

REGISTRATION OF MEMBERSHIP OF THE FREEMASONS

Report of the Committee on Standards of Conduct

1. This report contains the conclusions of a review, by the Committee on Standards of Conduct, of the requirement for Assembly Members to register membership of the Freemasons.

Recommendation

2. The Assembly is invited to:
 - i. note the Committee's conclusions in paragraphs 8-11 below;
 - ii. agree the proposed changes to Standing Order 4 Annex, Standing Order 16 and the creation of a new Standing Order requiring Members to record membership of the Freemasons and a range of other defined organisations; and
 - iii. agree the proposed changes to the guidance on Registration and Declaration of Members' Interests and approve new guidance on recording membership of organisations and societies.

Background

3. Section 72 of the Government of Wales Act requires the Assembly's Standing Orders to provide for a register of Members' interests and allows the Assembly to define in Standing Orders the interests that must be registered. A Member, who takes part in any proceedings of the Assembly (including Committees and sub committees) without having complied with the relevant provisions of the Act or Standing Orders is guilty of a criminal offence. Membership of the Freemasons is one of the interests that the Assembly has defined in Standing Orders.
4. The requirement to register Membership of the Freemasons was included in the Assembly's first Standing Orders made by the then Secretary of State for Wales under Section 50 of the Government of Wales Act. In doing so, he followed the advice of the National Assembly Advisory Group (NAAG) who were responding to expressions of public concern made to them about Freemasonry.
5. In September 2000 the South Wales Eastern Province of the Freemasons asked the Presiding Officer to consider the implications of the Human Rights Act, which came into force in October 2000, on the registration requirement and, in particular, whether the Assembly's requirements breached Articles 8 and 11 of the European Convention on Human Rights. The Presiding Officer referred the matter to the Standards of Conduct Committee for advice.

Standards Committee Consideration

6. The Committee has considered the matter on 4 occasions and has twice taken evidence directly from representatives of the Freemasons. The Committee has also received advice from the Presiding Office's legal adviser, David Lambert.
7. The Committee considered the following questions in making their recommendations on this issue:
 - i. whether the Freemasons is a secret society, who do not make public their membership;
 - ii. whether the Freemasons show improper favour to other Freemasons;
 - iii. whether, through the oaths they take, Freemasons owe greater loyalty to Freemasonry than to other institutions or the state;
 - iv. whether, if these allegations are true, they are unique to the Freemasons;
 - v. whether Assembly guidance to Local Authorities creates a precedent for the National Assembly's procedures; and
 - vi. the legal position.

Committee's Conclusions

8. The Committee concluded that despite the public misgivings about the activities of the Freemasons identified by NAAG, misgivings that are shared by a number of Members of the Committee, there is no conclusive evidence of misconduct against the Freemasons as an organisation.
9. The European Court of Human Rights has concluded that the Freemasons is not a secret society. Freemasons give an undertaking to uphold the law and authoritative inquiries by the Home Affairs Select Committee have concluded that most allegations involving Freemasons are groundless. No other legislature in the UK has a similar requirement to the Assembly's. It is also difficult to establish that the Freemasons are a unique organisation, which might then justify treating them differently to all others.
10. The Assembly's own treatment of Freemasons also appears inconsistent. The "Conduct of Members (Model Code of Conduct) (Wales) Order 2001", which came into force on 28 July last year for members of local authorities in Wales, makes it clear that membership of the Freemasons is only one among any number of organisations which Councillors must declare.
11. A number of Committee members felt that the current requirements, which singled out the Freemasons, without conclusive evidence of misconduct, were difficult to defend in principle. However, others felt that Members should continue to register Freemasonry. The overall conclusion of the Presiding Office's legal adviser was that the current requirement ran the risk of a successful legal challenge and should be replaced by a more legally robust requirement. The Committee took the view that whatever the views of individual Committee members there was little option but to concur with this

advice. The Committee therefore decided to recommend to the Assembly that the current requirements should be amended.

12. In framing its proposals the Committee was also mindful that, whatever the objective evidence, the NAAG had identified a degree of public concern about the activities of the Freemasons. However, the Assembly's own requirements may now themselves be contributing to unfair perceptions of the Freemasons. The Committee does not, therefore, believe that it would be appropriate to remove all requirements to declare Membership of the Freemasons. Instead, the Committee believes that there should be a requirement to record membership of a wider range of organisations including the Freemasons. This would be more in line with the requirement the Assembly has placed on local authorities in Wales.

Proposals

13. The proposals set out in this paper meet three key principles which the Committee took account of in its consideration of this matter:
 - i. that the registration requirements should minimise the risk of successful legal action against the Assembly;
 - ii. that any new requirements should not be overly onerous or complicated and the sanction for not complying should be proportionate to the nature of the "offence"; and
 - iii. that the requirements should encourage the greatest possible degree of openness and inclusivity compatible with the other two principles.
14. The Committee was also mindful that under Section 72 of the Government of Wales Act, failure to register membership of an organisation could attract criminal sanctions. To avoid the disproportionate consequences of failing to register very innocuous organisations, the Committee agreed that a new Standing Order requirement, requiring Members to inform the Presiding Office of certain interests, should be introduced. This would fall outside the scope of the registration requirements of the Government of Wales Act and would not, therefore, attract criminal sanctions. It would however be enforceable through the Standards Committee and Standing Orders.
15. In the light of the above the Committee proposes that
 - i. Standing Order 4 Annex should be amended to delete the requirements to register membership of the Freemasons.
 - ii. A new Standing Order and Standing Order Annex on "Recording of Membership of Societies" should be created. This will set out the types of organisations that members need to record.

- iii. Standing Order 16.1 should be amended to allow the Standards Committee to investigate, report on and recommend action in respect of complaints referred to it about breaches of the new Standing Order.
 - iv. Guidance should be amended to reflect the changes above.
16. A copy of the proposed amendments to Standing Orders is at Annex 1. A copy of the revised guidance on Registration and Declaration of Members' Financial and Other Interests is at Annex 2. Annex 3 contains links to other relevant background papers.

Conclusion

17. In considering this issue, some Committee Members were concerned that the current requirements were unfair in principle and discriminated unfairly against the Freemasons. Others felt that Members should continue to register Freemasonry. The Committee as a whole took the view that there is a risk that the current Standing Orders requirement will be challenged in the Courts. Such a challenge could be expensive to defend and there is a risk of losing the case, which might prove embarrassing and costly to the Assembly.
18. The Committee believes that the proposed changes will provide a far more legally robust system of registering membership of the Freemasons and other organisations and meet public concern on this issue.

*Committee on Standards of Conduct
July 2002*

Amendment to Standing Order 4 ANNEX

In Standing Order 4 ANNEX, delete the following:

"11. Membership by the Member of the Freemasons."

NEW STANDING ORDER 37 - Recording of Membership of Societies

37.1 The Presiding Officer shall maintain and publish a record of the notifications by Members of the matters set out in the Annex to this Standing Order and copies shall be available for inspection by Members and by the public.

37.2 Notifications shall be made by completion of a form prescribed by the Presiding Officer.

37.3 Within eight weeks of a Member taking the oath of allegiance or making the corresponding affirmation, he or she shall complete the form prescribed by the Presiding Officer, and shall sign the form and deliver it to the Office of the Presiding Officer.

37.4 Within four weeks of membership or change to membership occurring, a member shall notify the Presiding Officer of this change by completion of the prescribed form; and shall sign the form and deliver it to the Office of the Presiding Officer.

37.4A A Member may deliver the form referred to in paragraph 37.3 or 37.4.4 by taking it to the table office or arranging for another person to do so by post but the form shall not be regarded as having been delivered until it is received by the table office.

37.4B Members shall be under a continuing duty to ensure, by inspecting the record of declarations from time to time, that it correctly contains the particulars notified by them under paragraphs 37.3 or 37.4

Standing Order 37 Annex

The matters which must be recorded by Assembly Members

General

- I. A notification under this Standing Order shall be made by the Member of the matters set out below.
- II. For the purposes of this notification, "Entry requirements for membership" does not include the following:
 - (a) The requirement to pay a subscription;
 - (b) The agreement to and signing of terms and conditions of membership of the society

Matters to be recorded:

Membership or position of general control or management of any of the following:

- (a) private society which has entry requirements for membership ;
- (b) private club which has entry requirements for membership.

(Addition to Standing Order 16)

Standing Order 16 - Committee on Standards of Conduct

16.1 There shall be a Committee on Standards of Conduct, which shall:

- (i) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Presiding Officer that a Member has not complied with standing order 4 or any Assembly resolution relating to the financial or other interests of Members, or that an Assembly Secretary has not complied with the requirements of paragraph 2.8;

(ia.) investigate, report on and if appropriate, recommend action in respect of any complaint referred to it by the Presiding Officer that a member has not complied with any requirement to record matters specified under Standing Order 37.

- (ii) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Presiding Officer that a Member has not complied with any Assembly resolution relating to Members' standards of conduct or with the guidance for Assembly Secretaries which the Assembly has approved in accordance with paragraph 2.7;

(...)

NATIONAL ASSEMBLY FOR WALES
GUIDANCE FOR ASSEMBLY MEMBERS
ON THE REGISTRATION,
DECLARATION AND RECORDING OF
MEMBERS'
FINANCIAL AND OTHER INTERESTS

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SECTION 1: INTRODUCTION & STATUTORY FRAMEWORK

1.1 This guidance was approved by the Assembly on X Month 2002. It replaces in its entirety the "Guidance for Assembly Members on the Registration and Declaration of Members' Financial and Other Interests" which was approved by the Assembly on 5 February 2002.

1.2 The purpose of this guidance is to assist Members in discharging the duties placed upon them under section 72 of the Government of Wales Act 1998 ("the Act"), the Assembly's standing order 4 and standing order 37, and the Assembly's resolution of 19th May 1999 in relation to indirect interests. It is not, however, a substitute for the Act, standing order 4, standing order 37 or the Assembly's resolution, which Members must comply with when first registering and subsequently reviewing their interests and memberships and declaring and recording them. References in this guidance to proceedings of the Assembly include references to proceedings of its committees and sub-committees.

1.3 Section 72(6)(a) of the Government of Wales Act makes it an offence, liable to a fine not exceeding level 5 on the standard scale, if a Member takes part in any Assembly proceedings without having complied with, or in contravention of, the Act and the standing orders on registration and declaration of interests, voting and paid advocacy.

1.4 Responsibility for complying with the duties placed upon them rests with Members alone, although they may seek the advice of the Presiding Officer, the Clerk, or members of his staff

1.5 The main elements of the Assembly's standing order 4 are:

- SO 4.1 - registration of interests in a register which is open for public inspection and deposit of employment agreements;
- SO 4.5 - declaration of relevant interests before a Member takes part in any Assembly proceedings;
- SO 4.6 - a bar on paid advocacy in any proceedings of the Assembly;
- SO 4.7 - a bar on voting in relation to any interest which is required to be registered or declared where the decision is likely to give rise to a direct financial advantage to the Member which is greater than that accruing to the generality of persons affected by the decision;

- SO 4.8 - possible exclusion of Members and withdrawal of rights, for those who fail to comply with standing orders (as well as imposition of criminal sanctions);
- SO 4.10 - requirements in relation to the form and depositing of employment agreements involving the provision of services in a Member's capacity as an Assembly Member.

These provisions are explored in detail in Sections 2 and 4-7 of this guidance.

1.6 The Annex to standing order 4 specifies that the Assembly may specify by resolution, definitions, limits or values in relation to the categories of interests set out in the Annex. These were specified in an Assembly resolution of 19th May 1999.

1.7 Standing Order 37 covers the recording by Members of their membership of private clubs or societies.

1.8 The provisions of Standing Order 37 are not covered by the criminal sanctions set out in Section 72 of the Government of Wales Act. However, failure to register a relevant membership is a matter which the Committee on Standards of Conduct may investigate under Standing Order 16.(ia.) and can recommend action if it finds that a member has not complied with the provisions of Standing Order 37.

SECTION 2 - THE REGISTER OF INTERESTS (SO 4.1 & 4.2) AND THE RECORD OF MEMBERSHIP OF SOCIETIES (SO 37)

The Register

Under section 72(1) of the Act there is a requirement for there to be a register of interests of Assembly Members and for Assembly Members to register such interests (as defined in the standing orders) in that register. Interests are detailed in standing order 4 and the Annex to the standing order. The policy behind the requirement for a register is to give notification on a continuous basis to Assembly Members and to the public of those financial and other interests which might be thought to influence their conduct or actions in the Assembly. The Annex to the standing orders specifies the categories of interests that must be registered. The provisions are neither optional nor voluntary. Participation in proceedings, having failed to register the interests specified in the annex, is an offence under Section 72(6)(a) of the Government of Wales Act. Guidance and any advice given by the Presiding Officer and/or

his Office, are not a definitive interpretation of the requirements arising out of the Act and standing orders. Legal interpretation rests finally with the Courts. Because of the requirement in standing order 4.4 to notify any new or changed interests within 4 weeks of the change/interest occurring, Members are advised to review their interests regularly.

Some Members may decide to adopt a practice of registering interests which they are not obliged to register, e.g. hospitality whose value falls below the prescribed threshold of 0.5% of Members' salaries or interests possessed by the Member's immediate family other than the Member's partner or dependant child. There is nothing to prevent this, although it could lead to unfavourable comparisons being drawn between those who properly meet the requirements of the Act and standing orders and those who choose to exceed them.

Membership of Societies

Following advice from the Standards of Conduct Committee, the Record of Membership of Societies was introduced following the adoption by the Assembly of Standing Order 37 and Standing Order 37 Annex on [Date] [Month] 2002. Standing Order 37 replaced the former requirement under Standing Order 4 for Members to register their Membership of the Freemasons. The Record of Memberships is published in the same document as the Register of Interests.

The policy behind the requirement is similar to that for Standing Order 4 i.e. to give notification on a continuous basis to Assembly Members and to the public of memberships of private clubs or societies which might be thought to influence Members' conduct or actions in the Assembly.

The provisions of Standing Order 37 are modelled on those in Standing Order 4 so that, for instance, timescales for declaring recordable interests are identical. Like Standing Order 4, the provisions are neither optional nor voluntary and much of the general guidance on Standing Order 4 will apply to Standing Order 37. The main difference between Standing Order 37 and Standing Order 4 is that the criminal penalties sanctions of Section 72 of the Government of Wales Act do not apply.

Because of the requirement in standing order 37.4 to notify any new or changed interests within 4 weeks of the change/interest occurring, Members are advised to review their Memberships regularly. Examples of the types of Membership that must be recorded or which do not need to be recorded are set out in Annex B.

2.1 Registration and Recording in practice - SO 4.3, 4.4, 37.3 & 37.4

Standing orders 4.3 and 37.3 require Members to complete a registration and recording form and submit it to the Presiding Officer within **eight** weeks of taking the oath or making the affirmation. It is then the responsibility of Members under standing orders 4.4 and 37.4 to notify changes in their registrable and recordable interests within **four** weeks of each change occurring.

The contents of the Register are available for public inspection. An updated copy is placed on the Assembly's website every week that a revised entry is made and a copy can be inspected in the Assembly building (via the Table Office) or via the Intranet (Members Area/Members details/Interests). Copies of individual entries in the Register may be supplied on request in accordance with section 119 of the Act.

2.2 Declaration of Members' interests - SO 4.5

The standing order relating to declaration of interest is broader in scope than the standing orders relating to the registration of interests. As well as current interests (ie those in the current Register or interests acquired in the previous four weeks), Members are required to declare interests which are specified in the Annex to standing order 4 which they *may be expecting* to have before taking part in any proceedings of the Assembly if the interest is in any matter to which the proceedings relate. The main policy behind the requirement for a declaration of interest is to ensure that Assembly Members and the public are aware of any financial or other interest which might reasonably be thought to be relevant to the proceedings in which the Member wishes to speak.

Participation in proceedings without declaring any **current** relevant interests that a Member may have as specified in the annex to standing order 4 is an offence under section 72(6)(a) of the Government of Wales Act. Failure to declare a **future** interest is not a criminal offence under the Act, but, may be the subject of a complaint to the Standards Committee under standing order 16.1 (i).

Expected future interests may be more significant than current interests and candour is essential. Where, for example, a Member is debating subordinate legislation or making representations on a matter from which the Member has a reasonable expectation of personal financial advantage of a kind specified in the Annex to SO4, a declaration must be made. In deciding when a possible future benefit is sufficiently tangible to necessitate declaration, the key word

in the rule that the Member must bear in mind is “expecting”. Where a Member’s plans or degree of involvement in a project have passed beyond vague hopes and aspirations, and reached the stage where there is a reasonable expectation that a registrable benefit will accrue, then a declaration explaining the situation should be made. Where the interest is such as to require a declaration before speaking, Members should also ensure that they comply with the rules on voting (standing order 4.7).

Participation in proceedings without declaring any membership of a recordable society is not an offence under section 72 of the Government of Wales Act and is not a requirement in Standing Orders.

2.3 Declarations in Practice

For the purpose of making declarations, proceedings, in addition to debates in plenary sessions of the Assembly, include debates in committees and sub-committees and meeting of committees and sub-committees at which evidence is heard. An interest should be declared if it is within a category specified in the annex to the standing order 4 and if it is in any matter to which the proceedings relate. It is the responsibility of the Member to judge whether an interest relates sufficiently to a particular proceeding to require a declaration.

SO 4.5 requires the declaration to be made orally and because of the provisions of section 72(2) of the Act it would appear that a declaration should be made on each occasion that a matter is discussed. The basic principle is that Members should declare relevant interests each time that they participate in proceedings of the Assembly i.e.

- *In plenary* - before a member speaks for the first time in each agenda item but not each time that they subsequently speak during the particular item of business.
- *In Committee* - at the beginning of each Committee meeting

Provided that the details (including any relevant amounts) are in the Register of Interests then the Member may simply refer to the interests and the fact that the interests are to be found in the Register. If the declaration relates to interests which are either not yet in the Register or are ones which the Member or to the Member's knowledge, the Member's partner or any dependant child of the Member, may expect to have in the future, then the full details (including any relevant amounts) will be required to be given in the declaration.

The declaration should be sufficiently informative to enable the listener to understand the nature of the interest being declared, it is not enough to say "I have an interest in the matter under discussion". The declaration must identify the kind of interest involved. For example, "I am a farmer with interests in land or animals which would be affected by the scheme" or "I own a house in the area affected by the scheme being considered" or "I am a member of the board of one of the organisations which would be affected by this decision". If a member has more than one interest then each must be declared, e.g. "I am a farmer whose land would be affected by the scheme and I am also the owner of a house occupied by my parents and which will be affected".

Although no particular form of words is required, provided the declaration is clear, Members may find it useful to model their declaration on the following:

"Chair (or Mr. Presiding Officer, as the case may be). I wish to declare an interest in the matter under discussion. I am a farmer whose land would be affected by the scheme (or as the case may be). Details are recorded in the Register of Members' Interests."

However, the main responsibility for deciding whether to make a declaration lies with the individual Member.

SECTION 3 - PAID ADVOCACY - SO 4.6

Involvement of the Member

3.1 The Government of Wales Act and standing order 4.6 prohibits paid advocacy. No Member may take payment for advocating or initiating any cause or matter in the Assembly on behalf of any body or individual. This means that a Member must not, in consideration of payment or benefit in kind, advocate or initiate any cause or matter by speaking in proceedings, voting, tabling an oral or written question, tabling a motion, tabling or moving an amendment to a motion or to subordinate legislation, tabling or signing up to a written statement of opinion, or urging a colleague to do so. Members should note that the prohibition also applies where the payment or benefit is one that to the Member's knowledge is or is expected to be received by the Member's spouse.

3.2 The standing order does not prevent a Member from holding a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to membership of the

Assembly. Nor does it prevent a Member from being sponsored by a trade union or any other organisation, or holding any other registrable interest, or from receiving hospitality in the course of his or her Assembly duties whether in the United Kingdom or abroad. Nor does it prevent any Member from being a paid adviser on Assembly matters, or receiving any form of remuneration from any outside body.

3.3 However, in each case the Member is prevented by the SO from carrying out any action referred to in SO 4.6 in any proceedings of the Assembly or its committees.

Involvement with other Members

3.4 Members must not, for payment or benefit as described above, urge any other Member to advocate or initiate any cause or matter in Assembly proceedings.

3.5 In common with the standing orders relating to registration and declaration of interests, the main responsibility for observation of the rule against paid advocacy lies with the individual Member.

SECTION 4: RESTRICTIONS ON VOTING - SO 4.7

4.1 Under standing order 4.7 where a Member has an interest which is required to be registered or declared under SO4 the Member is not allowed to vote if in relation to that interest the decision might result in a **direct financial** advantage to the Member which is **greater** than that which might accrue to persons affected by the decision generally. Otherwise, Members may vote in the proceedings of the Assembly. As with the requirement to register and declare interests, failure to comply with standing order 4.7 on this matter is an offence under Section 72(6)(a) of the Government of Wales Act.

4.2 There is no clear answer for every situation. It may be very difficult for a Member to be clear, when voting, who are the persons who are or might be affected by the decision generally and whether that Member might directly benefit financially more than such persons generally.

4.3 There are two questions to be considered:

The first is whether the particular matter to be voted on in the Assembly or in a Committee involves a decision which might affect an interest required to be registered or declared under the Annex to the Standing Order. These interests

are generally (but not exclusively) financial interests. It would not be every matter voted on by the Committee, or the Assembly, which involved such a result. For example, a recommendation to an Assembly Secretary or to the Assembly by a Member who is a farmer to pursue a particular course of action (e.g. to adopt a particular scheme for supporting agriculture) could be seen as at least tending to result in direct financial advantage. General expressions of view on agricultural matters would not.

The second question is whether a decision "might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally". This is the most difficult aspect of the provision. The difficulty is in deciding who are the "persons affected by the decision generally" to whom a financial advantage might accrue. For example, in relation to a farming matter, if that meant "the population of Wales" then no farmer could vote on a matter affecting the incomes of farmers. It is therefore unlikely that this is the intention of the standing order. It is more likely to mean any particular persons affected by a particular decision. E.g. farmers in an area where a scheme of agri-environmental grants are proposed. When the persons have been identified then the question is whether the Member might directly benefit financially more than those persons generally. For example, because certain grant conditions are particularly fulfilled in relation to a Member's registrable interest, a Member who is a farmer might be particularly well-placed to benefit more from a proposed local grant scheme than other farmers in the area; this might prohibit that member from voting in relation to that scheme.

4.4 The Standards Committee has endorsed the following advice: You should not vote if the decision might result in a direct financial advantage to you "greater than that which might accrue to persons affected by the decision generally". This means that:

- a) You are therefore able to vote if you are satisfied that your interest would only be an indirect one; as would be the case if a member of your family would be the only direct beneficiary.
- b) Even if you were a direct beneficiary, you would be able to vote unless a greater benefit might result to you than to the generality of people affected.

This latter point is hard to interpret precisely and as explained above the only safe advice for Members must be "if in doubt, don't vote".

SECTION 5: EMPLOYMENT AGREEMENTS - SO 4.10

5.1 Any Member who has, or who proposes to enter into, an agreement involving the provision of services in the Member's capacity as an Assembly Member shall ensure that the agreement:

- is not in breach of standing order 4.6 (prohibition of paid advocacy)
- is in writing
- indicates the nature of the services to be provided
- specifies the payment or benefit the Member is to receive.

5.2 The Member is required to deposit a copy of the agreement with the Presiding Officer within 4 weeks. Employment agreements will be open to inspection by Assembly Members and by the public. Agreements will not be published or placed on the Assembly website but will be open to inspection by Assembly Members and by the public on request.

5.3 The requirement for agreements to be in writing and deposited with the Presiding Officer applies to any arrangement whereby a Member may offer advice about Assembly matters. For example, a continuing paid commitment to produce a newspaper column or to take part in a radio or television programme about matters concerning the Assembly would have to be the subject of a written agreement. The SO does not require such a commitment to be in the form of a written agreement if its subject is wholly unrelated to Assembly affairs. Occasional engagements where there is no ongoing commitment to provide a service, such as ad hoc current affairs or news interviews or intermittent panel appearances, may not need to be the subject of a written agreement but any remuneration received from such engagements would need to be registered under category 2.

5.4 It may not always be immediately obvious whether a particular agreement to provide services arises from, or relates to, membership of the Assembly. There will be cases that are difficult to classify. Some Members, for example, may provide advice on Assembly matters incidentally as part of a much wider employment agreement covering matters wholly unrelated to the Assembly. In these circumstances, it is in the first instance for an individual Member to decide whether the requirement of SO 4.10 should be met by isolating the Assembly services within a separate, depositable agreement. In reaching that decision the Member may wish to consult the Presiding Officer, the Clerk, or a member of his Office, but the matter remains one for the Member initially to decide.

SECTION 6: FAILURE TO COMPLY & COMPLAINTS PROCEDURE

The responsibility for ensuring the application of the requirements of standing orders 4 and 37 and the Assembly's resolutions on interests rests initially with Assembly Members. It is, therefore, appropriate for this guidance to outline the arrangements for enforcement and penalty in cases of non-compliance.

6.1 Non-compliance

Section 72(6) of the Government of Wales Act makes it an offence for a Member to take part in any proceedings without having complied with the standing orders on:

- registration of interests
- declaration of interests (current not future - see paragraph 2.3)
- voting in proceedings
- paid advocacy.

A Member who is guilty of such an offence is liable on summary conviction to a fine of up to level 5 on the standard scale. Prosecutions relating to non-compliance with standing orders may only be instituted by, or with the consent of, the Director of Public Prosecutions.

A protocol for dealing with complaints about a contravention of section 72(6) of the Act has been signed [negotiated/agreed] with the South Wales Police and the Director of Public Prosecutions. A copy of the protocol or information about its contents is available from the Office of the Presiding Officer.

6.2 Withdrawal of rights and exclusion - SO 4.8 & 4.9

Section 72(5)(a) of the Act allows the Assembly's standing orders to provide for the Assembly to exclude from its proceedings for a specified period Members who have failed to comply with, or have contravened, the standing orders on registration, declaration, voting and advocacy. These are covered in standing orders 4.8 & 4.9.

6.3 The Committee on Standards of Conduct: standing order 16

Standing order 16 sets out the role of the Committee on Standards of Conduct in relation to the matters dealt with in this guidance. Its primary role is to investigate, report on and, if appropriate, recommend action in respect of any

complaint referred to it by the Presiding Officer that a Member has not complied with the standing orders. Following the submission of a report to the Assembly in relation to a failure to comply with standing orders, the Assembly may resolve to exclude a Member for a specified period.

During the period for which the Member is excluded the Member is not entitled to receive any salary from the Assembly and is not permitted to attend the Assembly or any of its committees or sub-committees.

The above sanctions are in addition to the possibility of prosecution under section 72(6) of the Government of Wales Act.

6.4 Assembly Complaint Procedure

Complaints, whether from Assembly Members or from members of the public, should be addressed in writing to the Presiding Officer.

The acknowledgement of receipt of a complaint by the Presiding Officer is not to be interpreted as an indication that there is a *prima facie* case for investigation. A copy of the Assembly's complaint procedure is available from the Standards Committee Secretariat in the Office of the Presiding Officer. In March 2000 the Assembly appointed an Adviser to provide advice and assistance to the Presiding Officer on any matter relating to the conduct of Members and to investigate, upon invitation from the Assembly's Committee on Standards of Conduct, factual matters arising out of any matter before it. A protocol for the role of and access to the Adviser has been agreed between the Presiding Officer, the Committee and the Adviser. Further details are available from the Standards Committee Secretariat, Office of the Presiding Officer.

Annex A

The Categories of Statutorily Registrable & Declarable Interests

The Annex to standing order 4 requires Assembly Members to register their interests in the following categories and declare them before speaking in proceedings to which they are relevant. Before considering the detail, Members should take note of the two general requirements set out in the annex to the standing orders:

- 1) Remunerated activity in the areas of public relations, and political advice and consultancy relating to the functions of the Assembly shall be included in Category 2.
- 2) The majority of the interests specified in the Categories below include a reference to interests independently possessed by or given to the partner or any dependant child of the Member, and these must also be registered if such interests are known to the Member.

A partner is defined as "a spouse or one of a couple whether of the same sex or of the opposite sex who although not married to each other are living together and treat each other as if they are spouses".

A dependant child is defined as "any person who, at the time of registration is under the age of sixteen or is under the age of nineteen and receiving fulltime education at a recognised educational establishment and is:-

- (a) a child of the Member; or
- (b) a step-child of the Member by marriage; or
- (c) a child legally adopted by the Member, or
- (d) a child who, the Member intends to legally adopt; or
- (e) a child who, for at least the previous 6 calendar months has been financially supported by the Member".

Category 1: Directorships

Remunerated directorships held by the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, in public and private companies including directorships which are individually unremunerated but where remuneration is paid through another company in the same group.

In this category, and in others relevant categories, Members are advised to include as "remuneration" not only salaries and fees, but also the receipt of any taxable expenses, allowances, or benefits, such as the provision of a company car. Members should state the name of the company in which the directorship is held and give a broad indication of the company's business where it is not self-evident from its name. In addition to any remunerated directorships, Members are also required to register/declare any directorships which are held and which are themselves unremunerated but where the companies in question are associated with, or subsidiaries of, a company in which he or she holds a remunerated directorship.

Category 2: Remunerated Employment, Office, Profession, etc

Employment, office, trade, profession or vocation (apart from membership of the Assembly), for which the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, is remunerated or in which the Member has any pecuniary interest.

Details of all employment outside the Assembly and any sources of remuneration which do not fall clearly within any other category should be provided in this category. For employment, Members should state the employer or company, the nature of the business, and indicate the nature of the post which they hold in the company or the services for which the company remunerates them. Members who have paid posts as consultants or advisers should indicate the nature of the consultancy, for example "management consultant", "legal adviser", "parliamentary and public affairs consultant".

Any remunerated activity in the areas of public relations and political advice and consultancy relating to the functions of the Assembly must be included in this category. This includes any remunerated activity connected with any proceedings in the Assembly, a committee or sub-committee, the sponsoring of functions in the Assembly buildings and making representations to the Assembly Cabinet or any of its members. Assembly Members should take care

to ensure that such remunerated activity does not fall within the definition of paid advocacy.

Details of agreements involving the paid provision of services in the Member's capacity as an Assembly Member also need to be registered under this category.

Category 3: The Names of Clients

The names of clients when the interests referred to above include services by the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, which arise out of, or are related in any manner to, his or her membership of the Assembly.

In respect of any paid employment registered/declared in category 1 (Directorships) and category 2 (Remunerated employment, office, profession, etc), any provision to clients of services which relate to, or arise out of, the Member's position as a Member should be registered under this category. The names of all clients, including companies and partnerships to which services are provided, should be listed together with the nature of the client's business in each case. Where a Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, receives remuneration from a company or partnership engaged in consultancy business which itself has clients, the Members should list any of those clients to whom services or advice are provided, either directly or indirectly.

The types of services that are intended to be covered here include those connected with any Assembly proceeding, or other services related to membership. If a Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member has clients in a non-Assembly professional capacity (for example as a doctor, solicitor or accountant), the Member is not required to register the names of those clients, provided it is clear beyond doubt that the services which are being provided do not arise out of or relate in any manner to the Member's capacity as an Assembly Member.

Under this category, if a Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, is employed as an Assembly adviser by a firm which is itself a consultancy and therefore is providing such advice and services to its clients, the Member should disclose those of the consultancy's clients with whom he or she has a direct connection for the purpose of providing advice or services related to the Assembly or who benefit from the provision of such advice or services. Where a company or partnership

is named as a client, the nature of the company or partnership's business should be indicated.

Category 4: Gifts, hospitality, material benefits or advantage

Gifts, hospitality, material benefits or advantage above a value specified in any resolution of the Assembly received by the Member or, to the Member's knowledge the Member's partner or any dependant child of the Member, from any company, organisation or person and relating to or arising out of membership of the Assembly.

The Assembly resolved on 19th May 1999 that the specified financial values above which gifts, hospitality and any other benefits must be registered/declared are:

- (i) for tangible gifts (such as money, jewellery, glassware, etc), £125;
- (ii) for other benefits (such as hospitality, tickets to sporting and cultural events, relief from indebtedness, concessionary loans, provision of services, etc), 0.5 per cent of the basic gross annual Assembly salary for an Assembly Member.

Any gift, or benefit, which in any way relates to membership of the Assembly and which is given gratis, or at a cost below that generally available to members of the public, should be registered/declared whenever the value of the gift or benefit is greater than the amounts specified in (i) or (ii) above. Any similar gift or benefit which is received by any company or organisation in which the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, has a controlling interest should also be registered.

Gifts and material benefits in this category (and other categories) are exempt from registration/declaration if they do not relate in any way to membership of the Assembly. Consequently, gifts which are received by a Member on behalf of the Assembly as a whole do not need to be registered/declared provided they are handed over to the Assembly and a record is made of the Assembly's ownership of the gift. Whether this exemption applies in any particular case is in the first instance a matter for the individual Member to decide. If there is any doubt it should be registered.

References in this category to Members includes references to their spouses if, to the knowledge of Members, their spouses have received gifts or hospitality which in any way relates to or arises out of the Member's membership of the Assembly.

Category 5: Contracts with the Assembly

Any remuneration or other material benefit which a Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, receives from any public or private company or other body which has tendered for, is tendering for, or has, a contract with the Assembly.

Members should register/declare the source of all remuneration or material benefits received from any company or other body which has tendered or is tendering for contracts with the Assembly. It is for the Member to decide what constitutes a material benefit, but clearly any gifts or hospitality which are not registrable under category 4 above but given by a company with contractual links with the Assembly would need to be identified in this category.

Category 6: Financial sponsorships

Financial sponsorship (i) as a candidate for election to the Assembly, where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses; or (ii) as a Member of the Assembly by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage.

This category deals with sponsorship by companies, trade unions, professional bodies, trade associations and other organisations. Under this category and paragraph 1 of the general heading of the Annex to the standing orders, the Member is required to register/declare the source of any contribution to his or her election expenses in excess of 25 per cent of the total of such expenses. In the case of a Member who was elected from a group of party list candidates, the threshold of 25 per cent relates to the election expenses incurred by or on behalf of that group of party list candidates as included in the return as to election expenses required under article 55 of the National Assembly for Wales (Representation of the People) Order 1999. (The return is submitted by the registered nominating officer of each party which has submitted a list for at least one electoral region at an Assembly election and although the return concerns the party's expenses over the elections as a whole it does require a

separate breakdown in respect of each election agent for each group of party list candidates.)

In accordance with standing order 4.4, regional Members should update the Register in relation to category 6 within 4 weeks of the return being submitted. Subsection (ii) of this category relates to other forms of financial sponsorship. This is intended to cover any regular or continuing support from persons including companies or organisations from which the Member receives any financial or material benefit in support of his or her role as a Member of the Assembly.

If a company is the sponsor the nature of its business should be indicated. Members should register any financial sponsorship arrangement in which they are personally involved, irrespective of whether they receive personal payment.

It is considered that the provision of services of a research assistant or secretary whose salary, in whole or in part, is met by an external organisation, and the provision of free or subsidised accommodation for the Member's use, other than accommodation provided solely by the constituency party, should be registered, as appropriate, either in this section or under category 5 "Gifts, hospitality, material benefits or advantage". The Assembly resolved on 19th May 1999 that accommodation provided by a local authority or other body at no cost, or at a subsidised cost, to a Member for the sole purpose of holding constituency surgeries is exempt from registration.

Members should also register and declare any substantial donations which are made by an organisation or company on a regular basis to their constituency party when such donations are linked directly to their own candidacy or membership of the Assembly. The Assembly resolved on 19th May 1999 that "donations are to be regarded as financial sponsorship if such donations in any year are directly linked to a person's candidacy for election to, or membership of, the Assembly and amount to at least £500 in value (and references above to donations include a single donation)". However, donations made directly to a constituency party as an expression of general political support, not linked to the Member's candidacy or membership of the Assembly, do not come within the Assembly's resolution.

Similarly it is not necessary to register a trade union donation to a constituency party which is not linked to the promotion of a particular Assembly candidate or Member.

However, financial support of a Member by a trade union should be regarded as within paragraph 6 and should be registered (provided of course it exceeds 25% of election expenses) even where the trade union is affiliated to the political party in question.

Category 7: Overseas visits

Overseas visits: With the exceptions specified in any resolution of the Assembly, overseas visits made by the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, relating to or in any way arising out of membership of the Assembly where the cost of the visit was not wholly borne by the Member or the Member's partner or dependant child, or by Assembly public funds.

The Member should provide the date, destination, and purpose of the visit, the name of the government, organisation, company or individual that met the cost. Where only part of the cost was borne by an outside source (for example, the cost of accommodation but not the cost of travel), those details should be stated briefly. When an overseas visit was arranged by an all-party Assembly group but not paid for by the Assembly or by a party group, it is not sufficient to name the group as the sponsor of the visit: the Government, organisation, company or person ultimately meeting the cost should be specified.

The Assembly resolved on 19th May 1999 that the following categories of visit need not be registered but should be declared when relevant in Assembly proceedings.

- (i) Visits which are paid for by, or which are undertaken on behalf of the Assembly or which are made on behalf of an international organisation to which the Assembly belongs;
- (ii) Visits abroad with, or on behalf of, a Committee of the Assembly;
- (iii) Visits arranged for, and paid for, wholly by a Member's own political party;
- (iv) Visits paid for wholly by an institution of the European Union or by a political group of the European Parliament.

Visits which are entirely unconnected with membership of the Assembly are also exempt from registration but visits combining public duties with private purposes should be registered unless the public duties are undertaken in the

course of visits covered by any of (i) to (iv) above or unless the whole cost is paid for by the Member or the Member's partner or any dependant child.

Category 8: Land and Property

Any land or property, other than any home used for the personal residential purposes of the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member,, which has a substantial value as specified in any resolution of the Assembly or from which a substantial income is derived.

Entries should be reasonably specific as to the nature of the property and general location; for example:

“Woodland in Meirionydd”

“Dairy farm in Vale of Glamorgan”

“3 residential rented properties in Llandudno”.

The Assembly resolved on 19th May 1999 that “substantial value” means an amount equivalent to the basic gross annual salary for an Assembly Member and “substantial income” means an amount equivalent to 10 per cent of the basic gross annual salary for an Assembly Member.

It is possible for a Member or the Member's partner or dependant child to have more than one home “used for personal residential purposes of the Member or Member's partner or dependant child”. Such properties do not need to be registered.

Category 9 : Shareholdings

The names of companies or other bodies in which the Member has, either alone, or with or on behalf of his or her partner or dependant children, a beneficial interest or in which, to the Member's knowledge, the Member's partner or any dependant child of the Member has a beneficial interest, in shareholdings of a nominal value greater than one per cent of the issued share capital, or less than one per cent but more than an amount specified in any resolution of the Assembly.

The Assembly resolved on 19th May 1999 that "registration is required in respect of shareholdings of a nominal value less than 1% of the issued shared capital where the value of those shareholdings exceeds £25,000".

When determining whether or not shareholdings are registrable/declarable under the criteria set out above, Members should include not only holdings in which they themselves have a beneficial interest but also those in which the interest is held together with, or on behalf of, their spouse or dependant children. For each shareholding, the entry should state the name of the company or body, briefly indicate the nature of its business and make clear which of the criteria for registration is applicable.

Category 10: Public Bodies

Paid or unpaid membership or chairmanship by the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, of any body funded in whole or in part by the Assembly.

The Assembly has extensive funding powers in relation to public bodies and any formal association that a Member has with such bodies as a member or chair should be registered. Where the Assembly Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, has an association with a voluntary body or other body as a member or a chair which receives funding from the Assembly, that should be registered/declared. The advice of the Presiding Officer, the Clerk, or members of his Office, should be sought as to whether a body is funded wholly or in part by the Assembly.

Annex B

Recording of Membership of Societies under Standing Order 37

Examples of Memberships of Bodies which do not need to be recorded

1. Public Bodies

For example - CADW, English Heritage, Historic Scotland

2. Private societies which have only the requirement to pay a subscription

For Example - National Trust, RAC, AA, RSPB

3. Private societies which have terms and conditions of membership

For Example - University or College of Further or Higher Education, Parent/Teacher Association, Religious Bodies

4. Private Clubs which only have requirements to pay a subscription and/or agreement to conditions of membership.

For Example - Recreational Clubs or Working Persons Clubs. NB Provided there is no element of membership which is by invitation or selection only.

Examples of Memberships of Bodies which must be recorded

1. Private Societies which have requirements in addition to, or instead of, subscription requirements and agreement to terms and conditions of membership.

For Example - Freemasons, Rotary, Round Table, Recreational Clubs, Professional Bodies (e.g Law Society) NB particularly where Membership is by selection or invitation only.

2. Private Clubs which have requirements in addition to, or instead of, subscription requirements and agreement to terms and conditions of membership.

For Example - Private Members Clubs [(e.g. Cardiff and County Club)] NB particularly where Membership is by selection or invitation only.

Links to Background Papers

Human Rights Act 1998

Government of Wales Act 1998

National assembly for Wales Standing Orders

Plenary Debate of 19 May 1999

Guidance on Member's Interests

Conduct of Members (Model Code of Conduct) (Wales) Order 2001

NF v The Italian State

Grand Masonic Lodge of Italy v the Italian State

Relevant Minutes of Previous Standards Committee Meetings

Standards Committee Papers

STD 02-01(p7)

STD 05-01(02)

STD 01-02(02)