



# Welsh Language (Wales) Measure 2011

## 2011 nawm 1

### PART 4

#### STANDARDS

#### 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—

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- (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

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- (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.