



Welsh Language (Wales) Measure 2011

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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,

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- (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 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.

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- (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.

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- (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.

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- (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).

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- (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—

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- (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
 - (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—

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- (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—
 - “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”)

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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—
 - (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—
 - (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).

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- (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;
 - (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.