



# Welsh Language (Wales) Measure 2011

## 2011 nawm 1

### PART 5

#### ENFORCEMENT OF STANDARDS

#### CHAPTER 1

#### INVESTIGATING FAILURE TO COMPLY WITH STANDARDS ETC

##### *Investigations*

#### **71 Investigating failure to comply with standards etc**

- (1) The Commissioner may investigate whether a person (D) has failed to comply with a relevant requirement.
- (2) In this Part, “relevant requirement” means any of the following—
  - (a) a duty to comply with a standard specified by the Welsh Ministers (see section 25);
  - (b) a requirement included in a decision notice by virtue of section 79 (requirement to prepare action plan or take steps);
  - (c) an action plan (see sections 79 and 80);
  - (d) a requirement included in a decision notice by virtue of section 82 (publicising failure to comply).
- (3) If the relevant requirement is a duty to comply with a standard, the Commissioner may undertake an investigation under this section only if he or she suspects that D has failed to comply with the relevant requirement.
- (4) Schedule 10 makes further provision about investigations.

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

**Commencement Information**

**II** S. 71 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

**72 Discontinuing an investigation**

- (1) This section applies if the Commissioner undertakes an investigation under section 71.
- (2) The Commissioner may, at any time, discontinue the investigation.
- (3) If the Commissioner decides to discontinue the investigation, the Commissioner must—
  - (a) inform each interested person, and
  - (b) inform D of the reasons for reaching the decision.
- (4) The Commissioner must comply with subsection (3) as soon as practicable after reaching the decision.

**Commencement Information**

**I2** S. 72 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

*Determination of investigation*

**73 Determination of investigation**

- (1) lies if—
  - (a) the Commissioner undertakes an investigation under section 71, and
  - (b) does not discontinue the investigation.
- (2) The Commissioner must determine whether or not D has failed to comply with the relevant requirement.
- (3) The Commissioner must—
  - (a) produce an investigation report, and
  - (b) give a copy of the investigation report to each interested person.
- (4) The Commissioner must—
  - (a) give D a decision notice, and
  - (b) give a copy of the decision notice to any other interested person.
- (5) This section is subject to section 85.

**Commencement Information**

**I3** S. 73 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

---

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

---

### *Investigation reports*

#### **74 Investigation reports**

- (1) In this Measure, “investigation report” means a report on an investigation under section 71 which includes all of the following—
- (a) the terms of reference of the investigation;
  - (b) a summary of the evidence taken during the investigation;
  - (c) the Commissioner's findings on the investigation;
  - (d) the Commissioner's determination of whether or not D has failed to comply with the relevant requirement;
  - (e) a statement of whether the Commissioner is taking further action;
  - (f) if the Commissioner is taking further action, a statement of that action.
- (2) Subsection (1) does not prevent the Commissioner from including other matters in an investigation report.

---

**Commencement Information**

**I4** S. 74 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

### *Decision notices*

#### **75 Decision notices**

- (1) In this Measure “decision notice” means a notice that states the Commissioner's determination of whether or not D has failed to comply with the relevant requirement.
- (2) Subsection (1) does not prevent a decision notice from including other matters (and certain provisions of this Part require a decision notice to include other matters in certain circumstances).

---

**Commencement Information**

**I5** S. 75 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

### *No failure to comply: Commissioner's options*

#### **76 No failure to comply with a relevant requirement**

- (1) This section applies if the Commissioner determines that D has not failed to comply with a relevant requirement.
- (2) The Commissioner may—
- (a) take no further action, or
  - (b) act under subsection (3).
- (3) The Commissioner may do one or more of the following things—
- (a) give D or any other person recommendations;

---

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

---

- (b) give D or any other person advice.
- (4) If the investigation that led to the determination follows a complaint under section 93, the relevant decision notice must inform the person who made the complaint of the right to appeal under section 99.
- (5) This section is subject to section 85.
- (6) In this section, “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to the person who made the complaint under section 93.

**Commencement Information**

**I6** S. 76 in force at 7.7.2015 by S.I. 2015/1413, art. 3(e)

*Failure to comply: Commissioner's options*

**77 Failure to comply with a relevant requirement**

- (1) This section applies if the Commissioner determines that D has failed to comply with a relevant requirement.
- (2) The Commissioner may—
  - (a) take no further action,
  - (b) act under subsection (3), or
  - (c) act under subsection (4).
- (3) The Commissioner may do one or more of the following things—
  - (a) require D to prepare an action plan for the purpose of preventing the continuation or repetition of D's failure to comply with the relevant requirement;
  - (b) require D to take steps for the purpose of preventing the continuation or repetition of D's failure to comply with the relevant requirement;
  - (c) publicise D's failure to comply with the relevant requirement;
  - (d) require D to publicise the failure to comply with the relevant requirement;
  - (e) impose a civil penalty on D.
- (4) The Commissioner may do one or more of the following things—
  - (a) give D or any other person recommendations;
  - (b) give D or any other person advice;
  - (c) seek to enter into a settlement agreement with D (see Chapter 2), but only if the relevant requirement is a duty to comply with a standard.
- (5) If the Commissioner seeks to enter into a settlement agreement with D—
  - (a) D is not obliged to enter into such an agreement;
  - (b) if D declines to enter into a settlement agreement, the Commissioner may, but need not, exercise his or her powers under this section differently.
- (6) If the Commissioner acts under subsection (3), subsections (2) and (3) do not prevent the Commissioner from also doing either or both of the following—

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

- (a) giving D or any other person recommendations;
- (b) giving D or any other person advice.

(7) This section is subject to section 85.

**Commencement Information**

**I7** S. 77 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

*No imposed enforcement action*

**78 No imposed enforcement action**

- (1) This section applies if the Commissioner—
  - (a) determines that D has failed to comply with a relevant requirement, but
  - (b) decides—
    - (i) to take no further action, or
    - (ii) to act under section 77(4).
- (2) The relevant decision notice must give the Commissioner's reasons for deciding—
  - (a) to take no further action, or
  - (b) to act under section 77(4) and not under section 77(3).
- (3) This section is subject to section 85.
- (4) In this section “relevant decision notice” means the notice which the Commissioner is required by section 73 to give to D.

**Commencement Information**

**I8** S. 78 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

*Preventing continuation or repetition of D's failure*

**79 Requirement to prepare action plan or take steps**

- (1) This section applies if the Commissioner—
  - (a) determines that D has failed to comply with a relevant requirement, and
  - (b) decides to require D to do either or both of the following—
    - (i) to prepare an action plan for the purpose of preventing the continuation or repetition of D's failure to comply with the relevant requirement;
    - (ii) to take steps for the purpose of preventing the continuation or repetition of D's failure to comply with the relevant requirement.
- (2) The relevant decision notice must set out what the Commissioner requires D to do.
- (3) If the Commissioner requires D to prepare an action plan, the relevant decision notice must specify the period within which D must—
  - (a) produce a first draft plan, and

**Changes to legislation:** *There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

- (b) give that draft to the Commissioner.
- (4) The relevant decision notice must inform D of—
  - (a) the consequences if D does not comply with a requirement included in the notice by virtue of this section; and
  - (b) the right to appeal under section 95.
- (5) This section is subject to section 85.
- (6) In this section “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to D.

**Commencement Information**

**I9** S. 79 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

**80 Action plans**

- (1) This section applies if the Commissioner gives D a decision notice which requires D to prepare an action plan.
- (2) D must give a first draft plan to the Commissioner within the period specified in the decision notice.
- (3) After receiving a first draft plan from a person the Commissioner must—
  - (a) approve it, or
  - (b) give the person a notice which—
    - (i) states that the draft is not adequate,
    - (ii) requires the person to give the Commissioner a revised draft by a specified time, and
    - (iii) may make recommendations about the content of the revised draft.
- (4) Subsection (3) applies in relation to a revised draft plan as it applies in relation to a first draft plan.
- (5) An action plan comes into force—
  - (a) at the end of the period of six weeks beginning with the date on which a first draft or revised draft is given to the Commissioner, if that period expires without the Commissioner—
    - (i) giving a notice under subsection (3)(b), or
    - (ii) applying for an order under subsection (6)(b), or
  - (b) upon a court's declining to make an order under subsection (6)(b) in relation to a revised draft of the plan.
- (6) The Commissioner may apply to a county court—
  - (a) for an order requiring a person to give the Commissioner a first draft plan by a time specified in the order; or
  - (b) for an order requiring a person who has given the Commissioner a revised draft plan to prepare and give to the Commissioner a further revised draft plan—
    - (i) by a time specified in the order, and

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

- (ii) in accordance with any directions about the plan's content specified in the order.
- (7) An action plan may be varied by agreement between the Commissioner and the person who prepared it.
- (8) Paragraphs 5 to 12 of Schedule 10 apply in relation to consideration by the Commissioner of the adequacy of a draft action plan as they apply in relation to the conduct of an investigation.

**Commencement Information**

**I10** S. 80 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

*Publicising D's failure to comply*

**81 Publicising the failure to comply**

- (1) In this Measure, references to the Commissioner publicising D's failure to comply with the relevant requirement are to the Commissioner doing either or both of the following—
- (a) publishing a statement that D has failed to comply with the relevant requirement;
  - (b) publishing the investigation report produced in relation to the investigation of D.
- (2) In this Measure, references to D being required to publicise the failure to comply with the relevant requirement are to D being required to publicise any or all of the following—
- (a) a statement that D has failed to comply with the relevant requirement;
  - (b) the investigation report produced in relation to the investigation of D;
  - (c) other information relating to D's failure to comply with the relevant requirement.

**Commencement Information**

**I11** S. 81 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

**82 Requiring the failure to comply to be publicised**

- (1) This section applies if the Commissioner—
- (a) determines that D has failed to comply with a relevant requirement, and
  - (b) decides to do either or both of the following—
    - (i) publicise D's failure to comply with the relevant requirement;
    - (ii) require D to publicise the failure to comply with the relevant requirement.
- (2) The relevant decision notice must set out what the Commissioner—
- (a) is to do to publicise D's failure;
  - (b) requires D to do to publicise the failure.

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

- (3) The relevant decision notice must inform D of—
- (a) the consequences if D does not comply with a requirement included in the notice by virtue of this section; and
  - (b) the right to appeal under section 95.
- (4) This section is subject to section 85.
- (5) In this section “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to D.

**Commencement Information**

**I12** S. 82 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

*Civil penalties*

**83 Civil penalties**

- (1) The Commissioner must have regard to the matters set out in subsection (2) when determining—
- (a) whether to impose a civil penalty on any person, and
  - (b) the amount of any civil penalty.
- (2) Those matters are—
- (a) the seriousness of the matter in respect of which the civil penalty is to be imposed;
  - (b) the circumstances of the person on whom the civil penalty is to be imposed;
  - (c) the need to prevent the continuation or repetition of the matter in respect of which the civil penalty is to be imposed.
- (3) Subsection (1) does not prevent the Commissioner from having regard to other matters.
- (4) A civil penalty must not exceed £5,000.
- (5) A civil penalty is recoverable by the Commissioner as a debt due to the Commissioner.
- (6) The Commissioner must pay all civil penalties received by him or her into the Welsh Consolidated Fund.
- (7) The Welsh Ministers may, by order, substitute a different amount for the amount that is specified for the time being in subsection (4).
- (8) In this section “civil penalty” means any civil penalty that may be imposed by the Commissioner.

**Commencement Information**

**I13** S. 83 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)



---

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

---

## **84 Imposition of civil penalty**

- (1) This section applies if the Commissioner—
  - (a) determines that D has failed to comply with a relevant requirement, and
  - (b) decides to impose a civil penalty on D.
- (2) The relevant decision notice must—
  - (a) set out the civil penalty which the Commissioner has decided to impose;
  - (b) set out how the civil penalty may be paid;
  - (c) set out the period within which the civil penalty must be paid (which must be a period of not less than 28 days).
- (3) The relevant decision notice must also inform D of—
  - (a) the consequences if D does not pay the civil penalty; and
  - (b) the right to appeal under section 95.
- (4) This section is subject to section 85.
- (5) In this section “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to D.

### **Commencement Information**

**I14** S. 84 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

### *Consultation*

## **85 Consultation before final determination etc**

- (1) This section applies if the Commissioner undertakes an investigation under section 71.
- (2) Before finally determining whether or not D has failed to comply with the relevant requirement, the Commissioner must give each interested person notice of the determination which the Commissioner is proposing to make.
- (3) Before finally deciding what, if any, further action to take, the Commissioner must give each interested person—
  - (a) notice of whether or not the Commissioner is proposing to take further action, and a statement of the Commissioner's reasons for proposing to do so;
  - (b) if the Commissioner is proposing to take further action, notice of that proposed action, and a statement of the Commissioner's reasons for proposing to take that action; and
  - (c) copies of the draft of the decision notice which the Commissioner is proposing to give.
- (4) Before settling the investigation report, the Commissioner must give each interested person a draft of the proposed report.
- (5) The Commissioner must—
  - (a) give D an opportunity to make representations about the proposals referred to in subsections (2), (3) and (4), and

---

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

---

- (b) give any other interested person an opportunity to make representations about the proposals referred to in subsections (2) and (4).
- (6) The Commissioner must have due regard to any representations made by D or any other interested person before the Commissioner does any thing to which the representations relate.
- (7) The Commissioner is to determine the period within which a person may make representations in accordance with subsection (5); but the period must not be less than 28 days.

**Commencement Information**

**I15** S. 85 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

**86 Consultation before final determination following an appeal**

- (1) This section applies if the Commissioner is directed, following an appeal under section 99 or 101, or following any further appeal, to determine under section 73 that D has failed to comply with a standard (the “new determination”).
- (2) Before finally deciding what, if any further action to take based upon the new determination, the Commissioner must give each interested person—
  - (a) notice of whether or not the Commissioner is proposing to take further action, and a statement of the Commissioner's reasons for proposing to do so;
  - (b) if the Commissioner is proposing to take further action, notice of that proposed action, and a statement of the Commissioner's reasons for proposing to take that action; and
  - (c) copies of the draft of the decision notice which the Commissioner is proposing to give.
- (3) Before settling the investigation report, the Commissioner must give each interested person a draft of the proposed report.
- (4) The Commissioner must—
  - (a) give D an opportunity to make representations about the proposals referred to in subsections (2) and (3), and
  - (b) give any other interested person an opportunity to make representations about the proposals referred to in subsection (3).
- (5) The Commissioner must have due regard to any representations made by D or any other interested person under subsection (4).
- (6) The Commissioner is to determine the period within which a person may make representations in accordance with subsection (4); but the period must not be less than 28 days.

**Commencement Information**

**I16** S. 86 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

---

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

---

*When enforcement action takes effect*

**87 When enforcement action takes effect**

- (1) This section applies if the Commissioner gives D a decision notice setting out enforcement action which the Commissioner has decided to take in relation to a determination under section 73.
- (2) D must—
  - (a) prepare an action plan or take steps, or
  - (b) publicise a failure to comply,if, in accordance with section 79 or 82, the decision notice requires D to do so.
- (3) D must pay a civil penalty set out in the decision notice in accordance with section 84.
- (4) But subsections (2) and (3) apply only after the end of the 28 day period for making a relevant appeal.
- (5) The Commissioner may publicise D's failure to comply with the relevant requirement only after the end of the 28 day period for making a relevant appeal.
- (6) If a relevant appeal is made, subsections (2), (3) and (5) do not apply unless and until—
  - (a) that appeal, and any further appeal, has been disposed of, and
  - (b) a further appeal—
    - (i) may not be made, or
    - (ii) may be made only with the permission of the Tribunal or a court.
- (7) In this section “relevant appeal” means an appeal to the Tribunal under section 95 in respect of the matters set out in the decision notice.

---

**Commencement Information**

**I17** S. 87 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

*Enforcement by county court*

**88 Failure to comply with requirement to take steps**

- (1) This section applies if the Commissioner gives D a decision notice that requires D to take steps for the purpose of preventing the continuation or repetition of D's failure to comply with the relevant requirement.
- (2) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with the requirement in the decision notice.
- (3) In this section “relevant period” means the period of 5 years beginning with the day when the decision notice is given.

---

**Commencement Information**

**I18** S. 88 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

---

*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1. (See end of Document for details)*

---

## **89 Failure to comply with action plan**

- (1) This section applies if D has prepared an action plan in accordance with section 80.
- (2) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with the action plan.
- (3) In this section “relevant period” means the period of 5 years beginning with the day when the action plan comes into force.

---

### **Commencement Information**

**I19** S. 89 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

## **90 Failure to comply with requirement to publicise failure to comply**

- (1) This section applies if the Commissioner gives D a decision notice that requires D to take steps to publicise the failure to comply.
- (2) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with the requirement in the decision notice.
- (3) In this section “relevant period” means the period of 5 years beginning with the day when the decision notice is given.

---

### **Commencement Information**

**I20** S. 90 in force at 7.7.2015 by S.I. 2015/1413, art. 3(c)

**Changes to legislation:**

There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, CHAPTER 1.