

WELSH LANGUAGE (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 10 – Commissioner’s investigation of failure to comply with standards etc

383. *Schedule 10* is introduced by section 71 in Part 5 of the Measure.

paragraph 1 – Introduction

384. This Schedule applies to investigations conducted under section 71 of the Measure.

Paragraph 2 – Terms of reference

385. This paragraph states that before conducting an investigation, the Commissioner must prepare the terms of reference which must specify the person who is being investigated, and the suspected failure to comply with a relevant requirement.

386. Before settling the terms of reference, the Commissioner must give certain persons notice of the proposed terms and an opportunity to make representations about them. The Commissioner must consider any representations made.

387. This paragraph makes provision for publishing the settled terms of reference and for giving notice of them to certain persons. This paragraph applies to the preparation of, and changes to, the terms of reference.

Paragraphs 3 and 4 – Representations

388. *Paragraph 3* requires the Commissioner to make arrangements giving certain persons an opportunity to make representations, including oral representations, relating to investigations.

389. *Paragraph 4* requires the Commissioner to consider the representations made by the person being investigated or that person’s legal adviser. The Commissioner must consider representations made by any other person, unless the Commissioner considers it appropriate to refuse to do so. This paragraph defines legal advisers as being an authorised person under the Legal Services Act 2007, or an advocate or solicitor in Scotland.

Paragraphs 5 and 6 – Evidence notices

390. In the course of an investigation, the Commissioner may give a person (referred to as “A”) an evidence notice, which may require A to do one or more of the following: to provide information in A’s possession; to provide documents in A’s possession; or to give oral evidence. However A cannot be compelled to do anything that A could not be compelled to do if the proceedings were before a High Court.

391. The paragraph sets out what the notice may or must contain, including informing A of the consequences for not complying with the notice and of the right of appeal under paragraph 9.

392. If a person (referred to as “B”) provides information, documents or gives oral evidence, the Commissioner has the discretion to make payments for expenses properly incurred and allowances by way of compensation for loss of B’s time. Any such payments will be made in accordance with payment scales and conditions as may be determined by the Commissioner.

Paragraphs 7 and 8 – Confidentiality etc

393. An evidence notice given under paragraph 5 may not require a person to provide information which the person is prohibited from disclosing by virtue of an enactment and may not require a person to do anything that the person could not be compelled to do in proceedings before the High Court.
394. If A has been issued with an evidence notice, A must disregard it (and notify the Commissioner) if A believes that complying with the notice would require disclosing information classed as sensitive or other information relating to an intelligence service provided in subparagraphs (a) to (e).
395. Intelligence service means the Security service, the Secret Intelligence service, and the Government Communications Headquarters.
396. This paragraph also provides for what the Commissioner may do if notified by A that A is disregarding the notice.

Paragraphs 9 and 10 – Appeals

397. A may apply to the Welsh Language Tribunal to have the notice cancelled if A can show that a requirement imposed by the notice is unnecessary in relation to the purpose of the investigation or otherwise unreasonable or disproportionate.
398. If a requirement is undesirable for reasons of national security which are not provided for in paragraph 8(1), A may apply to the Tribunal to have the notice cancelled.

Paragraph 11 – Enforcement

399. If the Commissioner believes that A has failed, or is likely to fail, to comply with the notice without having a reasonable excuse, the Commissioner may apply to a county court for an order requiring A to take steps as specified in the order to comply with the notice.

Paragraph 12 – Power of entry and inspection

400. The Commissioner, or anyone authorised to act on his or her behalf, may enter and inspect a premises if the Commissioner thinks or the authorised person thinks it is necessary for the purpose of an investigation.
401. This power does not authorise entry to a dwelling, or to any premises that are not under the control of the person being investigated, nor does it authorise entry at a particular time if that time is unreasonable.