP, para 126, Legislation Committee No.1, 28 January 2010.

Independent Review Panel and to provide the necessary autonomy to enable the Board to consider issues and draw its own conclusions when exercising its functions. To this end, **we are content with section 12.**

## **Other issues**

### ***Scope for potential cross-over between the work of the Commissioner for Standards and the Board***

#### *Evidence from consultees*

167. In evidence, Mr Penn suggested there was “scope for potential cross-over” between the work of the Board and of the Commissioner for Standards, and questioned “how any such cross-over would be managed”. In expanding on this point, Mr Penn explained that the Commissioner for Standards may have cause to investigate allegations about misuse of allowances, which could raise wider issues in relation to determinations made by the Board. He informed the Committee that, in recent years, there had been several occasions when the outcome of investigations led him formally to communicate “concerns about particular allowances” to the Assembly Commission. Similarly, Mr Penn suggested the Board may, in the course of its work, become aware of a potential breach of the determination, which would fall within the remit of the Commissioner.<sup>141</sup> He advocated the development of a “formal protocol”, which set out clearly arrangements for dealing with these circumstances should they arise.<sup>142</sup>

#### *Evidence from Member in charge*

168. The Presiding Officer acknowledged that the functions of the Commissioner for Standards and the Board “complement each other” but went on to explain:

“...there is no overlap of function between the board and the commissioner. The board sets the rules of financial support for Members, and the commissioner may be involved if there is an

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<sup>141</sup> Written evidence, NAWRM5, and RoP, para 35, Legislation Committee No.1, 14 January 2010.

<sup>142</sup> RoP, para 37 - 41, Legislation Committee No.1, 14 January 2010.

allegation that any of those rules have been broken. Otherwise, these are very separate functions.”<sup>143</sup>

169. In addition, he made it clear that any issue brought to the attention of the Clerk by the Commissioner for Standards relating to the work of the Board could subsequently be referred to the Board by the Clerk under the terms of the proposed Measure.<sup>144</sup>

*Our view*

170. We acknowledge the evidence received about potential cross-over between the work of the Commissioner for Standards and the Board. We believe it is important to ensure that arrangements are put in place from the outset to manage this, should the circumstance arise. While we do not consider it necessary or appropriate to address this by means of provision within the proposed Measure, **we recommend a formal protocol be developed between the Board and Commissioner for Standards setting out how any potential cross-over between their work will be managed. This should be done in conjunction with the Commissioner for Standards and the Assembly Commission, and be agreed as soon as is reasonably practicable.**

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<sup>143</sup> RoP, para 78, Legislation Committee No.1, 28 January 2010.

<sup>144</sup> RoP, para 79, Legislation Committee No.1, 28 January 2010.

## Witnesses

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The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-1c1-agendas.htm>

*10 December 2009*

Rt Hon the Lord Elis-Thomas AM	Presiding Officer and Chair of the Assembly Commission, Member in charge of the proposed Measure
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*14 January 2010*

Richard Penn	National Assembly for Wales Commissioner for Standards Chair of the Independent Remuneration Panel for Wales
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*21 January 2010*

Sir Roger Jones OBE	Chair of the former NAW Independent Review Panel
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Barry K Winetrobe	Parliamentary and Constitutional Consultant
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*28 January 2010*

Rt Hon the Lord Elis-Thomas AM	Presiding Officer and Chair of the Assembly Commission, Member in charge of the proposed Measure
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## List of written evidence

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The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at [http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed\\_remuneration/lc1\\_3\\_-remuneration-writtenresponses.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-measures-proposed_remuneration/lc1_3_-remuneration-writtenresponses.htm)

<i>Name</i>	<i>Organisation</i>	<i>Reference</i>
Claire Clancy	Chief Executive and Clerk to the National Assembly	NAWRM 1 NAWRM 1A
Barry K Winetrobe	Parliamentary and Constitutional Consultant	NAWRM 2
Richard Penn	Chair of the Independent Remuneration Panel of Wales	NAWRM 3
Professor Laura McAllister	University of Liverpool Management School	NAWRM 4
Richard Penn	National Assembly for Wales Standards Commissioner	NAWRM 5
	Welsh Liberal Democrat Assembly Members Support Staff	NAWRM 6
Sir Roger Jones OBE	Chair of the former National Assembly for Wales Independent Review Panel	NAWRM 7
	Labour Assembly Members Support Staff	NAWRM 8
Dr Jonathan Bradbury	Department of Political and Cultural Studies, Swansea University	NAWRM 9