

SCHEDULE 2

(introduced by section 7)

INQUIRIES BY THE COMMISSIONER

Introduction

- 1 This Schedule applies to inquiries under section 7.

Terms of reference

- 2 Before conducting an inquiry, the Commissioner must prepare the terms of reference of the inquiry.
- 3 (1) This paragraph applies if the terms of reference relate to a particular person or category of person.
- (2) The terms of reference must specify that person or category of person.
- (3) Before settling the terms of reference, the Commissioner must—
- (a) give each relevant person notice of the proposed terms,
 - (b) give each relevant person an opportunity to make representations about the proposed terms, and
 - (c) consider any representations made.
- (4) After settling the terms of reference (having complied with sub-paragraph (3)), the Commissioner must—
- (a) publish the terms of reference of the inquiry in a manner that the Commissioner thinks is likely to bring the inquiry to the attention of persons whom it concerns or who are likely to be interested in it, and
 - (b) give notice of the terms of reference to—
 - (i) each relevant person, and
 - (ii) the Welsh Ministers.
- (5) In this paragraph “relevant person” means—
- (a) a person specified in the terms of reference of an inquiry, and
 - (b) in relation to a category of persons specified in the terms of reference of an inquiry, each person whom the Commissioner considers to fall within that category.
- 4 (1) This paragraph applies if the terms of reference do not relate to a particular person or category of person.
- (2) The Commissioner must—
- (a) publish the terms of reference of the inquiry in a manner that the Commissioner thinks is likely to bring the inquiry to the attention of persons whom it concerns or who are likely to be interested in it, and
 - (b) give notice of the terms of reference to the Welsh Ministers.
- 5 Paragraph 3 or 4 applies to any change in the terms of reference as the paragraph would apply if the change in the terms were the preparation of those terms.

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Representations

- 6 (1) The Commissioner must make arrangements for giving persons an opportunity to make representations in relation to inquiries.
- (2) The arrangements must give the following persons an opportunity to make representations in the course of an inquiry—
- (a) each person who—
 - (i) is specified in the terms of reference, or
 - (ii) falls within a category of person specified in the terms of reference, and
 - (b) the Welsh Ministers.
- (3) Arrangements under this paragraph may, amongst other things, include arrangements for oral representations.
- 7 (1) The Commissioner must consider representations made in relation to an inquiry by—
- (a) a person who—
 - (i) is specified in the terms of reference, or
 - (ii) falls within a category of person specified in the terms of reference, or
 - (b) a legal adviser who is acting on behalf of a person falling within paragraph (a)(i) or (ii), or
 - (c) the Welsh Ministers.
- (2) The Commissioner must consider representations made in relation to an inquiry by any other person, unless the Commissioner thinks it is appropriate to refuse to do so.
- (3) If the Commissioner refuses to consider representations made in relation to an inquiry, he or she must give the person who made the representations written notice of—
- (a) the decision to refuse to consider the representations, and
 - (b) the reasons for the decision.
- (4) In this paragraph “legal adviser” means—
- (a) a person who, for the purposes of the Legal Services Act 2007, is an authorised person, or a European lawyer who is an exempt person by virtue of paragraph 7 of Schedule 3 to that Act, in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and
 - (b) an advocate or solicitor in Scotland.

Reports on inquiries

- 8 (1) The Commissioner must prepare a report of his or her findings on any inquiry.
- (2) The report must not—
- (a) identify a failure to comply with a relevant requirement (within the meaning of Part 5) by a person who is, or may be, identified by virtue of the report, or
 - (b) otherwise refer to the activities of a person who is, or may be, identified by virtue of the report, unless the Commissioner thinks that the reference—
 - (i) will not cause the person harm, or

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- (ii) is necessary for the report to adequately reflect the results of the inquiry (having regard to its terms of reference).
- (3) The Commissioner must send a draft of the report to the Welsh Ministers.
- (4) If the terms of reference specify a particular person or category of person, the Commissioner must also send a draft of the report to each relevant person.
- (5) The Commissioner must—
 - (a) give the Welsh Ministers, and any other person to whom a draft of a report is sent, an opportunity to make representations about the draft report, and
 - (b) consider any representations made.
- (6) After settling the report (having complied with sub-paragraph (5)), the Commissioner must publish it.
- (7) This paragraph does not affect the application of the Data Protection Act 1998 to the Commissioner.
- (8) In this paragraph “relevant person” has the same meaning as in paragraph 3.