



Welsh Language (Wales) Measure 2011

2011 nawm 1

PART 5

ENFORCEMENT OF STANDARDS

CHAPTER 1

INVESTIGATING FAILURE TO COMPLY WITH STANDARDS ETC

Investigations

71 Investigating failure to comply with standards etc

- (1) The Commissioner may investigate whether a person (D) has failed to comply with a relevant requirement.
- (2) In this Part, “relevant requirement” means any of the following—
 - (a) a duty to comply with a standard specified by the Welsh Ministers (see section 25);
 - (b) a requirement included in a decision notice by virtue of section 79 (requirement to prepare action plan or take steps);
 - (c) an action plan (see sections 79 and 80);
 - (d) a requirement included in a decision notice by virtue of section 82 (publicising failure to comply).
- (3) If the relevant requirement is a duty to comply with a standard, the Commissioner may undertake an investigation under this section only if he or she suspects that D has failed to comply with the relevant requirement.
- (4) Schedule 10 makes further provision about investigations.

72 Discontinuing an investigation

- (1) This section applies if the Commissioner undertakes an investigation under section 71.
- (2) The Commissioner may, at any time, discontinue the investigation.
- (3) If the Commissioner decides to discontinue the investigation, the Commissioner must—
 - (a) inform each interested person, and
 - (b) inform D of the reasons for reaching the decision.
- (4) The Commissioner must comply with subsection (3) as soon as practicable after reaching the decision.

Determination of investigation

73 Determination of investigation

- (1) lies if—
 - (a) the Commissioner undertakes an investigation under section 71, and
 - (b) does not discontinue the investigation.
- (2) The Commissioner must determine whether or not D has failed to comply with the relevant requirement.
- (3) The Commissioner must—
 - (a) produce an investigation report, and
 - (b) give a copy of the investigation report to each interested person.
- (4) The Commissioner must—
 - (a) give D a decision notice, and
 - (b) give a copy of the decision notice to any other interested person.
- (5) This section is subject to section 85.

Investigation reports

74 Investigation reports

- (1) In this Measure, “investigation report” means a report on an investigation under section 71 which includes all of the following—
 - (a) the terms of reference of the investigation;
 - (b) a summary of the evidence taken during the investigation;
 - (c) the Commissioner’s findings on the investigation;
 - (d) the Commissioner’s determination of whether or not D has failed to comply with the relevant requirement;
 - (e) a statement of whether the Commissioner is taking further action;
 - (f) if the Commissioner is taking further action, a statement of that action.
- (2) Subsection (1) does not prevent the Commissioner from including other matters in an investigation report.

Decision notices

75 Decision notices

- (1) In this Measure “decision notice” means a notice that states the Commissioner’s determination of whether or not D has failed to comply with the relevant requirement.
- (2) Subsection (1) does not prevent a decision notice from including other matters (and certain provisions of this Part require a decision notice to include other matters in certain circumstances).

No failure to comply: Commissioner’s options

76 No failure to comply with a relevant requirement

- (1) This section applies if the Commissioner determines that D has not failed to comply with a relevant requirement.
- (2) The Commissioner may—
 - (a) take no further action, or
 - (b) act under subsection (3).
- (3) The Commissioner may do one or more of the following things—
 - (a) give D or any other person recommendations;
 - (b) give D or any other person advice.
- (4) If the investigation that led to the determination follows a complaint under section 93, the relevant decision notice must inform the person who made the complaint of the right to appeal under section 99.
- (5) This section is subject to section 85.
- (6) In this section, “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to the person who made the complaint under section 93.

Failure to comply: Commissioner’s options

77 Failure to comply with a relevant requirement

- (1) This section applies if the Commissioner determines that D has failed to comply with a relevant requirement.
- (2) The Commissioner may—
 - (a) take no further action,
 - (b) act under subsection (3), or
 - (c) act under subsection (4).
- (3) The Commissioner may do one or more of the following things—
 - (a) require D to prepare an action plan for the purpose of preventing the continuation or repetition of D’s failure to comply with the relevant requirement;

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- (b) require D to take steps for the purpose of preventing the continuation or repetition of D’s failure to comply with the relevant requirement;
 - (c) publicise D’s failure to comply with the relevant requirement;
 - (d) require D to publicise the failure to comply with the relevant requirement;
 - (e) impose a civil penalty on D.
- (4) The Commissioner may do one or more of the following things—
- (a) give D or any other person recommendations;
 - (b) give D or any other person advice;
 - (c) seek to enter into a settlement agreement with D (see Chapter 2), but only if the relevant requirement is a duty to comply with a standard.
- (5) If the Commissioner seeks to enter into a settlement agreement with D—
- (a) D is not obliged to enter into such an agreement;
 - (b) if D declines to enter into a settlement agreement, the Commissioner may, but need not, exercise his or her powers under this section differently.
- (6) If the Commissioner acts under subsection (3), subsections (2) and (3) do not prevent the Commissioner from also doing either or both of the following—
- (a) giving D or any other person recommendations;
 - (b) giving D or any other person advice.
- (7) This section is subject to section 85.

No imposed enforcement action

78 No imposed enforcement action

- (1) This section applies if the Commissioner—
- (a) determines that D has failed to comply with a relevant requirement, but
 - (b) decides—
 - (i) to take no further action, or
 - (ii) to act under section 77(4).
- (2) The relevant decision notice must give the Commissioner’s reasons for deciding—
- (a) to take no further action, or
 - (b) to act under section 77(4) and not under section 77(3).
- (3) This section is subject to section 85.
- (4) In this section “relevant decision notice” means the notice which the Commissioner is required by section 73 to give to D.

Preventing continuation or repetition of D’s failure

79 Requirement to prepare action plan or take steps

- (1) This section applies if the Commissioner—
- (a) determines that D has failed to comply with a relevant requirement, and
 - (b) decides to require D to do either or both of the following—

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- (i) to prepare an action plan for the purpose of preventing the continuation or repetition of D’s failure to comply with the relevant requirement;
 - (ii) to take steps for the purpose of preventing the continuation or repetition of D’s failure to comply with the relevant requirement.
- (2) The relevant decision notice must set out what the Commissioner requires D to do.
- (3) If the Commissioner requires D to prepare an action plan, the relevant decision notice must specify the period within which D must—
 - (a) produce a first draft plan, and
 - (b) give that draft to the Commissioner.
- (4) The relevant decision notice must inform D of—
 - (a) the consequences if D does not comply with a requirement included in the notice by virtue of this section; and
 - (b) the right to appeal under section 95.
- (5) This section is subject to section 85.
- (6) In this section “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to D.

80 Action plans

- (1) This section applies if the Commissioner gives D a decision notice which requires D to prepare an action plan.
- (2) D must give a first draft plan to the Commissioner within the period specified in the decision notice.
- (3) After receiving a first draft plan from a person the Commissioner must—
 - (a) approve it, or
 - (b) give the person a notice which—
 - (i) states that the draft is not adequate,
 - (ii) requires the person to give the Commissioner a revised draft by a specified time, and
 - (iii) may make recommendations about the content of the revised draft.
- (4) Subsection (3) applies in relation to a revised draft plan as it applies in relation to a first draft plan.
- (5) An action plan comes into force—
 - (a) at the end of the period of six weeks beginning with the date on which a first draft or revised draft is given to the Commissioner, if that period expires without the Commissioner—
 - (i) giving a notice under subsection (3)(b), or
 - (ii) applying for an order under subsection (6)(b), or
 - (b) upon a court’s declining to make an order under subsection (6)(b) in relation to a revised draft of the plan.
- (6) The Commissioner may apply to a county court—

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- (a) for an order requiring a person to give the Commissioner a first draft plan by a time specified in the order; or
 - (b) for an order requiring a person who has given the Commissioner a revised draft plan to prepare and give to the Commissioner a further revised draft plan—
 - (i) by a time specified in the order, and
 - (ii) in accordance with any directions about the plan’s content specified in the order.
- (7) An action plan may be varied by agreement between the Commissioner and the person who prepared it.
- (8) Paragraphs 5 to 12 of Schedule 10 apply in relation to consideration by the Commissioner of the adequacy of a draft action plan as they apply in relation to the conduct of an investigation.

Publicising D’s failure to comply

81 Publicising the failure to comply

- (1) In this Measure, references to the Commissioner publicising D’s failure to comply with the relevant requirement are to the Commissioner doing either or both of the following—
- (a) publishing a statement that D has failed to comply with the relevant requirement;
 - (b) publishing the investigation report produced in relation to the investigation of D.
- (2) In this Measure, references to D being required to publicise the failure to comply with the relevant requirement are to D being required to publicise any or all of the following—
- (a) a statement that D has failed to comply with the relevant requirement;
 - (b) the investigation report produced in relation to the investigation of D;
 - (c) other information relating to D’s failure to comply with the relevant requirement.

82 Requiring the failure to comply to be publicised

- (1) This section applies if the Commissioner—
- (a) determines that D has failed to comply with a relevant requirement, and
 - (b) decides to do either or both of the following—
 - (i) publicise D’s failure to comply with the relevant requirement;
 - (ii) require D to publicise the failure to comply with the relevant requirement.
- (2) The relevant decision notice must set out what the Commissioner—
- (a) is to do to publicise D’s failure;
 - (b) requires D to do to publicise the failure.
- (3) The relevant decision notice must inform D of—

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- (a) the consequences if D does not comply with a requirement included in the notice by virtue of this section; and
 - (b) the right to appeal under section 95.
- (4) This section is subject to section 85.
- (5) In this section “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to D.

Civil penalties

83 Civil penalties

- (1) The Commissioner must have regard to the matters set out in subsection (2) when determining—
- (a) whether to impose a civil penalty on any person, and
 - (b) the amount of any civil penalty.
- (2) Those matters are—
- (a) the seriousness of the matter in respect of which the civil penalty is to be imposed;
 - (b) the circumstances of the person on whom the civil penalty is to be imposed;
 - (c) the need to prevent the continuation or repetition of the matter in respect of which the civil penalty is to be imposed.
- (3) Subsection (1) does not prevent the Commissioner from having regard to other matters.
- (4) A civil penalty must not exceed £5,000.
- (5) A civil penalty is recoverable by the Commissioner as a debt due to the Commissioner.
- (6) The Commissioner must pay all civil penalties received by him or her into the Welsh Consolidated Fund.
- (7) The Welsh Ministers may, by order, substitute a different amount for the amount that is specified for the time being in subsection (4).
- (8) In this section “civil penalty” means any civil penalty that may be imposed by the Commissioner.

84 Imposition of civil penalty

- (1) This section applies if the Commissioner—
- (a) determines that D has failed to comply with a relevant requirement, and
 - (b) decides to impose a civil penalty on D.
- (2) The relevant decision notice must—
- (a) set out the civil penalty which the Commissioner has decided to impose;
 - (b) set out how the civil penalty may be paid;
 - (c) set out the period within which the civil penalty must be paid (which must be a period of not less than 28 days).
- (3) The relevant decision notice must also inform D of—

- (a) the consequences if D does not pay the civil penalty; and
 - (b) the right to appeal under section 95.
- (4) This section is subject to section 85.
- (5) In this section “relevant decision notice” means the decision notice which the Commissioner is required by section 73 to give to D.

Consultation

85 Consultation before final determination etc

- (1) This section applies if the Commissioner undertakes an investigation under section 71.
- (2) Before finally determining whether or not D has failed to comply with the relevant requirement, the Commissioner must give each interested person notice of the determination which the Commissioner is proposing to make.
- (3) Before finally deciding what, if any, further action to take, the Commissioner must give each interested person—
- (a) notice of whether or not the Commissioner is proposing to take further action, and a statement of the Commissioner’s reasons for proposing to do so;
 - (b) if the Commissioner is proposing to take further action, notice of that proposed action, and a statement of the Commissioner’s reasons for proposing to take that action; and
 - (c) copies of the draft of the decision notice which the Commissioner is proposing to give.
- (4) Before settling the investigation report, the Commissioner must give each interested person a draft of the proposed report.
- (5) The Commissioner must—
- (a) give D an opportunity to make representations about the proposals referred to in subsections (2), (3) and (4), and
 - (b) give any other interested person an opportunity to make representations about the proposals referred to in subsections (2) and (4).
- (6) The Commissioner must have due regard to any representations made by D or any other interested person before the Commissioner does any thing to which the representations relate.
- (7) The Commissioner is to determine the period within which a person may make representations in accordance with subsection (5); but the period must not be less than 28 days.

86 Consultation before final determination following an appeal

- (1) This section applies if the Commissioner is directed, following an appeal under section 99 or 101, or following any further appeal, to determine under section 73 that D has failed to comply with a standard (the “new determination”).
- (2) Before finally deciding what, if any further action to take based upon the new determination, the Commissioner must give each interested person—

- (a) notice of whether or not the Commissioner is proposing to take further action, and a statement of the Commissioner’s reasons for proposing to do so;
 - (b) if the Commissioner is proposing to take further action, notice of that proposed action, and a statement of the Commissioner’s reasons for proposing to take that action; and
 - (c) copies of the draft of the decision notice which the Commissioner is proposing to give.
- (3) Before settling the investigation report, the Commissioner must give each interested person a draft of the proposed report.
- (4) The Commissioner must—
- (a) give D an opportunity to make representations about the proposals referred to in subsections (2) and (3), and
 - (b) give any other interested person an opportunity to make representations about the proposals referred to in subsection (3).
- (5) The Commissioner must have due regard to any representations made by D or any other interested person under subsection (4).
- (6) The Commissioner is to determine the period within which a person may make representations in accordance with subsection (4); but the period must not be less than 28 days.

When enforcement action takes effect

87 When enforcement action takes effect

- (1) This section applies if the Commissioner gives D a decision notice setting out enforcement action which the Commissioner has decided to take in relation to a determination under section 73.
- (2) D must—
- (a) prepare an action plan or take steps, or
 - (b) publicise a failure to comply,
- if, in accordance with section 79 or 82, the decision notice requires D to do so.
- (3) D must pay a civil penalty set out in the decision notice in accordance with section 84.
- (4) But subsections (2) and (3) apply only after the end of the 28 day period for making a relevant appeal.
- (5) The Commissioner may publicise D’s failure to comply with the relevant requirement only after the end of the 28 day period for making a relevant appeal.
- (6) If a relevant appeal is made, subsections (2), (3) and (5) do not apply unless and until—
- (a) that appeal, and any further appeal, has been disposed of, and
 - (b) a further appeal—
 - (i) may not be made, or
 - (ii) may be made only with the permission of the Tribunal or a court.
- (7) In this section “relevant appeal” means an appeal to the Tribunal under section 95 in respect of the matters set out in the decision notice.

Enforcement by county court

88 Failure to comply with requirement to take steps

- (1) This section applies if the Commissioner gives D a decision notice that requires D to take steps for the purpose of preventing the continuation or repetition of D's failure to comply with the relevant requirement.
- (2) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with the requirement in the decision notice.
- (3) In this section "relevant period" means the period of 5 years beginning with the day when the decision notice is given.

89 Failure to comply with action plan

- (1) This section applies if D has prepared an action plan in accordance with section 80.
- (2) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with the action plan.
- (3) In this section "relevant period" means the period of 5 years beginning with the day when the action plan comes into force.

90 Failure to comply with requirement to publicise failure to comply

- (1) This section applies if the Commissioner gives D a decision notice that requires D to take steps to publicise the failure to comply.
- (2) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with the requirement in the decision notice.
- (3) In this section "relevant period" means the period of 5 years beginning with the day when the decision notice is given.