
Challenge and Appeals Procedure: Compliance Notices



Comisiynydd y
Gymraeg
Welsh Language
Commissioner



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Foreword

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The day from which a person is to be required to comply with the standard or with the standard in a respect (Section 46(4) the Measure)

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- 1.1 The main target audience for this procedure are those persons (“relevant persons”) who have already received a compliance notice from the Welsh Language Commissioner requiring them to comply with one or more standards regarding the Welsh language.
 - 1.2 Compliance notices given to relevant persons by the Welsh Language Commissioner under the Welsh Language Measure detail the specific standards they must comply with and in what way this is required, together with the imposition days¹ for those standards. Copies of those compliance notices that are in force will be on the Commissioner’s website.
 - 1.3 Relevant persons have the right to challenge the duties included in the compliance notice by applying to the Commissioner under Section 54 or Section 55 Welsh Language (Wales) Measure 2011. They also have a right of appeal to the Welsh Language Tribunal (“the Tribunal”) against the Commissioner’s determination.
 - 1.4 This procedure explains the right of those persons noted above to challenge the duties included in the compliance notice and offers clarity regarding the procedures to be followed in order to submit such a challenge. It also includes information regarding how the Commissioner will deal with challenges together with contact details for the Welsh Language Tribunal in respect of appeals.
 - 1.5 Please note that this procedure deals only with some specific aspects of Chapter 7, Part 4, Welsh Language (Wales) Measure 2011. The Welsh Language Commissioner’s Enforcement Policy deals with appeals to the Welsh Language Tribunal under Part 5 of the Measure in respect of failures to comply with relevant requirements.
 - 1.6 Copies of the above policies are available for inspection at the Commissioner’s office and electronic copies are available on the website.
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Introduction: the right to challenge and appeal

- 2.1 Chapter 7, Part 4 Welsh Language (Wales) Measure 2011 provides a mechanism to enable relevant persons to challenge the duties noted in the compliance notice, either before or after the imposition date has come into force.
 - 2.2 This means that relevant persons, who have received a compliance notice requiring them to comply with one or more standards, may apply to the Welsh Language Commissioner requesting a determination whether or not the requirement to comply with one or more standards, or to comply with one or more standards in a specific way, is unreasonable or disproportionate. A relevant person may do so whether the standards require compliance on a specific date in the future or already require compliance.
 - 2.3 Section 54 of the Measure grants relevant persons the right to challenge future duties, standards with which relevant persons will be required to comply on a specific date in the future. Section 55 of the Measure which grants relevant persons the right to challenge present duties, standards with which relevant persons are already required to comply. Please refer to the full text of the Measure for full details.
 - 2.4 A relevant person's right of appeal to the Welsh Language Tribunal under section 58 of the Measure comes into force once the Commissioner has determined that the requirement for the relevant person to comply with one or more standards, or to comply with one or more standards in a specific way, is **not** unreasonable or disproportionate. After that right has come into force, the relevant person may appeal to the Tribunal, requesting that the Tribunal determines the same question.
 - 2.5 An outline of what will happen if the Commissioner determines that the requirement to comply is unreasonable or disproportionate is included in the section entitled '**Determination**'.
 - 2.6 Following a determination by the Tribunal, the Commissioner or the relevant person may, with leave from the Tribunal or High Court, appeal to the High Court in accordance with section 59 of the measure on a point of law resulting from that determination.
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Applying for a determination

- 3.1 The Welsh Language Measure notes that all applications to the Commissioner for a determination must be in writing and must also note the reasons why the relevant person is of the opinion that the requirement to comply with the standard, or to comply with the standard in a specific way, is unreasonable or disproportionate.
 - 3.2 In order to facilitate the procedure, the Commissioner has drawn up two separate **application forms** to be completed by relevant persons wishing to challenge their duties under a compliance notice by submitting an application to the Commissioner for a determination. One form is for challenging a future duty and the other for challenging a present duty. Hard copies of the procedure and the forms are available at the Commissioner's office and electronic copies are available on the Commissioner's website. Please note that the Commissioner will only accept such applications if made using these forms.
 - 3.3 It is emphasized in the Measure that it is a **matter for the relevant person to demonstrate** that a requirement to comply with the standard, or to comply with a standard in a specific way, is unreasonable or disproportionate. The Commissioner does not have to prove the accuracy of the determination.
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Processing an application for a determination

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This may be the date on which the determination of the Commissioner/Tribunal comes into force as a result of a previous challenge

4.1 The Commissioner will strive to acknowledge all applications for a determination within 5 working days of receipt, explaining to the relevant person that the first stage in the process will be to consider whether or not the application is a valid one.

Stage 1: Validating the application

4.2 The Commissioner will validate the application by checking that it meets the necessary requirements in accordance with clauses 3.1 and 3.2 above. During this stage also the Commissioner, in respect of an application that challenges a present duty, will consider whether there is a reason for refusing to accept the application.

4.3 Under Section 55(3) of the Measure, the Commissioner may decide to refuse to accept an application that challenges a present duty for two reasons:

- if the Commissioner is satisfied that there has been no substantial change in the relevant person's circumstances since the day it was made a requirement for the first time for that person to comply with the standard, or to comply with the standard in that way²; or
- if the Commissioner is satisfied that there has been no substantial change in the relevant person's circumstances since the date the same question was determined upon a previous application (if relevant).

4.4 If the Commissioner considers to decide to refuse the application under Section 55(3), before deciding whether or not to do so, the Commissioner will inform the relevant person that this is being considered. The reasons for such consideration will be noted and comments will be invited from the relevant person within a further 20 working days. In deciding whether or not to refuse the application under Section 55(3), the Commissioner will consider any comments received within that timescale.

4.5 If it is found that the application is invalid, or if the Commissioner, in the case of a challenge to a present duty, decides to refuse the application under Section 55(3), the Commissioner will write to the relevant person explaining this.

4.6 If it is found that the application is valid, and if the Commissioner, in the case of a challenge to a present duty, decides not to refuse the application, the application will proceed to the second stage of the process.

4.7 It is aimed to complete this stage within a further 10 working days.

Stage 2: Assessing the application

4.8 Once it has been decided that an application for a determination is valid, the Commissioner will deal with the application. It has already been mentioned that the burden of proof lies with the relevant person in terms of the requirement to comply with a standard, or to comply with a standard in a specific way being

unreasonable or disproportionate. The Commissioner will consider the evidence of the relevant person and decide whether or not the evidence has validity. The time this stage takes to complete will vary from one application to another, depending on the individual facts in each case. However, the aim is to complete the case as soon as reasonably possible, and within 30 working days at the latest.

Stage 3: Consultation and the pre-determination review

- 4.9 Under Section 57(4) of the Measure, the Commissioner has the power to consult with any other person the Commissioner considers has an interest in the outcome of the application. If the Commissioner (or the Officer on the Commissioner's behalf) consults a person other than the relevant person, the Commissioner must disclose to the relevant person who that other person is and what the other person's response was to the consultation, inviting the comments of the relevant person within a further 20 working days.
- 4.10 The Commissioner will include the following in the pre-determination review:
- (1) The arguments submitted by the relevant person.
 - (2) The response to any consultation with another person.
 - (3) Any comments received from the relevant person to the said consultation within the timescale noted above.
 - (4) An initial conclusion in respect of the question of whether the relevant person's application should be allowed or refused.
- 4.11 Under Section 57(4) of the Measure, there is a duty upon the Commissioner also to consult the relevant person in determining the application. Before making a final determination upon the application the Commissioner will consult the relevant person by informing him/her of the initial conclusions and requesting comments within 10 working days. The Commissioner will consider those comments before making a final determination upon the application.

Stage 4: Determining the application

- 4.12 After assessing the application, consulting and the pre-determination review the Commissioner will make a determination.
- 4.13 The last stage of the application for a determination is to inform the relevant person of the final determination. Details regarding the possible outcomes as the Commissioner determines an application can be found in the next chapter.
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Determination

- 5.1 Two outcomes are possible as the Commissioner determines an application. The Commissioner may determine:
- that the requirement to comply with the standard, or to comply with it in a particular way, **is** unreasonable or disproportionate; or
 - that the requirement to comply with the standard, or to comply with it in a particular way, **is not** unreasonable or disproportionate.
- 5.2 If it is determined that the requirement to comply is unreasonable or disproportionate, the Commissioner will do one of the following:
- nullify the compliance notice;
 - nullify the compliance notice and serve a new compliance notice in accordance with the procedure noted in the Measure; or
 - vary the current compliance notice in accordance with the procedure noted in the Measure.
- 5.3 If the Commissioner determines that the requirement to comply is not unreasonable or disproportionate, the relevant person's right of appeal to the Tribunal will come into force. The Commissioner will inform the relevant person of this right when he/she is informed of the determination. Further details regarding the right of appeal can be found under the section entitled **'Appealing to the Welsh Language Tribunal'**.
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Appealing to the Welsh Language Tribunal

- 6.1 The Tribunal is an independent legal body which has the right to confirm, vary or revoke the Commissioner's determination. The relevant person will have the right of appeal to the Tribunal in respect of his/her present/future duty coming into force once the Commissioner has determined that the requirement to comply with it is **not** unreasonable or disproportionate.
 - 6.2 The relevant person must appeal to the Tribunal within the period of **28 days** beginning with the date on which he/she was informed of the determination by the Commissioner. However, the Tribunal may allow the appeal to be submitted after that period has elapsed if the Tribunal is satisfied by way of a written application from the relevant person that there is good reason for the failure to appeal or the delay in appealing before the end of that period.
 - 6.3 Appeals to the Tribunal are subject to the Rules of the Tribunal. More information regarding those rules and how to appeal can be found on the Tribunal website, or by contacting the Tribunal itself.
 - 6.4 Note also that the Commissioner or the relevant person, with the permission of the Tribunal or the High Court, may appeal to the High Court on a point of law resulting from the Tribunal's determination.
 - 6.5 If the High Court determines that the Tribunal has erred on a legal point it may set aside the Tribunal's decision and either send the case back to the Tribunal or re-make the decision.
 - 6.6 Please note that an application for permission to appeal against the Tribunal's determination must be made to the Tribunal or High Court within the period of 28 days beginning with the date on which the Tribunal notified the Commissioner/relevant person of its determination. Appeals to the High Court are also subject to the Rules of the Tribunal.
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Postponing the imposition of future duty

- 7.1 When a relevant person challenges a future duty by applying to the Commissioner for a determination, the requirement for the relevant person to comply with that duty will not be applicable until the Commissioner has made a determination on that application and until the relevant person's rights of appeal have been exhausted.
- 7.2 The relevant person's rights of appeal are considered to have been exhausted if:
- the period of 28 days for submitting an appeal under section 58(3) has elapsed and the relevant person has not submitted an appeal; or
 - an appeal has been submitted under section 58 of the Measure and it has been determined either that no further appeal may be submitted or that no further appeal may be submitted without permission from the Tribunal or court.
- 7.3 Once the Commissioner has determined an application and the relevant person's rights of appeal have been exhausted, the duty will be applicable and will come into force and it will be possible for the Commissioner to use her powers to force the relevant person to comply with the duty in accordance with Part 5 of the Measure. The Welsh Language Commissioner's Enforcement Policy provides details that aspect.
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Contacting us

- 8.1 If the relevant person is unhappy with the way the Commissioner has dealt with his/her application, it is possible to complain to the Commissioner by following the usual complaints procedure. Further details are available on the **website**.
- 8.2 Also, further information about the contents of this procedure may be obtained by contacting the Welsh Language Commissioner using the following contact details:

Welsh Language Commissioner
Market Chambers
5-7 St Mary Street
Cardiff CF10 1AT

0845 6033 221

post@welshlanguagecommissioner.wales

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Application forms for determination

- 9.1 Two application forms for determination are available: one for challenging future duties and one for challenging present duties. Only after completing and returning these forms can the relevant person apply to the Commissioner requesting a determination as to whether or not the requirement to comply with that standard(s), or to comply with the standard(s) in a specific way, is unreasonable or disproportionate.
 - 9.2 Hard copies of the procedure and forms are available at the Commissioner's office and electronic copies are available for downloading on the Commissioner's website.
 - 9.3 It is emphasized that it is a matter for the organization (relevant person) applying for a determination to demonstrate that the requirement to comply with standard(s), or to comply with standard(s) in a specific way, is unreasonable or disproportionate.
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