

Committee on Standards of Conduct

SOC(3)-03-10 : Paper 2

Recommendation 15 of the Report of the Independent Review Panel

Issue

1. At its meeting on 28 January, the Assembly Commission considered proposals for taking forward recommendations contained in the Independent Review Panel's report, 'Getting it Right for Wales'. This included consideration of Recommendation 15 of the report, which is that:

""In addition to recording information on other employment¹ on the Register of Interests, Assembly Members should also be required to detail the time involved in this additional employment". ""

2. Following consideration of this matter, the Commission agreed to refer this matter to the Committee on Standards of Conduct to consider options for implementing Recommendation 15, given its responsibility for ""supervising the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests...and the form and content of the Register²"".

3. This paper aims to initiate the Committee's discussion of the matter, and sets out options for the Committee's consideration - this paper does not provide any specific recommendation. Specific proposals/recommendations will be provided once the Committee has agreed its preferred way forward.

Background

4. As part of their Review, the Independent Panel considered the issue of Members having 'other employment', and noted that Members are already required to record this information in the Register of Members' Interests (under Standing Order 31). The Panel considered however that, in the interests of greater transparency and public confidence, further information should be supplied; in particular, the time involved in pursuing that other employment.

5. Given the complexity and the potential criminal sanctions associated with a failure to (correctly) register interests under Standing Order 31, careful consideration needs to be given to how the additional requirements should be implemented.

Current Provisions

6. Section 36 of the Government of Wales Act 2006 (the Act) includes a requirement that the Standing Orders must include provision for a Register of Members' Interests, and that the Standing Orders must define those interests to be registered. Under S.36(7) of the Act, a Member who does not comply (or contravenes) the relevant provisions contained in Standing Order commits an offence. The relevant provisions are contained in Standing Order 31 (SO31).

7. In accordance with SO31, Members are required to register specific financial interests. The Annex to SO31 defines those registrable interests. Category 2 of the registrable interests is shown below:

(ii) 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 dependent child of the Member over the age of sixteen, is remunerated, or in which the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member over the age of sixteen, has any pecuniary interest"; "

8. Therefore under Category 2, Members are required to register details of **all remunerated employment** outside the Assembly and any sources of remuneration which do not fall clearly within any other Category. The Committee will note that those details relate also to a Member's partner or any dependent child of the Member.

Options / Specific Considerations for taking forward Recommendation 15

9. There are a number of options that need to be considered in taking forward this recommendation. One of the key considerations the Committee will wish to take into account is the potential criminal sanctions that could arise from failure to correctly register information (and the effect this may have on Assembly Members). Alongside this, the Committee will also wish to consider the best mechanism for recording the hours spent in other employment. Options relating to these specific issues are set out below for the Committee's consideration:

Standing Order Provisions

Option 1: Inclusion of the new provision within Standing Order 31

10. The most direct interpretation of recommendation 15 is that the new requirement to register the hours spent in other employment is an extension of the current provision set out in SO 31. If SO 31 is amended to include a provision that Members must also register the hours spent in other employment, then failure to record those hours correctly under the agreed provisions would be (potentially) a

criminal offence under section 36 the Act.

11. However, the recording of the number of hours worked could be quite complex (see paragraphs 15 to 22 below) and depending on the agreed mechanism for recording the hours, might increase the potential for breaches of the relevant Standing Order provisions (such breaches would potentially be criminal offences).

Option 2: Establishing a New Standing Order

12. An alternative arrangement for the recording of hours spent in other employment could be to establish a new Standing Order specifically for that purpose. The employment itself would still be registered in accordance with SO31, but the new Standing Order could require members to record the hours spent in this employment separately.

13. The benefit of this approach is that the recording of this information under a new Standing Order would not bring it within the provisions of SO31 or section 36 of the Act (i.e. it would not form part of the formal Register of Members' Interests). Therefore, while failure to correctly record the relevant information would be a breach of the new SO (something that could, subject to a minor amendment to SO 16.1 (i) in order to refer to the new SO, be investigated by the Commissioner for Standards and the Standards Committee) the criminal sanctions that fall from Section 36 of the Act would not apply.

How to Record the Hours Worked in Practice

14. Whichever Standing Order mechanism is used for recording the number of hours worked, the Committee also needs to give careful consideration to how the number of hours worked in other employment will be registered / recorded in practice.

15. There are two options that have been identified for how this might work:

On an on-going basis; or

A return over a designated period.

Option 1: On-going Registration / Recording

16. In relation to other categories contained in the Register, interests are registered after they have been 'acquired', and generally SO31.4 allows Members no more than 4 weeks to register any change to their details. Other similar Standing Orders (SO32 and the draft SO31A) also have a general rule that Members have to record the relevant information within 4 weeks.

17. In relation to the hours spent in outside employment, depending on the type of employment, Members may spend time on a daily basis undertaking this other employment (even though the actual time spent could be very low). If the hours spent in other employment are to be recorded on an on-going basis, the general rule for registration would mean that Members would have to register their hours worked **each time** within the 4 week period.

18. This could prove very onerous, and given the potential frequency, could lead to occasions where Members fail to submit the specific details correctly in accordance with the relevant Standing Order.

Option 2: A return over a designated period

19. A provision could be built in to the relevant Standing Order that allows a Member to provide a return detailing the number of hours they have worked in other employment within a designated period. For example: within 4 weeks of the end of each calendar month, every six months or annually.

20. This would result in Members having to submit fewer entries. However, it would mean that Members would need to maintain an accurate record of the hours they have worked in order to provide an accurate return. The longer the designated period, the more records the Member might need to maintain.

Detailing time involved in additional employment

21. The Independent Review Panel did not specify the level of detail required in recording time involved in additional employment. In some cases a Member would already be required to record time spent on an additional employment for the purposes of that employment. In others (for example if the Member were self-employed) this might not be the case. In such cases, to require Members to complete detailed records could be seen as being onerous. An alternative option would be to require Members to state whether the time spent fell within one of a number of relatively broad categories, for example, bands of hours per week or days per month.

Conclusion

22. The Committee is invited to consider the various options set out in the paper and to indicate its preferred approach to:

the inclusion of new provisions in Standing Order (paras 10-13);

the general approach to recording (paras 14-20); and

the level of detail required (para 21).

23. Subject to these decisions, specific details (including draft revisions to Standing Orders and/or Guidance) will be brought back to the Committee for further consideration.

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Footnotes

1. Although the recommendation refers to "employment", Members are actually required to register any "employment, office, trade, profession or vocation" which would include self-employment. Throughout this paper "employment" is used in the broad sense, i.e. so as to include self-employment.
2. Standing Order 16.1(iii)