

# The Welsh Language Tribunal

Consultation Document

## The Welsh Language Tribunal Rules

Date of issue: **24 November 2014**

Action required: Responses by **19 January 2015**

# The Welsh Language Tribunal Rules

<b>Overview</b>	<p>This consultation seeks opinions on the draft Welsh Language Tribunal (“the Tribunal”) Rules. The Tribunal will hear cases on decisions made by the Welsh Language Commissioner in relation to Welsh Language Standards. (A more detailed explanation of the Tribunal’s work is given below.)</p> <p>The Rules will be made formally by the President of the Welsh Language Tribunal, with the assent of the Welsh Ministers. This consultation is jointly organised by the Tribunal and the Welsh Government.</p>
<b>How to respond</b>	<p>Responses to this consultation should be e-mailed/posted to the address below to arrive by <b>19 January 2015</b> at the latest.</p>
<b>Further information and related documents</b>	<p>Large print, Braille and alternate language versions of this document are available on request.</p> <p>The consultation documents can be accessed from the Welsh Government’s website at <a href="http://www.wales.gov.uk/consultations">www.wales.gov.uk/consultations</a></p>
<b>Contact details</b>	<p>For further information: FREEPOST RTLG-KURC-ELKJ Welsh Language Tribunal Welsh Language Division Cathays Park Cardiff CF10 3NQ</p> <p>e-mail: <a href="mailto:tyg@wales.gsi.gov.uk">tyg@wales.gsi.gov.uk</a> Tel: 029 2082 6841</p>

## **Data protection**

### **How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with issues arising from this consultation on matters concerning the Tribunal. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Tribunal intends to publish a summary of responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address to be published, please tell us this in writing when you send your response. We will then blank them out.

Names and addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 (and the Environmental Information Regulations 2004 when relevant) allow the public to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However the law also allows public bodies to withhold information in some circumstances. If anyone asks to see information we have withheld, the Welsh Government will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. The Welsh Government will get in touch with the person and ask their views before finally deciding whether to reveal the information.

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## **An introduction to the Welsh Language Tribunal**

The Welsh Language (Wales) Measure 2011 (“the Measure”) provides for the establishment of a Welsh Language Tribunal. The Tribunal will hear cases against the Welsh Language Commissioner’s (“the Commissioner”) decisions in relation to Welsh Language Standards.

The Tribunal will be fully established before the Commissioner issues a compliance notice to persons (who may be bodies or public office holders) requiring them to comply with Welsh Language Standards. This will ensure that those persons can exercise their right to appeal to the Tribunal against that requirement. (Once the Standards are imposed upon a person, a number of further situations may arise which would give that person, and others, the right to submit an application to the Tribunal.)

Keith Bush QC was appointed the first President of the Welsh Language Tribunal in July 2014.

## **Welsh Language Standards**

The Measure enables Welsh Ministers to determine standards pertaining to behaviour in relation to how the Welsh language is treated. The Standards will gradually take the place of the present system of Welsh Language Schemes, which are provided for under the Welsh Language Act 1993.

Standards are being created in order to give Welsh speakers more rights; rights which are enforceable. Standards will be imposed upon institutions in relation to provision of services, policy making, and matters relating to operation, promotion and record keeping. The first set of standards deal specifically with Local Authorities, National Park Authorities and the Welsh Government.

The Standards are made by being determined in statutory regulations. The role of the Welsh Government has been to draft the Standards and also the Regulations. Once the Regulations which include the Standards have been approved by the Welsh Assembly, it will then be a matter for the Commissioner to decide which Standards to impose upon Local Authorities, National Park Authorities and the Welsh Ministers, and to ensure that they comply with them.

## **Functions of the Welsh Language Tribunal**

The Measure provides for the Tribunal to conduct hearings on the following matters:

1. Appeals against the Commissioner’s determinations in relation to the imposition of Welsh Language Standards.

2. Appeals against the Commissioner's determinations in relation to a failure by a person to comply with a requirement of the Welsh Language Standards.
3. Appeals against the Commissioner's enforcement actions.
4. Appeals by a complainant against the Commissioner's determination that a person has failed to comply with a Standard.
5. Reviews of the Commissioner's determinations not to investigate a complaint (or to discontinue an investigation).

### **Challenging requirements to comply with Standards**

A person who receives a compliance notice may challenge the requirement to comply with a particular Standard on the grounds that the Standard is unreasonable or disproportionate.

Challenges may also be made in the event of a substantial change in circumstances which make it unreasonable or disproportionate to expect a person to continue to comply with the Standard.

In the first instance, the person will need to submit their challenge to the Commissioner, and get the Commissioner's formal decision on the matter, before, if necessary, appealing against that decision to the Tribunal. If the Tribunal is of the opinion that the requirement to comply with the Standard is unreasonable or disproportionate, the Tribunal must do one of the following:

- Annul the compliance notice
- Annul the compliance notice and issue a new compliance notice
- Vary the present compliance notice

### **Appeals relating to investigations by the Commissioner**

The Commissioner may hold an investigation to see if a person has failed to comply with a Standard. If the Commissioner determines that the person has failed to comply with a Standard, the Commissioner may:

- Take no further action;
- Require the person to prepare an action plan to prevent a recurrence of the failure;
- Publicise the failure to comply;
- Require the person to publicise their failure to comply;
- Impose a civil penalty (up to £5,000) upon the person;
- Give the person (or another person) recommendations or advice;
- Seek to enter into a settlement agreement with the person who has failed to comply.

If the Commissioner has determined that a person has failed to comply with a Standard, that person can appeal to the Tribunal against that determination, that is, on the grounds that there was no failure to comply with the Standard. In such a case, the Tribunal may decide to:

- Affirm the Commissioner's determination, or
- Annul the Commissioner's determination

The person may also appeal to the Tribunal on the grounds that the enforcement action is unreasonable or disproportionate. In such a case, the Tribunal may decide to:

- Affirm the enforcement action
- Vary the enforcement action, or
- Annul the enforcement action

### **Appeals by a complainant**

If, after receiving a complaint from a member of the public that a person has failed to comply with a Standard, the Commissioner holds an investigation and determines that the person did *not* fail to comply with the Standard, the person who made the complaint can appeal to the Tribunal against that determination.

In such a case, the Tribunal may decide to:

- Affirm the Commissioner's determination, or
- Annul the Commissioner's determination

### **Application by a complainant for a review of the Commissioner's decision not to investigate a complaint (or to discontinue an investigation)**

A member of the public who has made a complaint to the Commissioner that a person has failed to comply with a Standard, if the Tribunal will allow, can make an application to the Tribunal to review the Commissioner's decision:

- not to investigate the complaint;
- after having decided to conduct an investigation, to discontinue that investigation before it is completed.

The Tribunal must deal with an application such as this as though it were an application to the High Court for a judicial review, starting with an assessment as to whether there is a reasonable expectation that the application will be successful, or whether there is any other strong reason why the application should be heard. If this is so, the Tribunal will give permission for the application to be heard in full.

In such a case, following a full hearing, the Tribunal may decide to:

- Affirm the Commissioner's determination, or
- Annul the Commissioner's determination

## **Reviewing decisions made by the Tribunal**

The Tribunal will have the right to review its decisions, for example, if the fairness of a case was affected by a mistake in procedure on the part of the administration of the Tribunal.

## **Appeals from the Tribunal**

The Commissioner, or another party to a case heard by the Tribunal, may appeal to the High Court on a legal point which stems from the decision. The Tribunal or the High Court's permission must be secured before doing this.

## **Draft Rules**

### **Purpose of the Rules**

The purpose of establishing operational rules is to ensure that every case which appears before the Tribunal is treated fairly and consistently. Everybody who appears before the Tribunal must understand exactly which actions they need to take in order to present the facts of the dispute and their arguments effectively to the Tribunal. They and any other party involved with the case (the Commissioner, for example) must also be aware which other arguments (and, if no agreement can be reached regarding the facts, which alternative version of the facts) will be considered by the Tribunal.

The Rules set the required operational framework for cases which appear before the Tribunal. This must be done in compliance with section 123 of the Measure. It is proposed that this be done in line with Practice Guidance which shall be issued by the Tribunal President under section 124 of the Measure (and in accordance with Rule 25 of the Rules). The Practice Guidance will include practical advice on interpreting and enforcing the Rules.

There will be further consultation on the draft Practice Guidance which will be produced after the content of the Rules is finalised.

### **Origin of the Rules**

The process of drafting the Rules for the Welsh Language Tribunal is unique. Unlike any other tribunal operating in Wales, the Welsh Language Tribunal has no corresponding body in any jurisdiction in the United Kingdom. The Tribunal's area of work, that is the Standards imposed under the Welsh Language Measure (Wales) 2011, is unique to Wales. This piece of legislation, which aims to ensure parity between users of both languages which have official status in Wales, breaks new ground in the UK.

However, the common aim of tribunals is to decide cases fairly and justly and the primary elements of their procedures are very similar. The draft Rules,



therefore, are based on the key features of the latest tribunal rules to be adopted by a Welsh tribunal, which are included in The Special Educational Needs Tribunal for Wales Regulations 2012 (SI 2012 No. 322 W.53) which can be found here: <http://www.legislation.gov.uk/wsi/2012/322/made>. These rules have been amended significantly to meet the requirements of the Welsh Language Tribunal.

## **Rules overview**

The Rules are divided into eight sections:

- Common rules (which deal with some basic common principles and define the specialist terms used in the Rules);
- Provisions regarding choosing the Tribunal members who will hear individual cases;
- How to commence an application to the Tribunal;
- The practical actions which must be taken to prepare a case to be heard;
- The powers which the Tribunal will have to manage cases, including the directions the Tribunal may give to parties on the actions which they must take before a hearing;
- The process followed for hearings and formal decisions made by the Tribunal;
- What happens after a decision has been reached, including arrangements for reviewing the Tribunal's decisions or appealing to the High Court;
- Various provisions, including administrative rules regarding the recording of decisions, submission of documents and measuring deadlines.

## **Certain key features of the Rules**

### **Rule 3 – The Overriding Objective**

The purpose of this Rule is to declare the main aim of the Rules, which is to allow the Tribunal to decide cases fairly and justly. This rule also speculates details of certain aspects of the objective. The Rule will give guidance to the Tribunal and to the parties on their general conduct in their practice of their functions under the Rules.

### **Rule 6 – The Languages of the Tribunal**

This Rule incorporates the principle of ensuring parity between Welsh and English language users in relation to the Tribunal's procedures. Every party or witness shall have the right to use either language in the proceedings of the Tribunal and when communicating with the Tribunal. The Tribunal, in its administrative arrangements, shall be duty bound to ensure this.

## **Rule 7 – Alternative dispute resolution**

Great importance is attached at present, by courts and tribunals, to the desirability of providing alternative means of resolving disputes (such as mediation), where these means are available and appropriate under individual circumstances. Rule 6 will impose a duty on the Tribunal to draw every party's attention to any such appropriate procedure available.

## **Rules 8 and 9 – Membership of tribunal panels**

The three members of the Tribunal, including a Chair (who will always be legally qualified), who will form a panel to hear an appeal are usually chosen by the President. If circumstances arise which make this undesirable, the President shall delegate the task to another member of the Tribunal who is legally qualified.

## **Rules 10, 11 and 12 – Commencing applications**

These rules apply to commencing applications to the Tribunal, by submission of a written document ("notice of application") to the Tribunal within 28 days of the date that the applicant receives written notice of the Commissioner's decision. This period is set by the Measure but it may be lengthened in accordance with the Rules (in line with Rule 14). Rule 12 prescribes what information must be included in the notice of application.

## **Rule 13 – Actions taken by the Tribunal's Secretary**

Upon receipt of a notice of application, the Tribunal Secretary will usually immediately make a record of the application in the Tribunal's Register and inform the Commissioner. However, if the application does not appear valid (if it does not fall within the Tribunal's powers, for example), the Tribunal may bring this to the attention of those who submitted the notice.

## **Rule 16 – Giving or refusing permission to apply for a review of a decision by the Commissioner**

This Rule applies to the specific procedure for applying, under section 103 of the Measure, for a review of the Commissioner's decision not to investigate a complaint that a person has failed to comply with a Standard (or to discontinue an investigation). The applicant must have the Tribunal's permission (based on the criteria imposed by section 103(4) of the Measure) before submitting an application. The Tribunal (in practice, the President or another legally qualified member) will decide whether the prospective applicant should have the right to submit an application "on paper" but with a right for the prospective applicant to renew the application in a hearing conducted before a panel.

The application will only be accepted as a valid one if the Tribunal gives permission to make the application and if the standard procedure is followed,

starting with recording the application in the Tribunal's Register in accordance with Rule 13.

### **Rules 18 – 22 Case statements and written evidence**

Rules 18 – 22 apply to the procedures a party must follow to submit case statements (outlining the party's case), and any written evidence that the party will rely on to substantiate the case, to the Tribunal (and thereby to the other party or parties). Unless the relevant periods are extended by the Tribunal, the applicant must provide these documents within 20 working days of receiving the Tribunal's notice that the application has been formally registered. The Commissioner may respond within 20 working days of receipt of the applicant's case statement and the applicant may respond to the Commissioner's case statement within 20 working days of its receipt.

### **Rule 23 – Commissioner's failure to submit a case statement**

If the Commissioner does not submit a case statement (or if the Commissioner declares an intent not to oppose the application), then the Tribunal will have the right to determine the case, based on the applicant's case statement and evidence, without a hearing or in a hearing without representation on behalf of the Commissioner.

### **Rules 24 and 25 – Failure to respond to the Tribunal's enquiries**

The Tribunal shall have the right to ask a party, at any time, whether that party still wishes to proceed with its case and, if the party does not confirm that it wishes to do so, the Tribunal will have the right to decide the case formally without a hearing, or following a hearing conducted without representation on behalf of the party.

### **Rules 26 – 35 – The Tribunal's powers to manage cases**

These Rules set out the Tribunal's powers in relation to managing cases. The Tribunal will have the usual scope of powers to give direction with regards to the evidence which will be considered in case hearings, amending case statements content, disclosing personal information and so forth.

The Tribunal will also have the power to include an additional party (for example, if a complainant wishes to formally support the Commissioner's case, and if this is line with the overriding objective) or, if a number of individual applications raise the same question, to order that those hearings be heard together, or that one of them be decided first in order to avoid conducting hearings for the other cases.

The Tribunal will have the power to strike out an application where the applicant has failed to comply with direction or, if the Commissioner has failed to do so, to restrict the Commissioner's ability to oppose the application.

In addition, the Tribunal will have similar powers if it appears to the Tribunal that the application is defective in any way listed in Rule 28.

## **Rules 36 – 47 Application hearings**

Each application submitted to the Tribunal will be decided in a public hearing (unless the parties agree that a case be agreed “on paper” or the Rules allow for the case to be decided in summary, for example when a party does not comply with the Tribunal’s directions).

In an appropriate case, the Tribunal may summons a witness (Rule 41). However, the Tribunal may also receive evidence via telephone or video link (Rule 42).

After the hearing, the panel will consider its decision in private but will publish the decision, including the reasons behind the decision, to the parties and the public (Rules 47 and 60).

## **Rule 48 – Application for review of the Tribunal’s decision**

A party will have the right to apply for a review of the Tribunal’s decision, under the circumstances listed in Rule 48 (for example, where a party had failed to appear in the hearing for good and adequate reasons).

## **Rules 50 and 51 – Appeals to the High Court**

The Measure gives parties the right to appeal from the Tribunal to the High Court, but only with regards a point of law. A party which wishes to appeal must also have the Tribunal or the High Court’s permission (indicating which point of law, in the party’s opinion, is relevant). If an appeal is made to the High Court (with a possibility of further appeals to the Court of Appeal and the Supreme High Court) the Tribunal may suspend the Tribunal’s decision until the appeal has been decided. For example, if the Tribunal had endorsed a penalty imposed by the Commissioner, the Tribunal may order that it need not be paid until after the appeal decision.

## **Rule 53 – Extension of time**

The Tribunal will have a general power under Rule 53 to extend a deadline imposed by the Rules (or by the Tribunal’s direction). This power will not be applicable to applications for extending the time for commencing a case – there is a specific rule (Rule 14) which is applicable to this.

## **Rule 55 – Costs and expenses**

This Rule defines the circumstances which could lead (exceptionally) to an order for a party (or representative of a party) to pay costs and other party expenses.

## **Rule 56 – Power to exercise functions**

If the Rules do not define who may practice its functions on behalf of the Tribunal, it may be that the Tribunal panel, the President or a legally qualified

member of the Tribunal will do so. Practice guidance shall be issued by the President regarding who should practice the Tribunal's functions in particular circumstances.

### **Rule 63 – Method of sending, submitting or serving documents**

Documents may be sent or submitted, in accordance with the Rules, in various means including general first class post or electronically. The Rule creates the assumption that any document sent via first class post will have arrived on the second working day after the date of postage.

### **Rule 64 – Calculating time**

Rule 64 includes rules on calculating time under the Rules. For example, when a deadline has passed on a date which isn't a working day, it is considered that an action which takes place on the next working day has happened within that deadline.