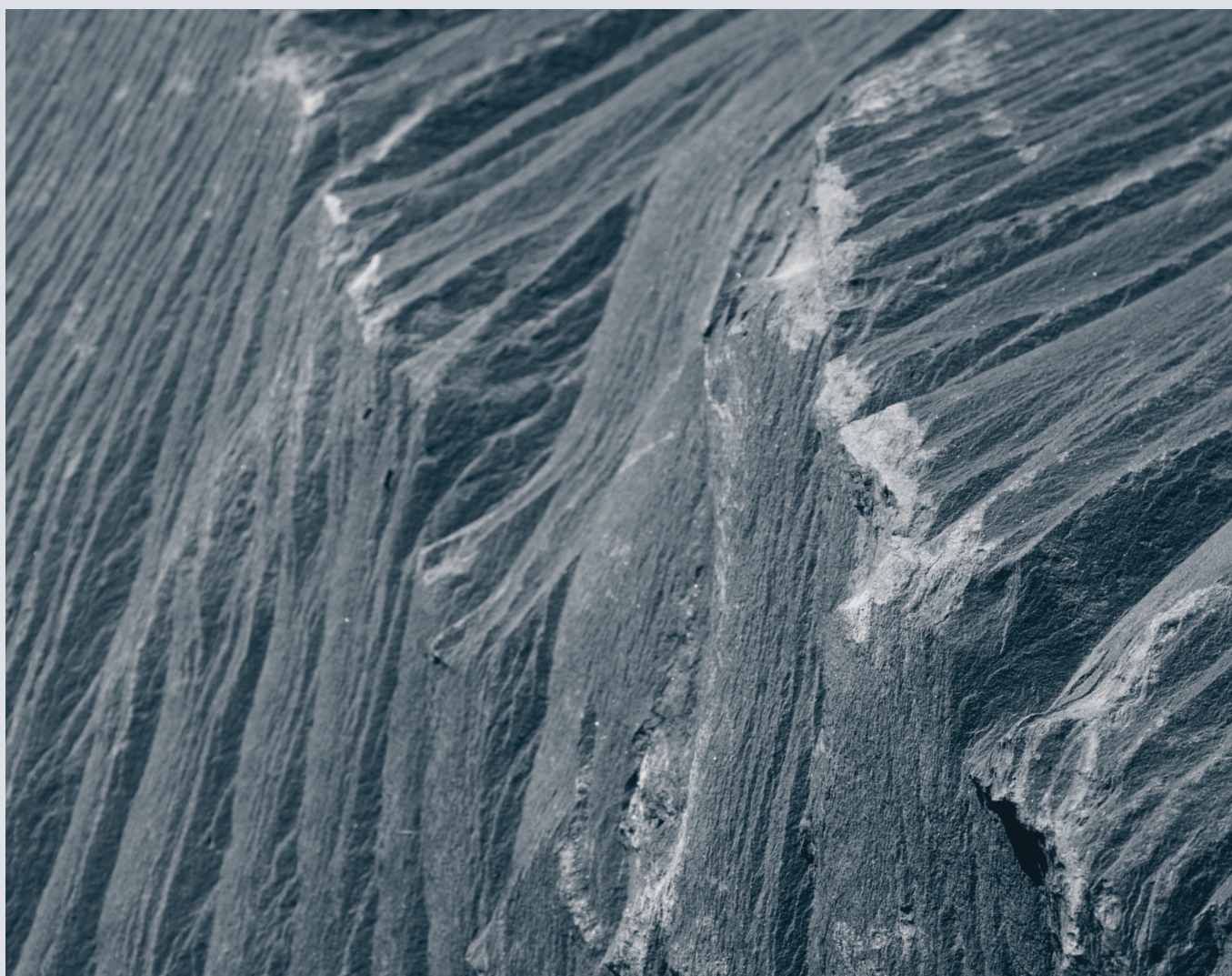

Welsh Language Commissioner's Enforcement Policy



Comisiynydd y
Gymraeg
Welsh Language
Commissioner



Contents

1	Background	3
2	Introduction	4
3	Principles of regulation	6
	(i) Proportionate	
	(ii) Accountable	
	(iii) Consistent	
	(iv) Transparent	
	(v) Targeting	
4	Statutory complaints under section 93 of the Welsh Language Measure	8
	- Submitting a complaint to the Commissioner	
	- The Commissioner's validation of the complaint	
	- Deciding whether or not to conduct an investigation	
5	Other evidence of a suspected failure of a relevant person to comply with a standard	12
6	Statutory investigation into a suspected failure of a relevant person to comply with a standard	13
	- Giving the relevant person and the complainant an opportunity to make representations in the course of a statutory investigation	
	- Giving a relevant person or any other person an evidence notice	
	- Power of entry and inspection	
	- Contempt of court	
	- Deciding to discontinue a statutory investigation	
	- Determination of a statutory investigation	
7	Determination of a statutory investigation into a suspected failure of a relevant person to comply with a standard	18
	- No failure to comply with a standard	
	- Explanation of the powers available to the Commissioner	
8	Failure to comply with a standard	23
	- Restore compliance following the failure	
	- Enforce compliance following the failure	
	- Impose a civil penalty for the failure	
9	Civil penalty	25
	Other relevant matters	
10	Failure to comply with an enforcement action or a settlement agreement	26
11	Working with the Ombudsman and other commissioners	28
12	Register of enforcement action	29
13	Glossary of terms	30
14	Procedure for complaints about the actions of the Commissioner	34

1 Background

- 1.1 This policy is a statutory document produced in accordance with section 108 of the Welsh Language (Wales) Measure 2011 [Welsh Language Measure]. It is a document setting out advice and information on the Welsh Language Commissioner's [the Commissioner] intended approach to the exercise of the Commissioner's functions under Part 5 of the Welsh Language Measure.
- 1.2 The policy's main target audience are those relevant persons who are required to comply with one or more standards of conduct [standards] in relation to the Welsh language. The policy is also relevant to the public, and to persons¹ wishing to complain to the Commissioner about the alleged conduct of a relevant person.
- 1.3 The Commissioner will continually review the implementation of this policy, and will publish it on the website and display it at all of the Commissioner's offices and sites.
- 1.4 Further information regarding the Commissioner's other functions can be found on the Welsh Language Commissioner's website.
- 1.5 This policy was approved by Welsh Ministers on 26/03/2015 in accordance with section 108(4) of the Welsh Language Measure

¹A person in this context includes any individual or body of corporate or non-corporate persons.

2 Introduction

2.1 The Welsh Language Measure establishes a legal framework to impose a duty on some organizations to comply with one or more standards in relation to the Welsh language. Organizations subject to standards are called relevant persons. Standards will operate in the following areas:

- service delivery
- policy making
- operational
- promotion
- record keeping.

2.2 The duties resulting from the standards require that relevant persons should not treat the Welsh language less favourably than the English language, and should promote or facilitate the use of the Welsh language. This ties in with the following principles that underpin the Commissioner's work:

- the official status which the Welsh language has in Wales
- the duties to use Welsh which are (or may be) imposed by law, and the rights which arise from the enforceability of those duties
- that the Welsh language should be treated no less favourably than the English language in Wales
- persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

2.3 Compliance notices given to relevant persons by the Commissioner under the Welsh Language Measure specify the standards they must comply with, together with the imposition days² for those standards. Copies of those compliance notices that are in force will be on the Commissioner's website.

2.4 Whilst a compliance notice specific to a relevant person is in force, that person will be required to comply with a standard.

2.5 In relation to the above, the Commissioner has statutory regulatory functions under the Welsh Language Measure to ensure that relevant persons comply with their duties. This may include a standard with which the relevant person is required to comply, an enforcement action³ imposed upon that person or a settlement agreement which has been entered into. This policy provides advice and information regarding how the Commissioner will exercise those regulatory functions.

²The day from which a person is to be required to comply with the standard or with the standard in a respect.

³Enforcement action is the name given to the actions noted in clause 7.5(ii) of this policy.

2 Introduction

2.6 The regulatory functions resulting from Part 5 of the Welsh Language Measure are to:

- produce an enforcement policy document
- consider carrying out statutory investigations into suspected failures of relevant persons to comply
- deal with complaints regarding the alleged conduct of relevant persons
- undertake statutory investigations into suspected failures of relevant persons to comply
- use powers to prevent the continuation or repetition of failures to comply
- impose civil penalties for the failures of relevant persons to comply
- make applications to a county court for orders to enforce compliance
- comply with the duties resulting from appeals and applications for reviews made to the Welsh Language Tribunal [the Tribunal] and
- create and maintain a register of enforcement action.

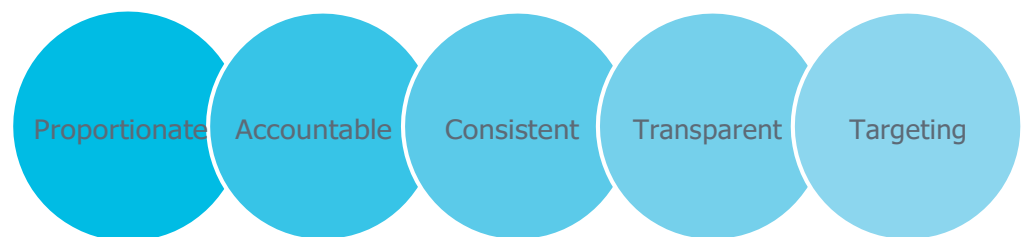
2.7 There are statutory processes to be followed in the exercise of the Commissioner's regulatory functions. This policy details the aspects associated with those processes.

3 Principles of regulation

3.1 The Legislative and Regulatory Reform Act 2006 requires some regulators⁴ to have regard to the principles of good regulation in exercising specific regulatory functions.

3.2 In accordance with section 22 of the act noted above, the Regulators' Code was produced and came into force on 6 April 2014, replacing the previous Regulators' Compliance Code and the Enforcement Concordat. The code provides a clear framework for the way in which regulators should engage with those they regulate. There is no statutory duty on the Commissioner to follow the code, but full consideration was given to it in producing this policy in accordance with the recommendations of the Better Regulation Delivery Office⁵ and the Welsh Government⁶.

3.3 The Commissioner will act in a firm but fair manner using the most appropriate powers in order to carry out the Commissioner's functions and ensure compliance. In accordance with the above, the Commissioner will exercise her regulatory functions by following the five principles noted below:



(i) Proportionate

3.4 In considering the suspected failure of a relevant person to comply, the Commissioner will be proportionate in deciding whether or not a statutory investigation should be undertaken. With this in mind, the Commissioner will consider the facts of each case individually.

3.5 In deciding what subsequent action to take as a result of determining that there has been a failure to comply, the Commissioner will consider what is proportionate in order to prevent the continuation or repetition of the failure⁷.

3.6 If it is found that a relevant person has failed to comply with an enforcement action or settlement agreement, the Commissioner will take further action against the relevant person.

⁴ The Commissioner has a relevant regulator status under the provisions of the Local Government (Wales) Measure 2009.

⁵ In their document '*Regulators' Code: Frequently Asked Questions*', the Better Regulation Delivery Office notes "We recommend that regulators acting outside the statutory scope of the Regulators' Code should adopt it on a voluntary basis".

⁶ In its document '*Inspection, Audit and Regulation in Wales*', the Welsh Government notes that it "expect[s] regulatory enforcement in Wales to follow the principles set out above."

⁷ See Chapter 6 of this policy.

3 Principles of regulation

(ii) Accountable

3.7 The Commissioner will be accountable for the decisions made by receiving comments and feedback on the enforcement work and the way in which powers are used. The Commissioner has a complaints procedure which a person can use in order to raise any concerns regarding the Commissioner's work and decisions⁸.

3.8 The Welsh Language Measure provides a mechanism that gives relevant persons and complainants the right to appeal to the Tribunal against some of the Commissioner's decisions. Complainants may apply to it to review the Commissioner's decision in some cases⁹. Those rights are detailed under the relevant sections in this policy.

(iii) Consistent

3.9 The Commissioner will be consistent in exercising the functions of Part 5 of the Welsh Language Measure, when implementing the enforcement policy and in making decisions in respect of the policy. It means that the Commissioner will employ a consistent manner in considering the facts of all cases individually and in deciding on an appropriate response. By acting in this way, the Commissioner will ensure fairness, objectivity and impartiality in dealing with various parties.

(iv) Transparent

3.10 The Commissioner will ensure transparency in the exercise of her regulatory functions by ensuring that the public and relevant persons understand how those functions are exercised. The Commissioner keeps a record of the details of all statutory investigations undertaken, including any subsequent action taken, by maintaining a register of enforcement action. The Commissioner will publish information in the form of a register of enforcement action.

(v) Targeting

3.11 The Commissioner will target regulatory work by implementing a number of specific measures, including risk. The Commissioner will also consider sharing resources with others where possible, in order to avoid any duplication.

3.12 The Commissioner may work with the Ombudsman and other commissioners when undertaking a statutory investigation in some cases¹⁰ or use third parties¹¹. The Commissioner will consider the circumstances of each individual case in order to reach a decision on the most appropriate course of action.

⁸ See section 14 of this policy.

⁹ In some cases, the Tribunal's permission is required to appeal.

¹⁰ See section 11 of this policy and Section 20 of the Welsh Language Measure.

¹¹ See Section 11(2)(c) of the Welsh Language Measure

4 Statutory complaints under section 93 of the Welsh Language Measure

8

4.1 One of the Commissioner's regulatory functions is to deal with complaints under section 93 of the Welsh Language Measure. The Commissioner's focus in dealing with complaints will be on trying to obtain a satisfactory resolution for the complainant, whether as a result of undertaking a statutory investigation or by other means. Where a failure to comply with a standard is found, consideration will also be given to whether subsequent action needs to be taken in order to prevent the continuation or repetition of that failure.

Submitting a complaint to the Commissioner

4.2 A person may complain to the Commissioner about the conduct of a relevant person in relation to a standard with which that person is required to comply.

4.3 The complainant must be a person who has been directly affected by the alleged conduct, or be a person acting on behalf of that person.

4.4 The Commissioner will accept written complaints by post, by e-mail, through the website and through social media. In order to ensure accessibility, it is possible for those who cannot submit a written complaint due to their personal circumstances, to contact the Commissioner over the telephone or any other appropriate medium to explain so and to discuss their complaint. The Commissioner will make reasonable provision and provide support for them to submit their complaint through an alternative method.

4.5 The Commissioner encourages complainants to complain to the relevant person in the first instance, in order to give that person an opportunity to respond, and offer a resolution, where there has been a failure to comply. However it must be made clear that it is not necessary for the complainant to submit a complaint to a relevant person. Furthermore there is a duty on the Commissioner to consider each complaint received.

4.6 A complainant, or a person acting on behalf of the complainant, is expected to submit a complaint to the Commissioner within 1 year of becoming aware of the alleged conduct. Otherwise, if a complaint is submitted beyond the period of 1 year, the Commissioner will only consider it if the Commissioner is of the opinion that it is appropriate to do so. Such situations may include, but are not restricted to, situations such as:

- the continuation of the alleged conduct
 - a serious failure to comply becomes apparent
 - substantial publicity in the case or
 - the complainant having a valid reason for not submitting the complaint earlier.
-

4 Statutory complaints under section 93 of the Welsh Language Measure

4.7 A complainant must include sufficient details regarding the following in his complaint:

- who the relevant person complained about is
- what the alleged conduct is
- how the conduct has affected the complainant and
- the name and contact details of the complainant.

4.8 Failure to include these details may mean that the Commissioner cannot consider the complaint further.

The Commissioner's validation of the complaint

4.9 The Commissioner will acknowledge receipt of all written complaints received relating to the conduct of a relevant person within 5 working days. The acknowledgement will inform the complainant whether or not the complaint is valid under section 93 *as soon as possible thereafter*.

4.10 If it is concluded that the complaint is not a valid one, because it does not comply with the requirements noted in clauses 4.4 and 4.7 of this policy¹², the Commissioner will explain how the complainant may submit a valid complaint, if appropriate.

4.11 If it is concluded that the complaint is a valid one, then the Commissioner has a duty to consider undertaking a statutory investigation into the question of whether the alleged conduct of the relevant person amounts to a failure to comply with a standard. The Commissioner may undertake a statutory investigation if the Commissioner suspects that the relevant person has failed to comply with a standard. Some cases are exempt from this duty:

- when the complaint has been made more than 1 year after the complainant became aware of the alleged conduct
- if the Commissioner considers the complaint to be frivolous or vexatious¹³ or
- if the complaint is withdrawn.

4.12 If the Commissioner considers a complaint to be frivolous or vexatious, or if the complaint is withdrawn, the Commissioner will decide to close the complaint. Closing complaints for the reasons noted in this paragraph does not mean that the Commissioner would not consider conducting an investigation in line with the discretion available to her under section 93(8) of the Measure.

¹² See also Section 93(3-6) of the Welsh Language Measure

¹³ See definition of frivolous and vexatious at the end of this document.

4 Statutory complaints under section 93 of the Welsh Language Measure

4.13 The Commissioner may conclude that a complaint is frivolous or vexatious in a number of circumstances. These could include circumstances where the complainant submits an unsubstantial complaint or changes the substance of a complaint, raises irrelevant matters, places unreasonable expectations upon the Commissioner or contacts the Commissioner in a way that is considered unreasonable.

4.14 In circumstances where the Commissioner does not believe the complaint is valid, the Commissioner will inform the complainant of her decision and the reasons for it, and inform the complainant of his/her right, with the Tribunal's permission, to make an application for the decision to be reviewed.

Deciding whether or not to conduct an investigation

4.15 In the majority of cases the Commissioner will contact the relevant person, giving that person the opportunity to provide information to the Commissioner in connection with the complainant's allegations. This is done for practical reasons and to obtain enough information for the Commissioner to decide whether or not to undertake an investigation in connection with the alleged behaviour. The request for information will be clear and will relate to verifying the factual validity of the complaint. The Commissioner will expect a response within 10 working days. However the Commissioner will be open to receiving a request for a reasonable extension (of no more than 10 further working days) by a relevant person, if there are valid reasons for that. The information received (or any lack of information provided) will contribute to the factors that will assist the Commissioner to come to a decision as to whether an investigation should be conducted under section 71.

4.16 The Commissioner's right to consider undertaking an immediate statutory investigation into the complaint is reserved if the individual circumstances of the complaint require. Such circumstances may include, but are not restricted to, circumstances such as:

- a complaint regarding a suspected serious failure to comply
- a complaint requiring urgent action and
- where indisputable evidence has already been provided by the complainant as part of the complaint.

4.17 The Commissioner will keep in regular contact with the complainant and the relevant person and provide a contact within the who they may contact to discuss the complaint.

4 Statutory complaints under section 93 of the Welsh Language Measure

4.18 It will be the Commissioner's decision whether or not to undertake a statutory investigation. In reaching that decision, the reasons for any decision will be recorded with that decision.

4.19 After making a decision, the Commissioner will notify the complainant and the relevant person, where relevant. If the Commissioner decides not to conduct a statutory investigation, she will explain to the complainant her reasons for not doing so.

4.20 Should the complainant be dissatisfied with the Commissioner's decision in this respect, it will be possible for him or her, with the Tribunal's permission, to make an application for the decision to be reviewed. The Commissioner will inform the complainant of that right.

5 Other evidence of a suspected failure of a relevant person to comply with a standard

5.1 In addition to the receipt of statutory complaints, a suspected failure of a relevant person to comply with a standard may come to the Commissioner's attention through other sources of evidence.

5.2 One of those sources will be the work undertaken to verify the compliance of relevant persons with the standards imposed upon them.

5.3 A suspected failure of a relevant person to comply with a standard may become apparent through other sources including, but not restricted to, the following:

- information the Commissioner discovers in exercising other functions under the Welsh Language Measure e.g. information which comes to light after conducting an inquiry under section 7 of the Measure
- information that indicates the failure of a relevant person to comply with a relevant provision in a code of practice¹⁴ issued by the Commissioner
- information that appears in the media
- information from the public or any other person
- information the relevant person provides to the Commissioner or publishes in accordance with the standards with which the person is required to comply.

5.4 When a suspected failure of a relevant person to comply with a standard becomes apparent through sources such as the above, and prior to conducting an investigation, the Commissioner will follow the steps outlined in clauses 4.15 – 4.19 of this policy, omitting any references to a complainant and with any reference to a 'complaint' being read as a reference to a 'case'.

¹⁴ Although the purpose of codes of practice is to provide practical guidance on the requirements of the standards, the Commissioner may rely upon the failure of a relevant person to comply with the contents of a code of practice as tending to establish a failure to comply with a particular standard.

6 Statutory investigation into a suspected failure of a relevant person to comply with a standard

6.1 After the Commissioner has decided that undertaking a statutory investigation into a suspected failure of a relevant person to comply with a standard is appropriate, whether as a result of receiving a complaint under section 93 or through any other source, the Commissioner will then prepare the terms of reference.

6.2 The terms of reference will specify the relevant person who is being investigated and the suspected failure in question. The terms of reference may include more than one suspected failure, where relevant. The terms of reference will also offer a proposed timetable for the inquiry.

6.3 If the statutory investigation is undertaken following a complaint made under section 93, the relevant person and the complainant will be given a reasonable opportunity to make representations in relation to the proposed terms of reference. The Commissioner will consider any representations made before publishing the final terms of reference, and informing those persons of it.

Giving the relevant person and the complainant an opportunity to make representations in the course of a statutory investigation

6.4 In undertaking a statutory investigation, the Commissioner will give the parties mentioned in clause 6.3 above a reasonable opportunity to make representations in relation to the investigation. The Commissioner will inform these parties of the arrangements. The arrangements may include the submission of oral or written representations.

6.5 The Commissioner shall consider representations made by the relevant person or by a legal advisor acting on behalf of that relevant person. The Commissioner will also consider representations made by a complainant if the Commissioner is of the opinion that it is appropriate to do so. If the Commissioner decides not to consider the representations of a complainant, he or she will be informed of the decision and the reasons for that decision.

Giving a relevant person or any other person an evidence notice

6.6 An evidence notice from the Commissioner may require a relevant person or any other person to do one or more of the following:

- provide information in that person's possession
 - produce documents in that person's possession or
 - give oral evidence.
-

6 Statutory investigation into a suspected failure of a relevant person to comply with a standard

6.7 An evidence notice will not require a relevant person to provide information that the relevant person is prohibited from disclosing by virtue of another enactment. Similarly, it will not require the relevant person to do anything that person could not be compelled to do in proceedings before the High Court. Any evidence received by the Commissioner will be kept in accordance with the Welsh Language Commissioner's Freedom of Information Act 2000 Policy¹⁵.

6.8 Persons shall disregard an evidence notice where it requires the disclosure of information involving the intelligence service. The exact circumstances are detailed in Part 2, Schedule 10 of the Welsh Language Measure. In such circumstances, the person must notify the Commissioner that the person is disregarding the evidence notice.

6.9 A person may apply to the Tribunal to have the evidence notice given to that person by the Commissioner cancelled on the grounds that a requirement imposed by it:

- is unnecessary in relation to the purpose of the investigation, or
- is otherwise unreasonable or disproportionate.

6.10 If the Commissioner is of the opinion that a person who has received an evidence notice has failed, or is likely to fail¹⁶ to comply with the evidence notice without reasonable excuse, the Commissioner may apply to a county court for an order requiring that person to comply with the evidence notice.

6.11 The Commissioner may, if thinks fit, pay a person that has provided information, presented documents or given oral evidence to him:

- sums in respect of expenses properly incurred by the person and
- allowances by way of compensation for the loss of the person's time.

6.12 The sums paid in respect of expenses are restricted to the true costs attached to providing information, producing documents or giving oral evidence. That may include any printing, copying, posting, telephone or travelling costs.

6.13 Allowances paid as compensation for the loss of the person's time are restricted to £25 an hour for the person's time in locating and quoting or providing the relevant information, document or evidence.

¹⁵ <http://www.comisiynyddygydraeg.org/English/Publications%20List/Freedom%20of%20Information%20Act%202000%20The%20Welsh%20Language%20Commissioner%27s%20Policy.pdf>

¹⁶ See Schedule 10, paragraph (11)(1)(b) of the Welsh Language Measure

6 Statutory investigation into a suspected failure of a relevant person to comply with a standard

6.14 The Commissioner will only pay the allowance as compensation for the loss of the person's time when the cost of complying with the evidence notice would be higher than £450 (18 hours: £450 / £25). When the cost of complying with the evidence notice is less than £450, the only costs that can be claimed are the sums in respect of expenses.

6.15 The person must apply to the Commissioner if that person wishes to claim any costs in this respect. Further details regarding how to make such an application will be given when the evidence notice is issued to the person.

Power of entry and inspection

6.16 The Commissioner, or any person authorised by the Commissioner, has the power to enter premises under the control of a relevant person who is under investigation. Inspection of the premises must be necessary for the purposes of the investigation in the Commissioner's view or that of the authorised person. However this power does not extend to dwellings¹⁷.

6.17 The Commissioner does not have to make an appointment and may enter without giving notice, at a reasonable time. However, the Commissioner will try to give notice to any relevant person, where it is reasonable to do so. If the Commissioner, or someone on her behalf, conducts an inspection without notice, the relevant person being inspected will be expected to ensure that someone appropriate is present during the inspection and to assist the person investigating to comply with health and safety regulations, and similar considerations.

Contempt of court

6.18 If a person has committed any act that would constitute contempt of court if the investigation were proceedings in the High Court, the Commissioner may issue a certificate to that effect to the High Court.

6.19 The High Court may investigate the matter and, if satisfied that the Commissioner's findings are correct, may deal with the person in any manner in which it could have dealt with the person had that person committed contempt of court in relation to the High Court.

6.20 This power also extends to a case in which a person, without legal excuse, has prevented the Commissioner from carrying out any one or more of her functions under Part 5 of the Welsh Language Measure.

¹⁷See Schedule 10, paragraph (12)(3)(a) of the Welsh Language Measure

6 Statutory investigation into a suspected failure of a relevant person to comply with a standard

Deciding to discontinue a statutory investigation

6.21 The Commissioner may decide to discontinue a statutory investigation at any time. The reasons for deciding to discontinue a statutory investigation may include, but are not restricted to, circumstances such as:

- the investigation indicating disproportionate use of the Commissioner’s resources
- evidence that a complainant had submitted false information or evidence and had done so illegally
- the investigation indicating early on that the relevant person had not failed to comply and therefore no justification for using resources to continue with the investigation
- if the Commissioner decides it would be beneficial, in her view, to discontinue the investigation in the public interest or
- the relevant person is abolished.

6.22 On the occasions when the Commissioner decides to discontinue a statutory investigation, the Commissioner will inform those parties noted in clause 6.3 above as soon as possible after the decision is made, together with the reasons for doing so. If the statutory investigation is undertaken following a complaint made under section 93 of the Welsh Language Measure, the complainant will be informed of his or her right, with the Tribunal’s permission, to make an application for the decision to be reviewed.

Determination of a statutory investigation

6.23 Before finally determining a statutory investigation, the Commissioner will give the parties mentioned in clause 6.3 above an opportunity to make representations in relation to any proposals attached to the determination the Commissioner is proposing to make, together with the determination itself. Those parties will be able to make representations, within a period of 28 days¹⁸.

6.24 Those parties may make representations in relation to the following proposals:

- notice of the determination which the Commissioner is proposing to make
- draft of the proposed statutory investigation report.

¹⁸ See Section 85(7) of the Welsh Language Measure

6 Statutory investigation into a suspected failure of a relevant person to comply with a standard

6.25 Having given due regard to any representations made, the Commissioner will provide final copies of the decision notice and the statutory investigation report to the parties.

6.26 The relevant person will also be able to make representations in relation to the following proposals:

- a notice outlining whether or not the Commissioner is proposing to take further action, and a statement of the Commissioner's reasons for proposing to do so
- 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
- draft copies of the decision notice which the Commissioner is proposing to give.

7 Determination of a statutory investigation into a suspected failure of a relevant person to comply with a standard

71 Having undertaken a statutory investigation into a suspected failure of a relevant person to comply with a standard, the Commissioner must make a final determination.

72 The various actions the Commissioner may take, depending on the kind of determination made, are explained below. The Commissioner will inform the relevant person and the complainant (if the investigation is undertaken following a complaint made under section 93) of the determination, by giving a decision notice to them.

No failure to comply with a standard

73 Where it is determined that the relevant person has not failed to comply with a standard, the Commissioner may do the following:

- (i) take no further action or
- (ii) give the relevant person or any other person recommendations and/or advice.

74 If the investigation that led to the determination was undertaken following a complaint made under section 93 of the Welsh Language Measure, the complainant may appeal to the Tribunal against the determination on the grounds that the relevant person did fail to comply with a standard. An appeal must be made before the end of a 28 day period beginning with the day on which the Commissioner gives the decision notice¹⁹. More details about this right will be given when giving the decision notice to the complainant. In an appeal of this kind, the relevant person may apply to the Tribunal to be added as a party to the proceedings.

Failure to comply with a standard

75 Where it is determined that the relevant person has failed to comply with a standard, the Commissioner may do the following:

- (i) take no further action or
- (ii) one or more of the following:
 - require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure
 - require the relevant person to take steps for the purpose of preventing the continuation or repetition of the failure
 - publicise the relevant person's failure to comply with a standard
 - require the relevant person to publicise the failure to comply with a standard
 - impose a civil penalty on the relevant person or

¹⁹The Tribunal may, following a written application by the complainant, allow an appeal to be made after the end of the relevant period of 28 days, in accordance with the requirements of section 99(4) of the Welsh Language Measure.

7 Determination of a statutory investigation into a suspected failure of a relevant person to comply with a standard

(iii) one or more of the following:

- give recommendations to the relevant person or any other person
- give advice to the relevant person or any other person
- seek to enter into a settlement agreement²⁰ with the relevant person.

19

76 Where the Commissioner determines that the relevant person has failed to comply with a standard, that relevant person may appeal to the Tribunal against the determination on the grounds that the relevant person did not fail to comply with a standard. An appeal must be made before the end of a 28 day period beginning with the day on which the Commissioner gives the decision notice²¹. More details of this right will be given when giving the decision notice to the relevant person. In such an appeal, and if the statutory investigation that led to the decision was undertaken following a complaint made under section 93 of the Welsh Language Measure, the complainant may apply to the Tribunal to be added as a party to the proceedings.

77 If any one or more of the actions noted in clause 7.5(ii) above are imposed on the relevant person, the relevant person may appeal to the Tribunal against those actions on the grounds that they are unreasonable and disproportionate. Similarly, an appeal must be made before the end of a 28 day period beginning with the day on which the Commissioner gives the decision notice²². More details of this right will be given when giving the decision notice to the relevant person.

Explanation of the powers available to the Commissioner

Take no further action

78 When the Commissioner decides to take no further action, the relevant person will not be required to take any further action. However, the duty to comply with the standard will continue.

Give recommendations and/or advice

79 When the Commissioner decides to give the relevant person or any other person recommendations and/or advice as a result of a determination of a failure to comply, the Commissioner will do so with the intention of providing guidance in relation to preventing the continuation or repetition of that failure. Where it is determined that there was no failure to comply, the Commissioner can give the relevant person or any other person recommendations and/or advice for the purpose of ensuring continuous compliance.

²⁰ See Section 91 of the Welsh Language Measure

²¹ The Tribunal may, following a written application by the relevant person, allow an appeal to be made after the end of the relevant period of 28 days, in accordance with the requirements of section 95(6) of the Welsh Language Measure.

²² Again, the Tribunal may, following a written application by the relevant person, allow an appeal to be made after the end of the relevant period of 28 days, in accordance with the requirements of section 95(6) of the Welsh Language Measure.

7 Determination of a statutory investigation into a suspected failure of a relevant person to comply with a standard

Requirement to prepare an action plan for the purpose of preventing the continuation or repetition of the failure

710 When the Commissioner decides to require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure, the decision notice will set out what the relevant person is required to do. The decision notice will also specify the timetable for submitting the first draft plan to the Commissioner, and the consequences if the relevant person does not comply with that requirement.

711 If the first draft plan submitted to the Commissioner is not adequate for the purposes of preventing the continuation or repetition of the failure, the Commissioner will give the relevant person a notice to that effect and require that person to submit a revised draft to the Commissioner within a specified time. The Commissioner may also make recommendations in relation to the content of that revised draft.

712 In considering whether a draft action plan is adequate the Commissioner may issue an evidence notice to any person and/or enter into the premises of the relevant person as she may do in relation to a statutory investigation as noted in clauses 6.6 – 6.17 of this policy.

713 The Commissioner may also apply to a county court for an order requiring the relevant person to submit a first draft plan or revised draft plan to the Commissioner by a time specified in the order. In respect of a revised draft plan, the order may also specify any directions about the plan's content.

714 An action plan comes into force either:

- at the end of a period of six weeks beginning on the date on which a first draft or revised draft is submitted to the Commissioner, if that period expires without the Commissioner giving a notice to the relevant person as noted in clause 7.11 above or without the Commissioner applying to the county court as noted in clause 7.13 above or
- upon a county court declining to make an order as noted in clause 7.13 above in respect of a revised draft of the plan.

Requirement to take steps for the purpose of preventing the continuation or repetition of the failure

715 When the Commissioner decides to require the relevant person to take steps for the purpose of preventing the continuation or repetition of the failure, the decision notice will set out what the relevant person is required to do and the consequences if that person does not comply with that requirement. The specific action takes effect at the end of the 28 day period for submitting an appeal.

7 Determination of a statutory investigation into a suspected failure of a relevant person to comply with a standard

Publicising the failure²³

716 In deciding to publicise the failure of the relevant person to comply with a standard, the Commissioner may decide to publicise any one or more of the following:

- a statement that the relevant person has failed to comply with a standard or
- the statutory investigation report.

717 Similarly, when the Commissioner requires the relevant person to publicise the failure to comply, that person may be required to publicise any one or more of the above or any other information relating to the relevant person's failure to comply with a standard.

718 The decision notice will set out what the Commissioner is to do and/or what the relevant person is to do in order to publicise the failure, and the consequences if the relevant person does not comply with that requirement. The duty to publicise the failure will take effect at the end of the 28 day period for submitting an appeal.

Civil penalties

719 When the Commissioner decides to impose a civil penalty on the relevant person, the maximum penalty will be £5,000. It should be noted, however, that Welsh Ministers may, by order, substitute a different amount for this maximum penalty.

720 All civil penalties received will be paid into the Welsh Consolidated Fund²⁴.

721 In respect of a civil penalty, the decision notice will set out the following details:

- the sum of the civil penalty
- how the civil penalty may be paid
- the period within which the civil penalty must be paid
- the consequences if the civil penalty is not paid.

722 See section 9 of this policy for more details about the Commissioner's decisions in respect of civil penalties.

²³ See Section 81 of the Welsh Language Measure

²⁴ The Fund was established by the Government of Wales Act 2006. It is a fund of public money allocated to Wales through various sources.

7 Determination of a statutory investigation into a suspected failure of a relevant person to comply with a standard

Settlement Agreements

723 In entering into a settlement agreement the Commissioner will agree not to take enforcement action in respect of the failure whilst the relevant person undertakes not to fail to comply with one or more of the standards; to take particular action; or to refrain from taking particular action.

724 The relevant person does not have to enter into a settlement agreement but if that person refuses to do so, the Commissioner may decide to exercise other enforcement powers.

725 The relevant person is not to be taken to have admitted the failure by reason only of entering into a settlement agreement.

Appeals by the complainant and the relevant person

726 If the statutory investigation is undertaken following a complaint made under section 93 of the Welsh Language Measure, clauses 7.4, 7.6 and 7.7 of this policy give details of the right of the relevant person, and a complainant to appeal against the Commissioner's decisions in respect of a determination of a statutory investigation. In determining an appeal, the Tribunal may affirm or annul the Commissioner's determination. In an appeal as noted in clause 7.7, the Tribunal may affirm, vary or annul the enforcement action.

727 Any decision of the Tribunal on an appeal has the same effect, and may be enforced in the same manner, as a determination of the Commissioner.

728 If the statutory investigation is undertaken following a complaint made under section 93 of the Welsh Language Measure, and if neither the relevant person, nor the complainant are parties in an appeal, the Commissioner will inform them of the Tribunal's decision.

729 The Commissioner, the complainant or the relevant person, may subsequently, with the permission of the Tribunal or the High Court, appeal to the High Court on a point of law arising out of the Tribunal's decision.

730 The High Court may affirm the Tribunal's decision or set its decision aside. If the High Court sets the Tribunal's decision aside, it must either remit the case to the Tribunal for reconsideration or re-make the decision itself.

731 It should be noted that the appeals are subject to Tribunal Rules. Further details about those rules together with details of how to appeal can be obtained by contacting the Tribunal directly.

8 Failure to comply with a standard

8.1 Where it is determined, at the end of a statutory investigation into a suspected failure of a relevant person to comply with a standard, that the relevant person has failed to comply with a standard, the Commissioner will decide what action is to be taken in response to that failure.

8.2 As the circumstances of each failure will be different, the Commissioner will consider the facts of each case individually. The Commissioner will decide how action should be taken, in order to prevent a failure from continuing or being repeated.

8.3 For this purpose, the Commissioner may take action in one or more of the following ways²⁵:

- (i) restore compliance following the failure
- (ii) enforce compliance following the failure including
- (iii) imposing a civil penalty for the failure.

Restore compliance following the failure

8.4 As far as possible, the Commissioner will try to ensure that a relevant person restores compliance voluntarily following the failure. The Commissioner will need adequate assurance regarding the willingness of the relevant person to co-operate and to take steps to prevent the continuation or repetition of the failure.

8.5 To this end, there are several steps the Commissioner may decide to take, which are:

- to take no further action or
- to give the relevant person or any other person advice and/or recommendations and/or
- to seek to enter into a settlement agreement with the relevant person.

8.6 The exact steps the Commissioner decides to take will depend on the exact nature of the failure in question together with the associated circumstances.

Enforce compliance following the failure

8.7 Where it is not possible to ensure that a relevant person restores compliance voluntarily as a result of the failure, the Commissioner will take steps to enforce compliance.

²⁵ See Section 77 of the Welsh Language Measure

8 Failure to comply with a standard

8.8 To this end, there are several steps the Commissioner may decide to take, namely:

- to require the relevant person to take specific steps for the purpose of preventing the continuation or repetition of the failure and/or
- to require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure and/or
- to publicise the relevant person's failure to comply and/or
- to require the relevant person to publicise the failure to comply.

Impose a civil penalty for the failure

8.9 With the most serious failures, the Commissioner will take the view that it is necessary to impose a civil penalty on the relevant person together with other enforcement action, in order to prevent the continuation or repetition of the failure. Imposing a civil penalty on a relevant person will also be a means for the Commissioner to ensure that the rights of Welsh speakers are protected. Again, the circumstances of each failure will vary from one case to another.

8.10 The figure below provides an overview of the steps the Commissioner will take in most circumstances. The figure also reflects the Commissioner's aim of focussing on outcome based regulation, and to use the civil penalty with the most serious failures only.

Restore compliance following the failure

- Take no further action
- Give the relevant person or any other person advice and/or recommendations
- Seek to enter into a settlement agreement with the relevant person

Enforce compliance following the failure

- Require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure
- Require the relevant person to take specific steps for the purpose of preventing the continuation or repetition of the failure
- Publicise the relevant person's failure to comply with a standard
- Require the relevant person to publicise the failure to comply

Impose a civil penalty for the failure

- Impose a civil penalty on the relevant person
-

9 Civil penalty

9.1 The Welsh Language Measure places a specific duty upon the Commissioner to have regard to specific matters in determining whether to impose a civil penalty on a relevant person for failing to comply, and the amount of that penalty.

9.2 Those specific matters to which the Commissioner must have regard are:

- the seriousness of the matter in respect of which the civil penalty is to be imposed
- the circumstances of the person on whom the civil penalty is to be imposed, and
- the need to prevent the continuation or repetition of the matter in respect of which the civil penalty is to be imposed.

9.3 The above shall not prevent the Commissioner from having regard to other matters. None of these matters are more important than the other.

Other relevant matters

9.4 The Commissioner may have regard to any other matter that is relevant, in the Commissioner's view, in deciding whether a civil penalty should be imposed on a relevant person or not.

9.5 As a matter of policy, after the Commissioner has decided to impose a civil penalty upon a relevant person, the penalty can be any amount up to a maximum of £5,000. In using the civil penalty, the Commissioner hopes to ensure an adequate deterrent in relation to the failure; to prevent other relevant persons from failing to comply in the same manner and to ensure that the rights of Welsh speakers are adequately protected.

10 Failure to comply with an enforcement action or a settlement agreement

10.1 In cases where the Commissioner has entered into a settlement agreement with the relevant person or imposed one or more enforcement actions on that person, the Commissioner will verify compliance with those requirements in order to ensure that the regulatory objectives are achieved.

10.2 It may become apparent in some cases that a relevant person has failed to comply with these requirements. In such cases, the Commissioner will respond by taking further action against the relevant person.

Failure to comply with a settlement agreement

10.3 If it becomes apparent through evidence that a relevant person has failed to comply with a requirement in a settlement agreement, the Commissioner may apply to a county court for an order requiring the relevant person to comply with that requirement.

10.4 It should be noted that the Commissioner's right to apply to a county court for an order to require compliance with a settlement agreement remains in force for a relevant period of 5 years²⁶ beginning on the day when the settlement agreement is entered into.

Failure to comply with an enforcement action

10.5 If it becomes apparent that a relevant person has failed to comply with an enforcement action imposed on that person, there are several different steps the Commissioner may take against the relevant person. As with the above, the Commissioner may apply to a county court for an order to require the relevant person to comply with the enforcement action.²⁷ The Commissioner's right to apply to a county court for an order to require compliance with an enforcement action remains in force for a period of 5 years beginning on the day when the decision notice is given to the relevant person. If a relevant person has prepared an action plan, the Commissioner may apply to a county court for an order to require an organization to comply with that action plan. In such case, the Commissioner's right to make such an application is valid for a period of 5 years commencing from the day on which the action plan comes into force.

10.6 The Commissioner may also undertake a further statutory investigation into whether a relevant person has failed to comply with an enforcement action imposed upon that person. The Commissioner may only undertake an investigation into those matters listed in section 71(2) of the Measure – and this does not include a civil penalty.

²⁶ See Section 92(2) of the Welsh Language Measure

²⁷ The Commissioner may not apply to the high court in relation to requiring a relevant person to prepare an action plan or an imposed civil penalty. See paragraph 10.9 in relation to a civil penalty.

10 Failure to comply with an enforcement action or a settlement agreement

10.7 Unlike a statutory investigation undertaken into a suspected failure of a relevant person to comply with a standard, the Commissioner does not have to suspect that a relevant person has failed to comply with an enforcement action in order to undertake a statutory investigation as outlined in 10.6.

10.8 If the Commissioner has evidence of a failure to comply with an enforcement action, the Commissioner will not give the relevant person an opportunity to respond to the allegations before deciding whether or not to undertake the investigation. Except for this, the same processes will be followed as outlined in sections 6 - 9 of this policy, excluding any references to a complainant with any reference to a 'standard' being read as a reference to an 'enforcement action'. It should be noted that the same powers are available to the Commissioner as in a statutory investigation into a suspected failure of a relevant person to comply with a standard.²⁸

10.9 Section 10 of this policy is not relevant in respect of failure to comply with a civil penalty imposed. However, the Commissioner may recover an unpaid civil penalty as a debt owed to the Commissioner. This may include taking legal action against the relevant person in the Civil Court.

²⁸ It should be noted that the Commissioner may only seek to enter into a settlement agreement with a relevant person in relation to a failure to comply with a standard.

11 Working with the Ombudsman and other commissioners

111 Sections 20 and 21 of the Welsh Language Measure outline to what degree the Commissioner may work collaboratively with the Ombudsman²⁹ and other commissioners³⁰.

112 If it appears to the Commissioner that the subject matter of the Commissioner's statutory investigation is a matter which could also be subject to an investigation by the Ombudsman or another commissioner, the Commissioner, if she is of the opinion that it is appropriate, will do the following:

- inform the Ombudsman or the relevant commissioner of the statutory investigation, including the Commissioner's proposals for undertaking the investigation and
- consult with the Ombudsman or the relevant commissioner in relation to the statutory investigation.

113 If it becomes apparent, as a result of the above, that both parties are investigating connected matters, they may do one or more of the following:

- co-operate with each other in relation to their separate investigations
- conduct a joint investigation and
- prepare and publish a joint report in relation to their separate investigations or their joint investigation.

114 If the Commissioner does not undertake a statutory investigation, the Commissioner, if she thinks it appropriate, will give the person seeking to bring the case information regarding how to refer the connected matter to the Ombudsman or another relevant commissioner. The Commissioner will also give that information to any other person interested in the case.

²⁹ Namely the Public Services Ombudsman for Wales.

³⁰ Namely the Children's Commissioner for Wales, the Older People's Commissioner for Wales and the Equality and Human Rights Commission at present. Welsh Ministers can add to this list of Ombudsmen and Commissioners by order.

12 Register of enforcement action

12.1 In accordance with section 109(1) of the Welsh Language Measure, the Commissioner must maintain a register of enforcement action noting details of every statutory investigation undertaken by the Commissioner.

12.2 A copy of the current register is available for inspection at the Commissioner's office and an electronic copy is available on the Commissioner's website.

12.3 The register includes the following details:

- a description of every statutory investigation undertaken by the Commissioner
- the Commissioner's findings on the statutory investigations
- the Commissioner's determination on the statutory investigations
- a statement noting whether or not the Commissioner took further action
- if the Commissioner took further action, a statement of that action
- details of decision notices and
- details of appeals made to the Tribunal under Part 5 of the Welsh Language Measure.

12.4 The Commissioner will keep the register up to date. The details in the register will be kept in accordance with the Commissioner's Document Information Retention and Disposal Policy.

13 Glossary of terms

13.1 The following glossary of terms does not include legal definitions but provides a concise explanation of their meanings.

30

Term	Explanation
Enforcement action	Enforcement action is the name given to the following actions: <ul style="list-style-type: none">○ a requirement upon a relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of a failure to comply○ a requirement upon the relevant person to take specific steps for the purpose of preventing the continuation or repetition of a failure to comply○ the Commissioner publicising the relevant person's failure to comply○ a requirement upon the relevant person to publicise the failure to comply and○ a civil penalty imposed on the relevant person.
Register of enforcement action	This is the name given to the register which the Commissioner must maintain. See section 12 of this policy for more details.
Commissioner	All references to the Commissioner in this document are references to the Welsh Language Commissioner, a post created under the Welsh Language (Wales) Measure 2011.
Frivolous or vexatious complaints	The intention in such cases is to prevent any complaints which are obviously completely unsubstantiated, when the complaints are possibly ones which have been submitted previously, or there is no hope or basis to consider whether the complaint will succeed.

13 Glossary of terms

31

Term	Explanation
Complaint	A complaint any person may submit to the Commissioner about the conduct of a relevant person in relation to a standard with which that person is required to comply. See section 4 of this policy for more details.
Settlement agreement	Seeking to enter into a settlement agreement is one of the steps the Commissioner may take after determining, as the result of a statutory investigation, that a relevant person has failed to comply with a standard. See clauses 7.23 - 7.25 of this policy for more details.
Imposition day	The day from which a person is to be required to comply with a standard or with a standard in a respect as specified in a Compliance Notice.
Compliance notice	A notice given to relevant persons by the Commissioner specifying the specific standards with which must comply, together with the imposition days for those standards – as specified in that notice.
Evidence notice	<p>A notice the Commissioner may give to a person in a statutory investigation. An evidence notice may include a requirement upon a person to do one or more of the following:</p> <ul style="list-style-type: none">○ provide information in that person's possession○ produce documents in that person's possession and○ give oral evidence. <p>See clauses 6.6 – 6.10 of this policy for more details.</p>

13 Glossary of terms

32

Term	Explanation
Welsh Language Measure	All references to the Welsh Language Measure in this document are references to the Welsh Language (Wales) Measure 2011.
Relevant person	Relevant person is the name given to an organization that is required by duty to comply with one or more standards of conduct.
Enforcement Policy	<p>This document. It is a document which the Commissioner is required to produce under section 108 of the Welsh Language Measure and which sets out advice and information on the Commissioner's intended approach to the exercise of the Commissioner's functions under Part 5 of the Welsh Language Measure.</p> <p>The Commissioner may not produce or amend the document without the approval of the Welsh Ministers.</p>
Power of entry and inspection	<p>A power the Commissioner has in respect of a statutory investigation. The Commissioner may enter premises controlled by a relevant person who is under investigation if the Commissioner is of the opinion that it is necessary to inspect those premises for the purposes of the investigation. See clauses 6.16 and 6.17 for more details.</p> <p>This power also applies in relation to consideration by the Commissioner of the adequacy of a draft action plan. See clause 7.12 for more details.</p>

13 Glossary of terms

Term	Explanation
Regulatory functions	This is the name given to describe the Commissioner's duties and powers under Part 5 of the Welsh Language Measure.
The Tribunal	All references to the Tribunal in this document are references to the Welsh Language Tribunal. The Tribunal was established by the Welsh Language (Wales) Measure 2011 to deal with appeals and applications for reviews of some of the Commissioner's decisions. More information can be obtained by contacting the Tribunal directly.
Statutory investigation	A statutory investigation is an investigation undertaken by the Commissioner under section 71 of the Welsh Language Measure in order to determine whether or not a relevant person has failed to comply with a requirement imposed on that relevant person. Such a requirement may be a standard with which a relevant person is required to comply or an enforcement action imposed upon that person as the result of a previous statutory investigation. This does not include a failure to comply with a civil penalty.

14 Procedure for complaints about the actions of the Commissioner

14.1 The Commissioner has a specific complaints procedure available if any person wishes to complain about acts or omissions relating to the exercise of the Commissioner's functions.

14.2 This procedure has been established in accordance with section 14 of the Welsh Language Measure.

14.3 Further details regarding this procedure are available on the website or by contacting the Commissioner directly and are available in the offices of the Commissioner.

14.4 The Commissioner can be contacted using the details below: Tel:

- 0845 6033 221
- E-mail: post@welshlanguagecommissioner.org
- Website: welshlanguagecommissioner.org



Comisiynydd y
Gymraeg
Welsh Language
Commissioner