

NATIONAL ASSEMBLY FOR WALES REMUNERATION MEASURE 2010

EXPLANATORY NOTES

Introduction

1. These explanatory notes are for the National Assembly for Wales (Remuneration) Measure 2010 which was passed by the National Assembly for Wales on 26 May 2010 and approved by Her Majesty in Council on [21 July 2010]. They have been prepared by the Rt Hon the Lord Elis-Thomas AM, the Chair of the Assembly Commission, to assist understanding of the Measure. They do not form part of the Measure and have not been endorsed by the National Assembly for Wales.
2. The notes need to be read in conjunction with the Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

COMMENTARY ON SECTIONS

General scheme of the Measure

3. The key aim of the Measure is to transfer the role of making determinations on the remuneration of current and former Assembly Members and holders of additional offices from the Assembly Commission to the National Assembly for Wales Remuneration Board ("the Board"). This transfer of responsibility was central to a number of the recommendations contained in the report of the Independent Review Panel ("the Panel") entitled *Getting it Right for Wales: an independent review of the current arrangements for the financial support of Assembly Members* (July 2009). This report can be found on the National Assembly for Wales' website at:

<http://www.assemblywales.org/irp-reportjuly09-e.pdf>

4. The Measure consists of 20 sections and three schedules. Section 1 establishes the Board. Sections 2, 3, and 12 to 15 set out the functions of the Board and the manner in which those functions must be exercised. Sections 4 to 7 and Schedules 1 and 2 deal with appointment to and termination of membership of the Board. Issues of an administrative nature including the terms and conditions of appointment to the Board, its administrative support, the

frequency of meetings and the requirement to produce an annual report are provided for in sections 8 to 11. Section 16 and Schedule 3 set out amendments to the Government of Wales Act 2006 (“the Act”) and section 17 amends the Freedom of Information Act 2000. Finally, sections 18 to 20 contain general provisions.

Section 1: National Assembly for Wales Remuneration Board

5. This section establishes the Board, which is to 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.
6. This section also sets out the parameters within which the Board must act. Subsection (4) requires that at least three members must be present for any meeting of the Board to be conducted. Subsection (5) states that at least three members must approve any determination the Board makes under sections 20(6), 24(1) or 53(7) of the Act (see paragraph 11 below). Subsection (6) provides that the Board must also comply with the duties set out in section 2(2) of the Measure (see paragraph 9 below). Subject to these constraints, the Board will set its own procedures.
7. Subsection (7) provides that 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: Independence, openness and inclusiveness

8. Subsection (1) establishes the Board’s independence from any influence by the Assembly or the Assembly Commission when exercising its functions.
9. Subsection (2) imposes on the Board an express duty generally to act in an open and transparent manner. The Board is also required to keep the public informed about its activities by publicising them on the Assembly’s website. Subsection (2) is qualified by subsection (3), which allows the Board to consider a matter in private where the Board considers this is appropriate. An example might be when taking legal advice or when finalising a draft determination.
10. Subsection (4) sets out a list of consultees and requires the Board to consult with those of them that might be affected by its decisions, except when the Board considers that there are circumstances that would make it

inappropriate to do so. Subsection (5) requires that, in carrying out such consultation with Assembly Members, the Board must have regard to its duty to act independently in relation to the discharge of its functions, in accordance with subsection (1).

Section 3: Functions of the Board

11. This section provides 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) give the Board the function of making determinations relating to Assembly Members' salaries, allowances and pensions. Section 24 (as amended) gives the Board the function of making determinations regarding payments to political groups of Assembly Members. Sections 53 and 54 (as amended) give the Board the function of making determinations relating to the First Minister, Welsh Ministers and Deputy Ministers and the Counsel General.
12. Subsection (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.
13. Subsection (3) places a duty on the Board to keep under review the extent to which these objectives are being achieved by the Board's determinations. When doing so, 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.
14. 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 4: Disqualification from membership of the Board

15. This section introduces Schedule 1 which contains a list of persons who are disqualified from being a member of the Board (see paragraph 39 below).

Section 5: Power to amend Schedule 1

16. This section enables the list of persons disqualified from membership of the Board to be amended from time to time, in the light of changing circumstances, without the need for an amending Measure.
17. A resolution of the Assembly is required to amend Schedule 1 (by adding or removing an office or person, or by altering the description of such an office or person). Once such a resolution has been passed, subsection (2) provides the legislative means for putting that decision into effect. This is achieved by conferring a power on the Counsel General to give effect to the Assembly's resolution by the making of an order by statutory instrument. The Counsel General must exercise that power as soon as possible after being notified in writing by the Presiding Officer that the resolution has been passed by the Assembly.

Section 6: Appointment of members of the Board

18. 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 paragraphs 42 to 45 below).

Section 7: Termination of membership of the Board

19. 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 (under section 4 and Schedule 1); 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 8: Terms and conditions

20. 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 9: Administrative support

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

Section 10: Meetings of the Board

22. This section requires the Board to meet at least once every calendar year. 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 13 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 11: Annual Report

23. This section places a duty on the Board, as soon as possible after the end of each financial year, to lay before the Assembly an annual report. The annual report will extend to all of the Board's activities, including its use of resources, during the preceding financial year. It will be open to relevant Assembly committees to consider the report in detail.

Section 12: Determinations

24. This section provides that the Board's determinations under sections 20(6), 24(1) or 53(7) of the Act must be in writing and communicated to the Assembly Commission. It also requires the Assembly Commission to incorporate all current determinations into a single document and to publish it.

Section 13: Exercise of functions in relation to salaries

25. 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 (including the First Minister and Deputy Ministers) and the Counsel General for each four-year Assembly term (but see paragraph 28 below). 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 include a period of exceptionally rapid inflation.

26. The section requires the Board, where it is reasonably practicable to do so, to make its determination for a four-year Assembly term before the end of the term which precedes it (so that it can take effect from the beginning of the new Assembly term). Subsections (7) and (8) make provision for situations where this is not achievable. They provide that, regardless of when such determinations are made, they will have effect from the beginning of the term in which they are to have effect.
27. In the event of a determination not being made before the end of the term which precedes that in relation to which it is to take effect, subsection (9) provides that previous determinations will continue to have effect until replaced and adjustments then made either to make good any under-payment, or to recover any over-payment, as the case may be.
28. The section also makes 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 14: Exercise of functions in relation to reimbursement of costs incurred in employing staff

29. 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 modify that determination during the financial year in which that the determination first takes effect. So, the general principle is that only one set of rules relating to the cost of employing staff will apply in any financial year. However, subsection (3) provides that the Board may depart from this where it is satisfied that there are exceptional circumstances making it just and reasonable to do so. This provision mirrors for staff employed by Assembly Members, or groups of Assembly Members, that which applies under section

13(4) in relation to Assembly Members, the Welsh Ministers (including the First Minister and Deputy Ministers) and the Counsel General (see paragraph 25 above).

Section 15: Exercise of functions: general

30. This section ensures that the Board takes into account the recommendations made in the Panel's report (see, in 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.
31. 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 16: Amendments to the Government of Wales Act 2006

32. This section introduces Schedule 3 (see paragraph 46 below).

Section 17: Amendment to the Freedom of Information Act 2000

33. This section brings the Board within the class of public authorities subject to the Freedom of Information Act 2000.

Section 18: Interpretation

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

Section 19: Transitional and saving provision

35. The purpose of this section is to ensure that determinations made by the Assembly or the Assembly Commission and directions made by the Secretary of State for Wales that are currently in force will remain in force until amended or replaced by the Board. In addition, it will enable references to the Assembly, Assembly Commission and the Secretary of State for Wales in those determinations and directions to be interpreted as references to the Board (where this is necessary in order to give effect to this continuity) without the need to amend each such reference individually.

Section 20: Short Title and Commencement

36. This section sets out the arrangements for commencement of the Measure.
37. Sections 1, 4, 5, 6, 7, 8, 9, 12, 17, 18 and 20, relate to matters such as the establishment and membership of the Board. These are to come into force on the day after that on which the Measure is approved by Her Majesty in Council.
38. The remaining provisions of the Measure deal with the conferring of functions on the Board and how they are to be exercised. These provisions will come into force on the day after a notice, confirming that those appointments have been made, is laid before the Assembly by the Clerk of the Assembly.

Schedule 1

39. In order to minimise the risk of conflicts of interest, section 4 and this schedule provide that certain persons are disqualified from being members of the Board¹. 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 already disqualified as an Assembly Member), the Auditor General for Wales and the National Assembly for Wales Commissioner for Standards are

¹ Section 4 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.

also disqualified. The list of disqualified persons also includes Members of the European Parliament, House of Commons, House of Lords, Scottish Parliament and Northern Ireland Assembly. In addition, a person cannot be a member of the Board if that person is a member of the Assembly Commission's Corporate Governance Committee, an Independent Adviser to the Assembly Commission, a former member of either of the panels appointed by the Assembly Commission to review the pay and allowances of Assembly Members, or a Non-Executive Director of the Welsh Assembly Government.

40. 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.
41. Since, under the Act, a vacancy in an electoral region seat can lead to the filling of that vacancy by a person who was, at the last election, on a party's list for that region, without an election, persons who are could potentially become Assembly Members in that way are also disqualified.

Schedule 2

42. 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. Paragraph 2 makes it clear that the Clerk may, from time to time, revise those arrangements.
43. In order to minimise any possibility of a conflict of interests, paragraph 3 requires the Clerk 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 to ensure that the arrangements have regard to equality of opportunity for all people.
44. Paragraph 4 requires the Clerk to publish details of the selection procedure, on the Assembly's website, in advance of, and during, the selection process.
45. Paragraphs 5 and 6 require the Assembly Commission to appoint whoever is selected by those arrangements unless the person selected is disqualified under section 4 and Schedule 1.

Schedule 3

46. 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.

Record of Proceedings in the National Assembly for Wales

The following table sets out the dates for each stage of the Measure's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales' website at:

<http://www.assemblywales.org/bus-home/bus-legislation.htm>;

Proposed Measure introduced	9 November 2009
Stage 1 - Committee consideration of general principles	26 November 2009 10 December 2009 14, 21 & 28 January 2010 11 & 25 February 2010
Stage 1 - Debate in plenary on general principles	24 March 2010
Stage 2 - Committee consideration of amendments	21 April 2010
Stage 3 - Plenary consideration of amendments	26 May 2010
Stage 4 - Passing of the proposed Measure in Plenary	26 May 2010
Royal Approval in Council	21 July 2010