

Standards Committee

Review of Members' Interests -

Standing Orders and Guidance

The purpose of this draft report is to assist members of the Standards Committee to examine Standing Order 4 to see whether it meets these requirements and to formulate, in principle, any suggested improvements. Any such proposal could then be the subject of detailed drafting with a view to inviting the Assembly to make any necessary revision to Standing

Orders.

For ease, it has been laid out in the suggested form of the Committee's eventual report to the Assembly and, once the Committee has given the Secretariat a steer, it will be turned into an actual draft report for consideration at the Committee's July meeting.

Draft report - April 2000

Introduction & Background

[Introductory text about the Review and the role/views of the Committee..... Experience in the first 12 months etc.]

The Government of Wales Act 1998 (Section 72) sets out measures which the National Assembly is required or permitted to incorporate into its Standing Orders to preserve standards of integrity.

The Act makes certain breaches of the relevant Standing Order (SO 4) criminal offences.

Both in the interests of the public and of Members it is vital therefore that Standing Orders meet the standards set by the Act, are easily understood, and are enforceable.

The requirements of S.72 of the Government of Wales Act.

Standing Orders:

Must provide for the registration of interests (the interests to be registered to be defined in Standing Orders):

Must require a Member to declare financial and other interests (as defined in Standing

Orders) before taking part in any proceedings of the Assembly **which relate to that interest;**

May prohibit or restrict participation by a Member in proceedings if the Member has an interest in the matter to which those proceedings relate:

Must prohibit a member from advocating (or urging others to advocate) a particular cause in return for financial or other reward;

May provide for a Member who fails to comply with the above rules to be penalised by exclusion from the Assembly, together with withdrawal of rights and privileges.

Standing Order 4 in fact contains all these kinds of provision. The standards set for the Assembly are therefore the very highest possible under the Act.

Part I - Issues & Recommendations

Registration of Interests

Registrable Interests are set out in the Annex to SO 4 [see Appendix 1]. On the whole they appear to be clearly understood. Members of the Committee have drawn attention to the question of whether "financial sponsorship" under paragraph 6 includes payment of election expenses or provision of on-going support or facilities by the registered political party in whose name the Member was elected. The advice given by officials is that it does not. With the Committee's agreement, supplementary guidance to that effect was issued to members in April 2000.

Some clarification may be needed in relation to the General section of the Annex that calls for an indication to within £5000 of the sums involved in contracts or sources of income or benefit. There is no definition of how such valuation is to be made, e.g in the case of fluctuating income over what period the assessment should be made and in the case of an asset at what date it should be valued. Assembly Guidance on the Registration of Interests does not give a clear answer to such questions.

Issue 1 -for consideration by the Committee

Is the Committee satisfied that paragraph 1 to the General section of the Annex is clear and accords with what is necessary to ensure proper standards of integrity? If not, what improvements would the Committee want to see?

Legal Advice

- *There needs to be clarification of the requirement and frequency of review. Additional draft guidance is attached at Annex 1*

Recommendation:

- *Basis of £5000 criteria to be clarified.*

Additional Action Required:

- *The Supplementary guidance needs to be incorporated into the main guidance on registration and declaration of interests.*

Registration in Practice

Some members have adopted a practice of registering interests which they are not obliged to register, e.g. hospitality whose value falls below the threshold of 0.5% of Members' salaries. Ought this to be permitted, or should the register be confined to interests which must be registered. The Scottish Parliament has adopted a two-part register, one for compulsory registration and the other for voluntary registration.

Again, supplementary guidance has been issued following discussions in Committee. The practice has begun to change in recent months owing to the guidance and advice given to Members by Table Office staff. The concern is that unfavourable comparisons may be drawn between those who comply with the rules and those who register all.

Issue 2 - for consideration by the Committee

Should Members be permitted to register interests which are not required to be registered under SO 4? If so, should that be done by means of a separate section for voluntary registration of interests?

Recommendations

- *That the main guidance on registration and declaration of interests is strengthened to incorporate the supplementary messages that the Committee has issued.*
- *We do not believe that a Member's right to choose whether to register and/or declare additional items/benefits should be withdrawn*
- *A voluntary register is not supported on the grounds that:*

There may be demands to publish it [and it would certainly be accessible to the public in hard copy], giving rise to questions as to why he/she had no entries, and resulting in increased pressure on Members to declare all. This would be self-defeating and, irrespective of the fact that it was "voluntary", would not remove the potential for unfavourable comparisons. There are also potentially resource implications for staff. . We estimate that the practice of over-registration is now confined to about 3-4 Members.

Declaration of Interests

Section 72(2) of the Act says that: " The standing orders must include provision for requiring any Assembly member who has -

- a financial interest (as defined in the standing orders) in any matter, or
- any other interest, or an interest of any other kind, specified in the standing orders in any matter,

to declare that interest before taking part in the proceedings...."

The "financial interest" is an interest that is defined in the standing orders (section 72(2)(a) of the Government of Wales Act). The Assembly's financial interests are similar to those which are set out in the standing orders of the Scottish Parliament, which derive their authority from similar provisions in section 39(2)(a) of the Scotland Act 1998. The provisions are also similar to those set out in the Standing Orders of the House of Commons. It may therefore be considered that the Assembly's Standing Orders are adequate in this respect as they presently stand.

The requirement to declare "any other interest or kind of interest specified in Standing Orders", has been defined in SO 4.5 as those interests specified in the Annex to the standing

orders, most of which are of course financial in nature. It could theoretically be argued that SO 4.5 does not fully reflect the intention of section 72(2) of the Act and that we need to add a general requirement category. This would need to be defined in the standing orders and included in the Annex.

There are two problems with this suggestion: firstly, that we would have to define explicitly what was meant by this (particularly in view of the fact that criminal sanctions would attach). Legal advice is that this would be extremely difficult to do; if (say) it related to grants or benefits then it could perhaps be linked to the Assembly's functions. Following this example through, it would mean that we would need to review each piece of legislation as it was passed (or commenced?) to ascertain whether it affected Members' positions. Secondly, that any possible definition would be so open to interpretation that it would restrict Members ability to participate and/or open them up to complaints.

Issue 3 - for consideration by the Committee

Whether it would be clearer and closer to the intention of the Act for there to be a general requirement to declare a "financial interest" (which would have to be defined) before taking part in proceedings relating to such an interest?

Recommendation:

- *Given that the existing standing orders are clear, that this has not proved to be a problem here or in other Parliaments/Assemblies who operate on the same basis, and that it would be extremely difficult to draft a robust and reasonable definition which allowed Members to participate as Members, we recommend that the status quo is maintained.*

Declaration of Interests in Practice

In one respect SO 4.5 is more restrictive than the Act requires. The Act does not specify how the declaration is to be made whereas SO 4.5 requires it to be made orally and (apparently) on each occasion that a matter is discussed. The Local Government Act has provision for a written declaration of interest to be lodged. The Assembly has its register of interests. If the fact that a Member is, for example, a farmer, or owns tenanted property has been registered, does that fact also need to be declared each time the Assembly considers agriculture or housing?

There have been some difficulties in knowing exactly what is required by this part of the standing orders/guidance. As a result, supplementary guidance was issued on behalf of the

Committee in April 2000. The issue is closely linked to the considerations in respect of voting [see paragraph xx below].

Issue 4 - for consideration by the Committee

Should an oral declaration of an interest that has already been registered be necessary whenever the Assembly considers a matter that affects that interest?

Recommendations:

- *That the guidance is redrafted to clarify precisely what is required, incorporating the additional material from the supplementary guidance issued by the Committee.*
- *The Secretariat does not however recommend any significant changes in the actual requirements as this could be perceived as a watering down of the Assembly's standards.*

Prohibition of Voting

SO 4.7 prohibits a Member from voting on a matter if the decision "might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally."

The understanding and application of this rule can give rise to great difficulties. Almost every decision that the Assembly makes affects a wide class of persons. How does one define the class of persons affected by a particular decision? How can one judge whether a particular Member will, or even might, derive a greater direct financial advantage than that class of persons?

On the other hand, only direct financial advantages give rise to the prohibition.

The Act does not make a rule of this kind obligatory and no similar rule applies to the Westminster Parliament or the Scottish Parliament. A declaration of interest is regarded as sufficient to deter abuse of a Member's vote to further personal gain. The Assembly's standards are therefore higher in this regard than the other legislatures.

One option would be to align the Assembly's arrangements to those in operation in Scotland & Westminster. It is clear, however, from previous discussions that the Committee would not want to be seen to be watering-down its standards and, in fact, the Committee has previously indicated concern that the Assembly's rules appear to be less rigorous than those

in operation in the local government sector.

The Local Government Act 1972 prohibits voting where the member has a pecuniary interest, direct or indirect in any contract or other matter. A member has an indirect pecuniary interest if the member or the member's nominee is a member of a company or other body or is a partner or employee of a person who has a pecuniary interest in a matter. Membership of or employment by public bodies does not count. Where a member is married to and living with a person who has a pecuniary interest that is also treated as a pecuniary interest of the member.

Using this approach as a model, but bearing in mind the far wider powers and areas of responsibility of the Assembly it would be possible to define a "financial interest" on which a duty to declare an interest and a prohibition on voting could be based. It could, for example, be limited to interests in contract and financial benefits such as grants, benefits and subsidies.

Careful consideration would have to be given, however, to the impact on such an approach on the work of the Assembly. Greater clarity would be achieved but the effect is likely to be a restriction on the rights of some Members to vote on some issues.

Issue 4 - for consideration by the Committee

Is SO 4.7 clear and easy to apply in its present form? If not, is such a prohibition necessary to safeguard standards of integrity. If it is necessary, how can it be clarified and should it be strengthened?

Recommendations:

- *The Secretariat does not recommend any changes to strengthen the prohibition on voting e.g. by bringing the Assembly's arrangements closer to those in operation in local government. Neither does it recommend any loosening of the existing arrangements*

As noted above our standards are already significantly higher than those in the other legislatures. The Assembly's rules are a compromise between the relatively broad requirements in Westminster and the extremely rigorous approach in local government. These arise from the different responsibilities. In Westminster general principles and legislation are considered while in local government specific decisions are more likely to affect individuals directly. In the interests of integrity the Assembly has adopted something closer to the local government model but which recognises the wider Assembly remit and powers. Wholesale application of the local government model could have a significant impact on Members' ability to participate

in proceedings.

Loosening the restrictions could be perceived badly by those who operate in the local government sector.

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Additional Action Required:

- *The Supplementary guidance needs to be incorporated into the main guidance on registration and declaration of interests.*

The Paid Advocacy Rule

The rule (SO 4.6) appears to be clear and no specific comments are made at present. However, the Neill Committee (6th report) recently recommended some changes in relation to the rules in operation in Westminster. See below (Neill Report, Part II).

Penalties for Non-compliance

Again, the rules (SO 4.8 and 4.9) appear to be satisfactory and no specific comments are made.

Part II - Additional Issues, including those raised by the Committee, Not Covered Elsewhere

Private Members' Clubs

The issue is whether it is possible to put in place arrangements that require Members to declare membership of private members' clubs. As reported at the Committee meeting on 10th February, the Secretariat discussed this issue briefly with other Assemblies/Parliaments, the Parliamentary Commissioner on Standards and representatives of the Neill Committee on 7th February. The unanimous response was that this had not been an issue elsewhere or even one which had been considered. By contrast, the representatives could see enormous difficulties on enforcement and definition.

Definition is a real problem. How would you draw the boundaries between what is

acceptable and what isn't? To leave it to the discretion of Members would not be fair to those Members and staff would be put in an invidious position. Assuming a definition could be found it would be extremely subjective and it would be difficult to avoid accusations that certain clubs were being singled out. This could give rise to negative and unwelcome publicity for the Assembly.

The issues raised by such a proposal are similar to, but go further than, those that apply to the requirement to register membership of the freemasons are. The requirement in paragraph 11 of the Annex to the standing orders is the only statutory requirement of its kind in the United Kingdom. There has been concern that its inclusion in the standing orders may breach human rights legislation and that therefore its enforcement would be difficult. To remove it now may be publicly construed as a slackening of standards, unless there were a clear legal imperative for doing so.

Issue 5 - for consideration by the Committee

Should a requirement to register membership of private members' clubs be introduced and included in standing order 4?

Recommendation:

In the circumstances outlined above, and with the danger of compounding potential human rights violations by requiring membership of private clubs to be registered, the Secretariat does not recommend the pursuance of this proposal.

Indirect Interests

Standing Order 4 and the Annex to the standing orders specify the categories of interest that must be registered. Additionally, the Assembly resolved [19 May 1999], when adopting its guidance for Assembly Members on the Registration and Declaration of Members' Financial and Other Interests, that members should register interests of a kind referred to in section 72 of the Government of Wales Act and in standing order 4. The Assembly further resolved that "indirect interests of Members in matters particularised in Annex A or in matters of that kind should also be registered if it might reasonably be thought by others who knew of the interest that it might influence the Members' conduct of Assembly business." The same applies to declarations.

The issue is whether for completeness these additional resolutions should be brought within the standing orders themselves. There is no reason to do so on "policing" grounds as Committee's remit extends beyond the standing orders to "any resolution relating to the

financial or other interests of Members". Including them in standing order 4 would bring them within the scope of section 72 of the Government of Wales Act 1998 thereby making failure to comply and participation in respect of indirect interests also subject to criminal sanctions.

Issue 6 - for consideration by the Committee

Should the Assembly's additional resolutions on interests be brought within standing order 4?

Recommendation:

- *The Assembly's resolution is not clear. A number of issues and anomalies have emerged during the first stage of the review.*
- *Given that section 72(6) would attach if these indirect interests were brought within standing orders the Secretariat is minded to recommend that the status quo be maintained. It does however believe that the assembly resolution should be reviewed; a further report will be made on this at the Committee's May meeting.*

The Neill Report

There are two recommendations in the Neill report that potentially impact on this review. These are:

- Criminal law of bribery - government to introduce legislation as soon as possible. The Assembly will need to amend standing orders to accommodate the new legislation.
- Ban on paid advocacy - if implemented this would relax the Assembly's rules on initiating proceedings to bring them in line with those for participation. However, Section 72 (4) of the Government of Wales Act requires Standing Orders to include provision prohibiting a Member from "advocating or initiating any cause or matter on behalf of any person, by any means specified in the Standing Orders, in consideration of any payment in kind of a description so specified".

The other recommendations in relation to Members' standards are either already enshrined in the Assembly's guidance or legislation or relate to the procedure for handling complaints. The Secretariat is preparing a comprehensive report on the recommendations to be considered by the Standards Committee at its meeting on 11th May.

Changes to Arrangements for Submission of Register Entries

The Committee has previously agreed an amendment to standing order 4.3 and 4.4 to allow

Members to submit register entries by post or via AMSS rather than (solely) in person. Guidance needs to be amended to reflect this change which was adopted by the Assembly on 5 April.

Additional Action required:

- *The changes to standing order 4 need to be incorporated into the main guidance on registration and declaration of interests.*

General - Guidance for Members

It is quite clear that Members (and officials) are finding the current guidance unwieldy and not sufficiently user friendly. There have been a number of occasions over the last [12] months where there has been a need to distil some of the formal content into a short/snappy format. There are also practical occasions (e.g. when attending committee) when it would be useful to have a quick reminder of the simple do's and don'ts. The Secretariat is therefore working-up a quick pocket-reference guide (double-sided, bilingual) for distribution to Members. This will not replace the Assembly's formal adopted guidance which will continue to be needed to cover the detail of the requirements of the Act, standing orders and the Assembly's resolutions. The latter will, however, be reviewed to see whether improvements can be made to clarify requirements and remove unnecessary repetition. (For example, it is clear that there needs to be a separate section on indirect interests.)

A mock-up of the short guide will be available for the Committee's May meeting.

Part III - Conclusion

To Follow for May meeting.

The Categories of Registerable Interests

The Standing Orders require Members to specify the sums involved under this category when registering an interest to the nearest £5,000. Where the sum involved is lower than £5,000, Members may either declare that the sum is lower than £5,000, or give an indication to the nearest £50.

When deciding whether, and if so what amount, to register, Members should calculate the value or likely value of an interest over the ensuing year from the date of the registration of the interest. Where there is likely to be fluctuation in the value, the average value over the year should be included.

Under Standing Order 4.4, new, or amended interests should be registered or the registration amended as the case may be, within four weeks of the Member becoming aware of the need to register or amend the registration. Additionally, on the 1 July of each year, a Member should consider whether it is necessary to amend the value of a registered interest. If a Member is aware that the value of an interest has increased or decreased since becoming registered, this should be the subject of an amended registration.

A Member is not required to arrange to carry out a profession valuation of an interest every year.