



# National Assembly for Wales Commissioner for Standards Measure 2009

## 2009 nawm 4

### *Investigatory Powers of the Commissioner*

#### **11 Power to call for witnesses and documents**

- (1) The Commissioner may, in accordance with section 12, require any person—
  - (a) to attend before the Commissioner for the purpose of giving evidence, or
  - (b) to produce to the Commissioner documents in the possession or under the control of that person,concerning any matter relevant to an investigation which the Commissioner is carrying out under this Measure.
- (2) For the purposes of this section,
  - (a) a person will be taken to comply with a requirement to produce a document if that person produces a copy of the document or an extract of the relevant part of the document,
  - (b) “document” means anything in which information is recorded in any form, and
  - (c) references to producing a document are to producing the information recorded in it in a visible and legible form.
- (3) The Commissioner may pay such reasonable allowances and expenses to persons giving evidence before the Commissioner, or producing documents to the Commissioner, as the Commissioner may determine.

#### **12 Witnesses and documents: notice**

- (1) A requirement under section 11 may only be imposed on a person by the Commissioner giving the person in question notice in writing specifying—

- (a) the time and place at which the person is to attend and the particular subjects concerning which the person is required to give evidence,
  - (b) the documents, or types of documents, which the person is to produce, the date by which and the person to whom they are to be produced and the particular subjects concerning which they are required.
- (2) Notice under subsection (1) is to be given—
- (a) in the case of an individual, by sending it in accordance with subsection (3) addressed to the person at the person's usual or last known address or, where the person has given an address for service of the notice, at that address, or
  - (b) in any other case, by so sending it addressed to the person at the person's registered or principal office,
- but may only be given if the address in question is in Wales or in England.
- (3) A notice is sent in accordance with this subsection if it is sent—
- (a) by a registered post service (within the meaning of the Postal Services Act 2000 (c. 26)), or
  - (b) by postal service which provides for its delivery by post to be recorded.

### **13 Oaths and affirmations**

The Commissioner may—

- (a) administer an oath or affirmation to any person giving evidence to the Commissioner, and
- (b) require that person to take an oath or make an affirmation.

### **14 Privilege and public interest immunity**

- (1) A person is not obliged by any requirement imposed under section 11(1) to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Wales or England.
- (2) A person acting as prosecutor in criminal proceedings is not obliged under section 11(1) to answer any question or to produce any document concerning the operation of the system of criminal prosecution in any particular case if that person (or, if subsection (3) applies, the Counsel General) considers that answering the question or producing the document might prejudice criminal proceedings in the case or would otherwise be contrary to the public interest.
- (3) This subsection applies if the proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General.

### **15 Offences**

- (1) A person to whom a notice has been given under section 12(1) commits an offence if that person—
  - (a) refuses or fails without reasonable excuse to attend before the Commissioner as required by the notice,
  - (b) refuses or fails without reasonable excuse, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice,

- (c) refuses or fails without reasonable excuse to produce any document required to be produced by the notice, or
  - (d) intentionally alters, suppresses, conceals or destroys any such document.
- (2) Subsection (1) is subject to section 14.
- (3) Any person who, without reasonable excuse, refuses to take an oath or make an affirmation when required to do so under section 13 commits an offence.
- (4) If a person charged with an offence under subsection (1)(a), (b) or (c) or under subsection (3) adduces evidence of a reasonable excuse for the refusal or failure, it is for the prosecution to prove that the person did not have such an excuse.
- (5) A person guilty of an offence under this section is liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale,
  - (b) to imprisonment for a period not exceeding three months, or
  - (c) both.
- (6) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
- (7) In subsection (6) “director”, in the case of a body corporate whose affairs are managed by its members, means a member of the body corporate.

## **16 Restriction on disclosure of information**

- (1) Except as permitted by subsection (2), the Commissioner or the staff of, or any other person appointed by, the Commissioner must not disclose any information contained in the complaint or any information which is furnished to or obtained by them in the course of, or for the purposes of, an investigation into that complaint.
- (2) Such information may be disclosed for the purpose of—
- (a) enabling or assisting the Commissioner to discharge any functions imposed or conferred on the Commissioner by virtue of any provision in this Measure,
  - (b) enabling the Commissioner to comply with any duty imposed on the Commissioner by or under any other enactment, or
  - (c) the investigation or prosecution of any offence or suspected offence.

## **17 Protection from defamation actions**

- (1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Measure—
- (a) by the Commissioner, or
  - (b) to the Commissioner
- is absolutely privileged.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

**18 Transitional provision**

- (1) The Assembly may require the Commissioner to undertake an investigation into any complaint which, on the day when this section comes into force, has been received, or is under investigation, under rules referred to in section 10(1)(b).
- (2) Any such requirement may direct the Commissioner to take into account any information in connection with the complaint which is specified in the direction.
- (3) Subject to any such requirement, any complaint which the Commissioner is directed to investigate is to be treated in the same way as any other complaint which is made to the Commissioner.