



# Welsh Language (Wales) Measure 2011

## 2011 nawm 1

### PART 4

#### STANDARDS

#### CHAPTER 1

##### DUTY TO COMPLY WITH STANDARDS

#### **25 Duty to comply with a standard**

- (1) A person (P) must comply with a standard of conduct specified by the Welsh Ministers in accordance with Chapter 2 if, and for as long as, the following conditions are met.
- (2) Condition 1 is that P is liable to be required to comply with standards (see Chapter 3).
- (3) Condition 2 is that the standard is potentially applicable to P (see Chapter 4).
- (4) Condition 3 is that the standard is specifically applicable to P (see Chapter 5).
- (5) Condition 4 is that the Commissioner has given a compliance notice to P (see Chapter 6).
- (6) Condition 5 is that the compliance notice requires P to comply with the standard (see Chapter 6).
- (7) Condition 6 is that the compliance notice is in force (see Chapter 6).
- (8) Subsection (1) is subject to the provisions of the compliance notice given to P.
- (9) For provision about—
  - (a) rights of challenge in respect of the duty to comply with standards, see Chapter 7;
  - (b) standards investigations and reports, see Chapter 8;
  - (c) general matters, see Chapter 9.

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## CHAPTER 2

### STANDARDS AND THEIR SPECIFICATION

#### *Specification of standards*

#### **26 Welsh Ministers to specify standards**

- (1) The Welsh Ministers may, by regulations—
  - (a) specify one or more service delivery standards,
  - (b) specify one or more policy making standards,
  - (c) specify one or more operational standards,
  - (d) specify one or more promotion standards, and
  - (e) specify one or more record keeping standards.
- (2) The Welsh Ministers may, by regulations, make other provision about such standards.

#### **27 Specification of standards: supplementary provision**

- (1) The Welsh Ministers may specify a record keeping standard relating to the keeping of records that fall within section 32(1)(b)(ii) (complaints concerning the Welsh language other than complaints concerning a person's compliance with other standards) only if it appears to the Welsh Ministers that the standard would—
  - (a) assist the Welsh Ministers to exercise any function under this Measure, or
  - (b) assist the Commissioner to exercise any function.
- (2) Regulations under any of paragraphs (a) to (e) of section 26(1) may specify different standards of the kind referred to in that paragraph in relation to different conduct.
- (3) Regulations under any of paragraphs (a) to (e) of section 26(1) may specify, in relation to particular conduct—
  - (a) a single standard of the kind referred to in that paragraph, or
  - (b) a number of standards of the kind referred to in that paragraph.
- (4) Standards specified under section 26(1), or regulations under section 26(2), may, among other things, deal with any of the following—
  - (a) the preparation, by persons who are under the duty in section 25 to comply with standards, of strategies or plans setting out how they propose to comply with the standards;
  - (b) procedures to be followed by persons who are under the duty in section 25 to comply with standards;
  - (c) the collection of information by persons who are under the duty in section 25 to comply with standards, including information about the use of Welsh and the use of English in relation to a particular conduct;
  - (d) information to be made available to the Commissioner;
  - (e) monitoring arrangements and publicity requirements;
  - (f) reporting requirements.

### *Service delivery standards*

## **28 Service delivery standards**

- (1) In this Measure “service delivery standard” means a standard that—
  - (a) relates to a service delivery activity, and
  - (b) is intended to promote or facilitate the use of the Welsh language, or to work towards ensuring that the Welsh language is treated no less favourably than the English language, when that activity is carried out.
- (2) In this section “service delivery activity” means a person—
  - (a) delivering services to another person, or
  - (b) dealing with any other person in connection with delivering services—
    - (i) to that other person, or
    - (ii) to a third person.

### *Policy making standards*

## **29 Policy making standards**

- (1) In this Measure “policy making standard” means a standard that—
  - (a) relates to a policy decision, and
  - (b) is intended to secure, or to contribute to securing, one or more of the following results.
- (2) The first of those results is that the person making the policy decision considers what effects, if any, (whether positive or adverse) the policy decision would have on—
  - (a) opportunities for other persons to use the Welsh language, or
  - (b) treating the Welsh language no less favourably than the English language.
- (3) The second of those results is that the person making the policy decision considers how the decision could be made so that the decision has positive effects, or increased positive effects, on—
  - (a) opportunities for other persons to use the Welsh language, or
  - (b) treating the Welsh language no less favourably than the English language.
- (4) The third of those results is that the person making the policy decision considers how the decision could be made so that the decision does not have adverse effects, or has decreased adverse effects, on—
  - (a) opportunities for other persons to use the Welsh language, or
  - (b) treating the Welsh language no less favourably than the English language.
- (5) In this section a reference to positive or adverse effects is a reference to such effects whether direct or indirect.
- (6) In this section “policy decision” means a decision by a person about—
  - (a) the exercise of the person’s functions, or
  - (b) the conduct of the person’s business or other undertaking.

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### *Operational standards*

#### **30 Operational standards**

- (1) In this Measure “operational standard” means a standard that—
- (a) relates to the relevant activities of a person (A), and
  - (b) is intended to promote or facilitate the use of the Welsh language—
    - (i) by A in carrying out A’s relevant activities,
    - (ii) by A and another person in dealings between them in connection with A’s relevant activities, or
    - (iii) by a person other than A in carrying out activities for the purposes of, or in connection with, A’s relevant activities.
- (2) In this section—
- (a) “relevant activities” means—
    - (i) functions, or
    - (ii) a business or other undertaking;
  - (b) a reference to the carrying out of relevant activities is to—
    - (i) the exercise of functions, or
    - (ii) the conduct of a business or other undertaking.

### *Promotion standards*

#### **31 Promotion standards**

In this Measure “promotion standard” means a standard (relating to any activity) that is intended to promote or facilitate the use of the Welsh language more widely.

### *Record keeping standards*

#### **32 Record keeping standards**

- (1) In this Measure “record keeping standard” means a standard relating to the keeping of—
- (a) records about other specified standards, and
  - (b) records about—
    - (i) complaints concerning a person’s compliance with other specified standards, or
    - (ii) other complaints concerning the Welsh language.
- (2) In this section “specified standard” means a standard specified by the Welsh Ministers under section 26(1).

## CHAPTER 3

### PERSONS LIABLE TO BE REQUIRED TO COMPLY WITH STANDARDS

#### **33 Persons liable to be required to comply with standards**

- (1) A person (P) is liable to be required to comply with standards if P is—
  - (a) within Schedule 5 and also within Schedule 6, or
  - (b) within Schedule 7 and also within Schedule 8.
- (2) This section applies for the purposes of this Part.

#### **34 Persons who are within Schedules 5, 6, 7 and 8**

- (1) A person is within Schedule 5 if the person is within a category of persons specified in column (2) of the Schedule 5 table.
- (2) A person is within Schedule 6 if the person—
  - (a) is specified in column (1) of the Schedule 6 table, or
  - (b) is within a category of persons specified in that column.
- (3) A person is within Schedule 7 if the person is within a category of persons specified in column (2) of the Schedule 7 table.
- (4) A person is within Schedule 8 if the person—
  - (a) is specified in column (1) of the Schedule 8 table, or
  - (b) is within a category of persons specified in that column.
- (5) A change in the name of a person specified in Schedule 6 or in Schedule 8 does not affect the operation of this Measure in relation to the person.
- (6) References in this Part to a person's entry in the Schedule 6 table or the Schedule 8 table are to the entry in that table which (in column (1)) specifies—
  - (a) P, or
  - (b) a category of persons which P is within.
- (7) This section applies for the purposes of this Measure.

#### **35 Amendment of persons and categories specified in Schedules 6 and 8**

- (1) The Welsh Ministers may, by order, amend the Schedule 6 table and Schedule 8 table in accordance with this section.
- (2) The Welsh Ministers may amend the Schedule 6 table so that column (1) includes a reference to—
  - (a) a person who falls within one or more of the Schedule 5 categories, or
  - (b) a category of persons, all of whom fall within one or more of the Schedule 5 categories.
- (3) The Welsh Ministers may amend the Schedule 6 table by removing any reference in column (1).
- (4) The Welsh Ministers may amend the Schedule 8 table so that column (1) includes a reference to—

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- (a) a person who falls within one or more of the Schedule 7 categories, or
  - (b) a category of persons, all of whom fall within one or more of the Schedule 7 categories.
- (5) The Welsh Ministers may amend the Schedule 8 table by removing any reference in column (1).
- (6) The Welsh Ministers may make such other amendments of the Schedule 6 table or Schedule 8 table, or of any other provision of this Measure, as they think appropriate in connection with, for the purposes of, or in consequence of, the powers in any of subsections (2) to (5).
- (7) In this section—
- “Schedule 5 category” (“*catgori yn Atodlen 5*”) means a category of persons specified in column (2) of the Schedule 5 table;
  - “Schedule 7 category” (“*catgori yn Atodlen 7*”) means a category of persons specified in column (2) of the Schedule 7 table.

## CHAPTER 4

### STANDARDS POTENTIALLY APPLICABLE

#### **36 Persons within Schedule 6**

- (1) This section applies to a person (P) who is within Schedule 6.
- (2) A standard specified by the Welsh Ministers under section 26(1) is potentially applicable to P if it belongs to a class of standard that is specified in column (2) of P’s entry in the Schedule 6 table.
- (3) For that purpose, each of the following is a class of standard—
- (a) service delivery standards;
  - (b) policy making standards;
  - (c) operational standards;
  - (d) promotion standards;
  - (e) record keeping standards.
- (4) This section applies for the purposes of this Part.

#### **37 Persons within Schedule 8**

- (1) This section applies to a person (P) who is within Schedule 8.
- (2) A standard specified by the Welsh Ministers under section 26(1) is potentially applicable to P if, and to the extent that, the standard is—
- (a) a service delivery standard that relates to the provision by P of a specified service (a “qualifying service delivery standard”), or
  - (b) a record keeping standard that relates to the keeping of records about—
    - (i) qualifying service delivery standards,
    - (ii) complaints concerning P’s compliance with qualifying service delivery standards, or

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(iii) complaints concerning the Welsh language that relate to the provision by P of specified services.

- (3) In this section “specified service” means a service that is specified in column (2) of P’s entry in the Schedule 8 table.
- (4) This section applies for the purposes of this Part.

### **38 Amendment of standards potentially applicable**

- (1) The Welsh Ministers may, by order, amend the Schedule 6 table and Schedule 8 table in accordance with this section.
- (2) The Welsh Ministers may amend the Schedule 6 table so that column (2) of an entry includes a reference to one or more of the following—
- (a) service delivery standards;
  - (b) policy making standards;
  - (c) operational standards;
  - (d) record keeping standards.
- (3) The Welsh Ministers may amend the Schedule 6 table so that column (2) of any of the following entries in the table includes a reference to promotion standards—
- (a) the Welsh Ministers’ entry;
  - (b) a county borough council’s entry;
  - (c) a county council’s entry;
  - (d) a National Park authority’s entry;
  - (e) an entry for any other person, but only if the person has given consent that promotion standards should be potentially applicable to that person.
- (4) For the purpose of subsection (3)—
- (a) “consent” means consent in writing given to the Welsh Ministers;
  - (b) a person may withdraw consent, but only with the agreement of the Welsh Ministers;
  - (c) if a person withdraws consent after that person’s entry has been amended to include a reference to promotion standards, the Welsh Ministers must amend the Schedule 6 table by removing the reference to promotion standards in the entry for that person.
- (5) The Welsh Ministers may amend the Schedule 6 table by removing any reference in column (2).
- (6) The Welsh Ministers may amend the Schedule 8 table so that column (2) of an entry relating to a person or category of person includes a reference to provision of a service (the “specified service”), but only if—
- (a) the condition in subsection (7) is met, and
  - (b) the condition in subsection (8) or (9) is met.
- (7) The specified service must fall within a category of service specified in column (3) of the Schedule 7 table (an “available service”).
- (8) If the specified service is to relate to a person within Schedule 8, that person must fall within the category of persons in column (2) of the Schedule 7 table to which the available service relates.

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- (9) If the specified service is to relate to a category of persons within Schedule 8, all persons within that category must fall within the category of persons in column (2) of the Schedule 7 table to which the available service relates.
- (10) The Welsh Ministers may amend the Schedule 8 table by removing any reference in column (2).
- (11) The Welsh Ministers may make such other amendments of the Schedule 6 table or Schedule 8 table, or of any other provision of this Measure, as they think appropriate in connection with, for the purposes of, or in consequence of, the powers under any of subsections (2) to (10).

## CHAPTER 5

### STANDARDS THAT ARE SPECIFICALLY APPLICABLE

#### **39 Standards that are specifically applicable**

- (1) A standard specified by the Welsh Ministers under section 26(1) is specifically applicable to a person (P) if the Welsh Ministers, by regulations, authorise the Commissioner to give P a compliance notice requiring P to comply with the standard.
- (2) The regulations may provide for a standard to be specifically applicable to P by means of provision that refers to—
  - (a) P in particular, or
  - (b) a group of persons which P is within.
- (3) This section applies for the purposes of this Part.

#### **40 Duty to make standards specifically applicable**

- (1) This section applies in relation to each standard that is specified by the Welsh Ministers under section 26(1).
- (2) The Welsh Ministers must secure that regulations under section 39 provide for the standard to be specifically applicable to one or more persons.

#### **41 Different standards relating to particular conduct**

- (1) This section applies if regulations under any of paragraphs (a) to (e) of section 26(1) specify a number of standards of the kind referred to in that paragraph in relation to particular conduct.
- (2) Regulations under section 39 may provide for one or more of the following—
  - (a) for one standard to be specifically applicable to one person, to two or more persons, or to a group of persons;
  - (b) for two or more standards to be specifically applicable to one person, to two or more persons, or to a group of persons;
  - (c) for different standards to be specifically applicable to different persons.



**42 Duty to make certain service delivery standards specifically applicable**

- (1) This section applies if regulations under section 39 provide for any service delivery standard to be specifically applicable to a person (P).
- (2) The Welsh Ministers must secure that regulations under section 39 provide for service delivery standards relating to all of the activities specified in Schedule 9 (so far as such standards have been specified by the Welsh Ministers under section 26(1)) to be specifically applicable to P if, and to the extent that, P carries out those activities.
- (3) But the Welsh Ministers need not secure that regulations provide for service delivery standards to be specifically applicable to P in relation to an activity specified in Schedule 9 if, or to the extent that—
  - (a) a standards report under section 64 indicates that it would be unreasonable or disproportionate for service delivery standards to be specifically applicable to P in relation to that activity, or
  - (b) the Welsh Ministers think it would be unreasonable or disproportionate for service delivery standards to be specifically applicable to P in relation to that activity.
- (4) This section does not prevent regulations under section 39 from providing for other service delivery standards to be specifically applicable to P.
- (5) The Welsh Ministers may, by order, amend Schedule 9 by adding, omitting or amending a reference to an activity.

**43 Limitation on power to make standards specifically applicable**

- (1) Regulations under section 39 may not provide for a standard to be—
  - (a) specifically applicable to a person unless the standard is potentially applicable to that person, or
  - (b) specifically applicable to a group of persons unless the standard is potentially applicable to all the persons in that group.
- (2) Regulations under section 39 may not provide for a standard to be specifically applicable to a Minister of the Crown unless the Secretary of State consents to that provision.
- (3) In a case where—
  - (a) a standard is specifically applicable to a Minister of the Crown, and
  - (b) the standard is modified by provision in regulations under section 26, the standard as modified is not specifically applicable to the Minister of the Crown unless the Secretary of State consents to that provision in those regulations.
- (4) In this section, “Minister of the Crown” has the same meaning as in Schedule 6.

## CHAPTER 6

### COMPLIANCE NOTICES

#### *Compliance notices*

#### **44 Compliance notices**

- (1) In this Measure “compliance notice” means a notice given by the Commissioner to a person (P) which—
  - (a) sets out, or refers to, one or more standards specified by the Welsh Ministers under section 26(1), and
  - (b) requires P to comply with the standard or standards set out or referred to.
- (2) A compliance notice may require a person to comply with a particular standard—
  - (a) in some circumstances, but not in other circumstances;
  - (b) in some area or areas, but not in other areas.
- (3) If regulations under section 39 provide for two or more standards specified in relation to particular conduct to be specifically applicable to a particular person, a compliance notice may require the person—
  - (a) to comply with only one of the standards, or
  - (b) to comply with different standards—
    - (i) at different times;
    - (ii) in different circumstances (whether at the same time or different times);
    - (iii) in different areas (whether at the same time or different times).

#### *Giving compliance notices*

#### **45 Giving compliance notices to any person**

- (1) The Commissioner may give a person (P) a compliance notice only if P is liable to be required to comply with standards (see Chapter 3).
- (2) A compliance notice given to P may set out, or refer to, a particular standard specified by the Welsh Ministers under section 26(1) only if the standard—
  - (a) is potentially applicable to P (see Chapter 4), and
  - (b) is specifically applicable to P (see Chapter 5).
- (3) If the Commissioner gives P a compliance notice, the Commissioner must also—
  - (a) give P a copy of any relevant code of practice issued under section 68, and
  - (b) inform P of the right of challenge under Chapter 7.
- (4) For provision about giving compliance notices to contractors, see section 48.

#### **46 Imposition days**

- (1) This section applies as respects each standard specified in a compliance notice given to a person.

- (2) The notice must state the imposition day or imposition days.
- (3) The imposition day, or the earliest of the imposition days, must fall after the end of the period of 6 months beginning with the day on which the notice is given.
- (4) In this section “imposition day”, in relation to a standard, means—
  - (a) the day from which a person is to be required to comply with the standard, or
  - (b) the day from which a person is to be required to comply with the standard in a respect.
- (5) For provision about giving compliance notices to contractors, see section 48.

#### **47 Consultation**

- (1) The Commissioner must consult a person before giving the person a compliance notice.
- (2) But subsection (1) does not require the Commissioner to consult a person on any matter if the Commissioner is satisfied that the person has already been consulted, or given the opportunity to be consulted, on that matter in connection with a standards investigation (see Chapter 8).
- (3) The failure of a person to participate in a consultation does not prevent the Commissioner from giving the person a compliance notice.

#### **48 Giving compliance notices to contractors**

- (1) This section applies (in addition to sections 45 and 46) in relation to a qualifying person who provides the public with services (the “relevant services”) provided under an agreement, or in accordance with arrangements, made with a public authority (the “relevant contract”).
- (2) A compliance notice given to the qualifying person may set out, or refer to, a particular standard (the “relevant standard”) in relation to the provision of the relevant services under the relevant contract only if—
  - (a) the public authority is required to comply with the relevant standard in providing the public with the relevant services (or would be so required if it provided the public with those services),
  - (b) the relevant contract was entered into on or after the public authority’s imposition day, and
  - (c) the qualifying person’s imposition day falls on or after the public authority’s imposition day.
- (3) The Commissioner must secure that the requirement for the qualifying person to comply with the relevant standard (which arises by virtue of the compliance notice being given in accordance with subsection (2)) is the same as, or no greater than, the requirement for the public authority to comply with the standard.
- (4) Expressions used in this section and in Schedule 8 have the same meanings in this section as in Schedule 8.
- (5) In this section—

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“public authority’s imposition day” (“*diwrnod gosod yr awdurdod cyhoeddus*”) means the day, or the earliest of the days, on which the public authority is required to comply with the relevant standard;

“qualifying person’s imposition day” (“*diwrnod gosod y person neilltuedig*”) means the day, or the earliest of the days, stated in the compliance notice given to the qualifying person as a day when the qualifying person is to be required to comply with the relevant standard in relation to the provision of the relevant services under the relevant contract.

#### *Varying compliance notices*

### **49 Varying compliance notices**

- (1) The Commissioner may vary any compliance notice.
- (2) Sections 45 to 47 apply to the variation of a compliance notice as they apply to the giving of a compliance notice, but only insofar as the notice is varied.
- (3) Section 48 applies to the variation of a compliance notice as it applies to the giving of a compliance notice.

#### *Revoking compliance notices*

### **50 Revoking compliance notices**

- (1) The Commissioner may revoke any compliance notice.
- (2) Subsections (3) and (4) apply in a case where the Commissioner—
  - (a) revokes a compliance notice that was given to a person (the “old notice”), and
  - (b) at the same time gives that person a compliance notice (the “new notice”).
- (3) Sections 45 to 47 apply to the giving of the new notice only insofar as the new notice is different from the old notice.
- (4) Section 48 applies to the giving of the new notice as it applies to the giving of a compliance notice.

#### *When compliance notice in force*

### **51 When compliance notice in force**

- (1) A compliance notice given to a person (P) is in force from the day when the Commissioner gives the notice to P.
- (2) A compliance notice remains in force unless — and until — it is revoked.
- (3) This section applies for the purposes of this Measure.

### *Publicising compliance notices*

## **52 Publicising compliance notices**

- (1) This section applies in relation to each compliance notice which is in force.
- (2) As from the relevant imposition day, the Commissioner must—
  - (a) ensure that a copy of the compliance notice is available for inspection at the Commissioner’s office, and
  - (b) ensure that copies of the compliance notice are made available at such other places and by such other means (including by electronic means) as the Commissioner thinks appropriate.
- (3) If a person makes an application to the Commissioner under Chapter 7 in respect of a standard, the Commissioner must ensure that, until the application is finally determined, the copies of the compliance notice made available in accordance with subsection (2) indicate—
  - (a) that the application has been made, and
  - (b) that the requirement to comply with the standard does not apply by virtue of section 60 (if that is the case).
- (4) The Commissioner must ensure that the arrangements for inspecting and gaining access to compliance notices 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 inspecting or gaining access to compliance notices.
- (5) In this section “relevant imposition day” means—
  - (a) if only one imposition day is stated in a compliance notice, that imposition day;
  - (b) if two or more imposition days are stated in a compliance notice, the earliest of those days.

### *Cessation of requirement to comply with standard*

## **53 Cessation of requirement to comply with standard**

- (1) This section applies in any case where a person (P) ceases to be under the duty in section 25(1) to comply with a standard because—
  - (a) one or more of conditions 1 to 3 in section 25 cease to be met, or
  - (b) the standard ceases to be specified by the Welsh Ministers under section 26(1).
- (2) As soon as practicable after this section applies, the Commissioner must, by exercising the powers conferred by this Chapter, secure that the change described in subsection (1) is reflected in the compliance notices (if any) that remain in force in relation to P.

## CHAPTER 7

### RIGHT OF CHALLENGE

#### 54 Challenging future duties

- (1) This section applies if—
  - (a) the Commissioner has given a person (P) a compliance notice, and
  - (b) the notice requires P—
    - (i) to comply with a standard, or
    - (ii) to comply with a standard in a particular respect,as from an imposition day that is in the future.
- (2) P may apply to the Commissioner for the Commissioner to determine whether or not the requirement for P to comply with that standard, or comply with it in that respect, is unreasonable or disproportionate.
- (3) If that determination is being made before the imposition day, the Commissioner must make the determination by reference to the circumstances as they are expected to exist on the imposition day.
- (4) An application under this section must be made before the imposition day.
- (5) In this section “imposition day” has the same meaning as in section 46.

#### 55 Challenging existing duties

- (1) This section applies if—
  - (a) the Commissioner has given a person (P) a compliance notice, and
  - (b) the notice already requires P—
    - (i) to comply with a standard, or
    - (ii) to comply with a standard in a particular respect.
- (2) P may apply to the Commissioner for the Commissioner to determine whether or not the requirement for P to comply with that standard, or to comply with it in that respect, is unreasonable or disproportionate.
- (3) But the Commissioner may refuse to accept an application under this section if he or she is satisfied that there has been no material change in P’s circumstances—
  - (a) since the day on which P was first required to comply with that standard, or to comply with it in that respect, or
  - (b) if the Commissioner has determined the relevant question on a previous application under this section, since the Commissioner determined the relevant question on that application.
- (4) In this section “relevant question” means the question to which an application under this section relates.

#### 56 Applications to the Commissioner

- (1) This section applies to an application under section 54 or 55 for the Commissioner to determine whether or not the requirement for P to comply with a standard, or to comply with it in a particular respect, is unreasonable or disproportionate.

- (2) The application must be made in writing.
- (3) The application must be made in the form required by the Commissioner (if he or she requires it to be made in a particular form).
- (4) The application must set out the reasons why P considers that the requirement to comply with the standard, or to comply with it in the particular respect, is unreasonable or disproportionate.

## **57 Determining an application**

- (1) This section applies to—
  - (a) any application under section 54, and
  - (b) any application under section 55 which the Commissioner does not refuse to accept.
- (2) It is for P to show that the requirement for P to comply with the standard, or to comply with it in the particular respect, is unreasonable or disproportionate.
- (3) The Commissioner must determine the application as soon as practicable after the application is made.
- (4) In determining the application, the Commissioner—
  - (a) must consult P, and
  - (b) may consult any other person the Commissioner considers to have an interest in the outcome of the application.
- (5) The Commissioner must notify P of the determination of the application.
- (6) If the Commissioner determines that the requirement for P to comply with the standard, or to comply with it in the particular respect, is unreasonable or disproportionate, he or she must do one of the following—
  - (a) revoke the compliance notice;
  - (b) revoke the compliance notice and give a new compliance notice;
  - (c) vary the existing compliance notice.
- (7) If the Commissioner gives a new compliance notice or varies the existing compliance notice—
  - (a) section 45(3) does not apply, and
  - (b) sections 46(3) and 47 do not apply insofar as the Commissioner and P agree the new compliance notice, or the variation of the existing compliance notice.

## **58 Right of appeal**

- (1) This section applies if the Commissioner notifies P under section 57 of a determination that the requirement for P to comply with a standard, or to comply with it in a particular respect, is not unreasonable or disproportionate.
- (2) P may appeal to the Tribunal for the Tribunal to determine whether or not that requirement is unreasonable or disproportionate.
- (3) An appeal under this section must be made within the period of 28 days beginning with the day when the Commissioner notified P under section 57.

- (4) But the Tribunal may, on a written application by P, allow an appeal to be made after the end of that period if the Tribunal is satisfied that there is a good reason—
  - (a) for the failure to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.
- (5) The Tribunal must notify P and the Commissioner of its determination of an appeal made under this section.
- (6) If the Tribunal determines that the requirement is unreasonable or disproportionate, subsections (6) and (7) of section 57 apply as if the Commissioner had made that determination.
- (7) This section is subject to Tribunal Rules (which may, amongst other things, make provision about the manner in which appeals under this section may be brought).

## **59 Appeals from Tribunal**

- (1) This section applies if the Tribunal has decided an appeal under section 58.
- (2) The Commissioner or P may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the decision.
- (3) If the High Court finds that the Tribunal has made an error on a point of law, the High Court—
  - (a) may set aside the decision of the Tribunal, and
  - (b) if it sets the decision aside, must either—
    - (i) remit the case to the Tribunal with directions for its reconsideration, or
    - (ii) re-make the decision.
- (4) The directions that the High Court may give under subsection (3)(b)(i) include, but are not limited to, either or both of the following—
  - (a) a direction that the persons who are to reconsider the case must not be the persons who made the decision that has been set aside;
  - (b) procedural directions in connection with the reconsideration of the case.
- (5) In re-making the decision in accordance with subsection (3)(b)(ii), the High Court—
  - (a) may make any decision which the Tribunal could make if the Tribunal were making the decision, and
  - (b) may make such findings of fact as the High Court thinks appropriate.
- (6) An application for permission to appeal must be made to the Tribunal or High Court within the period of 28 days beginning with the day when the Tribunal notified the person making the application of its determination of the appeal under section 58.
- (7) But the Tribunal or High Court may, on a written application by the Commissioner or P, allow an appeal to be made after the end of that period if the Tribunal or High Court is satisfied that there is a good reason—
  - (a) for the failure to apply for permission to appeal before the end of that period, and
  - (b) if there has been any delay in applying for permission to appeal out of time, for that delay.



(8) This section is subject to Tribunal Rules.

## **60 Postponement of imposition of duty**

- (1) This section applies if P makes an application under section 54 for the Commissioner to determine whether or not the requirement for P to comply with a standard, or to comply with it in a particular respect, is unreasonable or disproportionate.
- (2) The requirement for P to comply with that standard, or to comply with it in that respect, does not apply unless and until—
  - (a) the Commissioner has determined whether or not the requirement is unreasonable or disproportionate, and
  - (b) P’s rights of appeal are exhausted.
- (3) For that purpose, P’s rights of appeal are exhausted if—
  - (a) the period mentioned in section 58(3) for making an appeal to the Tribunal has ended without an appeal being made, or
  - (b) an appeal under section 58 has been made and determined, and a further appeal—
    - (i) may not be made, or
    - (ii) may be made only with the permission of the Tribunal or a court.

## **CHAPTER 8**

### **STANDARDS INVESTIGATIONS AND REPORTS**

#### *Standards investigations*

## **61 Standards investigations**

- (1) In this Measure “standards investigation” means an investigation carried out in relation to a person (P) for the purpose of determining one or more of the following questions—
  - (a) whether P should be — or should continue to be — liable to be required to comply with standards;
  - (b) if P is within Schedule 6, what standards (if any) should be — or should continue to be — potentially applicable to P;
  - (c) if P is within Schedule 8, what services (if any) should be — or should continue to be — specified in column (2) of P’s entry in the Schedule 8 table;
  - (d) what standards (if any) should be — or should continue to be — specifically applicable to P (whether or not the standards are already specified by the Welsh Ministers under section 26(1));
  - (e) any other question which the Commissioner considers to be relevant to the extent to which P may be subject to the duty in section 25(1) to comply with standards.
- (2) A particular standards investigation may be carried out in relation to—
  - (a) a particular person, or
  - (b) a group of persons.

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## **62 Power to carry out standards investigations**

- (1) The Commissioner may carry out standards investigations.
- (2) But the Commissioner may not carry out a standards investigation unless he or she has given an exploration notice to each relevant person, at least 14 days before beginning the investigation.
- (3) An exploration notice is a notice in writing which—
  - (a) states that the Commissioner is proposing to carry out a standards investigation, and
  - (b) specifies the subject matter of the standards investigation.
- (4) In this section “relevant person” means—
  - (a) in the case of a standards investigation relating to a particular person, that person;
  - (b) in the case of a standards investigation relating to a group of persons, such persons—
    - (i) who appear to the Commissioner to be members of the group, and
    - (ii) to whom the Commissioner thinks it appropriate to give exploration notices.

## **63 Requirements when carrying out standards investigations**

- (1) In carrying out a standards investigation, the Commissioner must have regard to the need to secure that requirements for persons to comply with standards by virtue of section 25(1) are not unreasonable or disproportionate.
- (2) If the Commissioner decides, or is directed, that a standards investigation is to consider whether service delivery standards should be specifically applicable to P, the investigation must—
  - (a) consider whether, in respect of each of the activities specified in Schedule 9 which P carries out, it is reasonable and proportionate for service delivery standards to be specifically applicable to P, and
  - (b) as respects each such activity, if it is reasonable and proportionate for service delivery standards to be specifically applicable to P, conclude that service delivery standards should be specifically applicable to P in relation to that activity.
- (3) In carrying out a standards investigation, the Commissioner must consult—
  - (a) each relevant person,
  - (b) the Advisory Panel, and
  - (c) the public, except—
    - (i) if, or
    - (ii) to the extent thatthe Commissioner considers that it is inappropriate to do so.
- (4) The failure of a person to participate in the Commissioner’s consultation does not prevent the Commissioner from carrying out the standards investigation.
- (5) In this section “relevant person” means—
  - (a) in the case of a standards investigation relating to a particular person, that person;

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- (b) in the case of a standards investigation relating to a group of persons, such persons—
  - (i) who appear to the Commissioner to be members of the group, and
  - (ii) whom the Commissioner thinks it appropriate to consult.

### *Standards reports*

## **64 Standards report**

- (1) After carrying out a standards investigation, the Commissioner must produce a standards report.
- (2) A standards report is a document that sets out—
  - (a) the conclusions of the standards investigation, and
  - (b) the Commissioner’s reasons for reaching those conclusions.
- (3) If—
  - (a) the conclusions of the investigation are (in whole or in part) that any standards should be specifically applicable to P, and
  - (b) any or all of those standards are not specified by the Welsh Ministers under section 26(1),the report must set out the standards that are not specified.
- (4) As soon as reasonably practicable after preparing a standards report, the Commissioner—
  - (a) must send a copy of the report to—
    - (i) each relevant person,
    - (ii) the Advisory Panel,
    - (iii) each person who participated in the Commissioner’s consultation under section 63, and
    - (iv) the Welsh Ministers, and
  - (b) may send a copy of the report to any other person whom the Commissioner considers to have an interest in the report.
- (5) In this section “relevant person” means—
  - (a) in the case of a standards investigation relating to a particular person, that person;
  - (b) in the case of a standards investigation relating to a group of persons, such persons—
    - (i) who appear to the Commissioner to be members of the group, and
    - (ii) to whom the Commissioner thinks it appropriate to give a copy of the report.

### *Welsh Ministers' power of direction*

## **65 Direction to carry out standards investigation**

- (1) This section applies if the Welsh Ministers exercise their powers under section 16 to direct the Commissioner so as to direct him or her to carry out a standards investigation in respect of a person or group of persons.

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- (2) The direction must specify the following matters—
- (a) the person or group of persons in respect of which the investigation is to be carried out;
  - (b) the subject matter of the investigation;
  - (c) the reasons why the Welsh Ministers consider that the Commissioner should conduct the standards investigation;
  - (d) the period (which must be no shorter than six months) within which the Commissioner must carry out the standards investigation.
- (3) Subsection (2) does not prevent the direction from specifying other matters.

*Regard to be had to standards report*

## **66 Welsh Ministers to have due regard to report**

- (1) This section applies if the Commissioner has carried out a standards investigation and produced a standards report (whether or not at the direction or request of the Welsh Ministers).
- (2) The Welsh Ministers must have due regard to the standards report in deciding whether, and how, to exercise the powers conferred on them by this Part.

## **CHAPTER 9**

### **GENERAL**

*Exception for broadcasting*

## **67 Exception for broadcasting**

- (1) This Measure—
  - (a) does not require, and
  - (b) does not authorise a person to require,
 a person to comply with a standard if, and to the extent that, the standard relates to broadcasting.
- (2) In this section—
  - (a) “broadcasting” means the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms;
  - (b) but references to broadcasting do not include any activity that is carried out in connection with broadcasting (unless the activity is itself broadcasting).

### *Codes of practice*

#### **68 Codes of practice**

- (1) The Commissioner may issue codes of practice for the purpose of providing practical guidance with respect to the requirements of any standards specified by the Welsh Ministers under section 26(1) (“standards codes of practice”).
- (2) The Commissioner may revise or withdraw standards codes of practice.
- (3) The Commissioner must not issue, revise or withdraw a standards code of practice without the consent of the Welsh Ministers.
- (4) Before seeking that consent, the Commissioner must consult—
  - (a) persons who are required to comply with the standard or standards to which the code of practice relates, and
  - (b) the Advisory Panel.
- (5) Where a code of practice is issued or revised by the Commissioner, the Commissioner must also issue a notice in writing—
  - (a) identifying the code in question and stating the date of issue, and
  - (b) specifying to which standard or standards the code relates.
- (6) Where the Commissioner withdraws a code of practice, the Commissioner must issue a notice in writing identifying the code in question and stating the date on which the code is to cease to have effect.

#### **69 Failure to comply with codes**

- (1) A person’s failure to comply with a provision of an approved code of practice does not render that person liable to enforcement action of any kind.
- (2) But if any action under this Measure is taken in respect of a failure of a person (P) to comply with a standard (“the alleged standards failure”)—
  - (a) a failure by P to comply with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is liable for the alleged standards failure, and
  - (b) compliance with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is not liable for the alleged standards failure.
- (3) References in this section to an approved code of practice are references—
  - (a) to a standards code of practice as it has effect for the time being, and
  - (b) where a standards code of practice has been revised, to that code as revised as it has effect for the time being.

### *Interpretation*

#### **70 Interpretation**

- (1) In this Part—
  - (a) references to a person being liable to be required to comply with standards are to be read in accordance with section 33;

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- (b) references to a person’s entry in the Schedule 6 table or the Schedule 8 table are to be read in accordance with section 34;
- (c) references to a standard being potentially applicable to a person are to be read in accordance with sections 36 and 37;
- (d) references to a standard being specifically applicable to a person are to be read in accordance with section 39.

(2) In this Part—

“Schedule 5 table” means the table in Schedule 5;

“Schedule 6 table” means the table in Schedule 6;

“Schedule 7 table” means the table in Schedule 7;

“Schedule 8 table” means the table in Schedule 8.