



Welsh Language (Wales) Measure 2011

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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—

- (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—

- (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.

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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.

CHAPTER 2

SETTLEMENT AGREEMENTS

91 Settlement agreements

- (1) A reference to a settlement agreement between the Commissioner and a person (D) in relation to D's failure to comply with a standard (the "relevant failure") is a reference to an agreement which contains—
 - (a) an undertaking by D to do one or more of the following—
 - (i) not to fail to comply with one or more standards;
 - (ii) to take particular action (which may include, but is not limited to, the preparation of a plan of steps to be taken);
 - (iii) to refrain from taking particular action; and
 - (b) an undertaking by the Commissioner not to take enforcement action in respect of the relevant failure.
- (2) A settlement agreement—

- (a) may include incidental or supplemental provision (which may include, but is not limited to, provision for termination in specified circumstances), and
 - (b) may be varied or terminated by agreement of the Commissioner and D.
- (3) D is not to be taken to have admitted the relevant failure by reason only of entering into a settlement agreement.
- (4) Subsection (1) applies for the purposes of this Measure.

92 Failure to comply with settlement agreement

- (1) The Commissioner may, during the relevant period, apply to a county court for an order requiring D to comply with a settlement agreement.
- (2) In this section “relevant period” means the period of 5 years beginning with the day when the settlement agreement is entered into.

CHAPTER 3

NON-COMPLIANCE WITH STANDARDS: COMPLAINTS BY PERSONS AFFECTED

93 Consideration of whether to investigate if conduct complained about

- (1) The Commissioner must consider whether to carry out an investigation under section 71 of whether the conduct of a person (D) (“the alleged conduct”) amounts to a failure to comply with a standard if—
 - (a) a person (P) makes a complaint to the Commissioner about that conduct, and
 - (b) that complaint is valid.
- (2) A complaint made by P to the Commissioner is a valid complaint if the conditions in subsections (3) to (6) are met.
- (3) P must be—
 - (a) a person who appears to the Commissioner to have been directly affected by the alleged conduct, or
 - (b) a person acting on behalf of such a person.
- (4) The complaint must be made in writing, unless P’s personal circumstances are such that it would not be reasonable for P to make the complaint in writing.
- (5) The complaint must give an address at which the Commissioner may contact P (whether the address is postal, electronic or of another description).
- (6) The complaint must identify—
 - (a) D, and
 - (b) the alleged conduct.
- (7) But, if those conditions are met, the Commissioner need not consider whether to carry out the investigation of the alleged conduct if—
 - (a) the complaint is made more than 1 year after the affected person became aware of the alleged conduct,
 - (b) the Commissioner considers that the complaint is frivolous or vexatious or is one that has already been made repeatedly, or

- (c) the complaint is withdrawn.
- (8) This section does not prevent the Commissioner from considering whether to carry out the investigation of the alleged conduct if—
 - (a) any of the conditions in subsections (3) to (6) is not met, or
 - (b) subsection (7) applies.
- (9) If a complaint is made under this section by a person acting on behalf of another person, in the provisions of this Measure which relate to appeals or further appeals connected with the complaint, a reference to the person who made the complaint (including a case where that person is referred to as “P”) is to be read as a reference to the other person (and not as a reference to the person who made the complaint).
- (10) In this section “affected person” means the person who appears to the Commissioner to have been directly affected by the alleged conduct.

94 Notification if no investigation etc

- (1) This section applies in any of the following cases.
- (2) The first case is where—
 - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct applies, and
 - (b) the Commissioner decides not to carry out an investigation.
- (3) The second case is where—
 - (a) section 93(7) applies in relation to a complaint, and
 - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct.
- (4) The third case is where the Commissioner decides that the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply.
- (5) The fourth case is where—
 - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply, and
 - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct under section 93(8) or, having considered whether to carry out an investigation under that section, decides not to carry out the investigation.
- (6) The fifth case is where—
 - (a) the Commissioner decides to carry out an investigation, and
 - (b) the Commissioner then decides to discontinue the investigation.
- (7) The Commissioner must notify P of—
 - (a) the decision mentioned in subsection (2)(b), (3)(b), (4), (5)(b) or (6)(b), and
 - (b) the reasons for that decision, and
 - (c) the right of review under section 103.

CHAPTER 4

APPEALS

95 Appeals to the Tribunal

- (1) This section applies if the Commissioner—
 - (a) undertakes an investigation under section 71, and
 - (b) determines that D has failed to comply with a relevant requirement.
- (2) D may appeal to the Tribunal on the grounds that D did not fail to comply with the relevant requirement.
- (3) But D may not appeal to the Tribunal under subsection (2) if the Commissioner has been directed, following an appeal under section 99 or 101, or any further appeal, to determine that D did fail to comply with the relevant requirement.
- (4) If the Commissioner takes enforcement action in connection with D’s failure to comply with the relevant requirement, D may appeal to the Tribunal on the grounds that the enforcement action is unreasonable or disproportionate.
- (5) An appeal under this section must be made before the end of the relevant 28 day period.
- (6) But the Tribunal may, on a written application by D, allow an appeal to be made after the end of the relevant 28 day 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.
- (7) An application under subsection (6) may be made before or after the end of the relevant 28 day period.
- (8) D may appeal under subsection (4) whether or not D also appeals under subsection (2).
- (9) 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).
- (10) In this Chapter “relevant 28 day period” means the period of 28 days beginning with the day on which the Commissioner gives D the decision notice in relation to the investigation.

96 Powers of Tribunal on appeal

- (1) On an appeal under section 95(2), the Tribunal may—
 - (a) affirm the Commissioner’s determination, or
 - (b) annul the Commissioner’s determination.
- (2) On an appeal under section 95(4), the Tribunal may—
 - (a) affirm the enforcement action,
 - (b) vary the enforcement action (including, but not limited to, by taking enforcement action of a different kind), or
 - (c) annul the enforcement action.

- (3) The Tribunal must notify D and the Commissioner of its decision on an appeal under section 95.
- (4) Any decision of the Tribunal on an appeal under section 95 has the same effect, and may be enforced in the same manner, as a determination of the Commissioner.

97 Appeals from Tribunal

- (1) This section applies if the Tribunal has decided an appeal under section 95.
- (2) The Commissioner or D 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 find 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 decision on the appeal under section 95.
- (7) But the Tribunal or High Court may, on a written application by the Commissioner or D, 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.

98 Commissioner's duty on an appeal

- (1) This section applies if—
 - (a) the Commissioner has carried out an investigation under section 71 following a complaint under section 93, and
 - (b) an appeal under section 95 or 97, or any further appeal, is made in relation to the investigation, and

- (c) P is not a party to those proceedings.
- (2) The Commissioner must—
- (a) as soon as reasonably practicable after being informed of the outcome of an appeal under section 95, give the person who made the complaint notice of the outcome,
 - (b) as soon as reasonably practicable after being informed of an appeal under section 97 or any further appeal, give the person who made the complaint notice that the appeal has been made, and
 - (c) as soon as reasonably practicable after being informed of the outcome of an appeal under section 97 or of the outcome of a further appeal, give the person who made the complaint notice of the outcome.

CHAPTER 5

APPEALS BY THE COMPLAINANT

Appeals against a determination that D has not failed to comply with a standard

99 Right of appeal by P

- (1) This section applies if—
- (a) a person (P) makes a complaint under section 93,
 - (b) the Commissioner undertakes an investigation under section 71 following the complaint, and
 - (c) the Commissioner determines that D has not failed to comply with a standard.
- (2) P may appeal to the Tribunal on the grounds that D did fail to comply with the standard.
- (3) An appeal under this section must be made before the end of the relevant 28 day period.
- (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) An application under subsection (4) may be made before or after the end of the relevant 28 day period.
- (6) The Tribunal must notify P and the Commissioner of its decision on an appeal made under this section.
- (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).
- (8) In this Chapter “relevant 28 day period” means the period of 28 days beginning with the day on which the Commissioner gives P the decision notice in relation to the investigation.

100 Powers of Tribunal on appeal by P

- (1) On an appeal under section 99, the Tribunal may—
 - (a) affirm the Commissioner’s determination, or
 - (b) annul the Commissioner’s determination.
- (2) If the Tribunal annuls the Commissioner’s determination (the “original determination”), the Tribunal must direct the Commissioner to determine under section 73 that D has failed to comply with the standard (the “new determination”).
- (3) If the Tribunal gives the Commissioner a direction under subsection (2), the Commissioner must revoke the decision notice and investigation report given under section 73 in relation to the original determination.
- (4) Section 73(3) and (4), and the other provisions of this Measure, apply to the new determination as they apply to any other determination under section 73.
- (5) The investigation report given under section 73(3) in relation to the new determination must include a statement that the Commissioner has made the new determination in compliance with a direction by the Tribunal.
- (6) In their application in relation to the new determination, sections 77, 78, 79, 82 and 84 are subject to section 86 but not to section 85.

101 Appeals from Tribunal

- (1) This section applies if the Tribunal has decided an appeal under section 99.
- (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 decision on the appeal under section 99.

- (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.

102 Commissioner’s duty on an appeal by P

- (1) This section applies if—
- (a) the Commissioner has carried out an investigation under section 71 following a complaint under section 93,
 - (b) an appeal under section 99 or 101, or any further appeal, is made in relation to the investigation, and
 - (c) D is not a party to those proceedings.
- (2) The Commissioner must—
- (a) as soon as reasonably practicable after being informed of the outcome of an appeal under section 99, give D notice of the outcome,
 - (b) as soon as reasonably practicable after being informed of an appeal under section 101 or any further appeal, give D notice that the appeal has been made, and
 - (c) as soon as reasonably practicable after being informed of the outcome of an appeal under section 101 or of the outcome of a further appeal, give D notice of the outcome.

CHAPTER 6

REVIEW BY THE COMPLAINANT

Review of Commissioner’s failure to investigate a complaint

103 P’s right of review

- (1) This section applies if P makes a complaint to the Commissioner under section 93 about D’s conduct (“the alleged conduct”), whether or not that complaint is a valid complaint under that section.
- (2) P may, with the permission of the Tribunal, apply to the Tribunal to review the decision of the Commissioner in any of the cases specified in this section.
- (3) The Tribunal must, subject to section 104, deal with an application for such a review as if it were an application for judicial review made to the High Court.
- (4) The Tribunal must give permission to apply where the Tribunal considers that—
- (a) the application would have a reasonable prospect of success, or
 - (b) there is some other compelling reason why the application should be heard.

Status: This is the original version (as it was originally enacted).

- (5) The first case referred to in subsection (2) is where—
 - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct applies, and
 - (b) the Commissioner decides not to carry out an investigation.
- (6) The second case is where—
 - (a) section 93(7) applies in relation to a complaint, and
 - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct.
- (7) The third case is where the Commissioner decides that the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply.
- (8) The fourth case is where—
 - (a) the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply, and
 - (b) the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct under section 93(8) or, having considered whether to carry out an investigation under that section, decides not to carry out the investigation.
- (9) The fifth case is where—
 - (a) the Commissioner decides to carry out an investigation, and
 - (b) the Commissioner then decides to discontinue the investigation.
- (10) An application under subsection (2) must be made before the end of the relevant 28 day period.
- (11) But the Tribunal may, on a written application by P, allow an application under subsection (2) 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 apply before the end of that period, and
 - (b) if there has been any delay in applying for permission to apply out of time, for that delay.
- (12) An application under subsection (11) may be made before or after the end of the relevant 28 day period.
- (13) The Tribunal must notify P and the Commissioner of its decision on an application made under subsection (2).
- (14) This section is subject to Tribunal Rules (which may, amongst other things, make provision about the manner in which applications under this section may be brought).
- (15) In this Chapter “relevant 28 day period” means the period of 28 days beginning with the day on which the Commissioner gave P notice of his or her decision under section 94.

104 Powers of Tribunal on review

- (1) On an application under section 103, the Tribunal may—
 - (a) affirm the Commissioner’s determination, or
 - (b) annul the Commissioner’s determination.

- (2) If the Tribunal annuls the Commissioner's determination, the Tribunal must remit the case to the Commissioner with directions for its reconsideration.

105 Appeals from Tribunal

- (1) This section applies if the Tribunal has decided an application under section 103(2).
- (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 under this section of its decision on the application under section 103.
- (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.

CHAPTER 7

ADDING A PARTY TO PROCEEDINGS

106 Right to apply to be added as a party to proceedings

- (1) This section applies if—
- (a) an appeal is made to the Tribunal under section 95(2) or section 99, and

Status: This is the original version (as it was originally enacted).

- (b) the appeal is made in relation to a determination made after an investigation that follows a complaint made under section 93.
- (2) In the case of an appeal made under section 95(2)—
 - (a) the Tribunal must notify the person who made the complaint (P) that the appeal has been made, and
 - (b) P may apply to the Tribunal to be added as a party to the proceedings.
- (3) In such a case, if P is added as a party to the proceedings—
 - (a) the Tribunal must notify P of its decision on the appeal, and
 - (b) P may, with the permission of the Tribunal or High Court, appeal to the High Court under section 97 on a question of law arising out of that decision.
- (4) In the case of an appeal made under section 99—
 - (a) the Tribunal must notify D that the appeal has been made, and
 - (b) D may apply to the Tribunal to be added as a party to the proceedings.
- (5) If D is added as a party to proceedings—
 - (a) the Tribunal must notify D of its decision on the appeal, and
 - (b) D may, with the permission of the Tribunal or High Court, appeal to the High Court under section 101 on a question of law arising out of that decision.
- (6) This section is subject to Tribunal Rules (which may, among other things, make provision about the manner in which and the time within which an application under this section to be added as a party to proceedings may be made).
- (7) This section does not prevent Tribunal Rules from making provision about other persons who may be added as a party to proceedings.

CHAPTER 8

GENERAL

Obstruction and contempt

107 Obstruction and contempt

- (1) If the Commissioner is satisfied that the condition in subsection (2) is met in relation to a person, the Commissioner may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
 - (a) without lawful excuse, has obstructed the discharge of any of the Commissioner's functions under this Part, or
 - (b) has done an act in relation to an investigation under section 71 which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) If the Commissioner issues a certificate under subsection (1), the High Court may inquire into the matter.

- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with the person in any manner in which it could have dealt with the person if the person had committed contempt in relation to the High Court.

Enforcement policy document

108 Enforcement policy document

- (1) The Commissioner must produce an enforcement policy document.
- (2) The Commissioner may amend the enforcement policy document.
- (3) An enforcement policy document is a document setting out advice and information on the Commissioner's intended approach to the exercise of the Commissioner's functions under this Part.
- (4) The Commissioner may not produce or amend the enforcement policy document without the approval of the Welsh Ministers.
- (5) The Commissioner must—
 - (a) ensure that a copy of the enforcement policy document is available for inspection at the Commissioner's office, and
 - (b) ensure that copies of the document are made available at such other places and by such other means (including by electronic means) as he or she thinks appropriate.
- (6) The Commissioner must ensure that the arrangements for inspecting and gaining access to copies of the enforcement policy document 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 the document.

Register of enforcement action

109 Register of enforcement action

- (1) The Commissioner must create and maintain a register of enforcement action.
- (2) The register of enforcement action must include all of the following—
 - (a) a description of every investigation undertaken by the Commissioner;
 - (b) as respects each investigation undertaken, the following information as included in the investigation report—
 - (i) the Commissioner's findings on the investigation;
 - (ii) the Commissioner's determination of whether or not D had failed to comply with the relevant requirement;
 - (iii) the statement of whether the Commissioner took further action;
 - (iv) if the Commissioner took further action, the statement of that action;
 - (c) as respects each investigation undertaken, details of any decision notice given;
 - (d) details of appeals made to the Tribunal under Chapter 4 (including, but not limited to, the decisions made by the Tribunal).
- (3) The Commissioner must keep the register of enforcement action up to date.

- (4) The Commissioner must—
 - (a) ensure that a copy of the register of enforcement action is available for inspection at the Commissioner’s office, and
 - (b) ensure that copies of the register of enforcement action are made available at such other places and by such other means (including by electronic means) as he or she thinks appropriate.
- (5) The Commissioner must ensure that the arrangements for inspecting and gaining access to copies of the register of enforcement action 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 the register.
- (6) In this section “investigation” means an investigation under section 71.

Interpretation

110 Interpretation

In this Part—

“enforcement action” (“*camau gorfodi*”), in relation to an investigation under section 71, means one or more of the following—

- (a) requiring D to prepare an action plan for the purpose of preventing the continuation or repetition of D’s failure;
- (b) requiring D to take steps for the purpose of preventing the continuation or repetition of D’s failure;
- (c) publicising D’s failure;
- (d) requiring D to publicise the failure;
- (e) imposing a civil penalty on D;

“interested person” (“*person a chanddo fuddiant*”), in relation to an investigation under section 71, means—

- (a) D, and
- (b) if the investigation follows a complaint under section 93, the person who made the complaint.