



# Welsh Language (Wales) Measure 2011

## 2011 nawm 1

### PART 1

#### OFFICIAL STATUS OF THE WELSH LANGUAGE

#### **1 Official status of the Welsh language**

- (1) The Welsh language has official status in Wales.
- (2) Without prejudice to the general principle of subsection (1), the official status of the Welsh language is given legal effect by the enactments about—
  - (a) duties on bodies to use the Welsh language, and the rights which arise from the enforceability of those duties, which enable Welsh speakers to use the language in dealings with those bodies (such as the provision of services by those bodies);
  - (b) the treatment of the Welsh language no less favourably than the English language;
  - (c) the validity of the use of the Welsh language;
  - (d) the promotion and facilitation of the use of the Welsh language;
  - (e) the freedom of persons wishing to use the Welsh language to do so with one another;
  - (f) the creation of the Welsh Language Commissioner; and
  - (g) other matters relating to the Welsh language.
- (3) Those enactments include (but are not limited to) the enactments which—
  - (a) require the Welsh and English languages to be treated on the basis of equality in the conduct of the proceedings of the National Assembly for Wales;
  - (b) confer a right to speak the Welsh language in legal proceedings in Wales;
  - (c) give equal standing to the Welsh and English texts of—
    - (i) Measures and Acts of the National Assembly for Wales, and
    - (ii) subordinate legislation;
  - (d) impose a duty on the Welsh Ministers to adopt a strategy setting out how they propose to promote and facilitate the use of the Welsh language;

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- (e) create standards of conduct that relate to the use of the Welsh language, or the treatment of the Welsh language no less favourably than the English language, in connection with—
    - (i) delivering services,
    - (ii) making policy, and
    - (iii) exercising functions or conducting businesses and other undertakings;
  - (f) create standards of conduct in promoting and facilitating the use of the Welsh language;
  - (g) create standards of conduct for keeping records in connection with the Welsh language;
  - (h) impose a duty to comply with those standards of conduct that are created, and create remedies for failures to comply with them; and
  - (i) create the Welsh Language Commissioner with functions that include—
    - (i) promoting the use of the Welsh language,
    - (ii) facilitating the use of the Welsh language,
    - (iii) working towards ensuring that the Welsh language is treated no less favourably than the English language,
    - (iv) conducting inquiries into matters relating to the Commissioner’s functions, and
    - (v) investigating interference with the freedom to use the Welsh language.
- (4) This Measure does not affect the status of the English language in Wales.

## PART 2

### THE WELSH LANGUAGE COMMISSIONER

#### *The Commissioner*

## 2 The Welsh Language Commissioner

- (1) There is to be a Welsh Language Commissioner (referred to in this Measure as “the Commissioner”).
- (2) The First Minister must appoint the Commissioner.
- (3) Schedule 1 makes further provision about the Commissioner.
- (4) For provision about the integrity of the Commissioner, see Chapter 1 of Part 8.

#### *General duty*

## 3 The Commissioner’s principal aim

- (1) The principal aim of the Commissioner in exercising his or her functions is to promote and facilitate the use of the Welsh language.

- (2) The actions which the Commissioner must undertake in exercising functions in accordance with subsection (1) include (but are not limited to) working towards increasing—
  - (a) the use of the Welsh language in the provision of services, and
  - (b) other opportunities for persons to use the Welsh language.
- (3) In exercising functions in accordance with subsection (1), the Commissioner must have regard to—
  - (a) the official status which the Welsh language has in Wales,
  - (b) the duties to use Welsh which are (or may be) imposed by law, and the rights which arise from the enforceability of those duties,
  - (c) the principle that, in Wales, the Welsh language should be treated no less favourably than the English language, and
  - (d) the principle that persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

### *Functions*

## **4 Promoting and facilitating use of Welsh and treating Welsh no less favourably than English**

- (1) The Commissioner may do anything that he or she thinks appropriate—
  - (a) to promote the use of the Welsh language,
  - (b) to facilitate the use of the Welsh language, or
  - (c) to work towards ensuring that the Welsh language is treated no less favourably than the English language.
- (2) That includes, but is not limited to, doing any of the following things—
  - (a) promoting the provision of opportunities to use the Welsh language;
  - (b) encouraging best practice in relation to the use of Welsh by persons who deal with, or provide services to, other persons;
  - (c) keeping under review the adequacy and effectiveness of the law relating to the Welsh language;
  - (d) producing and publishing reports;
  - (e) carrying out, or commissioning others to carry out, research;
  - (f) carrying out, or commissioning others to carry out, educational activities;
  - (g) giving assistance (including financial assistance) to any person;
  - (h) making recommendations in writing to the Welsh Ministers;
  - (i) making representations to any person;
  - (j) giving advice to any person.
- (3) If the Commissioner makes a recommendation or representation, or gives advice, to the Welsh Ministers in writing, they must have due regard to the recommendation, representation or advice in exercising any function to which it relates.
- (4) The power of the Commissioner under subsection (2)(g) to give financial assistance is subject to section 11(4).
- (5) The powers of the Commissioner under subsection (2)(h) to (j) to make recommendations or representations, or to give advice, to a person (including the

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Welsh Ministers) may be exercised whether or not the person has requested the Commissioner to exercise the powers.

- (6) The Commissioner may consult the Advisory Panel in connection with the exercise of a function conferred by this section.

## 5 Production of 5-year reports

- (1) The Commissioner must produce, in relation to each reporting period, a report on the position of the Welsh language in that period.
- (2) In this Measure, such a report is referred to as “a 5-year report”.
- (3) If a 5-year report is the first such report to be produced after a census, the report must include the following matters—
- (a) a report of the results of the census so far as they relate to the Welsh language;
  - (b) an assessment of the implications of those results for the position of the Welsh language.
- (4) Subsection (3) does not limit the matters which the Commissioner may include in any 5-year report.
- (5) In this section—
- “census” (“*cyfrifiad*”) means a census taken under the Census Act 1920 in Wales (whether or not the census is also taken elsewhere than in Wales);
- “reporting period” (“*cyfnod adrodd*”) means—
- (a) the period that begins with the day on which section 2 comes into force and ends with 31 December 2015; and
  - (b) each successive period of 5 years.

## 6 5-year reports: supplementary

- (1) In preparing each 5-year report, the Commissioner—
- (a) must consult the Advisory Panel, and
  - (b) may consult any other persons that the Commissioner thinks it appropriate to consult.
- (2) The Commissioner must publish each 5-year report in Welsh and in English.
- (3) The Commissioner must publish each 5-year report as soon as reasonably practicable after the end of the period to which it relates.
- (4) As soon as reasonably practicable after each 5-year report is published, the Commissioner must send a copy of the report to the Welsh Ministers.
- (5) The Welsh Ministers must—
- (a) examine each 5-year report submitted to them, and
  - (b) lay a copy of the report before the National Assembly for Wales.

## 7 Inquiries

- (1) The Commissioner may conduct an inquiry into any matter relating to any of the Commissioner’s functions.

- (2) But that is subject to subsections (3) to (5).
- (3) Subsection (1) does not authorise the Commissioner to conduct an inquiry in a case where he or she—
  - (a) may or must carry out a standards investigation under Chapter 8 of Part 4, or
  - (b) undertakes (and does not discontinue) an investigation under Part 5.
- (4) Subsection (1) does not authorise the Commissioner to conduct an inquiry into the failure, by one or more particular persons, to comply with one or more relevant requirements.
- (5) Subsection (1) does not authorise the Commissioner to conduct an inquiry into the interference, by one or more particular persons, with the freedom to communicate in Welsh (but see Part 6 for power to investigate certain interference with that freedom).
- (6) Subsection (4) or (5) does not prevent the Commissioner from taking the conduct of one or more particular persons into account when conducting an inquiry into—
  - (a) failure to comply with relevant requirements, or
  - (b) interference with the freedom to communicate in Welsh.
- (7) The Commissioner may—
  - (a) discontinue, or
  - (b) suspend,the conduct of an inquiry or any aspect of an inquiry.
- (8) If, in the course of an inquiry, the Commissioner begins to suspect that a person may have failed to comply with one or more relevant requirements—
  - (a) in continuing the inquiry the Commissioner must, so far as possible, avoid further consideration of whether or not the person has failed to comply with the requirements,
  - (b) the Commissioner may commence an investigation into that question under Part 5, and
  - (c) the Commissioner may use information or evidence acquired in the course of the inquiry for the purpose of the investigation.
- (9) Schedule 2 makes supplemental provision about inquiries.
- (10) In this section, a reference to failure to comply with one or more relevant requirements has the same meaning as in Part 5.

## **8 Judicial review and other legal proceedings**

- (1) The Commissioner may institute or intervene in legal proceedings in England and Wales if it appears to the Commissioner that the proceedings are relevant to a matter in respect of which the Commissioner has a function.
- (2) Subsection (1)—
  - (a) does not create a cause of action, and
  - (b) is subject to any limitation or restriction imposed by virtue of an enactment or in accordance with the practice of a court.
- (3) In this section “legal proceedings” includes, but is not limited to, proceedings before any court or tribunal.

## 9 Legal assistance

- (1) The Commissioner may provide an individual with assistance if the person is, or may become, a party to actual or possible legal proceedings in England and Wales that are relevant to a matter in respect of which the Commissioner has a function.
- (2) This section does not affect any restriction imposed in respect of representation—
  - (a) by virtue of an enactment, or
  - (b) in accordance with the practice of a court or tribunal.
- (3) It is for the Commissioner to determine, for the purposes of this section, whether there are possible legal proceedings that are relevant to a matter in respect of which the Commissioner has a function.
- (4) In this section—
  - “assistance” (“*cymorth*”) includes, but is not limited to, the following things—
    - (a) legal advice;
    - (b) legal representation;
    - (c) facilities for the settlement of a dispute;
  - “legal proceedings” (“*achos cyfreithiol*”) includes, but is not limited to, proceedings before any court or tribunal.

## 10 Legal assistance: costs

- (1) This section applies where—
  - (a) the Commissioner has assisted an individual under section 9 in relation to proceedings, and
  - (b) the individual becomes entitled to some or all of his or her costs in the proceedings (whether by virtue of an award or by virtue of an agreement).
- (2) The Commissioner’s expenses in providing the assistance—
  - (a) are charged on sums paid to the individual by way of costs, and
  - (b) may be enforced as a debt due to the Commissioner.
- (3) A requirement to pay money to the Commissioner under subsection (2) ranks after a requirement imposed by virtue of section 11(4)(f) of the Access to Justice Act 1999 (recovery of costs in funded cases).
- (4) For the purposes of subsection (2), the Commissioner’s expenses are to be calculated in accordance with such provision (if any) as the Welsh Ministers make for the purpose by regulations.
- (5) Regulations under subsection (4) may, amongst other things, provide for the apportionment of expenditure incurred by the Commissioner—
  - (a) partly for one purpose and partly for another, or
  - (b) for general purposes.

## 11 Powers

- (1) The Commissioner may do anything that he or she thinks to be appropriate in connection with any of his or her functions.

- (2) That includes, but is not limited to, any of the following things—
  - (a) making grants and loans and giving guarantees;
  - (b) charging for the provision of advice or other services;
  - (c) paying third parties for the provision of advice or other services;
  - (d) accepting gifts of money or other property;
  - (e) acquiring or disposing of any property or right.
- (3) Subsection (2) is subject to subsections (4) to (6).
- (4) The Commissioner must not—
  - (a) make a grant or loan,
  - (b) give a guarantee, or
  - (c) acquire or dispose of any interest in land,except with the approval of the Welsh Ministers.
- (5) Subsection (4) does not apply to anything done under section 9.
- (6) The Commissioner’s power to charge for the provision of advice or services is limited to charging such amounts as the Commissioner thinks appropriate to recover the actual or estimated costs to the Commissioner of providing that advice or those services.

## **12 Staff**

- (1) The Commissioner—
  - (a) must appoint a person to be the Deputy Welsh Language Commissioner (referred to in this Measure as “the Deputy Commissioner”), and
  - (b) may appoint such other staff as the Commissioner thinks appropriate in connection with the exercise of his or her functions.
- (2) References in this Measure to the Commissioner’s staff are to the Deputy Commissioner and other staff.
- (3) The Commissioner may pay remuneration to the members of the Commissioner’s staff.
- (4) The Commissioner may pay allowances (including, but not limited to, travelling and subsistence allowances) and gratuities to the members of the Commissioner’s staff.
- (5) The Commissioner may pay—
  - (a) pensions to, or in respect of, persons who have been members of the Commissioner’s staff, and
  - (b) amounts for or towards provision of pensions to, or in respect of, persons who have been members of the Commissioner’s staff.
- (6) The Commissioner must obtain the approval of the Welsh Ministers for—
  - (a) the number of staff that may be appointed,
  - (b) the terms and conditions of service of the staff, and
  - (c) payments made under any of subsections (3) to (5).
- (7) The First Minister must appoint the Deputy Commissioner if—
  - (a) the office of Commissioner is vacant, or

- (b) it appears to the First Minister that the Commissioner will fail to appoint the Deputy Commissioner in accordance with this section.

(8) For provision about the integrity of the Deputy Commissioner, see Chapter 1 of Part 8.

### **13 Exercise of Commissioner’s functions by staff**

- (1) The Commissioner may delegate any or all of the Commissioner’s functions to a member of the Commissioner’s staff.
- (2) The functions of the Commissioner are exercisable by the Deputy Commissioner if—
  - (a) the office of Commissioner is vacant, or
  - (b) it appears to the First Minister that the Commissioner is for any reason unable to exercise the functions of Commissioner.
- (3) If a function of the Commissioner is exercisable by a member of the Commissioner’s staff in accordance with subsection (1) or (2), any property or rights vested in the Commissioner may be dealt with by the member of staff in exercising the function as if vested in the member of staff.

### **14 Complaints procedure**

- (1) The Commissioner must establish a procedure for the investigation of complaints about acts or omissions relating to the exercise of the Commissioner’s functions (“the complaints procedure”).
- (2) The complaints procedure must include provision about—
  - (a) how a complaint may be made;
  - (b) the person to whom a complaint may be made;
  - (c) the period within which consideration of a complaint must begin and be concluded; and
  - (d) action that the Commissioner must consider taking in response to a complaint.
- (3) The Commissioner may amend the complaints procedure.
- (4) The Commissioner must—
  - (a) ensure that a copy of the complaints procedure is available for inspection at the Commissioner’s office, and
  - (b) ensure that copies of the complaints procedure are made available at such other places and by such other means (including by electronic means) as he or she thinks appropriate.
- (5) The Commissioner must ensure that the arrangements for inspecting and gaining access to copies of the complaints procedure are published in such a way as to bring those arrangements to the attention of persons whom the Commissioner thinks likely to have an interest in the procedure.

### **15 Seal and validity of documents**

- (1) The Commissioner may have a seal.
- (2) A document purporting to be—
  - (a) duly executed under the seal of the Commissioner, or



(b) signed by or on the Commissioner’s behalf,  
is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

## **16 Welsh Ministers' power of direction**

- (1) The Welsh Ministers may give directions to the Commissioner.
- (2) But the Welsh Ministers may not direct the Commissioner in relation to the following matters—
  - (a) giving a compliance notice to a person under Chapter 6 of Part 4 (including the content of a compliance notice to be given to a person);
  - (b) Part 5 (enforcement of standards);
  - (c) Part 6 (the freedom to use Welsh).
- (3) The Commissioner must comply with directions given by the Welsh Ministers.

## **17 Consultation**

If, in connection with the exercise of a function, the Commissioner consults—

- (a) the Advisory Panel, or
- (b) any other person in accordance with this Measure,

the Commissioner must have regard to the consultation in exercising the function.

### *Annual reports*

## **18 Annual reports**

- (1) The Commissioner must produce a report in relation to each financial year of the Commissioner (an “annual report”).
- (2) An annual report must include the following matters—
  - (a) a summary of the action taken in the exercise of the Commissioner’s functions;
  - (b) a review of issues relevant to the Welsh language;
  - (c) a summary of the Commissioner’s work programme;
  - (d) the Commissioner’s proposals for a work programme for the following financial year;
  - (e) a summary of the complaints made in accordance with the procedure established under section 14.
- (3) An annual report may also include any other matters which the Commissioner thinks it appropriate to include in such a report.
- (4) For provision about the Commissioner’s financial year, see paragraph 15 of Schedule 1.

## **19 Annual reports: supplementary**

- (1) In preparing each annual report, the Commissioner may consult—
  - (a) the Advisory Panel, and

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- (b) any other persons that the Commissioner thinks it appropriate to consult.
- (2) The Commissioner must publish each annual report in Welsh and in English.
- (3) The Commissioner must publish each annual report no later than 31 August in the financial year following the financial year to which the report relates.
- (4) As soon as reasonably practicable after each annual report is published, the Commissioner must send a copy of the report to the Welsh Ministers.
- (5) The Welsh Ministers must—
  - (a) examine each annual report submitted to them, and
  - (b) lay a copy of the report before the National Assembly for Wales.

*Working with other ombudsmen, commissioners etc*

## **20 Working jointly with the Public Services Ombudsman for Wales**

- (1) This section applies if it appears to the Commissioner that the subject matter of a particular standards enforcement investigation (the “Commissioner’s investigation”) could also be the subject of an investigation by the Public Services Ombudsman for Wales.
- (2) If the Commissioner thinks it appropriate, he or she must—
  - (a) inform the Ombudsman about the Commissioner’s investigation (including the Commissioner’s proposals for undertaking the investigation), and
  - (b) consult the Ombudsman in relation to the Commissioner’s investigation.
- (3) If the Commissioner consults the Ombudsman in relation to the Commissioner’s investigation, the Commissioner and the Ombudsman may do any or all of the following—
  - (a) co-operate with each other in relation to the investigation;
  - (b) conduct a joint investigation;
  - (c) prepare and publish a joint report in relation to the investigation.
- (4) The Welsh Ministers may by order—
  - (a) provide for this section to apply in relation to any other person as it applies in relation to the Public Services Ombudsman for Wales, and
  - (b) make such other provision as the Welsh Ministers think appropriate in connection with, for the purposes of, or in consequence of provision made under paragraph (a).
- (5) The provision that may be made under subsection (4) includes, but is not limited to—
  - (a) provision enabling or requiring the other person to work jointly with the Commissioner; and
  - (b) amendments of any enactment.
- (6) Before making an order under subsection (4), the Welsh Ministers must consult the Commissioner and any other persons they think it appropriate to consult.
- (7) In this section—

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“investigation” (*ymchwiliad*), in relation to the Public Services Ombudsman for Wales, includes examination and inquiry, and cognate expressions are to be construed accordingly;

“standards enforcement investigation” (*ymchwiliad i orfodi safonau*) means an investigation which the Commissioner is entitled to undertake, or is undertaking, under section 71.

## **21 Working collaboratively with ombudsmen, commissioners etc**

- (1) This section applies if it appears to the Commissioner that the subject matter of a particular standards enforcement investigation (the “Commissioner’s investigation”) relates to, or raises, a matter which could be the subject of an investigation by a particular ombudsman (the “connected matter”).
- (2) If the Commissioner thinks it appropriate, he or she must inform the ombudsman about the connected matter.
- (3) If the Commissioner undertakes the Commissioner’s investigation, the Commissioner must, if he or she thinks it appropriate—
  - (a) inform the ombudsman about the investigation (including the Commissioner’s proposals for undertaking the investigation), and
  - (b) consult the ombudsman in relation to the investigation.
- (4) If the Commissioner undertakes the Commissioner’s investigation and the ombudsman investigates the connected matter, they may do any or all of the following—
  - (a) co-operate with each other in relation to their separate investigations;
  - (b) conduct a joint investigation;
  - (c) prepare and publish a joint report in relation to their separate investigations or their joint investigation.
- (5) If the Commissioner does not undertake the Commissioner’s investigation, the Commissioner must, if he or she thinks it appropriate—
  - (a) give the person seeking to bring the case information about how to refer the connected matter to the ombudsman, and
  - (b) give that information to any other person interested in the case.
- (6) In this section—

“investigation” (*ymchwiliad*), in relation to an ombudsman, includes examination and inquiry, and cognate expressions are to be construed accordingly;

“ombudsman” (*ombwdsmon*) means—

  - (a) the Public Services Ombudsman for Wales,
  - (b) the Children’s Commissioner for Wales,
  - (c) the Commissioner for Older People in Wales, and
  - (d) the Commission for Equality and Human Rights;

“standards enforcement investigation” (*ymchwiliad i orfodi safonau*) means an investigation which the Commissioner is entitled to undertake, or is undertaking, under section 71.
- (7) The Welsh Ministers may by order amend the definition of “ombudsman” in subsection (6) by—

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- (a) adding a person;
  - (b) omitting a person;
  - (c) changing a description of a person.
- (8) The Welsh Ministers may, by order, make such other provision as the Welsh Ministers think appropriate in connection with, for the purposes of, or in consequence of provision made under subsection (7), including, but not limited to—
- (a) provision enabling or requiring the other person to work with the Commissioner, and
  - (b) amendments of any enactment.
- (9) Before making an order under subsection (7), the Welsh Ministers must consult the person concerned and any other persons they think it appropriate to consult.
- (10) Schedule 3 contains amendments about other Commissioners and Ombudsmen working jointly and collaboratively with the Welsh Language Commissioner.

### *Disclosure of information*

## **22 Power to disclose information**

- (1) Information which has been obtained by the Commissioner in the exercise of any of the Commissioner's functions must not be disclosed unless the disclosure is authorised by subsection (2).
- (2) The Commissioner may disclose the information—
- (a) for the purpose of the exercise of any of the Commissioner's functions;
  - (b) for the purpose of proceedings for an offence of perjury alleged to have been committed in the course of a standards enforcement investigation;
  - (c) for the purpose of an inquiry with a view to the taking of proceedings mentioned in paragraph (b);
  - (d) for the purpose of issuing a certificate under section 107 (obstruction and contempt);
  - (e) if the information is to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, and the disclosure is to a person to whom the Commissioner thinks it should be disclosed in the public interest;
  - (f) if the information is of the kind mentioned in subsection (3), and the disclosure is to the Information Commissioner;
  - (g) if the disclosure is to a permitted person, and the Commissioner is satisfied that the public interest condition is met;
  - (h) if the information was obtained by the Commissioner more than 70 years before the date of disclosure, and the disclosure is to a person to whom the Commissioner thinks it should be disclosed in the public interest.
- (3) The information referred to in subsection (2)(f) is information that appears to the Commissioner to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4); or
  - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments referred to in subsection (3)(a) are—

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- (a) Part 5 of the Data Protection Act 1998 (enforcement);
  - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations); and
  - (c) Part 4 of that Act (enforcement).
- (5) The offences referred to in subsection (3)(b) are those under—
- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of a warrant); or
  - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).
- (6) For the purposes of subsection (2)(g), the public interest condition is met if the disclosure—
- (a) is appropriate for the purpose of the exercise by the permitted person of any of that person’s functions, and
  - (b) is in the public interest.
- (7) In determining for the purpose of this section whether disclosure of information is in the public interest, the Commissioner must take into account the interests of—
- (a) any person to whom the information relates; and
  - (b) such other persons as the Commissioner thinks appropriate.
- (8) This section does not affect the application of the Data Protection Act 1998 to the Commissioner.
- (9) In this section—
- “permitted person” (*“person a ganiatawyd”*) means—
- (a) the Welsh Ministers;
  - (b) the First Minister;
  - (c) the Counsel General to the Welsh Assembly Government;
  - (d) the Public Services Ombudsman for Wales;
  - (e) the Children’s Commissioner for Wales;
  - (f) the Children’s Commissioner;
  - (g) the Commission for Equality and Human Rights;
  - (h) the Commissioner for Children and Young People for Northern Ireland;
  - (i) the Commissioner for Older People in Wales;
  - (j) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996;
  - (k) a council for a county or county borough in Wales;
  - (l) a council for a county or district in England;
  - (m) a council for a London borough;
  - (n) a chief of police of a police force for a police area;
  - (o) the chief constable of the British Transport Police Force;
- “standards enforcement investigation” (*“ymchwiliad i orfodi safonau”*) means an investigation undertaken by the Commissioner under section 71.
- (10) The Welsh Ministers may by order amend the definition of “permitted person” in subsection (9) by—
- (a) adding a person;
  - (b) omitting a person;

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(c) changing a description of a person.

(11) Before making an order under subsection (10), the Welsh Ministers must consult the person concerned and any other persons they think it appropriate to consult.

## PART 3

### ADVISORY PANEL TO THE WELSH LANGUAGE COMMISSIONER

#### 23 Advisory Panel

- (1) The Welsh Ministers must appoint persons to be members of a panel of advisers to the Commissioner.
- (2) The panel is to be known as the Advisory Panel to the Welsh Language Commissioner (referred to in this Measure as the “Advisory Panel”).
- (3) The Welsh Ministers must secure that, as far as it is practicable, there are at least 3, but not more than 5, members of the Advisory Panel at any time.
- (4) Schedule 4 makes further provision about the members of the Advisory Panel.

#### 24 Consultation

- (1) The Commissioner may consult the Advisory Panel on any matter.
- (2) The other provisions of this Measure which provide for the Commissioner to consult the Advisory Panel do not limit subsection (1).
- (3) References in this Measure to consultation with the Advisory Panel are to consultation with any or all of the members of the Advisory Panel.

## PART 4

### STANDARDS

#### CHAPTER 1

##### DUTY TO COMPLY WITH STANDARDS

#### 25 Duty to comply with a standard

- (1) A person (P) must comply with a standard of conduct specified by the Welsh Ministers in accordance with Chapter 2 if, and for as long as, the following conditions are met.
- (2) Condition 1 is that P is liable to be required to comply with standards (see Chapter 3).
- (3) Condition 2 is that the standard is potentially applicable to P (see Chapter 4).
- (4) Condition 3 is that the standard is specifically applicable to P (see Chapter 5).

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- (5) Condition 4 is that the Commissioner has given a compliance notice to P (see Chapter 6).
- (6) Condition 5 is that the compliance notice requires P to comply with the standard (see Chapter 6).
- (7) Condition 6 is that the compliance notice is in force (see Chapter 6).
- (8) Subsection (1) is subject to the provisions of the compliance notice given to P.
- (9) For provision about—
  - (a) rights of challenge in respect of the duty to comply with standards, see Chapter 7;
  - (b) standards investigations and reports, see Chapter 8;
  - (c) general matters, see Chapter 9.

## CHAPTER 2

### STANDARDS AND THEIR SPECIFICATION

#### *Specification of standards*

#### **26 Welsh Ministers to specify standards**

- (1) The Welsh Ministers may, by regulations—
  - (a) specify one or more service delivery standards,
  - (b) specify one or more policy making standards,
  - (c) specify one or more operational standards,
  - (d) specify one or more promotion standards, and
  - (e) specify one or more record keeping standards.
- (2) The Welsh Ministers may, by regulations, make other provision about such standards.

#### **27 Specification of standards: supplementary provision**

- (1) The Welsh Ministers may specify a record keeping standard relating to the keeping of records that fall within section 32(1)(b)(ii) (complaints concerning the Welsh language other than complaints concerning a person's compliance with other standards) only if it appears to the Welsh Ministers that the standard would—
  - (a) assist the Welsh Ministers to exercise any function under this Measure, or
  - (b) assist the Commissioner to exercise any function.
- (2) Regulations under any of paragraphs (a) to (e) of section 26(1) may specify different standards of the kind referred to in that paragraph in relation to different conduct.
- (3) Regulations under any of paragraphs (a) to (e) of section 26(1) may specify, in relation to particular conduct—
  - (a) a single standard of the kind referred to in that paragraph, or
  - (b) a number of standards of the kind referred to in that paragraph.

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- (4) Standards specified under section 26(1), or regulations under section 26(2), may, among other things, deal with any of the following—
- (a) the preparation, by persons who are under the duty in section 25 to comply with standards, of strategies or plans setting out how they propose to comply with the standards;
  - (b) procedures to be followed by persons who are under the duty in section 25 to comply with standards;
  - (c) the collection of information by persons who are under the duty in section 25 to comply with standards, including information about the use of Welsh and the use of English in relation to a particular conduct;
  - (d) information to be made available to the Commissioner;
  - (e) monitoring arrangements and publicity requirements;
  - (f) reporting requirements.

*Service delivery standards*

**28 Service delivery standards**

- (1) In this Measure “service delivery standard” means a standard that—
- (a) relates to a service delivery activity, and
  - (b) is intended to promote or facilitate the use of the Welsh language, or to work towards ensuring that the Welsh language is treated no less favourably than the English language, when that activity is carried out.
- (2) In this section “service delivery activity” means a person—
- (a) delivering services to another person, or
  - (b) dealing with any other person in connection with delivering services—
    - (i) to that other person, or
    - (ii) to a third person.

*Policy making standards*

**29 Policy making standards**

- (1) In this Measure “policy making standard” means a standard that—
- (a) relates to a policy decision, and
  - (b) is intended to secure, or to contribute to securing, one or more of the following results.
- (2) The first of those results is that the person making the policy decision considers what effects, if any, (whether positive or adverse) the policy decision would have on—
- (a) opportunities for other persons to use the Welsh language, or
  - (b) treating the Welsh language no less favourably than the English language.
- (3) The second of those results is that the person making the policy decision considers how the decision could be made so that the decision has positive effects, or increased positive effects, on—
- (a) opportunities for other persons to use the Welsh language, or
  - (b) treating the Welsh language no less favourably than the English language.



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- (4) The third of those results is that the person making the policy decision considers how the decision could be made so that the decision does not have adverse effects, or has decreased adverse effects, on—
- (a) opportunities for other persons to use the Welsh language, or
  - (b) treating the Welsh language no less favourably than the English language.
- (5) In this section a reference to positive or adverse effects is a reference to such effects whether direct or indirect.
- (6) In this section “policy decision” means a decision by a person about—
- (a) the exercise of the person’s functions, or
  - (b) the conduct of the person’s business or other undertaking.

### *Operational standards*

## **30 Operational standards**

- (1) In this Measure “operational standard” means a standard that—
- (a) relates to the relevant activities of a person (A), and
  - (b) is intended to promote or facilitate the use of the Welsh language—
    - (i) by A in carrying out A’s relevant activities,
    - (ii) by A and another person in dealings between them in connection with A’s relevant activities, or
    - (iii) by a person other than A in carrying out activities for the purposes of, or in connection with, A’s relevant activities.
- (2) In this section—
- (a) “relevant activities” means—
    - (i) functions, or
    - (ii) a business or other undertaking;
  - (b) a reference to the carrying out of relevant activities is to—
    - (i) the exercise of functions, or
    - (ii) the conduct of a business or other undertaking.

### *Promotion standards*

## **31 Promotion standards**

In this Measure “promotion standard” means a standard (relating to any activity) that is intended to promote or facilitate the use of the Welsh language more widely.

### *Record keeping standards*

## **32 Record keeping standards**

- (1) In this Measure “record keeping standard” means a standard relating to the keeping of—
- (a) records about other specified standards, and

- (b) records about—
  - (i) complaints concerning a person’s compliance with other specified standards, or
  - (ii) other complaints concerning the Welsh language.
- (2) In this section “specified standard” means a standard specified by the Welsh Ministers under section 26(1).

### CHAPTER 3

#### PERSONS LIABLE TO BE REQUIRED TO COMPLY WITH STANDARDS

#### **33 Persons liable to be required to comply with standards**

- (1) A person (P) is liable to be required to comply with standards if P is—
  - (a) within Schedule 5 and also within Schedule 6, or
  - (b) within Schedule 7 and also within Schedule 8.
- (2) This section applies for the purposes of this Part.

#### **34 Persons who are within Schedules 5, 6, 7 and 8**

- (1) A person is within Schedule 5 if the person is within a category of persons specified in column (2) of the Schedule 5 table.
- (2) A person is within Schedule 6 if the person—
  - (a) is specified in column (1) of the Schedule 6 table, or
  - (b) is within a category of persons specified in that column.
- (3) A person is within Schedule 7 if the person is within a category of persons specified in column (2) of the Schedule 7 table.
- (4) A person is within Schedule 8 if the person—
  - (a) is specified in column (1) of the Schedule 8 table, or
  - (b) is within a category of persons specified in that column.
- (5) A change in the name of a person specified in Schedule 6 or in Schedule 8 does not affect the operation of this Measure in relation to the person.
- (6) References in this Part to a person’s entry in the Schedule 6 table or the Schedule 8 table are to the entry in that table which (in column (1)) specifies—
  - (a) P, or
  - (b) a category of persons which P is within.
- (7) This section applies for the purposes of this Measure.

#### **35 Amendment of persons and categories specified in Schedules 6 and 8**

- (1) The Welsh Ministers may, by order, amend the Schedule 6 table and Schedule 8 table in accordance with this section.

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- (2) The Welsh Ministers may amend the Schedule 6 table so that column (1) includes a reference to—
  - (a) a person who falls within one or more of the Schedule 5 categories, or
  - (b) a category of persons, all of whom fall within one or more of the Schedule 5 categories.
- (3) The Welsh Ministers may amend the Schedule 6 table by removing any reference in column (1).
- (4) The Welsh Ministers may amend the Schedule 8 table so that column (1) includes a reference to—
  - (a) a person who falls within one or more of the Schedule 7 categories, or
  - (b) a category of persons, all of whom fall within one or more of the Schedule 7 categories.
- (5) The Welsh Ministers may amend the Schedule 8 table by removing any reference in column (1).
- (6) The Welsh Ministers may make such other amendments of the Schedule 6 table or Schedule 8 table, or of any other provision of this Measure, as they think appropriate in connection with, for the purposes of, or in consequence of, the powers in any of subsections (2) to (5).
- (7) In this section—
  - “Schedule 5 category” (“*catgori yn Atodlen 5*”) means a category of persons specified in column (2) of the Schedule 5 table;
  - “Schedule 7 category” (“*catgori yn Atodlen 7*”) means a category of persons specified in column (2) of the Schedule 7 table.

## CHAPTER 4

### STANDARDS POTENTIALLY APPLICABLE

#### **36 Persons within Schedule 6**

- (1) This section applies to a person (P) who is within Schedule 6.
- (2) A standard specified by the Welsh Ministers under section 26(1) is potentially applicable to P if it belongs to a class of standard that is specified in column (2) of P’s entry in the Schedule 6 table.
- (3) For that purpose, each of the following is a class of standard—
  - (a) service delivery standards;
  - (b) policy making standards;
  - (c) operational standards;
  - (d) promotion standards;
  - (e) record keeping standards.
- (4) This section applies for the purposes of this Part.

### **37 Persons within Schedule 8**

- (1) This section applies to a person (P) who is within Schedule 8.
- (2) A standard specified by the Welsh Ministers under section 26(1) is potentially applicable to P if, and to the extent that, the standard is—
  - (a) a service delivery standard that relates to the provision by P of a specified service (a “qualifying service delivery standard”), or
  - (b) a record keeping standard that relates to the keeping of records about—
    - (i) qualifying service delivery standards,
    - (ii) complaints concerning P’s compliance with qualifying service delivery standards, or
    - (iii) complaints concerning the Welsh language that relate to the provision by P of specified services.
- (3) In this section “specified service” means a service that is specified in column (2) of P’s entry in the Schedule 8 table.
- (4) This section applies for the purposes of this Part.

### **38 Amendment of standards potentially applicable**

- (1) The Welsh Ministers may, by order, amend the Schedule 6 table and Schedule 8 table in accordance with this section.
- (2) The Welsh Ministers may amend the Schedule 6 table so that column (2) of an entry includes a reference to one or more of the following—
  - (a) service delivery standards;
  - (b) policy making standards;
  - (c) operational standards;
  - (d) record keeping standards.
- (3) The Welsh Ministers may amend the Schedule 6 table so that column (2) of any of the following entries in the table includes a reference to promotion standards—
  - (a) the Welsh Ministers' entry;
  - (b) a county borough council’s entry;
  - (c) a county council’s entry;
  - (d) a National Park authority’s entry;
  - (e) an entry for any other person, but only if the person has given consent that promotion standards should be potentially applicable to that person.
- (4) For the purpose of subsection (3)—
  - (a) “consent” means consent in writing given to the Welsh Ministers;
  - (b) a person may withdraw consent, but only with the agreement of the Welsh Ministers;
  - (c) if a person withdraws consent after that person’s entry has been amended to include a reference to promotion standards, the Welsh Ministers must amend the Schedule 6 table by removing the reference to promotion standards in the entry for that person.
- (5) The Welsh Ministers may amend the Schedule 6 table by removing any reference in column (2).

- (6) The Welsh Ministers may amend the Schedule 8 table so that column (2) of an entry relating to a person or category of person includes a reference to provision of a service (the “specified service”), but only if—
  - (a) the condition in subsection (7) is met, and
  - (b) the condition in subsection (8) or (9) is met.
- (7) The specified service must fall within a category of service specified in column (3) of the Schedule 7 table (an “available service”).
- (8) If the specified service is to relate to a person within Schedule 8, that person must fall within the category of persons in column (2) of the Schedule 7 table to which the available service relates.
- (9) If the specified service is to relate to a category of persons within Schedule 8, all persons within that category must fall within the category of persons in column (2) of the Schedule 7 table to which the available service relates.
- (10) The Welsh Ministers may amend the Schedule 8 table by removing any reference in column (2).
- (11) The Welsh Ministers may make such other amendments of the Schedule 6 table or Schedule 8 table, or of any other provision of this Measure, as they think appropriate in connection with, for the purposes of, or in consequence of, the powers under any of subsections (2) to (10).

## CHAPTER 5

### STANDARDS THAT ARE SPECIFICALLY APPLICABLE

#### **39 Standards that are specifically applicable**

- (1) A standard specified by the Welsh Ministers under section 26(1) is specifically applicable to a person (P) if the Welsh Ministers, by regulations, authorise the Commissioner to give P a compliance notice requiring P to comply with the standard.
- (2) The regulations may provide for a standard to be specifically applicable to P by means of provision that refers to—
  - (a) P in particular, or
  - (b) a group of persons which P is within.
- (3) This section applies for the purposes of this Part.

#### **40 Duty to make standards specifically applicable**

- (1) This section applies in relation to each standard that is specified by the Welsh Ministers under section 26(1).
- (2) The Welsh Ministers must secure that regulations under section 39 provide for the standard to be specifically applicable to one or more persons.

**41 Different standards relating to particular conduct**

- (1) This section applies if regulations under any of paragraphs (a) to (e) of section 26(1) specify a number of standards of the kind referred to in that paragraph in relation to particular conduct.
- (2) Regulations under section 39 may provide for one or more of the following—
  - (a) for one standard to be specifically applicable to one person, to two or more persons, or to a group of persons;
  - (b) for two or more standards to be specifically applicable to one person, to two or more persons, or to a group of persons;
  - (c) for different standards to be specifically applicable to different persons.

**42 Duty to make certain service delivery standards specifically applicable**

- (1) This section applies if regulations under section 39 provide for any service delivery standard to be specifically applicable to a person (P).
- (2) The Welsh Ministers must secure that regulations under section 39 provide for service delivery standards relating to all of the activities specified in Schedule 9 (so far as such standards have been specified by the Welsh Ministers under section 26(1)) to be specifically applicable to P if, and to the extent that, P carries out those activities.
- (3) But the Welsh Ministers need not secure that regulations provide for service delivery standards to be specifically applicable to P in relation to an activity specified in Schedule 9 if, or to the extent that—
  - (a) a standards report under section 64 indicates that it would be unreasonable or disproportionate for service delivery standards to be specifically applicable to P in relation to that activity, or
  - (b) the Welsh Ministers think it would be unreasonable or disproportionate for service delivery standards to be specifically applicable to P in relation to that activity.
- (4) This section does not prevent regulations under section 39 from providing for other service delivery standards to be specifically applicable to P.
- (5) The Welsh Ministers may, by order, amend Schedule 9 by adding, omitting or amending a reference to an activity.

**43 Limitation on power to make standards specifically applicable**

- (1) Regulations under section 39 may not provide for a standard to be—
  - (a) specifically applicable to a person unless the standard is potentially applicable to that person, or
  - (b) specifically applicable to a group of persons unless the standard is potentially applicable to all the persons in that group.
- (2) Regulations under section 39 may not provide for a standard to be specifically applicable to a Minister of the Crown unless the Secretary of State consents to that provision.
- (3) In a case where—
  - (a) a standard is specifically applicable to a Minister of the Crown, and
  - (b) the standard is modified by provision in regulations under section 26,

the standard as modified is not specifically applicable to the Minister of the Crown unless the Secretary of State consents to that provision in those regulations.

- (4) In this section, “Minister of the Crown” has the same meaning as in Schedule 6.

## CHAPTER 6

### COMPLIANCE NOTICES

#### *Compliance notices*

#### **44 Compliance notices**

- (1) In this Measure “compliance notice” means a notice given by the Commissioner to a person (P) which—
- (a) sets out, or refers to, one or more standards specified by the Welsh Ministers under section 26(1), and
  - (b) requires P to comply with the standard or standards set out or referred to.
- (2) A compliance notice may require a person to comply with a particular standard—
- (a) in some circumstances, but not in other circumstances;
  - (b) in some area or areas, but not in other areas.
- (3) If regulations under section 39 provide for two or more standards specified in relation to particular conduct to be specifically applicable to a particular person, a compliance notice may require the person—
- (a) to comply with only one of the standards, or
  - (b) to comply with different standards—
    - (i) at different times;
    - (ii) in different circumstances (whether at the same time or different times);
    - (iii) in different areas (whether at the same time or different times).

#### *Giving compliance notices*

#### **45 Giving compliance notices to any person**

- (1) The Commissioner may give a person (P) a compliance notice only if P is liable to be required to comply with standards (see Chapter 3).
- (2) A compliance notice given to P may set out, or refer to, a particular standard specified by the Welsh Ministers under section 26(1) only if the standard—
- (a) is potentially applicable to P (see Chapter 4), and
  - (b) is specifically applicable to P (see Chapter 5).
- (3) If the Commissioner gives P a compliance notice, the Commissioner must also—
- (a) give P a copy of any relevant code of practice issued under section 68, and
  - (b) inform P of the right of challenge under Chapter 7.
- (4) For provision about giving compliance notices to contractors, see section 48.

**46 Imposition days**

- (1) This section applies as respects each standard specified in a compliance notice given to a person.
- (2) The notice must state the imposition day or imposition days.
- (3) The imposition day, or the earliest of the imposition days, must fall after the end of the period of 6 months beginning with the day on which the notice is given.
- (4) In this section “imposition day”, in relation to a standard, means—
  - (a) the day from which a person is to be required to comply with the standard, or
  - (b) the day from which a person is to be required to comply with the standard in a respect.
- (5) For provision about giving compliance notices to contractors, see section 48.

**47 Consultation**

- (1) The Commissioner must consult a person before giving the person a compliance notice.
- (2) But subsection (1) does not require the Commissioner to consult a person on any matter if the Commissioner is satisfied that the person has already been consulted, or given the opportunity to be consulted, on that matter in connection with a standards investigation (see Chapter 8).
- (3) The failure of a person to participate in a consultation does not prevent the Commissioner from giving the person a compliance notice.

**48 Giving compliance notices to contractors**

- (1) This section applies (in addition to sections 45 and 46) in relation to a qualifying person who provides the public with services (the “relevant services”) provided under an agreement, or in accordance with arrangements, made with a public authority (the “relevant contract”).
- (2) A compliance notice given to the qualifying person may set out, or refer to, a particular standard (the “relevant standard”) in relation to the provision of the relevant services under the relevant contract only if—
  - (a) the public authority is required to comply with the relevant standard in providing the public with the relevant services (or would be so required if it provided the public with those services),
  - (b) the relevant contract was entered into on or after the public authority’s imposition day, and
  - (c) the qualifying person’s imposition day falls on or after the public authority’s imposition day.
- (3) The Commissioner must secure that the requirement for the qualifying person to comply with the relevant standard (which arises by virtue of the compliance notice being given in accordance with subsection (2)) is the same as, or no greater than, the requirement for the public authority to comply with the standard.
- (4) Expressions used in this section and in Schedule 8 have the same meanings in this section as in Schedule 8.



(5) In this section—

“public authority’s imposition day” (“*diwrnod gosod yr awdurdod cyhoeddus*”) means the day, or the earliest of the days, on which the public authority is required to comply with the relevant standard;

“qualifying person’s imposition day” (“*diwrnod gosod y person neilltuedig*”) means the day, or the earliest of the days, stated in the compliance notice given to the qualifying person as a day when the qualifying person is to be required to comply with the relevant standard in relation to the provision of the relevant services under the relevant contract.

#### *Varying compliance notices*

### **49 Varying compliance notices**

- (1) The Commissioner may vary any compliance notice.
- (2) Sections 45 to 47 apply to the variation of a compliance notice as they apply to the giving of a compliance notice, but only insofar as the notice is varied.
- (3) Section 48 applies to the variation of a compliance notice as it applies to the giving of a compliance notice.

#### *Revoking compliance notices*

### **50 Revoking compliance notices**

- (1) The Commissioner may revoke any compliance notice.
- (2) Subsections (3) and (4) apply in a case where the Commissioner—
  - (a) revokes a compliance notice that was given to a person (the “old notice”), and
  - (b) at the same time gives that person a compliance notice (the “new notice”).
- (3) Sections 45 to 47 apply to the giving of the new notice only insofar as the new notice is different from the old notice.
- (4) Section 48 applies to the giving of the new notice as it applies to the giving of a compliance notice.

#### *When compliance notice in force*

### **51 When compliance notice in force**

- (1) A compliance notice given to a person (P) is in force from the day when the Commissioner gives the notice to P.
- (2) A compliance notice remains in force unless — and until — it is revoked.
- (3) This section applies for the purposes of this Measure.

*Publicising compliance notices***52 Publicising compliance notices**

- (1) This section applies in relation to each compliance notice which is in force.
- (2) As from the relevant imposition day, the Commissioner must—
  - (a) ensure that a copy of the compliance notice is available for inspection at the Commissioner’s office, and
  - (b) ensure that copies of the compliance notice are made available at such other places and by such other means (including by electronic means) as the Commissioner thinks appropriate.
- (3) If a person makes an application to the Commissioner under Chapter 7 in respect of a standard, the Commissioner must ensure that, until the application is finally determined, the copies of the compliance notice made available in accordance with subsection (2) indicate—
  - (a) that the application has been made, and
  - (b) that the requirement to comply with the standard does not apply by virtue of section 60 (if that is the case).
- (4) The Commissioner must ensure that the arrangements for inspecting and gaining access to compliance notices are published in such a way as to bring those arrangements to the attention of persons whom the Commissioner thinks likely to have an interest in inspecting or gaining access to compliance notices.
- (5) In this section “relevant imposition day” means—
  - (a) if only one imposition day is stated in a compliance notice, that imposition day;
  - (b) if two or more imposition days are stated in a compliance notice, the earliest of those days.

*Cessation of requirement to comply with standard***53 Cessation of requirement to comply with standard**

- (1) This section applies in any case where a person (P) ceases to be under the duty in section 25(1) to comply with a standard because—
  - (a) one or more of conditions 1 to 3 in section 25 cease to be met, or
  - (b) the standard ceases to be specified by the Welsh Ministers under section 26(1).
- (2) As soon as practicable after this section applies, the Commissioner must, by exercising the powers conferred by this Chapter, secure that the change described in subsection (1) is reflected in the compliance notices (if any) that remain in force in relation to P.

## CHAPTER 7

### RIGHT OF CHALLENGE

#### 54 Challenging future duties

- (1) This section applies if—
  - (a) the Commissioner has given a person (P) a compliance notice, and
  - (b) the notice requires P—
    - (i) to comply with a standard, or
    - (ii) to comply with a standard in a particular respect,as from an imposition day that is in the future.
- (2) P may apply to the Commissioner for the Commissioner to determine whether or not the requirement for P to comply with that standard, or comply with it in that respect, is unreasonable or disproportionate.
- (3) If that determination is being made before the imposition day, the Commissioner must make the determination by reference to the circumstances as they are expected to exist on the imposition day.
- (4) An application under this section must be made before the imposition day.
- (5) In this section “imposition day” has the same meaning as in section 46.

#### 55 Challenging existing duties

- (1) This section applies if—
  - (a) the Commissioner has given a person (P) a compliance notice, and
  - (b) the notice already requires P—
    - (i) to comply with a standard, or
    - (ii) to comply with a standard in a particular respect.
- (2) P may apply to the Commissioner for the Commissioner to determine whether or not the requirement for P to comply with that standard, or to comply with it in that respect, is unreasonable or disproportionate.
- (3) But the Commissioner may refuse to accept an application under this section if he or she is satisfied that there has been no material change in P’s circumstances—
  - (a) since the day on which P was first required to comply with that standard, or to comply with it in that respect, or
  - (b) if the Commissioner has determined the relevant question on a previous application under this section, since the Commissioner determined the relevant question on that application.
- (4) In this section “relevant question” means the question to which an application under this section relates.

#### 56 Applications to the Commissioner

- (1) This section applies to an application under section 54 or 55 for the Commissioner to determine whether or not the requirement for P to comply with a standard, or to comply with it in a particular respect, is unreasonable or disproportionate.

- (2) The application must be made in writing.
- (3) The application must be made in the form required by the Commissioner (if he or she requires it to be made in a particular form).
- (4) The application must set out the reasons why P considers that the requirement to comply with the standard, or to comply with it in the particular respect, is unreasonable or disproportionate.

## **57 Determining an application**

- (1) This section applies to—
  - (a) any application under section 54, and
  - (b) any application under section 55 which the Commissioner does not refuse to accept.
- (2) It is for P to show that the requirement for P to comply with the standard, or to comply with it in the particular respect, is unreasonable or disproportionate.
- (3) The Commissioner must determine the application as soon as practicable after the application is made.
- (4) In determining the application, the Commissioner—
  - (a) must consult P, and
  - (b) may consult any other person the Commissioner considers to have an interest in the outcome of the application.
- (5) The Commissioner must notify P of the determination of the application.
- (6) If the Commissioner determines that the requirement for P to comply with the standard, or to comply with it in the particular respect, is unreasonable or disproportionate, he or she must do one of the following—
  - (a) revoke the compliance notice;
  - (b) revoke the compliance notice and give a new compliance notice;
  - (c) vary the existing compliance notice.
- (7) If the Commissioner gives a new compliance notice or varies the existing compliance notice—
  - (a) section 45(3) does not apply, and
  - (b) sections 46(3) and 47 do not apply insofar as the Commissioner and P agree the new compliance notice, or the variation of the existing compliance notice.

## **58 Right of appeal**

- (1) This section applies if the Commissioner notifies P under section 57 of a determination that the requirement for P to comply with a standard, or to comply with it in a particular respect, is not unreasonable or disproportionate.
- (2) P may appeal to the Tribunal for the Tribunal to determine whether or not that requirement is unreasonable or disproportionate.
- (3) An appeal under this section must be made within the period of 28 days beginning with the day when the Commissioner notified P under section 57.

- (4) But the Tribunal may, on a written application by P, allow an appeal to be made after the end of that period if the Tribunal is satisfied that there is a good reason—
  - (a) for the failure to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.
- (5) The Tribunal must notify P and the Commissioner of its determination of an appeal made under this section.
- (6) If the Tribunal determines that the requirement is unreasonable or disproportionate, subsections (6) and (7) of section 57 apply as if the Commissioner had made that determination.
- (7) This section is subject to Tribunal Rules (which may, amongst other things, make provision about the manner in which appeals under this section may be brought).

## **59 Appeals from Tribunal**

- (1) This section applies if the Tribunal has decided an appeal under section 58.
- (2) The Commissioner or P may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the decision.
- (3) If the High Court finds that the Tribunal has made an error on a point of law, the High Court—
  - (a) may set aside the decision of the Tribunal, and
  - (b) if it sets the decision aside, must either—
    - (i) remit the case to the Tribunal with directions for its reconsideration, or
    - (ii) re-make the decision.
- (4) The directions that the High Court may give under subsection (3)(b)(i) include, but are not limited to, either or both of the following—
  - (a) a direction that the persons who are to reconsider the case must not be the persons who made the decision that has been set aside;
  - (b) procedural directions in connection with the reconsideration of the case.
- (5) In re-making the decision in accordance with subsection (3)(b)(ii), the High Court—
  - (a) may make any decision which the Tribunal could make if the Tribunal were making the decision, and
  - (b) may make such findings of fact as the High Court thinks appropriate.
- (6) An application for permission to appeal must be made to the Tribunal or High Court within the period of 28 days beginning with the day when the Tribunal notified the person making the application of its determination of the appeal under section 58.
- (7) But the Tribunal or High Court may, on a written application by the Commissioner or P, allow an appeal to be made after the end of that period if the Tribunal or High Court is satisfied that there is a good reason—
  - (a) for the failure to apply for permission to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.

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(8) This section is subject to Tribunal Rules.

## 60 Postponement of imposition of duty

- (1) This section applies if P makes an application under section 54 for the Commissioner to determine whether or not the requirement for P to comply with a standard, or to comply with it in a particular respect, is unreasonable or disproportionate.
- (2) The requirement for P to comply with that standard, or to comply with it in that respect, does not apply unless and until—
  - (a) the Commissioner has determined whether or not the requirement is unreasonable or disproportionate, and
  - (b) P’s rights of appeal are exhausted.
- (3) For that purpose, P’s rights of appeal are exhausted if—
  - (a) the period mentioned in section 58(3) for making an appeal to the Tribunal has ended without an appeal being made, or
  - (b) an appeal under section 58 has been made and determined, and a further appeal—
    - (i) may not be made, or
    - (ii) may be made only with the permission of the Tribunal or a court.

## CHAPTER 8

### STANDARDS INVESTIGATIONS AND REPORTS

#### *Standards investigations*

## 61 Standards investigations

- (1) In this Measure “standards investigation” means an investigation carried out in relation to a person (P) for the purpose of determining one or more of the following questions—
  - (a) whether P should be — or should continue to be — liable to be required to comply with standards;
  - (b) if P is within Schedule 6, what standards (if any) should be — or should continue to be — potentially applicable to P;
  - (c) if P is within Schedule 8, what services (if any) should be — or should continue to be — specified in column (2) of P’s entry in the Schedule 8 table;
  - (d) what standards (if any) should be — or should continue to be — specifically applicable to P (whether or not the standards are already specified by the Welsh Ministers under section 26(1));
  - (e) any other question which the Commissioner considers to be relevant to the extent to which P may be subject to the duty in section 25(1) to comply with standards.
- (2) A particular standards investigation may be carried out in relation to—
  - (a) a particular person, or
  - (b) a group of persons.

## **62 Power to carry out standards investigations**

- (1) The Commissioner may carry out standards investigations.
- (2) But the Commissioner may not carry out a standards investigation unless he or she has given an exploration notice to each relevant person, at least 14 days before beginning the investigation.
- (3) An exploration notice is a notice in writing which—
  - (a) states that the Commissioner is proposing to carry out a standards investigation, and
  - (b) specifies the subject matter of the standards investigation.
- (4) In this section “relevant person” means—
  - (a) in the case of a standards investigation relating to a particular person, that person;
  - (b) in the case of a standards investigation relating to a group of persons, such persons—
    - (i) who appear to the Commissioner to be members of the group, and
    - (ii) to whom the Commissioner thinks it appropriate to give exploration notices.

## **63 Requirements when carrying out standards investigations**

- (1) In carrying out a standards investigation, the Commissioner must have regard to the need to secure that requirements for persons to comply with standards by virtue of section 25(1) are not unreasonable or disproportionate.
- (2) If the Commissioner decides, or is directed, that a standards investigation is to consider whether service delivery standards should be specifically applicable to P, the investigation must—
  - (a) consider whether, in respect of each of the activities specified in Schedule 9 which P carries out, it is reasonable and proportionate for service delivery standards to be specifically applicable to P, and
  - (b) as respects each such activity, if it is reasonable and proportionate for service delivery standards to be specifically applicable to P, conclude that service delivery standards should be specifically applicable to P in relation to that activity.
- (3) In carrying out a standards investigation, the Commissioner must consult—
  - (a) each relevant person,
  - (b) the Advisory Panel, and
  - (c) the public, except—
    - (i) if, or
    - (ii) to the extent thatthe Commissioner considers that it is inappropriate to do so.
- (4) The failure of a person to participate in the Commissioner’s consultation does not prevent the Commissioner from carrying out the standards investigation.
- (5) In this section “relevant person” means—
  - (a) in the case of a standards investigation relating to a particular person, that person;

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- (b) in the case of a standards investigation relating to a group of persons, such persons—
  - (i) who appear to the Commissioner to be members of the group, and
  - (ii) whom the Commissioner thinks it appropriate to consult.

### *Standards reports*

## **64 Standards report**

- (1) After carrying out a standards investigation, the Commissioner must produce a standards report.
- (2) A standards report is a document that sets out—
  - (a) the conclusions of the standards investigation, and
  - (b) the Commissioner’s reasons for reaching those conclusions.
- (3) If—
  - (a) the conclusions of the investigation are (in whole or in part) that any standards should be specifically applicable to P, and
  - (b) any or all of those standards are not specified by the Welsh Ministers under section 26(1),
 the report must set out the standards that are not specified.
- (4) As soon as reasonably practicable after preparing a standards report, the Commissioner—
  - (a) must send a copy of the report to—
    - (i) each relevant person,
    - (ii) the Advisory Panel,
    - (iii) each person who participated in the Commissioner’s consultation under section 63, and
    - (iv) the Welsh Ministers, and
  - (b) may send a copy of the report to any other person whom the Commissioner considers to have an interest in the report.
- (5) In this section “relevant person” means—
  - (a) in the case of a standards investigation relating to a particular person, that person;
  - (b) in the case of a standards investigation relating to a group of persons, such persons—
    - (i) who appear to the Commissioner to be members of the group, and
    - (ii) to whom the Commissioner thinks it appropriate to give a copy of the report.

### *Welsh Ministers' power of direction*

## **65 Direction to carry out standards investigation**

- (1) This section applies if the Welsh Ministers exercise their powers under section 16 to direct the Commissioner so as to direct him or her to carry out a standards investigation in respect of a person or group of persons.



- (2) The direction must specify the following matters—
- (a) the person or group of persons in respect of which the investigation is to be carried out;
  - (b) the subject matter of the investigation;
  - (c) the reasons why the Welsh Ministers consider that the Commissioner should conduct the standards investigation;
  - (d) the period (which must be no shorter than six months) within which the Commissioner must carry out the standards investigation.

- (3) Subsection (2) does not prevent the direction from specifying other matters.

*Regard to be had to standards report*

## **66 Welsh Ministers to have due regard to report**

- (1) This section applies if the Commissioner has carried out a standards investigation and produced a standards report (whether or not at the direction or request of the Welsh Ministers).
- (2) The Welsh Ministers must have due regard to the standards report in deciding whether, and how, to exercise the powers conferred on them by this Part.

## **CHAPTER 9**

### **GENERAL**

*Exception for broadcasting*

## **67 Exception for broadcasting**

- (1) This Measure—
- (a) does not require, and
  - (b) does not authorise a person to require,
- a person to comply with a standard if, and to the extent that, the standard relates to broadcasting.
- (2) In this section—
- (a) “broadcasting” means the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms;
  - (b) but references to broadcasting do not include any activity that is carried out in connection with broadcasting (unless the activity is itself broadcasting).

*Codes of practice***68 Codes of practice**

- (1) The Commissioner may issue codes of practice for the purpose of providing practical guidance with respect to the requirements of any standards specified by the Welsh Ministers under section 26(1) (“standards codes of practice”).
- (2) The Commissioner may revise or withdraw standards codes of practice.
- (3) The Commissioner must not issue, revise or withdraw a standards code of practice without the consent of the Welsh Ministers.
- (4) Before seeking that consent, the Commissioner must consult—
  - (a) persons who are required to comply with the standard or standards to which the code of practice relates, and
  - (b) the Advisory Panel.
- (5) Where a code of practice is issued or revised by the Commissioner, the Commissioner must also issue a notice in writing—
  - (a) identifying the code in question and stating the date of issue, and
  - (b) specifying to which standard or standards the code relates.
- (6) Where the Commissioner withdraws a code of practice, the Commissioner must issue a notice in writing identifying the code in question and stating the date on which the code is to cease to have effect.

**69 Failure to comply with codes**

- (1) A person’s failure to comply with a provision of an approved code of practice does not render that person liable to enforcement action of any kind.
- (2) But if any action under this Measure is taken in respect of a failure of a person (P) to comply with a standard (“the alleged standards failure”)—
  - (a) a failure by P to comply with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is liable for the alleged standards failure, and
  - (b) compliance with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is not liable for the alleged standards failure.
- (3) References in this section to an approved code of practice are references—
  - (a) to a standards code of practice as it has effect for the time being, and
  - (b) where a standards code of practice has been revised, to that code as revised as it has effect for the time being.

*Interpretation***70 Interpretation**

- (1) In this Part—
  - (a) references to a person being liable to be required to comply with standards are to be read in accordance with section 33;

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- (b) references to a person’s entry in the Schedule 6 table or the Schedule 8 table are to be read in accordance with section 34;
- (c) references to a standard being potentially applicable to a person are to be read in accordance with sections 36 and 37;
- (d) references to a standard being specifically applicable to a person are to be read in accordance with section 39.

(2) In this Part—

- “Schedule 5 table” means the table in Schedule 5;
- “Schedule 6 table” means the table in Schedule 6;
- “Schedule 7 table” means the table in Schedule 7;
- “Schedule 8 table” means the table in Schedule 8.

## 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.

#### **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.

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- (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.

#### *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.

#### *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.

### *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).

### *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;
  - (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.

### *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;

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- (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—
- (a) giving D or any other person recommendations;
  - (b) giving D or any other person advice.
- (7) This section is subject to section 85.

*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.

*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—

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- (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
  - (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.

## **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—

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- (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
    - (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.

*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.

**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.
- (3) The relevant decision notice must inform D of—



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- (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.

### *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.

## **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.

### *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
  - (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.

#### **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—

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- (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.

*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.

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### *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.

#### **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.

#### **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.

## **CHAPTER 2**

### **SETTLEMENT AGREEMENTS**

#### **91 Settlement agreements**

- (1) A reference to a settlement agreement between the Commissioner and a person (D) in relation to D's failure to comply with a standard (the "relevant failure") is a reference to an agreement which contains—
  - (a) an undertaking by D to do one or more of the following—
    - (i) not to fail to comply with one or more standards;
    - (ii) to take particular action (which may include, but is not limited to, the preparation of a plan of steps to be taken);
    - (iii) to refrain from taking particular action; and
  - (b) an undertaking by the Commissioner not to take enforcement action in respect of the relevant failure.
- (2) A settlement agreement—

- (a) may include incidental or supplemental provision (which may include, but is not limited to, provision for termination in specified circumstances), and
  - (b) may be varied or terminated by agreement of the Commissioner and D.
- (3) D is not to be taken to have admitted the relevant failure by reason only of entering into a settlement agreement.
- (4) Subsection (1) applies for the purposes of this Measure.

## **92 Failure to comply with settlement agreement**

- (1) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with a settlement agreement.
- (2) In this section “relevant period” means the period of 5 years beginning with the day when the settlement agreement is entered into.

## **CHAPTER 3**

### **NON-COMPLIANCE WITH STANDARDS: COMPLAINTS BY PERSONS AFFECTED**

## **93 Consideration of whether to investigate if conduct complained about**

- (1) The Commissioner must consider whether to carry out an investigation under section 71 of whether the conduct of a person (D) (“the alleged conduct”) amounts to a failure to comply with a standard if—
- (a) a person (P) makes a complaint to the Commissioner about that conduct, and
  - (b) that complaint is valid.
- (2) A complaint made by P to the Commissioner is a valid complaint if the conditions in subsections (3) to (6) are met.
- (3) P must be—
- (a) a person who appears to the Commissioner to have been directly affected by the alleged conduct, or
  - (b) a person acting on behalf of such a person.
- (4) The complaint must be made in writing, unless P’s personal circumstances are such that it would not be reasonable for P to make the complaint in writing.
- (5) The complaint must give an address at which the Commissioner may contact P (whether the address is postal, electronic or of another description).
- (6) The complaint must identify—
- (a) D, and
  - (b) the alleged conduct.
- (7) But, if those conditions are met, the Commissioner need not consider whether to carry out the investigation of the alleged conduct if—
- (a) the complaint is made more than 1 year after the affected person became aware of the alleged conduct,
  - (b) the Commissioner considers that the complaint is frivolous or vexatious or is one that has already been made repeatedly, or

- (c) the complaint is withdrawn.
- (8) This section does not prevent the Commissioner from considering whether to carry out the investigation of the alleged conduct if—
  - (a) any of the conditions in subsections (3) to (6) is not met, or
  - (b) subsection (7) applies.
- (9) If a complaint is made under this section by a person acting on behalf of another person, in the provisions of this Measure which relate to appeals or further appeals connected with the complaint, a reference to the person who made the complaint (including a case where that person is referred to as “P”) is to be read as a reference to the other person (and not as a reference to the person who made the complaint).
- (10) In this section “affected person” means the person who appears to the Commissioner to have been directly affected by the alleged conduct.

#### **94 Notification if no investigation etc**

- (1) This section applies in any of the following cases.
- (2) The first case is where—
  - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct applies, and
  - (b) the Commissioner decides not to carry out an investigation.
- (3) The second case is where—
  - (a) section 93(7) applies in relation to a complaint, and
  - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct.
- (4) The third case is where the Commissioner decides that the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply.
- (5) The fourth case is where—
  - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply, and
  - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct under section 93(8) or, having considered whether to carry out an investigation under that section, decides not to carry out the investigation.
- (6) The fifth case is where—
  - (a) the Commissioner decides to carry out an investigation, and
  - (b) the Commissioner then decides to discontinue the investigation.
- (7) The Commissioner must notify P of—
  - (a) the decision mentioned in subsection (2)(b), (3)(b), (4), (5)(b) or (6)(b), and
  - (b) the reasons for that decision, and
  - (c) the right of review under section 103.

## CHAPTER 4

### APPEALS

#### 95 Appeals to the Tribunal

- (1) This section applies if the Commissioner—
  - (a) undertakes an investigation under section 71, and
  - (b) determines that D has failed to comply with a relevant requirement.
- (2) D may appeal to the Tribunal on the grounds that D did not fail to comply with the relevant requirement.
- (3) But D may not appeal to the Tribunal under subsection (2) if the Commissioner has been directed, following an appeal under section 99 or 101, or any further appeal, to determine that D did fail to comply with the relevant requirement.
- (4) If the Commissioner takes enforcement action in connection with D’s failure to comply with the relevant requirement, D may appeal to the Tribunal on the grounds that the enforcement action is unreasonable or disproportionate.
- (5) An appeal under this section must be made before the end of the relevant 28 day period.
- (6) But the Tribunal may, on a written application by D, allow an appeal to be made after the end of the relevant 28 day period if the Tribunal is satisfied that there is a good reason—
  - (a) for the failure to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.
- (7) An application under subsection (6) may be made before or after the end of the relevant 28 day period.
- (8) D may appeal under subsection (4) whether or not D also appeals under subsection (2).
- (9) This section is subject to Tribunal Rules (which may, amongst other things, make provision about the manner in which appeals under this section may be brought).
- (10) In this Chapter “relevant 28 day period” means the period of 28 days beginning with the day on which the Commissioner gives D the decision notice in relation to the investigation.

#### 96 Powers of Tribunal on appeal

- (1) On an appeal under section 95(2), the Tribunal may—
  - (a) affirm the Commissioner’s determination, or
  - (b) annul the Commissioner’s determination.
- (2) On an appeal under section 95(4), the Tribunal may—
  - (a) affirm the enforcement action,
  - (b) vary the enforcement action (including, but not limited to, by taking enforcement action of a different kind), or
  - (c) annul the enforcement action.

- (3) The Tribunal must notify D and the Commissioner of its decision on an appeal under section 95.
- (4) Any decision of the Tribunal on an appeal under section 95 has the same effect, and may be enforced in the same manner, as a determination of the Commissioner.

## **97 Appeals from Tribunal**

- (1) This section applies if the Tribunal has decided an appeal under section 95.
- (2) The Commissioner or D may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the decision.
- (3) If the High Court find that the Tribunal has made an error on a point of law, the High Court—
  - (a) may set aside the decision of the Tribunal, and
  - (b) if it sets the decision aside, must either—
    - (i) remit the case to the Tribunal with directions for its reconsideration, or
    - (ii) re-make the decision.
- (4) The directions that the High Court may give under subsection (3)(b)(i) include, but are not limited to, either or both of the following—
  - (a) a direction that the persons who are to reconsider the case must not be the persons who made the decision that has been set aside,
  - (b) procedural directions in connection with the reconsideration of the case.
- (5) In re-making the decision in accordance with subsection (3)(b)(ii), the High Court—
  - (a) may make any decision which the Tribunal could make if the Tribunal were making the decision, and
  - (b) may make such findings of fact as the High Court thinks appropriate.
- (6) An application for permission to appeal must be made to the Tribunal or High Court within the period of 28 days beginning with the day when the Tribunal notified the person making the application of its decision on the appeal under section 95.
- (7) But the Tribunal or High Court may, on a written application by the Commissioner or D, allow an appeal to be made after the end of that period if the Tribunal or High Court is satisfied that there is a good reason—
  - (a) for the failure to apply for permission to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.
- (8) This section is subject to Tribunal Rules.

## **98 Commissioner's duty on an appeal**

- (1) This section applies if—
  - (a) the Commissioner has carried out an investigation under section 71 following a complaint under section 93, and
  - (b) an appeal under section 95 or 97, or any further appeal, is made in relation to the investigation, and



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- (c) P is not a party to those proceedings.
- (2) The Commissioner must—
- (a) as soon as reasonably practicable after being informed of the outcome of an appeal under section 95, give the person who made the complaint notice of the outcome,
  - (b) as soon as reasonably practicable after being informed of an appeal under section 97 or any further appeal, give the person who made the complaint notice that the appeal has been made, and
  - (c) as soon as reasonably practicable after being informed of the outcome of an appeal under section 97 or of the outcome of a further appeal, give the person who made the complaint notice of the outcome.

## CHAPTER 5

### APPEALS BY THE COMPLAINANT

*Appeals against a determination that D has not failed to comply with a standard*

#### **99 Right of appeal by P**

- (1) This section applies if—
- (a) a person (P) makes a complaint under section 93,
  - (b) the Commissioner undertakes an investigation under section 71 following the complaint, and
  - (c) the Commissioner determines that D has not failed to comply with a standard.
- (2) P may appeal to the Tribunal on the grounds that D did fail to comply with the standard.
- (3) An appeal under this section must be made before the end of the relevant 28 day period.
- (4) But the Tribunal may, on a written application by P, allow an appeal to be made after the end of that period if the Tribunal is satisfied that there is a good reason—
- (a) for the failure to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.
- (5) An application under subsection (4) may be made before or after the end of the relevant 28 day period.
- (6) The Tribunal must notify P and the Commissioner of its decision on an appeal made under this section.
- (7) This section is subject to Tribunal Rules (which may, amongst other things, make provision about the manner in which appeals under this section may be brought).
- (8) In this Chapter “relevant 28 day period” means the period of 28 days beginning with the day on which the Commissioner gives P the decision notice in relation to the investigation.

## **100 Powers of Tribunal on appeal by P**

- (1) On an appeal under section 99, the Tribunal may—
  - (a) affirm the Commissioner’s determination, or
  - (b) annul the Commissioner’s determination.
- (2) If the Tribunal annuls the Commissioner’s determination (the “original determination”), the Tribunal must direct the Commissioner to determine under section 73 that D has failed to comply with the standard (the “new determination”).
- (3) If the Tribunal gives the Commissioner a direction under subsection (2), the Commissioner must revoke the decision notice and investigation report given under section 73 in relation to the original determination.
- (4) Section 73(3) and (4), and the other provisions of this Measure, apply to the new determination as they apply to any other determination under section 73.
- (5) The investigation report given under section 73(3) in relation to the new determination must include a statement that the Commissioner has made the new determination in compliance with a direction by the Tribunal.
- (6) In their application in relation to the new determination, sections 77, 78, 79, 82 and 84 are subject to section 86 but not to section 85.

## **101 Appeals from Tribunal**

- (1) This section applies if the Tribunal has decided an appeal under section 99.
- (2) The Commissioner or P may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the decision.
- (3) If the High Court finds that the Tribunal has made an error on a point of law, the High Court—
  - (a) may set aside the decision of the Tribunal, and
  - (b) if it sets the decision aside, must either—
    - (i) remit the case to the Tribunal with directions for its reconsideration, or
    - (ii) re-make the decision.
- (4) The directions that the High Court may give under subsection (3)(b)(i) include, but are not limited to, either or both of the following—
  - (a) a direction that the persons who are to reconsider the case must not be the persons who made the decision that has been set aside,
  - (b) procedural directions in connection with the reconsideration of the case.
- (5) In re-making the decision in accordance with subsection (3)(b)(ii), the High Court—
  - (a) may make any decision which the Tribunal could make if the Tribunal were making the decision, and
  - (b) may make such findings of fact as the High Court thinks appropriate.
- (6) An application for permission to appeal must be made to the Tribunal or High Court within the period of 28 days beginning with the day when the Tribunal notified the person making the application of its decision on the appeal under section 99.

- (7) But the Tribunal or High Court may, on a written application by the Commissioner or P, allow an appeal to be made after the end of that period if the Tribunal or High Court is satisfied that there is a good reason—
- (a) for the failure to apply for permission to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.
- (8) This section is subject to Tribunal Rules.

### **102 Commissioner’s duty on an appeal by P**

- (1) This section applies if—
- (a) the Commissioner has carried out an investigation under section 71 following a complaint under section 93,
  - (b) an appeal under section 99 or 101, or any further appeal, is made in relation to the investigation, and
  - (c) D is not a party to those proceedings.
- (2) The Commissioner must—
- (a) as soon as reasonably practicable after being informed of the outcome of an appeal under section 99, give D notice of the outcome,
  - (b) as soon as reasonably practicable after being informed of an appeal under section 101 or any further appeal, give D notice that the appeal has been made, and
  - (c) as soon as reasonably practicable after being informed of the outcome of an appeal under section 101 or of the outcome of a further appeal, give D notice of the outcome.

## **CHAPTER 6**

### **REVIEW BY THE COMPLAINANT**

#### *Review of Commissioner’s failure to investigate a complaint*

### **103 P’s right of review**

- (1) This section applies if P makes a complaint to the Commissioner under section 93 about D’s conduct (“the alleged conduct”), whether or not that complaint is a valid complaint under that section.
- (2) P may, with the permission of the Tribunal, apply to the Tribunal to review the decision of the Commissioner in any of the cases specified in this section.
- (3) The Tribunal must, subject to section 104, deal with an application for such a review as if it were an application for judicial review made to the High Court.
- (4) The Tribunal must give permission to apply where the Tribunal considers that—
- (a) the application would have a reasonable prospect of success, or
  - (b) there is some other compelling reason why the application should be heard.

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- (5) The first case referred to in subsection (2) is where—
  - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct applies, and
  - (b) the Commissioner decides not to carry out an investigation.
- (6) The second case is where—
  - (a) section 93(7) applies in relation to a complaint, and
  - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct.
- (7) The third case is where the Commissioner decides that the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply.
- (8) The fourth case is where—
  - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply, and
  - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct under section 93(8) or, having considered whether to carry out an investigation under that section, decides not to carry out the investigation.
- (9) The fifth case is where—
  - (a) the Commissioner decides to carry out an investigation, and
  - (b) the Commissioner then decides to discontinue the investigation.
- (10) An application under subsection (2) must be made before the end of the relevant 28 day period.
- (11) But the Tribunal may, on a written application by P, allow an application under subsection (2) to be made after the end of that period if the Tribunal is satisfied that there is a good reason—
  - (a) for the failure to apply before the end of that period, and
  - (b) if there has been any delay in applying for permission to apply out of time, for that delay.
- (12) An application under subsection (11) may be made before or after the end of the relevant 28 day period.
- (13) The Tribunal must notify P and the Commissioner of its decision on an application made under subsection (2).
- (14) This section is subject to Tribunal Rules (which may, amongst other things, make provision about the manner in which applications under this section may be brought).
- (15) In this Chapter “relevant 28 day period” means the period of 28 days beginning with the day on which the Commissioner gave P notice of his or her decision under section 94.

#### **104 Powers of Tribunal on review**

- (1) On an application under section 103, the Tribunal may—
  - (a) affirm the Commissioner’s determination, or
  - (b) annul the Commissioner’s determination.

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- (2) If the Tribunal annuls the Commissioner’s determination, the Tribunal must remit the case to the Commissioner with directions for its reconsideration.

### **105 Appeals from Tribunal**

- (1) This section applies if the Tribunal has decided an application under section 103(2).
- (2) The Commissioner or P may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the decision.
- (3) If the High Court finds that the Tribunal has made an error on a point of law, the High Court—
- (a) may set aside the decision of the Tribunal, and
  - (b) if it sets the decision aside, must either—
    - (i) remit the case to the Tribunal with directions for its reconsideration, or
    - (ii) re-make the decision.
- (4) The directions that the High Court may give under subsection (3)(b)(i) include, but are not limited to, either or both of the following—
- (a) a direction that the persons who are to reconsider the case must not be the persons who made the decision that has been set aside,
  - (b) procedural directions in connection with the reconsideration of the case.
- (5) In re-making the decision in accordance with subsection (3)(b)(ii), the High Court—
- (a) may make any decision which the Tribunal could make if the Tribunal were making the decision, and
  - (b) may make such findings of fact as the High Court thinks appropriate.
- (6) An application for permission to appeal must be made to the Tribunal or High Court within the period of 28 days beginning with the day when the Tribunal notified the person making the application under this section of its decision on the application under section 103.
- (7) But the Tribunal or High Court may, on a written application by the Commissioner or P, allow an appeal to be made after the end of that period if the Tribunal or High Court is satisfied that there is a good reason—
- (a) for the failure to apply for permission to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.
- (8) This section is subject to Tribunal Rules.

## **CHAPTER 7**

### **ADDING A PARTY TO PROCEEDINGS**

#### **106 Right to apply to be added as a party to proceedings**

- (1) This section applies if—
- (a) an appeal is made to the Tribunal under section 95(2) or section 99, and

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- (b) the appeal is made in relation to a determination made after an investigation that follows a complaint made under section 93.
- (2) In the case of an appeal made under section 95(2)—
  - (a) the Tribunal must notify the person who made the complaint (P) that the appeal has been made, and
  - (b) P may apply to the Tribunal to be added as a party to the proceedings.
- (3) In such a case, if P is added as a party to the proceedings—
  - (a) the Tribunal must notify P of its decision on the appeal, and
  - (b) P may, with the permission of the Tribunal or High Court, appeal to the High Court under section 97 on a question of law arising out of that decision.
- (4) In the case of an appeal made under section 99—
  - (a) the Tribunal must notify D that the appeal has been made, and
  - (b) D may apply to the Tribunal to be added as a party to the proceedings.
- (5) If D is added as a party to proceedings—
  - (a) the Tribunal must notify D of its decision on the appeal, and
  - (b) D may, with the permission of the Tribunal or High Court, appeal to the High Court under section 101 on a question of law arising out of that decision.
- (6) This section is subject to Tribunal Rules (which may, among other things, make provision about the manner in which and the time within which an application under this section to be added as a party to proceedings may be made).
- (7) This section does not prevent Tribunal Rules from making provision about other persons who may be added as a party to proceedings.

## CHAPTER 8

### GENERAL

#### *Obstruction and contempt*

#### **107 Obstruction and contempt**

- (1) If the Commissioner is satisfied that the condition in subsection (2) is met in relation to a person, the Commissioner may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
  - (a) without lawful excuse, has obstructed the discharge of any of the Commissioner’s functions under this Part, or
  - (b) has done an act in relation to an investigation under section 71 which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) If the Commissioner issues a certificate under subsection (1), the High Court may inquire into the matter.

- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with the person in any manner in which it could have dealt with the person if the person had committed contempt in relation to the High Court.

#### *Enforcement policy document*

### **108 Enforcement policy document**

- (1) The Commissioner must produce an enforcement policy document.
- (2) The Commissioner may amend the enforcement policy document.
- (3) An enforcement policy document is a document setting out advice and information on the Commissioner's intended approach to the exercise of the Commissioner's functions under this Part.
- (4) The Commissioner may not produce or amend the enforcement policy document without the approval of the Welsh Ministers.
- (5) The Commissioner must—
  - (a) ensure that a copy of the enforcement policy document is available for inspection at the Commissioner's office, and
  - (b) ensure that copies of the document are made available at such other places and by such other means (including by electronic means) as he or she thinks appropriate.
- (6) The Commissioner must ensure that the arrangements for inspecting and gaining access to copies of the enforcement policy document are published in such a way as to bring those arrangements to the attention of persons whom the Commissioner thinks likely to have an interest in the document.

#### *Register of enforcement action*

### **109 Register of enforcement action**

- (1) The Commissioner must create and maintain a register of enforcement action.
- (2) The register of enforcement action must include all of the following—
  - (a) a description of every investigation undertaken by the Commissioner;
  - (b) as respects each investigation undertaken, the following information as included in the investigation report—
    - (i) the Commissioner's findings on the investigation;
    - (ii) the Commissioner's determination of whether or not D had failed to comply with the relevant requirement;
    - (iii) the statement of whether the Commissioner took further action;
    - (iv) if the Commissioner took further action, the statement of that action;
  - (c) as respects each investigation undertaken, details of any decision notice given;
  - (d) details of appeals made to the Tribunal under Chapter 4 (including, but not limited to, the decisions made by the Tribunal).
- (3) The Commissioner must keep the register of enforcement action up to date.

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- (4) The Commissioner must—
- (a) ensure that a copy of the register of enforcement action is available for inspection at the Commissioner’s office, and
  - (b) ensure that copies of the register of enforcement action are made available at such other places and by such other means (including by electronic means) as he or she thinks appropriate.
- (5) The Commissioner must ensure that the arrangements for inspecting and gaining access to copies of the register of enforcement action are published in such a way as to bring those arrangements to the attention of persons whom the Commissioner thinks likely to have an interest in the register.
- (6) In this section “investigation” means an investigation under section 71.

### *Interpretation*

## 110 Interpretation

In this Part—

“enforcement action” (*“camau gorfodi”*), in relation to an investigation under section 71, means one or more of the following—

- (a) requiring D to prepare an action plan for the purpose of preventing the continuation or repetition of D’s failure;
- (b) requiring D to take steps for the purpose of preventing the continuation or repetition of D’s failure;
- (c) publicising D’s failure;
- (d) requiring D to publicise the failure;
- (e) imposing a civil penalty on D;

“interested person” (*“person a chanddo fuddiant”*), in relation to an investigation under section 71, means—

- (a) D, and
- (b) if the investigation follows a complaint under section 93, the person who made the complaint.

## PART 6

### FREEDOM TO USE WELSH

## 111 Application to Commissioner

- (1) An individual (P) may apply to the Commissioner for the Commissioner to investigate whether a person (D) has interfered with P’s freedom to undertake a Welsh communication with another individual (R) (the “alleged interference”).
- (2) An application under this section must comply with the following requirements.
- (3) The application must be made in writing, unless P’s personal circumstances are such that it would not be reasonable for P to make the application in writing.



- (4) The application must give an address at which the Commissioner may contact P (whether the address is postal, electronic or of another description).
- (5) The application must identify—
  - (a) D, and
  - (b) the alleged interference.

## **112 Welsh communications**

In this Measure, “Welsh communication” means a communication in Welsh between two individuals, both of whom—

- (a) are in Wales, and
- (b) wish to use the Welsh language with one another in undertaking the communication.

## **113 Interference with freedom to use Welsh**

- (1) For the purposes of this Measure, D is to be taken to interfere with P’s freedom to undertake a Welsh communication with R in any of the following cases.
- (2) Case 1 is where D indicates that P or R should not undertake—
  - (a) a particular communication in Welsh that is a Welsh communication, or
  - (b) a category of communications in Welsh consisting (wholly or partly) of one or more Welsh communications.
- (3) Case 2 is where D indicates that P or R will be subjected to a detriment (by D or any other person) because P or R has undertaken—
  - (a) a particular communication in Welsh that is a Welsh communication, or
  - (b) a category of communications in Welsh consisting (wholly or partly) of one or more Welsh communications.
- (4) Case 3 is where D, or a person acting at D’s instigation, subjects P or R to a detriment because P or R has undertaken—
  - (a) a particular communication in Welsh that is a Welsh communication, or
  - (b) a category of communications in Welsh consisting (wholly or partly) of one or more Welsh communications.
- (5) But, in a case falling within subsection (2)(b), (3)(b) or (4)(b), D is to be taken to interfere with P’s freedom to undertake a Welsh communication only insofar as the category of communications consists of one or more Welsh communications.
- (6) For the purposes of subsection (2), the circumstances in which D is to be taken to indicate that P or R should not undertake a particular communication, or a category of communications, include, but are not limited to, circumstances where—
  - (a) D instructs P or R not to undertake the communication or category of communications,
  - (b) D indicates that P or R will be subjected to a detriment (by D or any other person) if P or R undertakes the communication or category of communications, or
  - (c) D, or a person acting at D’s instigation, subjects P or R to a detriment in connection with P or R undertaking the communication or category of communications.

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- (7) For the purposes of this section, it is irrelevant—
  - (a) whether or not D or any other person has authority to give an indication, and
  - (b) whether or not D or any other person has authority to enforce an indication.
- (8) In this section, references to P or R being subjected to a detriment include P or R being intimidated, bullied, harassed or humiliated.

#### **114 Deciding whether to investigate**

- (1) This section applies if P makes an application to the Commissioner under section 111.
- (2) It is for the Commissioner to decide whether or not to investigate the alleged interference.
- (3) When deciding whether to investigate the alleged interference, the Commissioner—
  - (a) must take into account the context in which interference is alleged to have taken place (including, but not limited to, the relationships, if any, that exist between D and P and between D and R);
  - (b) may ask P, D, or any other person, for information or views relating to the alleged interference; and
  - (c) must, if he or she asks P or D for information or views, give P or D the relevant information about investigations.
- (4) Subsection (3) does not limit the matters which the Commissioner may consider when deciding whether to investigate the alleged interference.
- (5) If the Commissioner decides to investigate the alleged interference, the Commissioner must—
  - (a) inform P and D of the decision, and
  - (b) give P and D the relevant information about investigations (insofar as the Commissioner has not already given the information under subsection (3)(c)).
- (6) If the Commissioner decides not to investigate the alleged interference, the Commissioner must inform P of—
  - (a) the decision, and
  - (b) the reasons for reaching the decision.
- (7) The Commissioner must comply with subsection (5) or (6) as soon as practicable after reaching the decision in question.
- (8) In this section “relevant information about investigations” means information about—
  - (a) the procedure for carrying out investigations under this Part, and
  - (b) the Commissioner’s powers in relation to such investigations (including, but not limited to, the power under section 118 to produce and publish reports and other documents).

#### **115 Investigations**

- (1) This section applies if the Commissioner decides to investigate the alleged interference.
- (2) The Commissioner may ask P, D, or any other person, for information or views relating to the alleged interference.

- (3) The Commissioner must, so far as it is practicable, give D the opportunity to respond to the allegations made by P or any other person.

#### **116 Discontinuing investigations**

- (1) The Commissioner may, at any time, discontinue the investigation of the alleged interference.
- (2) If the Commissioner decides to discontinue the investigation, the Commissioner must—
  - (a) inform P and D of the decision, and
  - (b) inform P of the reasons for reaching the decision.
- (3) The Commissioner must comply with subsection (2) as soon as practicable after reaching the decision.

#### **117 Concluding investigations**

- (1) This section applies if the Commissioner—
  - (a) decides to investigate the alleged interference, and
  - (b) does not discontinue the investigation.
- (2) The Commissioner must determine whether or not D has interfered with P's freedom to undertake the Welsh communication.
- (3) If the Commissioner determines that D has interfered with P's freedom to undertake the Welsh communication, the Commissioner must also give his or her views on the interference (including, but not limited to, his or her views on whether the interference was justified).
- (4) Before the Commissioner makes a determination under subsection (2) or gives his or her views under subsection (3), he or she must—
  - (a) inform D of the determination which the Commissioner is proposing to make and of the views which the Commissioner is proposing to give, and
  - (b) so far as it is practicable, give D the opportunity to respond to the proposed determination and views.
- (5) The Commissioner must notify P and D—
  - (a) of the determination of P's application, and
  - (b) if the determination is that D has interfered with P's freedom to undertake the Welsh communication, of his or her views on the interference.
- (6) The Commissioner must comply with subsection (5) as soon as practicable after making the determination.
- (7) The Commissioner may give P, D, or any other person advice about—
  - (a) the alleged interference, or
  - (b) any matter that relates to the alleged interference.

#### **118 Reports**

- (1) This section applies in any case where an application is made under section 111.

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- (2) The Commissioner may produce, and give the Welsh Ministers, a report on—
  - (a) the application, and
  - (b) the action taken by the Commissioner in response to the application.
- (3) The Commissioner must give copies of any such report to P and D.
- (4) The Commissioner may publish—
  - (a) a report given to the Welsh Ministers under subsection (2),
  - (b) a version of such a report, or
  - (c) another document that relates (whether wholly or partly) to the subject matter of such a report,(a “public document”), but only if the following conditions are met.
- (5) The first condition is that the Commissioner—
  - (a) notifies P and D of the intention to publish a public document, and
  - (b) so far as it is practicable, gives P, D, or any other person the Commissioner considers appropriate, the opportunity to provide the Commissioner with views about publication of a public document.
- (6) The second condition is that—
  - (a) P and D agree to the publication of a public document, or
  - (b) the Commissioner considers that it is in the public interest to publish a public document.
- (7) In considering whether it is in the public interest to publish a public document, the Commissioner must take account of, amongst other things—
  - (a) the interests of P and D, and
  - (b) the interests of any other persons which the Commissioner thinks it is appropriate to take account of.
- (8) In relation to any application in which the Commissioner determines that D has not interfered with P’s freedom to undertake a Welsh communication, a public document must not identify D.

## **119 Annual report to Welsh Ministers**

- (1) The Commissioner must include in each annual report produced in accordance with Part 2 a report on—
  - (a) relevant applications made to the Commissioner in the period to which the report relates,
  - (b) the action taken by the Commissioner in response to relevant applications made in that period, and
  - (c) the Commissioner’s view of the adequacy and effectiveness of the law in protecting the freedom of persons in Wales wishing to use the Welsh language to do so with one another.
- (2) In formulating a view for the purposes of subsection (1)(c), the matters which the Commissioner must consider include, but are not limited to—
  - (a) all relevant applications made since section 111 came into force, and
  - (b) all action taken by the Commissioner in response to relevant applications made since section 111 came into force.

- (3) In relation to any relevant application in which the Commissioner determines that D has not interfered with P’s freedom to undertake a Welsh communication, the matters included in an annual report in accordance with this section must not identify D.
- (4) The Welsh Ministers may, by regulations, make provision about reports under this section.
- (5) In this section “relevant application” means an application made under section 111.

## PART 7

### WELSH LANGUAGE TRIBUNAL

#### *The Tribunal*

#### **120 The Welsh Language Tribunal**

- (1) There is to be a Welsh Language Tribunal (referred to in this Measure as the “Tribunal”).
- (2) The Tribunal is to consist of the following members—
  - (a) the President of the Welsh Language Tribunal (referred to in this Measure as the “President”);
  - (b) legally-qualified members; and
  - (c) lay members.
- (3) The Welsh Ministers must appoint the members of the Tribunal.
- (4) Schedule 11 makes further provision about the Tribunal.

#### **121 Composition for proceedings before Tribunal**

- (1) The President must select the members of the Tribunal who are to deal with particular proceedings before the Tribunal.
- (2) The President must select three members of the Tribunal to deal with the proceedings.
- (3) The President must ensure that—
  - (a) at least one of the three members is a legal member, and
  - (b) at least one of the three members is a lay member.
- (4) If only one of the three members is a legal member, that legal member is to chair the proceedings.
- (5) If more than one of the three members are legal members, the President is to select the legal member who is to chair the proceedings.
- (6) This section is subject to Tribunal Rules.
- (7) In this section “legal member” means—
  - (a) the President, or
  - (b) a legally-qualified member of the Tribunal.

## 122 Hearings in public

- (1) Proceedings before the Tribunal are to be held in public.
- (2) But that is subject to Tribunal Rules.

*Practice and procedure etc*

## 123 Welsh Language Tribunal Rules

- (1) The President must make rules governing the practice and procedure to be followed in the Tribunal.
- (2) The rules are to be known as “Welsh Language Tribunal Rules” (but are referred to in this Measure as “Tribunal Rules”).
- (3) Tribunal Rules must include the following—
  - (a) provision about the selection under section 121(2) of the three members of the Tribunal to deal with proceedings;
  - (b) provision about the selection under section 121(5) of the legal member to chair proceedings;
  - (c) provision about conflicts of interest that arise—
    - (i) in relation to the participation of members of the Tribunal in the determination of proceedings, or
    - (ii) in relation to the exercise of the President’s functions under section 121.
- (4) Tribunal Rules may, amongst other things, include provision about the following matters—
  - (a) the exercise by the President, or by the member chairing any proceedings, of any functions which relate to matters that are preliminary or incidental to the proceedings;
  - (b) the conduct of proceedings in the absence of any member other than the member chairing them;
  - (c) the disclosure or inspection of documents, and such right to further particulars as might be granted by a county court;
  - (d) the determination of proceedings without a hearing in circumstances prescribed in Tribunal Rules;
  - (e) frivolous and vexatious proceedings;
  - (f) the award of costs (including, but not limited to, punitive costs) or expenses;
  - (g) assessing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be assessed in the county court);
  - (h) the publication of reports of the Tribunal’s decisions;
  - (i) the Tribunal’s powers to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with Tribunal Rules;
  - (j) the date upon which a notice is deemed to have been given by the Tribunal.
- (5) The power to make Tribunal Rules includes power—
  - (a) to make different provision for different purposes, and
  - (b) to confer functions on the President or the Welsh Ministers (as well as on any other person), including functions involving the exercise of a discretion.

- (6) The President must submit Tribunal Rules to the Welsh Ministers.
- (7) The Welsh Ministers may allow or disallow Tribunal Rules submitted to them.
- (8) Rules allowed by the Welsh Ministers—
  - (a) come into force on such day that the Welsh Ministers direct, and
  - (b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by the Welsh Ministers.
- (9) A statutory instrument containing rules made by the President is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

#### **124 Practice directions**

- (1) The President may give directions as to the practice and procedure of the Tribunal.
- (2) But the President may not give practice directions unless they have been approved by the Welsh Ministers.
- (3) Subsection (2) does not apply to practice directions to the extent that they relate to—
  - (a) the application or interpretation of the law, or
  - (b) the making of decisions by members of the Tribunal.
- (4) The power under this section to give practice directions includes—
  - (a) power to vary or revoke practice directions given in exercise of the power, and
  - (b) power to make different provision for different purposes.

#### **125 Guidance, advice and information**

- (1) The President may give guidance to other members of the Tribunal in relation to the exercise of their functions as members of the Tribunal.
- (2) A member of the Tribunal must have regard to such guidance in exercising such functions.
- (3) The President may give advice and information in respect of the Tribunal and its functions (including, but not limited to, its practice and procedure).
- (4) The President may give such advice—
  - (a) to particular persons, or
  - (b) more generally.

#### **126 Supplementary powers**

- (1) In relation to the matters mentioned in subsection (2), the Tribunal has the same powers, rights, privileges and authority as the High Court.
- (2) The matters are—
  - (a) the attendance and examination of witnesses,
  - (b) the production and inspection of documents, and
  - (c) all other matters incidental to the Tribunal's functions.

- (3) Subsection (1)—
  - (a) does not limit any power to make Tribunal Rules, or
  - (b) is not limited by anything in Tribunal Rules, except an express limitation.
- (4) The Tribunal may direct that a party or witness is to be examined on oath or affirmation.
- (5) The Tribunal may administer any oath, or take any affirmation, that is necessary for that purpose.

*Staff and other resources*

**127 Staff, accommodation and other resources of Tribunal**

- (1) The Welsh Ministers must ensure that the Tribunal is provided with—
  - (a) staff,
  - (b) accommodation, and
  - (c) financial and other resources,
 that are appropriate for the Tribunal to exercise its functions.
- (2) It is for the Welsh Ministers to determine what staff, accommodation and financial and other resources are appropriate for that purpose.
- (3) The Welsh Ministers may satisfy the duty under subsection (1) by—
  - (a) providing staff, accommodation or other resources, or
  - (b) entering into arrangements with any other person for the provision of staff, accommodation or other resources.
- (4) The Welsh Ministers may pay remuneration to the staff of the Tribunal.
- (5) The Welsh Ministers may pay allowances (including, but not limited to, travelling and subsistence allowances) and gratuities to the staff of the Tribunal.
- (6) The Welsh Ministers may pay—
  - (a) pensions to, or in respect of, persons who have been staff of the Tribunal, and
  - (b) amounts for or towards provision of pensions to, or in respect of, persons who have been staff of the Tribunal.

**128 Specially qualified advisers**

- (1) The President may appoint specially qualified advisers to provide assistance to the Tribunal (whether in relation to particular proceedings before the Tribunal or otherwise).
- (2) The President may pay remuneration to specially qualified advisers.
- (3) The President may pay allowances (including, but not limited to, travelling and subsistence allowances) and gratuities to specially qualified advisers.
- (4) But the Welsh Ministers must approve the amount of any remuneration, allowances or gratuities payable to a specially qualified adviser before the President agrees to pay, or pays, the remuneration, allowances or gratuities.



### *Administrative matters*

#### **129 Seal**

- (1) The Tribunal is to have an official seal.
- (2) purporting to be sealed with the official seal of the Tribunal is to be received in evidence in England and Wales without further proof.
- (3) But subsection (2) does not apply if the document is shown not to be sealed with the official seal of the Tribunal.

#### **130 Financial year**

- (1) The Tribunal's first financial year is the period that begins with the commencement day and ends with—
  - (a) the following 31 March (if the commencement day is 1 April), or
  - (b) the second following 31 March (if the commencement day is not 1 April).
- (2) Subject to that, the Tribunal's financial year is the period of 12 months ending with 31 March.
- (3) In this section “commencement day” means the day when section 120 comes into force.

#### **131 Vacancy in the office of President**

- (1) This section applies if the office of President is vacant.
- (2) The Welsh Ministers may appoint one or more of the legally-qualified members of the Tribunal to exercise any or all of the President's functions.
- (3) If, or to the extent that, the President's functions are not exercisable by a legally-qualified member in accordance with subsection (2), the Welsh Ministers may exercise the functions.
- (4) But the Welsh Ministers may not participate in determining any proceedings before the Tribunal.

### *Reports, reviews and performance*

#### **132 President's annual report**

- (1) As soon as practicable after the end of each financial year, the President must—
  - (a) produce a report on the Tribunal's exercise of its functions in that financial year, and
  - (b) lay a copy of the report before the National Assembly for Wales.
  - (c) The President must comply with any requirements of the National Assembly for Wales in relation to the form of the report and the laying of it.

**133 Training etc for members of Tribunal**

- (1) The President must maintain appropriate arrangements for the training, guidance and welfare of members of the Tribunal.
- (2) It is for the President to decide what arrangements are appropriate for that purpose.

**PART 8****GENERAL****CHAPTER 1****INTEGRITY****134 Register of interests**

- (1) Each relevant office holder must create and maintain a register of interests.
- (2) A relevant office holder's register of interests must include all of his or her registrable interests.
- (3) A relevant office holder must produce his or her register of interests in Welsh and in English.
- (4) A relevant office holder must keep his or her register of interests up to date.
- (5) That includes, but is not limited to, a duty to include a registrable interest in the register of interests within 4 weeks of—
  - (a) the interest arising, or
  - (b) the relevant office holder becoming aware of the interest (if that occurs after the interest arises).

**135 Publication of registers of interests**

- (1) The Commissioner must—
  - (a) ensure that a copy of the register of interests of each relevant office holder is available for inspection at the Commissioner's office, and
  - (b) ensure that copies of the register of interests of each relevant office holder are made available at such other places and by such other means (including by electronic means) as he or she thinks appropriate.
- (2) The Commissioner must ensure that the arrangements for inspecting and gaining access to copies of relevant office holders' registers of interests are published in such a way as to bring those arrangements to the attention of persons whom the Commissioner thinks likely to have an interest in the registers.
- (3) The Deputy Commissioner must give the Commissioner—
  - (a) such copies of the Deputy Commissioner's register of interests, and
  - (b) such other assistance,as the Commissioner may require to enable him or her to comply with the duty under subsection (1).

**136 Conflicts of interest**

- (1) A relevant office holder must not exercise a function if he or she has a registrable interest which relates to the exercise of the function.
- (2) In a case where subsection (1) prevents the Commissioner from exercising a function, he or she must delegate that function (so far as necessary to enable that exercise of it to be carried out) to—
  - (a) the Deputy Commissioner, or
  - (b) another member of the Commissioner’s staff.
- (3) In a case where subsection (1) prevents the Deputy Commissioner from exercising a function, the Commissioner must make arrangements for the function to be exercised otherwise than by the Deputy Commissioner.

**137 Validity of acts**

The validity of an act of a relevant office holder is not affected by a failure to comply with any provision of, or made under, this Chapter.

**138 Regulations**

- (1) The Welsh Ministers may, by regulations—
  - (a) specify what interests are registrable interests for the purposes of this Chapter, and
  - (b) make other provision for the purposes of this Chapter.
- (2) Registrable interests may, among other things, include interests of persons with whom relevant office holders have a connection (whether familial, financial or of any other kind).
- (3) In this section “interest” means an interest of any kind (including, but not limited to, financial interests, and all activities and occupations).

**139 Interpretation of this Chapter**

In this Chapter—

“registrable interest” (*“buddiant cofrestradwy”*) means a registrable interest specified in regulations made under section 138;

“relevant office holder” (*“deiliad swydd perthnasol”*) means—

- (a) the Commissioner, or
- (b) the Deputy Commissioner.

**CHAPTER 2****DEFAMATION****140 Absolute privilege**

- (1) For the purposes of the law of defamation, the following are absolutely privileged—

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- (a) the publication of a matter by the Commissioner in the exercise of any of his or her functions;
  - (b) the publication of a matter by a member of the Advisory Panel in the exercise of any of his or her functions;
  - (c) the publication of a matter by a person in compliance with a requirement in a decision notice;
  - (d) the publication, in a communication between—
    - (i) the Commissioner, and
    - (ii) a protected person,
 of a matter in connection with an inquiry or investigation;
  - (e) the publication, in a communication between—
    - (i) the complainant or a person acting on behalf of the complainant, and
    - (ii) a representative,
 of a matter in connection with an investigation under Part 5 or Part 6.
- (2) In this section a reference to the Commissioner includes the following persons—
- (a) the members of the Commissioner’s staff;
  - (b) any person acting on the Commissioner’s behalf or assisting in the exercise of the Commissioner’s functions.

#### 141 Interpretation of this Chapter

In this Chapter—

“complainant” (“*achwynydd*”) means—

- (a) in relation to an investigation under Part 5, the person (if any) referred to as “P” in section 93;
- (b) in relation to an investigation under Part 6—
  - (i) the person referred to as “P” in section 111; and
  - (ii) the person referred to as “R” in section 111;

“inquiry” (“*ymholiad*”) means an inquiry under section 7;

“investigation” (“*ymchwiliad*”) means any of the following—

- (a) a standards investigation under Chapter 8 of Part 4;
- (b) an investigation under Part 5 (compliance with relevant requirements);
- (c) an investigation under Part 6 (interference with the freedom to communicate in Welsh);

“protected person” (“*person a ddiogelir*”), in relation to an inquiry or investigation, means any of the following persons—

- (a) a member of the Advisory Panel;
  - (b) a representative;
  - (c) a person who is the subject of the inquiry or investigation;
  - (d) a person with whom the Commissioner is communicating for the purpose of obtaining information in connection with an inquiry or investigation;
  - (e) the complainant;
  - (f) a person acting on behalf of a person falling within paragraph (c) to (e);
- “representative” (“*cynrychiolydd*”) means any of the following persons—
- (a) a member of a community council, county borough council or county council in Wales;

- (b) a Member of the National Assembly for Wales;
- (c) a Member of Parliament;
- (d) a member of the House of Lords;
- (e) a Member of the European Parliament.

### CHAPTER 3

#### RESTRICTIONS

#### 142 Restrictions

- (1) This Measure does not authorise or require the Commissioner to exercise a prescribed function which by virtue of an enactment is also exercisable by a prescribed person.
- (2) In this section “prescribed” means prescribed in an order made for the purposes of this section by the Welsh Ministers.

### PART 9

#### WELSH LANGUAGE BOARD, WELSH LANGUAGE SCHEMES ETC

#### 143 Abolition of Board and transfer of functions

- (1) The Welsh Language Board is abolished.
- (2) The functions conferred on the Board by section 3 of the 1993 Act are transferred to the Commissioner.
- (3) But that is subject to any order under section 154 which provides for those functions to be transferred to the Welsh Ministers (whether instead of, or in addition to, the functions being transferred to the Commissioner).
- (4) The functions conferred on the Board by Part 2 of the 1993 Act are transferred to the Commissioner.
- (5) The following provisions of the 1993 Act are repealed—
  - (a) section 1;
  - (b) section 2;
  - (c) section 4(2);
  - (d) section 34(2);
  - (e) Schedule 1.

#### 144 Abolition of Board’s general functions and replacement of schemes with standards

- (1) The functions conferred by section 3 of the 1993 Act (and transferred as mentioned in section 143) are abolished.
- (2) Part 2 of the 1993 Act ceases to apply to a person if and when that person first becomes subject to the duty under section 25(1) of this Measure to comply with a standard.

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- (3) The following provisions of the 1993 Act are repealed—
- (a) section 3;
  - (b) section 4(1).

#### **145 Replacement of Welsh language schemes with standards**

- (1) The functions conferred on the Board by Part 2 of the 1993 Act (and transferred as mentioned in section 143) are abolished.
- (2) The following provisions of the 1993 Act are repealed—
- (a) Part 2;
  - (b) section 34(1) and (3).

#### **146 Other provision**

Schedule 12 contains other provision relating to the abolition of the Board.

#### **147 Supplementary**

- (1) The Welsh Ministers' powers under other Parts of this Measure may be exercised for the purpose of bringing into force any provision of this Measure relating to the Commissioner so as to enable functions of the Board to be transferred to, and to be exercisable by, the Commissioner before any new function is exercisable by the Commissioner (whether or not any new function subsequently becomes exercisable whilst any transferred function remains exercisable).
- (2) For that purpose “new function” means a function which is conferred on the Commissioner by a provision of any other Part of this Measure.
- (3) This Part does not limit the Welsh Ministers' powers under other Parts of this Measure (and accordingly those powers may be used to make provision in addition to, or in place of, provision in this Part).
- (4) In this section, references to the Welsh Ministers' powers under other Parts of this Measure include, but are not limited to, their powers under—
- (a) section 154 (transitional and consequential provision etc), and
  - (b) section 156(2) (commencement).
- (5) In this Part—
- “1993 Act” (“*Deddf 1993*”) means the Welsh Language Act 1993;
- “Board” (“*y Bwrdd*”) means the Welsh Language Board.

## **PART 10**

### WELSH MINISTERS' WELSH LANGUAGE STRATEGY

#### **148 Welsh Ministers to prepare an action plan**

- (1) Section 78 of the Government of Wales Act 2006 is amended as follows.
- (2) After subsection (8), insert—

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“(9) For each financial year, the Welsh Ministers must publish a plan setting out how they will implement the proposals set out in the Welsh language strategy during that year.

(10) The plan must be published as soon as reasonably practicable before the commencement of the financial year to which it relates.”

#### **149 The Welsh Language Partnership Council**

- (1) The Welsh Ministers must establish and maintain a body to be known as the Welsh Language Partnership Council (referred to in this section as “the Partnership Council”).
- (2) The Partnership Council is to consist of—
  - (a) the Welsh Minister with responsibility for the Welsh language (who is to chair the Partnership Council), and
  - (b) members appointed by the Welsh Ministers from among—
    - (i) the Welsh Ministers,
    - (ii) the Deputy Welsh Ministers,
    - (iii) persons who appear to the Welsh Ministers to have experience of matters relating to the Welsh language, and
    - (iv) persons who appear to the Welsh Ministers to have experience relevant to any of the matters listed in subsection (6).
- (3) The Welsh Ministers must, in exercising their power to appoint members of the Partnership Council under subsection (2)(b)(iii) and (iv), have regard to the fact that it is desirable for the Partnership Council’s membership to reflect the varying extent to which the Welsh language is used by those living in Wales.
- (4) The Partnership Council’s procedure is to be regulated by standing orders, to be made by the Welsh Ministers following consultation with the Partnership Council.
- (5) The standing orders may make provision about who is to chair the Partnership Council in the absence of the Welsh Minister with responsibility for the Welsh language.
- (6) The Partnership Council may—
  - (a) give advice or make representations to the Welsh Ministers in relation to the Welsh language strategy adopted under section 78 of the Government of Wales Act 2006 (including the plan setting out how the Welsh Ministers will implement the proposals set out in the strategy), and
  - (b) do anything it considers appropriate for the purposes of giving that advice or making those representations.

### **PART 11**

#### **SUPPLEMENTARY**

#### **150 Orders and regulations**

- (1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.

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- (2) A statutory instrument containing any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales—
- (a) an order under section 20(4)(a) or (b) (application of section 20 to persons other than Public Services Ombudsman for Wales etc) that amends provision of primary legislation;
  - (b) an order under section 21(7) (amendment of definition of “ombudsman”);
  - (c) an order under section 21(8) (provision in connection with order under section 21(7)) that amends primary legislation;
  - (d) an order under section 22(10) (amendment of definition of “permitted person”);
  - (e) regulations under section 26(1) or (2) (specification of standards etc);
  - (f) an order under section 35 or 38 (amendment of Schedule 6 or 8), apart from an order containing provision under that section all of which is of the kind referred to in subsection (4);
  - (g) regulations under section 39 (standards that are specifically applicable);
  - (h) an order under section 42 (amendment of Schedule 9);
  - (i) regulations under section 68 (supply of information to Commissioner);
  - (j) an order under section 83(7) (alteration of maximum amount of civil penalty);
  - (k) an order under section 154 (transitional and consequential provision etc) that contains a provision amending, repealing or otherwise modifying an enactment (other than an enactment contained in subordinate legislation);
  - (l) regulations under paragraph 7(1) of Schedule 1 (provision about the appointment of the Commissioner);
  - (m) an order under paragraph 8(1) of Schedule 1 (exercise of Commissioner’s functions by Welsh Ministers) that amends this Measure;
  - (n) an order under paragraph 1 of Schedule 5 (alteration of amount of public money specified in the Schedule 5 table).
- (3) Any other statutory instrument containing an order or regulations under this Measure, apart from an instrument containing only an order under section 156 (commencement), is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (4) The provision mentioned in subsection (2)(f) is provision amending a reference to a person in the person’s entry in the Schedule 6 table or Schedule 8 table in consequence of a change in that person’s name.
- (5) Any power of the Welsh Ministers to make an order or regulations under this Measure includes power—
- (a) to make different provision for different cases, different purposes, or different geographical areas;
  - (b) to make provision generally or in relation to specific cases;
  - (c) to make such transitional, transitory, consequential, saving, incidental and other provision as the Welsh Ministers think necessary or appropriate.
- (6) The power of the Welsh Ministers under section 155(3) also includes, in the case of the commencement of the repeal of provision in the Welsh Language Act 1993, power to provide for different commencement for different jurisdictions.



- (7) In this section “primary legislation” means an Act of Parliament or a Measure or Act of the Assembly.

## **151 Directions**

Any direction given by the Welsh Ministers under this Measure—

- (a) may be varied or revoked by a later direction;
- (b) must be given in writing;
- (c) may make provision generally or in relation to specific cases; and
- (d) may make different provision for different cases, different purposes or different geographical areas.

## **152 Notices etc**

- (1) This section applies in relation to notices and other documents required or authorised to be given under this Measure.
- (2) A notice or document that is required or authorised to be given to the Commissioner may be given—
- (a) by delivering it to the Commissioner,
  - (b) by sending it by post to the principal office of the Commissioner, or
  - (c) subject to subsection (3), by transmitting it electronically.
- (3) A notice or document may be given to the Commissioner by transmitting it electronically only if it has been transmitted in such manner as the Commissioner may require.
- (4) A notice or document that the Commissioner is required or authorised to give to another person may be given—
- (a) by delivering it to the person,
  - (b) by sending it by post to the person’s last known address, or
  - (c) subject to subsection (5), by transmitting it electronically.
- (5) The Commissioner may give a notice or document to a person by transmitting it electronically only if the following requirements are met—
- (a) the person to whom the notice or document is to be given must have—
    - (i) indicated to the Commissioner that person’s willingness to receive the notice or document by transmission by electronic means, and
    - (ii) provided the Commissioner with an address suitable for that purpose, and
  - (b) the Commissioner must send the notice or document to the address provided by that person.
- (6) A person may give, for the purposes of subsection (4), an indication of willingness to receive—
- (a) notices or documents generally by transmission by electronic means, or
  - (b) notices or documents of particular descriptions by electronic means.
- (7) This section does not exclude any method of giving or sending a notice or other document not expressly provided for by this section.

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*Status: This is the original version (as it was originally enacted).*

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- (8) A requirement of this Measure for a notice or document to be in writing does not prevent this section from applying in relation to it.
- (9) A requirement for the Commissioner to give a notice or other document to a person does not apply if the Commissioner thinks that it is not practicable to give that notice or document to that person in accordance with subsection (4).
- (10) The Welsh Ministers may by order make provision about the date upon which a notice or document is deemed to have been given.

### **153 Interpretation of this Measure**

- (1) In this Measure—

“Advisory Panel” (“*Panel Cynghori*”) means the Advisory Panel to the Welsh Language Commissioner (see Part 3);

“Commissioner” (“*Comisiynydd*”) means the Welsh Language Commissioner (see Part 2);

“Deputy Commissioner” (“*Dirprwy Gomisiynydd*”) means the Deputy Welsh Language Commissioner (see section 12);

“enactment” (“*deddfiad*”) includes an Assembly Measure, an Act of the Assembly, subordinate legislation and any future enactment;

“President” (“*Llywydd*”) means the President of the Welsh Language Tribunal (see Part 7);

“Tribunal” (“*Tribiwnlys*”) means the Welsh Language Tribunal (see Part 7);

“Tribunal Rules” (“*Rheolau'r Tribiwnlys*”) means Welsh Language Tribunal Rules (see Part 7).

- (2) In this Measure references to the Commissioner’s staff are to be construed in accordance with section 12(2).

### **154 Transitional and consequential provision etc**

- (1) The Welsh Ministers may, by order, make such transitional, transitory, consequential, saving, incidental and other provision as they think necessary or appropriate in connection with, or to give full effect to, this Measure.
- (2) The provision that may be made under this section includes, but is not limited to, provision that amends, repeals or otherwise modifies an enactment.

### **155 Extent**

- (1) This Measure extends to England and Wales only.
- (2) But that is subject to subsection (3).
- (3) A repeal of a provision of the Welsh Language Act 1993 has the same extent as the provision repealed.

### **156 Commencement**

- (1) The following provisions come into force on the day on which this Measure is approved by Her Majesty in Council—

- (a) Part 1;
  - (b) this Part.
- (2) Subject to subsection (1), this Measure comes into force in accordance with provision made by the Welsh Ministers by order.

**157 Short title**

This Measure may be cited as the Welsh Language (Wales) Measure 2011.