

Proposed National Assembly for Wales (Remuneration) Measure 20xx

Explanatory Memorandum

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This Explanatory Memorandum has been prepared by the Assembly Commission and is laid before the National Assembly for Wales.

Declaration on Legislative Competence

In my view, the provisions of the *proposed National Assembly for Wales (Remuneration) Measure*, introduced by me on 15 October 2009 would be within the legislative competence of the National Assembly for Wales.

Assembly Commission
Rt Hon the Lord Elis-Thomas
Member in charge of the proposed Measure

15 October 2009

Contents

Part 1: Background and Purpose of the Proposed Measure

1. Introduction	3
2. Legislative Background	5
3. Purpose and Policy Objectives	6
4. The Current Arrangements and Legislative Context	8
5. Consultation by the Panel	15
6. Power to make Subordinate Legislation	17
7. Territorial Application	17

Part 2: Regulatory Impact Assessment

8. Options	18
9. Estimate of Costs	20

Part 3: Explanatory Notes 23

Part 1: Background and Purpose of the Proposed Measure

1. Introduction

1.1 In August 2008 the National Assembly Commission set up the Independent Review Panel (“the Panel”) in order to look at all aspects of financial support available to Assembly Members; including salaries and allowances for travel, pensions, accommodation, constituency offices and support staff.

The Panel:

- reviewed the current arrangements for financial support for Assembly Members and looked at best practice;
- received evidence about relevant matters;
- consulted with relevant bodies and stakeholders;
- produced a set of evidence-based recommendations containing principles that will deliver a fair, equitable and transparent process for the financial support of Assembly Members.

1.2 The Panel’s report, *Getting it Right for Wales*¹ (“the Panel’s report”) was published and presented to the Assembly Commission in July 2009 and contained 23 principal recommendations and 85 supporting recommendations. The Assembly Commission agreed the recommendations in full and the Presiding Officer made a statement in Plenary on 8 July 2009.² All the parties, in response to the statement, agreed with the report’s recommendations. The Presiding Officer stated:

On the recommendations where the panel is proposing immediate action, and where the commission already has legal powers, we will not delay. The chief executive and her staff have already started to make arrangements to implement such recommendations at the earliest possible opportunity. For many of the recommendations, the changes require a substantial amount of preparatory work before they can be implemented, and this was recognised by the panel in the report. However, the commission intends to start this work immediately, to be completed by May 2011.

¹¹ Independent Review Panel, [Getting it Right for Wales: An Independent Review of the current arrangements for the financial support of Assembly Members](#), July 2009.

² RoP, [Statement on the Report of the Independent Review Panel, Plenary, 8 July 2009](#).

- 1.3 A key recommendation 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.
- 1.4 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.
- 1.5 In his statement in Plenary the Presiding Officer said:
- We intend to start work immediately on a commission proposed Measure, which, following the agreement of the commission yesterday, as Member in charge under Standing Order No. 23.6, I will bring forward to the Assembly in the autumn, to establish such an independent review body and to put in place the systematic, objective approach to setting pay recommended by the panel.
- 1.6 This Explanatory Memorandum has been prepared and laid in accordance with Standing Order 23.18. It sets out the background to the provisions in the Commission proposed Measure, the proposed National Assembly for Wales (Remuneration) Measure 20-- and explains the scope of the proposed Measure.

2. Legislative Background

- 2.1 The constitutional context to this proposal is set out in the Government of Wales Act 2006. The Act provides a mechanism for enhancing the legislative powers of the National Assembly for Wales, allowing it to make Measures where it has the ‘legislative competence’ (i.e. the power) to do so.
- 2.2 Standing Order 23.5 states that a proposed Measure introduced by the Commission is referred to as a “Commission proposed Measure” and Standing Order 23.6 states that the Member in charge of a Commission proposed Measure is the member of the Commission authorised by the Commission. As indicated in his statement in Plenary on 8 July 2009, the Presiding Officer is the “Member in charge”.
- 2.3 The legislative competence for this proposed Measure is provided for in Matter 13.3 of Field 13: National Assembly for Wales in 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.

3. Purpose and Policy Objectives

3.1 The Assembly Commission currently has responsibility for deciding on the level of salaries and other financial support for Assembly Members. Since the National Assembly for Wales was established in 1999, the salary of an Assembly Member has been set as a proportion of the salary of a Member of Parliament. Thus when the salaries of Members of Parliament have been increased, Assembly Members' salaries were adjusted accordingly. Likewise the salaries of additional office holders in the Assembly such as the Presiding Officer and the Leader of the Opposition and the salaries of Welsh Ministers and the Counsel General are linked to specific posts in Westminster. The Panel's report recommends that this direct link with Westminster should end as soon as possible and that an independent system for setting Assembly Members' and additional office holders' salaries and other financial support arrangements should replace it. The Panel favoured the creation of a statutory Independent Review Body.

3.2 Recommendation 12 of the Panel's report states:

The Assembly Commission should prepare and bring forward an Assembly Measure as soon as practicable, to establish a statutory Independent Review Body to make decisions in respect of the matters listed below. The role of this body is to:

- i) make decisions on all aspects of financial support for Assembly Members
- ii) take account of changing responsibilities in the work of Assembly Members
- iii) review the effectiveness and impact of the uprating process
- iv) deal with any 'ad hoc' issues

It should be noted that the members of this Body should be independent of the Assembly and should have relevant expertise. 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.

3.3 The purpose of the proposed Measure, therefore, is to establish an independent National Assembly for Wales Remuneration Board ("the Board"), to transfer to the Board the 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 reviewing 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.

- 3.4 The Board will also make determinations in relation to the remuneration of additional office holders other than those referred to in paragraph 3.3; for example, the Presiding Officer, Deputy Presiding Officer, Assembly Commissioners, leaders of opposition parties and committee chairs.
- 3.5 The proposed Measure provides for the establishment of the Board and requires it to have regard to the recommendations of the Panel when it first meets.
- 3.6 According to the Panel, whose findings have been accepted by the Assembly Commission, the objective of creating such a body is to establish "an open and transparent process" for determining Assembly Members' salaries which will "instill public confidence"³.
- 3.7 The Panel's report contains extensive discussion about the issue of devising an appropriate mechanism to set the salary for elected representatives in Westminster and beyond and it considered a wide range of evidence. In particular, it agreed with the approach set out by Sir John Baker of the Senior Salaries Review Body in his 2008 Review of MPs' pay and allowances ("the Baker Report"),⁴ when he was asked to identify an independent mechanism for determining their salaries. The Baker report recommended an Independent Review Body for the salaries and allowances of Members of Parliament.
- 3.8 The proposed Measure will therefore play a key part in achieving the Panel's aim of "providing a complete system of financial support for Assembly Members which is robust and fit for purpose"⁵.

³ Paragraph 5.30, Independent Review Panel, [Getting it Right for Wales: An Independent Review of the current arrangements for the financial support of Assembly Members](#), July 2009.

⁴ [Sir John Baker, Review of Parliamentary Pay and Pensions, June 2008, Cm 7416](#),

⁵ Paragraph 1.1, *ibid*

4. The Current Arrangements and Legislative Context

4.1 *Current arrangements*

4.1.1 Before the National Assembly for Wales was established in 1999, the Senior Salaries Review Body (SSRB) was asked to make recommendations on a structure for salaries, allowances and pensions for Assembly Members. It evaluated the roles and responsibilities of Assembly Members in relation to Westminster Members of Parliament and comparators in the public and private sectors, and then derived Assembly Members' salary by reference to that evaluation. The SSRB has subsequently carried out two further reviews of Assembly Members' salaries and allowances, in 2001 and 2004. The 2004 review recommended narrowing the differential between Members of Parliament and Assembly Members' salaries to 76.5 per cent.

4.1.2 Sections 20 to 22 and 53 to 54 of the Government of Wales Act 2006 govern the current arrangements for the remuneration of Assembly Members and the Welsh Ministers respectively.

4.1.3 Section 20:

- places a duty on the Assembly to make provision for the payment of salaries to Assembly Members;
- confers a power on the Assembly to make provision for the payment of allowances to Assembly Members;
- confers a power on the Assembly to make provision for paying pensions, allowances or gratuities for people who used to be Assembly Members and for people who are still Assembly Members but who used to be Presiding Officers or other additional office holders of the Assembly.

4.1.4 Section 53 contains analogous duties and powers in respect of Welsh Ministers and the Counsel General.

4.1.5 Sections 20(6) and 53(7) Government of Wales Act 2006 empowers the Assembly to make provisions by standing order or resolution, to confer functions on the Assembly Commission.

- 4.1.6 Sections 22(3) and 54(3) Government of Wales Act 2006 apply where the Assembly has conferred functions on the Commission for determining salaries etc. In those cases, the Commission must publish its determinations as soon as reasonably practicable after they have been made.
- 4.1.7 Section 24 of the Government of Wales Act 2006 requires the Commission to make payments to or in respect of political groups for the purpose of assisting members of those groups to perform their functions. The Commission is to determine the level of these payments and must publish its determinations as well as annual information about the sums paid under the section.
- 4.1.8 Standing Orders 1.7 to 1.10 (October 2008) confer the functions of setting salaries pensions and allowances under Sections 20, 21 and 53 of the Government of Wales Act 2006 on the Assembly Commission.

4.2 *The First Panel*

- 4.2.1 Following the changes in the role and function of the Assembly resulting from the Government of Wales Act 2006, the Assembly Commission decided in July 2007 to preserve the ratio of Assembly Member salaries to that of Members of Parliament at 76.5 per cent as recommended by the SSRB in 2004 but to seek an independent review.⁶ In autumn 2007, therefore, it decided to seek recommendations on the salaries, pensions and allowances available to Assembly Members from a Panel of four independent people, chaired by Sir Michael Wheeler-Booth, a former Clerk of the Parliaments, and one Assembly Commissioner (non-voting), William Graham AM (“the First Panel”).
- 4.2.2 The Terms of Reference of the Review included asking the First Panel to consider the salaries and other financial support for Assembly Members, the appropriate levels of salaries for Assembly and Government office-holders and the how the remuneration of Assembly Member Support Staff should be organised.

⁶ [National Assembly for Wales Commission, Minutes, 4 July 2007.](#)

4.2.3 The First Panel received written evidence from six Assembly Members and two others and took oral evidence from members of each of the four main parties represented in the Assembly.

4.2.4 The Report of the First Panel was published in March 2008.⁷ It addressed itself only to the issue of Assembly Members' salaries, explaining that:

We are conscious that the Panel has not, at this stage, discharged the entire brief given to us, but we felt it was necessary to approach the matter in two phases. This report deals with issues which, on the weight of the evidence and background information presented to us, appeared to be urgent. It also makes a recommendation that the Commission puts in place a fundamental review of the pay and system of financial support for Assembly Members, which has the object of recommending something more tailored to the National Assembly for Wales, rather than the current structure, which is based upon that of Westminster.

4.2.5 Its conclusion was that although the new powers and duties given to Assembly Members in May 2007 have resulted in growth in their roles, these were not yet fully developed. However, Assembly Members were working increasingly within their new powers although their roles had not reached the level of those of Members of the Scottish Parliament.

4.2.6 It made a number of recommendations including "a fundamental examination of the pay and system of financial support for Members under the developing devolution settlement". This would allow for further experience of the new powers of the Assembly as they develop to inform the review, and for a new approach to be adopted and tailored for the Assembly.

4.2.7 The Assembly Commission endorsed the First Panel's principal recommendation to reduce the differential between Members of Parliament and Assembly Members' salaries further by increasing the ratio from 76.5 per cent to 82 per cent to reflect the increased responsibilities conferred by the Government of Wales Act 2006. It also approved a number of other alterations to the salaries payable to office holders. In May 2008 the Assembly Commission agreed to establish an independent

⁷ [National Assembly for Wales, Independent Panel on Financial Support for Assembly Members, March 2008.](#)

panel which would review the whole range of pay and support to Assembly Members.⁸

4.3 *The Independent Review Panel*

4.3.1 The Assembly Commission established the Panel in summer 2008. Its remit was:

To examine all aspects of the financial support available to Assembly Members, including pay and allowances for travel, accommodation, constituency offices and support staff.

In carrying out its work, the Panel will:

- review the current arrangements for financial support for Assembly Members and seek out best practice;
- receive evidence about relevant matters;
- consult with relevant bodies and stakeholders;
- produce a set of evidence-based recommendations containing principles that will deliver a fair, equitable and transparent process for the financial support of Assembly Members.

4.3.2 The Panel's report was submitted to the Assembly Commission on 6 July 2009.

4.4 *Need for an independent mechanism for pay and allowances*

4.4.1 The Panel's report recommended that the direct link between Assembly Members' salaries and Members of Parliament salaries at Westminster should cease. This also applies to the link between the salaries of additional office holders in the National Assembly for Wales and specific posts in Westminster.

4.4.2 Having decided that the direct link with Westminster salaries should be broken, the Panel endorsed the approach to establishing an independent mechanism recommended in the Baker report on the salaries and allowances of Members of Parliament in 2008.

⁸ National Assembly for Wales, Assembly Commission, [Minutes \(AC 2008 \(3\)\)](#), 8 May 2008.

4.4.3 The Baker report identified three main elements necessary for an “independent mechanism for determining pay”:

- an uprating mechanism that will adjust pay automatically (either annually or at some other interval);
- fixing the pay level at a base level for the uprating mechanism to take effect;
- an Independent Body which can review whether pay remains adequate for the job and appropriate in the light of any changes to the roles and responsibilities. The Independent Body would also monitor the working of the uprating mechanism.

4.4.4 The Baker report also recommended that these reviews should occur once in each Parliament and that the outcome of these reviews should be implemented without the need for further debates or votes in the House of Commons. These matters were debated in the House of Commons in July 2008 and the UK Government’s preferred options, based largely on the Baker report, were adopted. Members of Parliament, do not, therefore, at present vote on their own pay and allowances. They retain the power to revert to the former system in relation to salaries but the power to set levels of allowances has now passed to the Independent Parliamentary Standards Authority under the Parliamentary Standards Act 2009.

4.4.5 The Panel noted that the Baker report included a table of international comparisons, which set out how the pay of elected Members is determined in several countries. It showed that independent remuneration panels are used in five of these countries; Australia, New Zealand, Norway, Spain and Sweden. Members play no role in determining their pay in seven of the countries; Canada, France, Ireland, New Zealand, Singapore, Spain and Sweden. The Report further stated:

In France, the pay of Members of Parliament has been directly linked to the pay of senior civil servants since 1958. French Members of Parliament do not vote on their own or the civil servants’ pay. In Ireland, pay of the Irish Members of Parliament is linked to the civil service and fundamental reviews are conducted every four years. In Italy, the salaries of Members of Parliament are linked to magistrates in the Supreme Court, but the magistrates’ salaries are set by the Government. In New Zealand, the salaries and allowances of Members

of Parliament are set by an independent statutory body called the Remuneration Authority; they use public and private comparators. There is widespread international use of comparators and the setting of pay independently.

4.4.6 The Panel, therefore, recommended the establishment of an Independent Review Body in Wales to first meet at least six months prior to the next Assembly⁹ to decide on future pay for Assembly Members. It also recommended that the review body should meet at least once a year.

4.4.7 The Panel recommended that the role of this body would be to:

- make decisions on all aspects of financial support for Assembly Members;
- take account of changing responsibilities in the work of Assembly Members;
- review the effectiveness and impact of the uprating process;
- deal with any 'ad hoc' issues such as the creation of new office holder posts;
- Review and approve changes to office cost provision;
- take an overview of the total remuneration package and the expenses and allowances regime.

4.4.8 The Panel was of the view that the Independent Review Body should be appointed on a statutory basis and operate independently. It would require support and resources to carry out its functions. Its role would be to make decisions on all aspects of financial support for Assembly Members. Those decisions would be final and would not be subject to ratification or approval by the Assembly Commission or the National Assembly for Wales. Recommendation 12 of the Panel's report therefore recommends that the Assembly Commission should prepare and bring forward an Assembly Measure as soon as practicable, to establish this statutory Independent Review Body.

4.4.9 The Panel suggested that the members of this body should be independent of the Assembly and should have relevant expertise. It

⁹ In other words to first meet no later than November 2010

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. The Principal Accounting Officer should have the ability to call a meeting of the Body at any time.

4.4.10 The Executive Summary of the Panel's report states that candidates for election as Assembly Members should not be attracted solely by the level of remuneration and expenses, but neither should they be deterred from standing simply because they do not have sufficient means.

4.4.11 Recommendation 14 of the Panel's report is that the Independent Review Body should from time to time review the supplements paid to additional office holders (see paragraphs 3.3 and 3.4 above).

4.4.12 The Panel considered that the Independent Review Body should consider the value of the Assembly Members' pension scheme as part of the total remuneration package.

4.4.13 The Assembly Commission has accepted the recommendations of the Panel in full and the proposed Measure is being introduced to implement its key recommendation by creating an **independent National Assembly for Wales Remuneration Board** that will be the statutory Independent Review Body to set and review Assembly Members' and additional office holders' salaries, allowances and pension arrangements.

5. Consultation by the Panel

- 5.1 In supporting the need for an independent remuneration board the Assembly Commission has had regard to the extensive evidence gathering undertaken by the Panel in the course of its review. Given that the need for this Measure has arisen from the Panel's report, it was not considered necessary to carry out a separate consultation exercise.
- 5.2 In carrying out its review, the Panel gathered evidence by a range of means. The Panel agreed at its first meeting to seek evidence from all Assembly Members, the party groups represented in the Assembly, Members' support staff, other UK legislatures and relevant organisations. A general call for evidence from the public was also made. Seventy four responses were received; ten from Members or their support staff, 36 from local councils (including community councils), seven from other organisations and 21 from individuals.
- 5.3 Two public meetings were held; one in Llandudno on 5 December 2008 and one in Cardiff on 27 January 2009. In addition, 25 private meetings were held between September 2008 and July 2009. In some of these meetings the Panel heard evidence from 15 Assembly Members and two Ministers. Four Members represented the views of their political group and the others appeared on their own behalf. The Panel also heard from two former Assembly Members, one of whom is now a Member of Parliament. In addition, evidence was heard from seven Members' support staff from the four main political groups, together with officials from the Scottish Parliament and Her Majesty's Revenue and Customs.
- 5.4 The Panel held informal discussions with the four Assembly Commissioners, the Commissioner for Standards, the Auditor General for Wales, a Member of the previous review panel and various officials from the Assembly Commission who are involved in administering the current system of financial support to Members.
- 5.5 The Chair of the Panel, Sir Roger Jones also held informal discussions with Sir Alan Langlands, Chair of the panel that reviewed allowances for Members of the Scottish Parliament, and Sir Christopher Kelly, Chair of the Committee of Standards and Conduct in Public Life.

- 5.6 The need for independence and transparency across the whole issue of pay and allowances was reflected in most of the responses¹⁰.
- 5.7 Many respondents called for clear and detailed guidance on Members' pay and allowances, written in plain English, so that both Members and the public understand exactly what payments Members could be entitled to and for a well publicised and detailed monitoring system of allowances paid¹¹.
- 5.8 There was criticism of both current salaries and allowances but also recognition that Members should be reimbursed fairly for necessary expenses incurred as part of their duties as an Assembly Member for example "remuneration should be adequate for the proper performance of their role"¹².
- 5.9 Most comments were about the levels of pay and allowances and a robust system for monitoring these however there were also comments about the process for setting Members' pay and allowances for example "Assembly Members should not decide on their own rates of pay and allowances"¹³ and "politicians are in the unique position of being able to fix both their salaries and expenses with very little control"¹⁴.

¹⁰ [Evidence submitted to the Panel's Consultation](#).

¹¹ From 29 June 2009 details of Members' allowances, pay and expenses are published on the National Assembly for Wales website: [Publication of Assembly Members' Allowances](#)

¹² [Evidence submitted to the Panel's Consultation](#), No. 41 Carmarthen Town Council

¹³ [Evidence submitted to the Panel's Consultation](#), No.24, Johnston Community Council

¹⁴ [Evidence submitted to the Panel's Consultation](#), No.23 Gwynne Evan Owen

6. Power to make Subordinate Legislation

6.1 None

7. Territorial Application

7.1 This proposed Measure will apply in relation to Wales.

Part 2: Regulatory Impact Assessment

8. Options

8.1 The current options are:

Option 1: Do nothing

Option 2: Ask the UK Government to introduce a Parliamentary Bill

Option 3: Introduce a proposed Measure

Option 1: Do nothing

8.2 The first option is to continue with the existing arrangements where the Assembly Commission remains responsible for the setting and reviewing of the salaries and other financial support for Assembly Members. Legislation would not be required in order to break the link with Westminster salaries. However the Panel recommended that a new independent system was required that would be “open and transparent” and that would “instill public confidence”. It specifically recommended that the Commission should bring forward an Assembly Measure as soon as possible.

8.3 In the Strategy for the Third Assembly the Assembly Commission identified its purpose as to “make the Assembly an accessible and effective parliamentary body that inspires the confidence of the people of Wales”.

8.4 Given that the Assembly Commission established the Panel to report on future arrangements and has subsequently accepted the recommendations of the Panel in full, with the support of all the political parties, to not proceed with a Measure at this stage would seriously undermine public confidence in the Assembly and this option is therefore effectively ruled out.

Option 2: Ask the UK Government to introduce a Parliamentary Bill

8.5 As a statutory independent National Assembly for Wales Remuneration Board is to be established, exercising statutory functions currently vested in the Assembly and the Commission, then legislation is required to amend the existing provisions of the Government of Wales Act 2006 (see Section 4.1 above). This could be achieved through a Parliamentary Bill. However the Assembly has the power to make its own law in areas of devolved

competence and can therefore establish the Board through amending the 2006 Act by the means of an Assembly Measure. (The Government of Wales Act 2006 specifically empowers the Assembly to amend the relevant sections of the Act – see Schedule 5 Part 2 paragraph 6(2)). For this reason, seeking the introduction of a Parliamentary Bill to amend the 2006 Act when the Assembly already has the power to do this itself would be an unnecessary and inappropriate use of Parliamentary time. Given the urgency of the need to establish the Board before the next Assembly elections in 2011, in any case it is highly unlikely that it would be possible for a Parliamentary Bill to achieve the same objective in the time available, particularly in light of the fact that a General Election must be held by summer 2010.

Option 3: Introduce a proposed Measure

- 8.6 The Panel has outlined the arrangements it would wish to see in place before the next Assembly elections in 2011. This included the establishment of the statutory independent review body that should first meet at least six months prior to the next Assembly (ie: by November 2010 at the latest) to set the salaries of Assembly Members and additional office holders for the next Assembly term.
- 8.7 Legislation is therefore required as a matter of urgency in order to implement this recommendation, which has been accepted by the Assembly Commission. As the Assembly already has Measure-making powers in respect of Assembly Members' salaries under Matter 13.3 of Schedule 5 to the Government of Wales Act 2006, it can use these powers to establish the Board at the earliest opportunity (see Section 2 above).
- 8.8 The Panel recommended that the Assembly Commission should prepare and bring forward an Assembly Measure as soon as practicable, to establish the statutory remuneration board.
- 8.9 The importance of securing public confidence in how pay and other financial support for Assembly Members is determined must not be underestimated in the current political climate. The proposed Measure provides for a robust, transparent and independent system to be put in place for the Fourth Assembly.

9. Estimate of Costs

Estimate of Costs: Option 1 – do nothing – continue with existing arrangements.

- 9.1 There are minimal costs relating to this option as the Measure is looking at the costs of setting up and maintaining the Board, which would not occur in this option.

Estimate of Costs: Option 2 – Ask the UK Government to introduce a Parliamentary Bill

- 9.2 The Explanatory Memorandum notes that it would be highly unlikely that such a Bill could be passed to enable the establishment of the Board before the next Assembly elections. This action would simply add another step to the legislative process and the estimated costs of Board set out in Option 3 would also apply to Option 2 in addition to the administrative costs of passing a Parliamentary Bill.

Estimate of Costs: Option 3 – Introduce a proposed Measure

- 9.3 The Panel recommends that the statutory independent review board should first meet at least six months prior to the next Assembly, by November 2010 at the latest. The Board will be the chair and four other members and will meet at least once a year.
- 9.4 The Board will be likely to need to meet more frequently in the year immediately before each Assembly election, to set remunerations for the coming Assembly term and less frequently in between elections to monitor and deal with ad hoc issues.
- 9.5 There will therefore be different costs for a year leading up to an election, compared to years in which an election is not planned.
- 9.6 The following estimates of costs use the remuneration rates for the chair, £237 per day, and other panel members, £185 per day, as paid to the independent review panel which reported in July 2009.

9.7 Based on these assumptions the daily cost of employing all five Board members is approximately £1,200, including ancillary costs such as travel and subsistence. The minimum requirement is to meet once a year, it has been assumed that each Board member will input two days work per meeting day, to cover for preparatory and follow up work.

Non-election year

9.8 On the assumption that in a normal year there will be two meetings and this will require four days input from each Board member, the annual cost would be in the region of £5,000.

9.9 The administrative support requirement will be dependent on the activity of the Board. In a year when there is no full review the level of support is likely to be minimal and equal to approximately two days per day input by the Board, this will include preparation and dissemination of any findings of the Board. This would equate to four days administrative support in each of the following three years 2011-12 and 2012-13, 2013-2014 and would be provided by existing staff.

Election years

9.10 A more detailed review would be required every four years, before each Assembly election. The first review is set to build on the recommendations of the Panel's report. The reported cost of the Panel's work was almost £60,000¹⁵.

9.11 The Measure states that the Board will be expected to have regard to the Panel's recommendations and it is therefore assumed that much of the research and consultation responses can be built upon. Therefore costs in 2010-11 will be substantially less than £60,000.

9.12 If we were to assume 8 meetings took place in 2010-11, this would equate to 16 days for each Board member, for which the total cost would be approximately £19,000. Assuming two days for each meeting date, the level of administrative support during 2010-11 required from Assembly staff would be 16 days, this would be provided by existing staff.

¹⁵ Source: Assembly Commission - Response to a Freedom of Information Request (still to be published),

9.13 For election years, relating to the fifth Assembly and beyond, it is likely that a comprehensive revaluation will be required.

Annual costs

9.14 On the basis of the above estimations this would equate to costs in the region of £19,000 in 2010-11, and £5,000 in 2011-12, 2012-13 and 2013-14.

9.15 There will be some variability in the number of days input by the Board members, and the number of days actually input will be dependent in part on demand for their services in relation to ad hoc issues.

9.16 There will also be additional costs in recruiting the Board members. This cost will fall in the financial year 2010-11 and the cost of advertisements for applications should not exceed £6,000.

9.17 All costs relating to the Board highlighted above will be borne by the Assembly Commission.

Note on costs excluded from all three options

9.18 The costs of collecting and disseminating information about Assembly Members' pay and expenses will be common for all three options and have therefore been excluded from calculations.

9.19 The auditing of Members' remuneration would also need to be subject to similar internal and external auditing arrangements, whether the Board was or was not operating. Board members' pay and costs would be part of the Assembly accounts and covered by the audit of these accounts. Hence estimates of costs are not determined by the Measure and are excluded from calculations.

Part 3: Explanatory Notes

Section 1 – The National Assembly for Wales Remuneration Board

1. This section establishes the Board, in accordance with Recommendation 12 of the Panel's report.
2. The Board will consist of a Chair and four other members. An Acting Chair may be appointed by the other members if there is a vacancy or if the Chair is unable to act, for example, if the Chair cannot attend a particular meeting.
3. At least three members must be present for any meeting of the Board to be conducted. In addition, at least three members must approve any determination the Board makes under section 20(6), 24(1) or 53(7) of the Government of Wales Act 2006 ("the Act") (see paragraph 5 below). Otherwise it will be for the Board to set its own procedures.
4. Any vacancy among the members or a defect in the appointment of a member will not affect the validity of the Board's proceedings.

Section 2 – Functions of the Board

5. This section provides (in accordance with Recommendation 12 of the Panel's report that the Board's main functions are those conferred on it by sections 20, 22, 24, 53 and 54 of the Act as amended by this Measure. Sections 20 and 22 of the Act (as amended) will give the Board the function of making determinations relating to Assembly Members' salaries, allowances and pensions. Section 24 will give the Board the function of making determinations regarding payments to political groups of Assembly Members. Sections 53 and 54 will give the Board the function of making determinations relating to Welsh Ministers and the Counsel General.
6. Sub-section (2) sets out three objectives that the Board must seek to achieve when exercising its functions: firstly, providing Assembly Members with a level of remuneration which fairly reflects the complexity and importance of the functions which they are expected to discharge and which does not deter, on financial grounds, persons with the necessary commitment and ability from seeking election as Assembly Members;

secondly, providing Assembly Members with adequate resources to enable them to exercise their functions as Assembly Members and, thirdly, ensuring that public money is spent with probity, accountability, value for money and transparency, in line with the Panel's recommendations.

7. There will be a duty on the Board to keep under review the extent to which these objectives are being achieved by the Board's determinations. When carrying out such a review, the Board must take into account how those determinations have operated, any changes in the functions of Assembly Members and any other relevant changes in circumstances.
8. The Board may, on its own initiative or at the written request of the Clerk of the Assembly, consider any other matter relevant to the discharge of its functions.

Section 3 – Disqualification from membership of the Board

9. This section introduces Schedule 1 which contains a list of persons who are disqualified from being a member of the Board (see below).

Section 4 – Appointment of the members of the Board

10. The Assembly Commission is to appoint the Chair and the other members of the Board for a fixed term of five years. A person cannot be appointed as a member of the Board more than twice. This means that the maximum period that a person could be a member is ten years. Subsection (3) introduces Schedule 2 (see below).

Section 5 – Termination of membership of the Board

11. This section provides that the Chair and other members of the Board cease to hold office on expiry of their terms of appointment, if they resign, if they become disqualified or if they are removed by resolution of the Assembly following a motion proposed by a member of the Assembly Commission on behalf of the Assembly Commission. The resolution, if voted on, must be passed with a two-thirds majority in the Assembly.

Section 6 – Terms and conditions

12. The Assembly Commission is to determine the terms and conditions on which the Chair and other members will hold office. The Assembly Commission must pay the Chair and other members any amounts they are entitled to under those terms and conditions.

Section 7 – Administrative support

13. This section requires the Assembly Commission to provide the Board with the administrative support which it reasonably requires.

Section 8 – Meetings of the Board

14. This section requires the Board to meet at least once every calendar year (see recommendation 108 of the Panel's report). The Board must in addition meet to consider a particular matter if the Clerk of the Assembly makes a written request for it to do so. Section 10 also contains some requirements affecting the frequency and timing of Board meetings. Apart from these restrictions, the Board is free to decide when it meets.

Section 9 – Determinations

15. The Commission must incorporate all current determinations into a single document and must publish it. This gives effect to recommendation 46 of the Panel's report.
16. This section provides that the Board's determinations under section 20(6), 24(1) or 53(7) of the Act must be in writing and communicated to the Assembly Commission.

Section 10 – Exercise of functions in relation to salaries

17. This section provides that the Board may not make more than one determination relating to the salaries of Assembly Members and one relating to the salaries of the Welsh Ministers and the Counsel General for each four-year Assembly term (but see paragraph 19 below). This restriction derives from recommendation 11 of the Panel's report. Another salary determination may, however, be made before the end of a term if the Board is satisfied that there are exceptional circumstances making it just and reasonable to do so. By way of example, "exceptional circumstances" could

(as recommendation 11 states) include a significant change in the powers of the Assembly.

18. The section also requires the Board, where it is reasonably practicable to do so, to make determinations before the end of the term which precedes that in relation to which it is to take effect. This gives effect to the part of recommendation 11 of the Panel's report which states that an independent review body should first meet at least six months prior to the next Assembly (ie: by November 2010 at the latest) to decide on the remuneration of Assembly Members. Rather than set a six month time limit, this section gives the Board more flexibility as to the timing of the making of the determination and allows for exceptional circumstances to affect the timing of a salaries determination.
19. The section has to make detailed provision defining what is meant by a "term" of the Assembly. An Assembly term is normally the four year period between Assembly general elections. However, the Act provides, in certain circumstances, for extraordinary general elections before the end that period. Unless such an election is held less than 6 months from the end of the normal term there would still be an ordinary general election at the end of the original four years. The section therefore makes it clear that in such a case no second set of salaries determinations would be needed in respect of the period between the extraordinary general election and the next ordinary one.

Section 11 – Exercise of functions in relation to reimbursement of costs incurred in employing staff

20. This section provides that if the Board makes a determination providing for the reimbursement of costs incurred by Assembly Members, or groups of Assembly Members, in employing staff, the Board may not subsequently amend that determination during the financial year in which that the determination first takes effect. So only one set of rules relating to cost of employing staff can apply in each financial year.

Section 12 – Exercise of functions: general

21. This section will ensure that the Board takes into account the recommendations made in the Panel's report (see, particular,

recommendations 11, 14 and 56) and applies them, unless there is good reason not to, when it first makes a determination to which any such recommendation is relevant. If the Board, when making such a determination, decides to differ from a relevant recommendation, it must state its reasons for the difference and communicate that statement in writing to the Assembly Commission. The statement will be laid before the Assembly.

22. In subsequent determinations, the Board will not be obliged to have regard to the Panel's recommendations in those determinations, but may do so if it wishes. This reflects the fact that as time goes by the detailed recommendations made in the Panel's report will increasingly be superseded by the Board's own decisions incorporated into its determinations.

Section 13 – Amendments to the Act

23. This section introduces Schedule 3 (see below).

Section 14 – Interpretation

24. This section defines the terms of the Measure. Terms used in the Measure that are also used in the Act will have the same meaning as they do in the Act.

Section 15 – Transitional and saving provision

25. The purpose of this section is to ensure that determinations made by the Assembly Commission that are currently in force will remain in force until amended or replaced by the Board.

Section 16 – Short Title and Commencement

26. This section sets out the arrangements for commencement of the Measure.
27. Sections 1, 3, 4, 5, 6, 7, 9, 14, and section 16 itself, relate to matters such as the establishment and membership of the Board. These come into force on the day after that on which the Measure is approved by Her Majesty in Council.

28. The remaining provisions of the Measure deal with the conferring of functions on the Board and how they are to be exercised. They cannot be brought into force until all the members of the Board have been appointed. These provisions will therefore come into force on the day after a notice, confirming that those appointments have been made, is laid before the Assembly by the Clerk.

Schedule 1

29. In order to minimise the risk of conflicts of interest, section 3 and this schedule provide that certain persons are disqualified from being members of the Board¹⁶. These are Assembly Members or candidates to be Assembly Members, members of staff of the Assembly or the Welsh Assembly Government and persons employed by Assembly Members or a group of Assembly Members for the purpose of assisting Assembly Members to perform the functions of an Assembly Member (for example support staff employed by Assembly Members). The Counsel General (where such person is not an Assembly Member), the Auditor General for Wales and the National Assembly for Wales Commissioner for Standards are also disqualified. In addition, a person cannot be a member of the Board if they are a member of the Assembly Commission's Corporate Government Committee, an Independent Adviser to the Assembly Commission, a former member of the First Panel (see paragraph 4.2.1 above), the Panel (see paragraph 4.3.1 above), or a Non-Executive Director of the Welsh Assembly Government.
30. For the purposes of this Measure, a person becomes a candidate for election as an Assembly Member on the day that person is declared to be a candidate or nominated as a candidate, whichever is earlier.
31. Since, under the Act, a vacancy in an electoral region seat can lead to a person who was, at the last election, on a party's list for that region, filling that vacancy without an election, persons who are could potentially become Assembly Members in that way are also disqualified.

Schedule 2

¹⁶ Section 3 and Schedule 1 set out those persons disqualified by law from being members of the Board. In addition, however, those selecting potential Board members will be able to take into account, when judging their suitability, any connection with an Assembly Member (such as a family relationship) which could give rise to an actual or perceived conflict of interest.

32. This Schedule sets out further detail on the arrangements for selecting candidates for appointment as the Chair and other members of the Board. Paragraph 1 requires the Clerk of the Assembly, on behalf of the Assembly Commission, to make the necessary arrangements.
33. In order to minimise any possibility of a conflict of interests, paragraph 2 requires the Clerk of the Assembly to ensure that no person who could be affected by the exercise of the Board's functions (for example, Assembly Members) may participate in the selection process. It also requires the Clerk of the Assembly to ensure that the arrangements have regard to equality of opportunity for all people.
34. Paragraph 3 requires the Assembly Commission to appoint whoever is selected by those arrangements unless the Assembly Commission considers that the person selected is disqualified under section 3 and schedule 1.

Schedule 3

35. This Schedule contains amendments to the Act in order to achieve the central purpose of this Measure, namely transferring the role in making determinations on the remuneration of current and former Assembly Members and additional office holders from the Assembly Commission to the Board. The sections of the Act that are amended by this Measure are set out below, in their amended form:

20 *Remuneration of Assembly members*

- (1) *Provision must be made for the payment of salaries to Assembly members.*
- (2) *Provision may be made for the payment of allowances to Assembly members.*
- (3) *Provision may be made for the payment of pensions, gratuities or allowances to, or in respect of, any person who—*
 - (a) *has ceased to be an Assembly member, or*

- (b) *has ceased to hold office as the Presiding Officer or Deputy Presiding Officer, or such other office in connection with the Assembly as the Assembly may determine, but continues to be an Assembly member.*
- (4) *Such provision may, in particular, include provision for—*
 - (a) *contributions or payments towards provision for such pensions, gratuities or allowances, and*
 - (b) *the establishment and administration (whether by the Assembly Commission or otherwise) of one or more pension schemes.*
- (5) *Sums required for the making of payments by virtue of provision under subsection (1) or (3) to or in respect of a person who holds or has held the office of Presiding Officer or Deputy Presiding Officer are to be charged on the Welsh Consolidated Fund.*
- (6) *Provision under this section is to be made by determination made by the Board.*
- (7) *The Assembly Commission must give effect to any determination made by the Board under this section.*
- (8) *In this section (and in sections 22, 24, 53 and 54) “the Board” means the National Assembly for Wales Remuneration Board established by section 1 of the National Assembly for Wales (Remuneration) Measure 20-- (nawm 20-- -).*

22 Remuneration: supplementary

- (1) *Different provision may be made under section 20 or 21 for different cases.*
- (2) *The Assembly Commission must ensure that information concerning—*
 - (a) *the amounts paid to each Assembly member as salary and allowances, and*
 - (b) *the total amount paid to Assembly members as salaries and allowances,*

is published for each financial year.

(3) *The Assembly Commission must lay before the Assembly every determination made by the Board under section 20(6) as soon as is reasonably practicable after it is made.*

(4) *For the purposes of sections 20 and 21 a person who—*

(a) *ceases to be an Assembly member when the Assembly is dissolved, but*

(b) *is nominated as a candidate at the subsequent general election,*

is to be treated as an Assembly member until the end of the day on which the poll at the election is held.

(5) *Where a person—*

(a) *ceases to be an Assembly member when the Assembly is dissolved, but*

(b) *continues to hold office as Presiding Officer or as a member of the Assembly Commission by virtue of paragraph 1(1) or (2) of Schedule 2,*

the fact that the person is no longer an Assembly member does not affect any entitlement under sections 20 and 21 in respect of the holding of office as Presiding Officer or as a member of the Assembly Commission (or both) until the end of the day on which the person ceases to hold it.

(6) *Provision made under section 20(3) does not affect pensions or allowances in payment before the provision was made.*

24 Assistance to groups of Assembly members

(1) *The Assembly Commission must make to (or in respect of) political groups to which Assembly members belong such payments as the Board from time to time determines for the purpose of assisting Assembly members who belong to those political groups to perform their functions as Assembly members.*

(2) *A determination under subsection (1) may make provision—*

- (a) *for calculating the amount of any payment to (or in respect of) a political group,*
 - (b) *for the conditions subject to which payments to (or in respect of) a political group are to be made, and*
 - (c) *for claims for such payments to be made to the Assembly Commission.*
- (3) *A determination under subsection (1) may make different provision for different political groups.*
- (4) *...*¹⁷
- (5) *The standing orders must include provision for determining for the purposes of this Act whether any Assembly member belongs to a political group and, if so, to which; and (in particular)—*
- (a) *may include provision for treating an Assembly member as not belonging to a political group unless a specified number of Assembly members belong to it, and*
 - (b) *must include provision requiring the Presiding Officer to decide any questions arising under the provision included by virtue of this subsection.*
- (6) *The Assembly Commission must lay before the Assembly every determination made by the Board under section 24(1) as soon as is reasonably practicable after it is made.*
- (7) *The Assembly Commission must ensure that information concerning the sums paid under this section is published for each financial year.*

53 Remuneration

- (1) *Provision must be made for the payment of salaries to persons to whom this section applies.*
- (2) *Provision may be made for the payment of allowances to persons to whom this section applies.*

¹⁷ The whole of Section 4(4) is omitted by the Measure

- (3) *Provision may be made for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a person to whom this section applies.*
- (4) *Such provision may, in particular, include provision for—*
 - (a) *contributions or payments towards provision for such pensions, gratuities or allowances, and*
 - (b) *the establishment and administration (whether by the Assembly Commission or otherwise) of one or more pension schemes.*
- (5) *This section applies to—*
 - (a) *the First Minister,*
 - (b) *every Welsh Minister appointed under section 48,*
 - (c) *the Counsel General, and*
 - (d) *every Deputy Welsh Minister.*
- (6) *Sums required for the making of payments by virtue of provision under this section are payable out of the Welsh Consolidated Fund.*
- (7) *Provision under this section is to be made by determination made by the Board.*
- (8) *The Assembly Commission must give effect to any determination made by the Board under this section.*

54 *Remuneration: supplementary*

- (1) *Different provision may be made under section 53 for different cases.*
- (2) *The Assembly Commission must ensure that information concerning—*
 - (a) *the amounts paid to each person to whom section 53 applies as salary and allowances, and*

(b) *the total amount paid to such persons as salaries and allowances,*

is published for each financial year.

- (3) *The Assembly Commission must lay before the Assembly every determination made by the Board under section 53(7) as soon as is reasonably practicable after it is made.*
- (4) *Provision made under section 53(3) does not affect pensions or allowances in payment before the provision was made.*