



# Welsh Language (Wales) Measure 2011

## 2011 nawm 1

### PART 5

#### ENFORCEMENT OF STANDARDS

### 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.
- (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

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- (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.
- (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).

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- (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.