

Julie James, Council General

By email

May 2025

Amendment of the National Assembly for Wales Commissioner for Standards Measure 2009

Dear Julie,

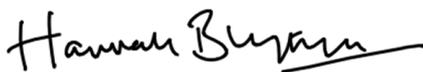
I welcome your commitment in the legislative programme to introduce an Individual Member Accountability Bill, which will seek to address the recommendations of the Standards of Conduct Committee ("the Committee") in relation to recall and deliberate deception.

Prior to being asked to undertake the work on recall and deception, the Committee had already given consideration to a number of other potential amendments to the National Assembly for Wales Commissioner for Standards Measure 2009. These amendments have been identified over the last twelve years as a result of decided cases and practical experience of the operation of the Measure in a dynamic and changing standards environment.

The changes identified by the Committee are set out in the attached paper prepared by the Senedd's Chief Legal Adviser and agreed by the Committee. The amendments are, in themselves, relatively minor and it would be more efficient to include these within the Bill you are preparing, rather than seek to find more legislative time for further amending legislation to achieve these necessary changes to the functioning of the Measure.

I would be happy to meet and discuss these proposals and the need for them, further if that would assist your consideration.

Yours Sincerely



Hannah Blythyn MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Amendment of the National Assembly for Wales Commissioner for Standards Measure 2009

Introduction

1. The Senedd Standards of Conduct Committee in its reports on Individual Member Responsibility has made recommendations that require legislation, including the amendment of the National Assembly for Wales Commissioner for Standards measure.¹ Notably, these include recommendations for a “remove and replace” vote as a sanction for serious breaches of the Members’ Code of Conduct and giving the Senedd Commissioner for Standards the power to initiate investigations of suspected misconduct on the Commissioner’s own initiative.
2. Prior to its recent reports on Individual Member Accountability, the Committee has considered a range of other amendments to the National Assembly for Wales Commissioner for Standards Measure 2009 (“the Measure”), which has remained largely in its original form since it was enacted. On 10 July 2023, the Committee agreed a report from the Chief Legal Adviser referring to amendments which the experience of the Committee and the Commissioner had suggested would improve the functioning of the Measure and also update its provisions in certain respects (for example, the use of electronic service of documents) some of which were also noted in the Standards Committee’s Legacy Report of the Fifth Senedd.² In addition, the Commissioner has since drawn attention to two further matters that would merit amendment to the Measure and these are also noted below.³
3. The Chief Legal Adviser’s paper discussed the desirability of the Commissioner having the power to initiate investigations without the need for a third-party complaint. This amendment has now been recommended as part of the Committee’s report on Individual Member Accountability: Deliberate Deception.⁴ The Government’s response to that report, laid on 16 March 2025, has accepted that

¹ [cr-ld16929-e.pdf](#) and [Individual Member Accountability: Deliberate deception](#)

² [Fifth Senedd Legacy Report](#)

³ The use of interrogatories (para. 8.4) and the grounds of ineligibility to be appointed Commissioner (paras. 12 and 13)

⁴ See Recommendation 6



recommendation and committed to bringing forward legislative provision within the Bill to establish a system of recall.

4. The other matters which the Committee wishes to see amended in the Measure are set out in this paper.
5. A version of this paper has been considered by the Standards Committee, who have also taken evidence in private from the Standards Commissioner. The Commissioner is supportive of the amendments discussed in this paper. The Committee also made some comments now incorporated in this version of the paper. Subject to the incorporation of those comments the paper has been approved by the Standards Committee.

Self-referral by a Member

6. From time to time Members whose conduct is subject to criticism may seek to refer themselves to the Commissioner so that their conduct can be investigated. It is not completely clear whether the functions of the Commissioner under section 6 (1) and (2) of the Measure extend to considering a complaint where the complainant is a Member referring their own conduct. The Committee wish to put this beyond doubt and wishes to see provision that a complaint includes a referral by a Member about themselves.
7. Should a Member announce that they intend to refer themselves to the Commissioner but subsequently fail to do so, the existence of the power already proposed for the Commissioner to initiate an investigation will ensure that the Commissioner can take up the matter themselves if a referral does not arrive and failure to refer, once the intention is announced, may itself lead to a finding of bringing the Senedd into disrepute.

Obstruction of the Commissioner

8. The Fifth Senedd Standards Committee recorded that in the course of the consideration of a complaint against a Member a member of that Member's staff had sought to persuade witnesses not to give evidence. While such instances are rare, the Committee considers that provision to deter such conduct should be made, as was recommended in the Fifth Senedd Legacy Report.⁵ The Measure already creates a number offences as set out in section 15(1). The Committee wishes to see an additional offence of obstructing or interfering with an investigation being conducted by the Commissioner added to the existing offences. A precedent for such an offence can be found at section 23 of the Education Act 2005 relating to the obstruction of a school inspection.

Giving Notice by Electronic Means and Use of Video

⁵ At para. 50

9. When the Measure was passed in 2009, the giving of notice and the examination of witnesses did not encompass the use of electronic means. The Committee wishes to see the provisions of sections 11 and 12 of the Measure enabling the Commissioner to call for witnesses and providing for the giving of notice to be updated to allow:

8.1 The giving of notice by electronic means and to apply section 13(2) of the Legislation (Wales) Act 2019.

8.2 The production of documents by electronic means.

8.3 The examination of witnesses (including examination on oath) to take place by video link as an alternative to attendance in person.

8.4 The Commissioner to require a person to answer questions in writing (“interrogatories”) as an alternative to giving evidence in person.⁶

Use of Translators

10. Where the Commissioner decides to place a witness on oath under section 13 of the Measure, the powers to administer an oath do not cover the situation where the witness wishes to do so in a language the Commissioner is not conversant with, necessitating the use of a translator. The Committee therefore wishes to see the Commissioner’s powers to administer an oath extended to include the power to administer an oath or affirmation to a translator.

Confidentiality of Members Under Investigation

11. The current strict confidentiality provisions under section 16 of the Measure prevent the Senedd and the Commissioner from adopting provisions currently applying in other legislature which provide for greater transparency about complaints being made, such the arrangements in relation to investigations of Members of the House of Commons.
12. At present, section 16 prevents the Commissioner from even responding to questions arising from statements to the media as to whether or not a complaint has been received in the Commissioner’s office. The current restrictive terms of section 16, embodied in primary legislation, make it difficult to adapt the transparency and confidentiality obligations of the Commissioner as circumstances change.
13. A more flexible approach would be to repeal section 16 and replace it with an amendment to section 10(1) of the Measure that Standing Orders must include provisions as to the disclosure by the Commissioner of information about investigations.

⁶ This is one of the additional matters raised by the Commissioner mentioned in paragraph 2.

Recovery of Losses Due to Misuse of Resources

14. Where a Member has been found to have misused Senedd resources and as a result there has been a loss to the Commission, the Committee wishes to see a provision to enable the Commission to recover such amounts from the Member (or former Member) as a debt.

Ineligibility to be appointed Commissioner⁷

15. The Commissioner has brought to the attention of the Committee in the context of the recent inquiries into Individual Member Accountability some issues regarding the grounds for making a person ineligible to be appointed as Commissioner. The Commissioner suggests that the two year period of ineligibility of former Members of the Senedd or Senedd or Welsh Government staff may now be too short and that such a person could still be, or at least might be perceived to be, too close to the Member complained about and also to witnesses. It is also for that reason the Commissioner suggests the inclusion of Members' support staff as a distinct ground of ineligibility. The Commissioner has also drawn attention to the current omission from the list of a Counsel General who is not a Member of the Senedd.
16. In order to enable the Senedd to consult upon amending the grounds for ineligibility and to update them from time to time, the Committee wish to see the Measure amended to remove the existing list and replace it with a requirement for the Senedd to specify in Standing Orders the grounds making a person ineligible to appointed Commissioner.

⁷ This is the second issue raised by the Commissioner referred to in paragraph 2 above.