



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

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# Welsh Language Commissioner's Enforcement Policy

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# 1 Background

- 1.1 This policy is a statutory document produced in accordance with section 108 Welsh Language (Wales) Measure 2011 [Welsh Language Measure]. It is a document setting out advice and information on the Welsh Language Commissioner's [the Commissioner] intended approach to the exercise of the Commissioner's functions under Part 5 Welsh Language Measure.
- 1.2 The policy's main target audience are those relevant persons who are required to comply with one or more standards of conduct [standards] in relation to the Welsh language. The policy is also relevant to the public, and to persons<sup>1</sup> wishing to complain to the Commissioner about the alleged conduct of a relevant person.
- 1.3 The Commissioner will continually review the implementation of this policy, publish it on the website and display it in all of the Commissioner's offices and sites.
- 1.4 Further information regarding the Commissioner's other functions can be found on the Welsh Language Commissioner's website.
- 1.5 Welsh Ministers approved this policy on [xx/xx/2015] in accordance to section 108(4) Welsh Language Measure.

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<sup>1</sup> A person in this context includes any individual or body of corporate or non-corporate persons.

## 2 Introduction

- 2.1 The Welsh Language Measure establishes a legal framework to impose a duty on some organizations to comply with one or more standards in relation to the Welsh language. Organizations subject to standards are called *relevant persons*. Standards will operate in the following areas:
- service delivery;
  - policy making;
  - operational;
  - promotion;
  - record keeping.
- 2.2 The duties resulting from the standards mean that relevant persons must not treat the Welsh language less favourably than the English language, together with promoting or facilitating the use of the Welsh language. This links in with the principles that underpin the Commissioner's work namely:
- The official status which the Welsh language has in Wales
  - The duties to use Welsh which are (or may be) imposed by law , and the rights which arise from the enforceability of those duties
  - that the Welsh language should be treated no less favourably than the English language in Wales
  - persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.
- 2.3 Compliance notices given to relevant persons by the Commissioner under the Welsh Language Measure specify the standards they must comply with, together with the imposition days<sup>2</sup> for those standards. Copies of those compliance notices that are in force will be on the Commissioner's website.
- 2.4 Whilst a compliance notice specific to him is in force, a relevant person will be required to comply with a standard.
- 2.5 In relation to the above, the Commissioner has statutory regulatory functions under the Welsh Language Measure to ensure that relevant persons comply with their duties. This could include a standard with which the relevant person is required to comply with, an enforcement action<sup>3</sup> imposed upon him or a settlement agreement which has been entered into. This policy provides advice and information regarding how the Commissioner will exercise those regulatory functions.
- 2.6 The regulatory functions resulting from Part 5 Welsh Language Measure are:
- produce an enforcement policy document;
  - consider carrying out statutory investigations into suspected failures of relevant persons to comply;
  - deal with complaints regarding the alleged conduct of relevant persons;

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<sup>2</sup> The day from which a person is to be required to comply with the standard or with the standard in a respect.

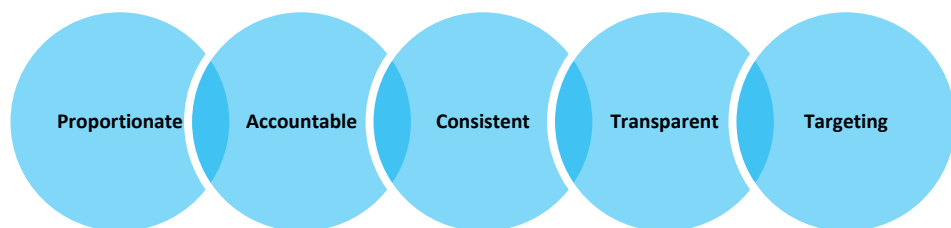
<sup>3</sup> Enforcement action is the name given to the actions noted in clause 7.5(ii) of this policy.

- undertake statutory investigations into suspected failures of relevant persons to comply;
- use powers to prevent the continuation or repetition of failures to comply;
- impose civil penalties for the failures of relevant persons to comply;
- make applications to a county court for orders to enforce compliance;
- comply with the duties resulting from appeals and applications for reviews made to the Welsh Language Tribunal [the Tribunal]; and
- create and maintain a register of enforcement action.

2.7 There are statutory processes to be followed as the Commissioner exercises its regulatory functions. This policy details the aspects associated with those processes.

## 3 Regulation principles

- 3.1 The Legislative and Regulatory Reform Act 2006 requires some regulators<sup>4</sup> to have regard to the principles of good regulation in exercising specific regulatory functions.
- 3.2 In accordance with section 22 of the act noted above, the Regulators' Code was produced and came into force on 6 April 2014, superseding the previous Regulators' Compliance Code and the Enforcement Concordat. The code provides a clear framework for how regulators should engage with those they regulate. There is no statutory duty on the Commissioner to follow the code, but full consideration was given to it in producing this policy in accordance with the recommendations of the Better Regulation Delivery Office<sup>5</sup> and the Welsh Government<sup>6</sup>.
- 3.3 The Commissioner will act in a firm but fair manner using the most appropriate powers in order to carry out the Commissioner's functions and ensure compliance. In accordance with the above, the Commissioner will exercise its regulatory functions by following the five principles noted below:



### (i) Proportionate

- 3.4 In considering a suspected failure of a relevant person to comply, the Commissioner will be proportionate in deciding whether or not a statutory investigation should be undertaken. With this in mind, the Commissioner will consider the facts of each case individually.
- 3.5 In deciding what subsequent action to take as a result of determining that there has been a failure to comply, the Commissioner will consider what is proportionate in order to prevent the continuation or repetition of the failure<sup>7</sup>.
- 3.6 If it becomes apparent that a relevant person has failed to comply with an enforcement action or settlement agreement, the Commissioner will take further action against the relevant person.

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<sup>4</sup> The Commissioner has a relevant regulator status under the provisions of the Local Government (Wales) Measure 2009.

<sup>5</sup> In their document '*Regulators' Code: Frequently Asked Questions*', the Better Regulation Delivery Office notes "We recommend that regulators acting outside the statutory scope of the Regulators' Code should adopt it on a voluntary basis".

<sup>6</sup> In its document '*Inspection, Audit and Regulation in Wales*', the Welsh Government notes that it "expect[s] regulatory enforcement in Wales to follow the principles set out" above.

<sup>7</sup> See Chapter 6 of this policy.

### **(ii) Accountable**

- 3.7 The Commissioner will be accountable for the decisions made by receiving comments and feedback about the enforcement work and the way in which powers are used. The Commissioner has a complaints procedure which a person can use in order to express any concerns regarding the Commissioner's work and decisions<sup>8</sup>.
- 3.8 The Welsh Language Measure provides a mechanism that gives relevant persons and complainants the right to appeal to the Tribunal against some of the Commissioner's decisions. The Tribunal's permission is not required to make an appeal under Section 99 Welsh Language Measure. Also, with the permission of the Tribunal, complainants may apply to it to review the Commissioner's decision in some cases. Those rights are detailed under the relevant sections in this policy.

### **(iii) Consistent**

- 3.9 The Commissioner will be consistent in exercising enforcement policy functions and in making decisions regarding it. It means that the Commissioner will employ a consistent manner in considering the facts of all cases individually and in deciding on an appropriate response. By acting in this way, the Commissioner will ensure fairness, objectivity and impartiality in dealing with various parties.

### **(iv) Transparent**

- 3.10 The Commissioner will be transparent in dealing with its regulatory functions by ensuring that the public and relevant persons understand how those functions are exercised. The Commissioner keeps a record of the details of all statutory investigations undertaken, including any subsequent action taken, by maintaining a register of enforcement action. The Commissioner will publish information in the form of a register of enforcement action.

### **(v) Targeting**

- 3.11 The Commissioner will target regulatory work by implementing several specific measures, including risk. The Commissioner will also consider sharing resources with others where possible, in order to avoid any duplication.
- 3.12 The Commissioner may work with the Ombudsman and other commissioners when undertaking a statutory investigation in some cases<sup>9</sup> or use third parties<sup>10</sup>. The Commissioner will consider the circumstances of the individual case in order to reach a decision on the most appropriate course of action.

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<sup>8</sup> See section 14 of this policy.

<sup>9</sup> See section 11 of this policy and Section 20 Welsh Language Measure.

<sup>10</sup> See Section 11(2)(c) Welsh Language Measure

## 4 Statutory complaints under section 93 Welsh Language Measure

- 4.1 One of the Commissioner's regulatory functions is to deal with complaints under section 93 Welsh Language Measure. The Commissioner's focus in dealing with complaints will be on trying to obtain a satisfactory resolution for the complainant, whether it be by undertaking a statutory investigation or by other means. Where a failure to comply with a standard becomes apparent, consideration will also be given to whether subsequent action needs to be taken in order to prevent the continuation or repetition of that failure.

### Submitting a complaint to the Commissioner

- 4.2 A person may complain to the Commissioner about the conduct of a relevant person in relation to a standard with which he is required to comply with.
- 4.3 The complainant must have been directly affected by the alleged conduct, or be a person acting on behalf of that person.
- 4.4 The Commissioner will accept written complaints by post, by e-mail, through the website and through social media. In order to ensure accessibility, it will be possible for those who cannot submit a written complaint due to their personal circumstances, to contact the Commissioner over the telephone or any other appropriate medium to explain so and to discuss their complaint. The Commissioner will make reasonable provision and provide support for them to submit their complaint through another means.
- 4.5 The Commissioner encourages complainants to complain to the relevant person in the first instance, in order to give them an opportunity to respond, and offer a resolution, where there has been a failure. However it must be made clear that it is not necessary for the complainant to submit a complaint to a relevant person. Furthermore there is a duty on the Commissioner to consider each complaint received.
- 4.6 A complainant, or a person acting on behalf of the complainant, is expected to submit a complaint to the Commissioner within 1 year of becoming aware of the alleged conduct. Otherwise, if a complaint is submitted beyond the period of 1 year, the Commissioner will only consider it if of the opinion that it is appropriate to do so. Such situations may include, but are not restricted to, situations such as a the following:
- the alleged conduct continuing;
  - a serious failure to comply becomes apparent;
  - substantial publicity in the case; or
  - the complainant having a valid reason for not submitting the complaint



earlier.

4.7 A complainant must include adequate details regarding the following in his complaint:

- who the relevant person complained about is;
- what the alleged conduct is;
- how the conduct has affected the complainant; and
- the name and contact details of the complainant.

4.8 Failure to include these details may mean that the Commissioner cannot consider the complaint further.

### **The Commissioner validating the complaint**

4.9 The Commissioner will acknowledge receipt of all written complaints involving the conduct of a relevant person received within 5 working days. In acknowledging, the complainant will be informed whether or not the complaint is a valid one under section 93.

4.10 If it is concluded that the complaint is not a valid one, because it does not comply with the requirements noted in clauses 4.4, 4.6 and 4.7 of this policy<sup>11</sup>, the Commissioner will explain how the complainant may submit a valid complaint, if appropriate.

4.11 If it is concluded that the complaint is a valid one, then the Commissioner is under a duty to consider undertaking a statutory investigation into the question of whether the alleged conduct of the relevant person amounts to a failure to comply with a standard. Only if the Commissioner suspects that the relevant person has failed to comply with a standard may a statutory investigation be undertaken to this end. Some cases are exempt from this duty namely:

- when the complaint has been made more than 1 year after the complainant became aware of the alleged conduct;
- if the Commissioner considers the complaint to be frivolous or vexatious<sup>12</sup>; or
- if the complaint is withdrawn.

4.12 If the Commissioner considers a complaint to be frivolous or vexatious, or if the complaint is withdrawn, the Commissioner will decide to close the complaint. Closing the complaint for the reasons noted in this paragraph is not tantamount to saying that the Commissioner would not consider conducting an investigation as per the discretion available under section 93(8) of the Measure.

4.13 A number of circumstances can lead the Commissioner to conclude that a complaint is frivolous or vexatious. These could include circumstances where the complainant submits an unsubstantial complaint or changes the substance of a complaint, raises irrelevant matters, places unreasonable expectations upon the Commissioner or contacts the Commissioner in a way that is considered unreasonable.

4.14 In circumstances when the Commissioner does not believe the complaint is valid, the Commissioner will inform the complainant of its decision and the reasons for it, and inform him of his right, with the Tribunal's permission, to apply to it to review that decision.

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<sup>11</sup> See also Section 93(3-6) Welsh Language Measure

<sup>12</sup> See definition of frivolous and vexatious at the back of this document.

## Deciding to conduct an investigation or not

- 4.15 In the majority of cases the Commissioner will contact the relevant person, giving them the opportunity to provide information to the Commissioner in connection with the complainant's allegations. This is done for practical reasons and to obtain enough information for the Commissioner to decide whether or not to investigate in connection with the alleged behaviour. The request for information will be clear and will pertain to verifying the factual validity of the complaint. The Commissioner expects a response within 10 working days. However the Commissioner is open to receiving an application for a reasonable extension (of no more than 10 further working days) by a relevant person, if there are valid reasons for that. The information received (or any lack of information provided) will contribute to the factors that will assist the Commissioner to come to a decision as to whether an investigation should be conducted under section 71.
- 4.16 The Commissioner's right to consider undertaking a statutory investigation into the complaint right away is reserved if the individual circumstances of the complaint demand it. Such circumstances may include, but are not restricted to, circumstances such as the following:
- a complaint causing suspicion of a serious failure to comply;
  - a complaint calling for urgent action;
  - where indisputable evidence has already been provided by the complainant as part of the complaint
- 4.17 The Commissioner will keep in regular contact with the complainant and the relevant person and provide a contact within the office that they can contact to discuss the complaint.
- 4.18 It will be the Commissioner's decision whether or not to undertake a statutory investigation. In reaching that decision, the reasons for any decision will be recorded with that decision.
- 4.19 After making a decision, the Commissioner will notify the complainant and the relevant person, where relevant. If the Commissioner decides not to conduct a statutory investigation, she will explain to the complainant her reasons for not doing so.
- 4.20 Should the complainant be dissatisfied with the Commissioner's decision in this respect, it will be possible for him, with the Tribunal's permission, to apply to it to review the decision. The Commissioner will inform the complainant of that right.

## 5 Other evidence of a suspected failure of a relevant person to comply with a standard

- 5.1 As well as through the receipt of statutory complaints, a suspected failure of a relevant person to comply with a standard may come to the Commissioner's attention through other sources of evidence.
- 5.2 One of those sources will be the work to verify the compliance of relevant persons with the standards imposed upon them.
- 5.3 A suspected failure of a relevant person to comply with a standard may become apparent through other sources including but not restricted to the following:
- information the Commissioner discovers in exercising other functions under the Welsh Language Measure e.g. information which comes to light after conducting an inquiry under section 7 of the Measure;
  - information that indicates the failure of a relevant person to comply with a relevant provision in a code of practice<sup>13</sup> issued by the Commissioner;
  - information that appears on the media;
  - information from the public or any other person
  - information the relevant person provides to the Commissioner or publishes as per the standards the person is required to comply with.
- 5.4 When a suspected failure of a relevant person to comply with a standard becomes apparent through sources such as the above, and prior to conducting an inquiry, the Commissioner will carry out the same action as is outlined in clauses 4.15 – 4.19 of this policy, excepting any references to a complainant and with any reference to a 'complaint' being read as a reference to a 'case'.

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<sup>13</sup> Although the purpose of codes of practice is to provide practical guidance on the requirements of the standards, the Commissioner may rely upon the failure of a relevant person to comply with the contents of a code of practice as tending to establish a failure to comply with a particular standard.

## 6 Statutory investigation into a suspected failure of a relevant person to comply with a standard

- 6.1 After the Commissioner has decided that undertaking a statutory investigation into a suspected failure of a relevant person to comply with a standard is appropriate, whether as a result of receiving a complaint under section 93 or through any other source, the Commissioner will then set about preparing the terms of reference.
- 6.2 The terms of reference will specify the relevant person who is being investigated and the suspected failure in question. The terms of reference may include more than one suspected failure, where relevant. The terms of reference will also offer a proposed timetable for the inquiry.
- 6.3 The relevant person and the complainant, if the statutory investigation follows a complaint made under section 93, will be given a reasonable opportunity to make representations about the proposed terms of reference. The Commissioner will consider any representations made before publishing the final terms of reference, and informing those persons of it.

### Giving the relevant person and the complainant an opportunity to make representations in the course of a statutory investigation

- 6.4 In undertaking a statutory investigation, the Commissioner will give the parties mentioned in clause 6.3 above a reasonable opportunity to make representations in relation to the investigation. The Commissioner will inform these parties of the arrangements. The arrangements may include the submission of oral or written representations.
- 6.5 The Commissioner must consider representations made by the relevant person or by a legal advisor acting on behalf of that relevant person. The Commissioner will also consider representations made by a complainant if of the opinion that it is appropriate to do so. If the Commissioner decides to refuse to consider the representations of a complainant, he will be informed of the decision and the reasons for making that decision.

### Giving a relevant person or any other person an evidence notice

- 6.6 An evidence notice from the Commissioner may include a requirement upon a relevant person or any other person to do one or more of the following:
- provide information in his possession;
  - produce documents in his possession; or
  - give oral evidence.
- 6.7 An evidence notice will not require a relevant person to provide information that he is prohibited from disclosing by virtue of another enactment. Similarly, it will not require

him to do anything he could not be compelled to do in proceedings before the High Court. Any evidence received by the Commissioner will be kept in accordance with Freedom of Information Act 2000 The Welsh Language Commissioner's Policy<sup>14</sup>.

- 6.8 Persons must disregard an evidence notice where it requires the disclosure of information involving the intelligence service. The exact circumstances are detailed in Part 2, Schedule 10 Welsh Language Measure. In such circumstances, the person must notify the Commissioner that he is disregarding the evidence notice.
- 6.9 A person may apply to the Tribunal to have the evidence notice given to him by the Commissioner cancelled on the basis that a requirement imposed by it:
- is unnecessary having regard to the purpose of the investigation, or
  - is otherwise unreasonable or disproportionate.
- 6.10 The Commissioner may, if it thinks that a person who has received an evidence notice has failed, or is likely to fail<sup>15</sup> to comply with the evidence notice without reasonable excuse, apply to a county court for an order requiring that person to comply with the evidence notice.
- 6.11 The Commissioner may, if thinks fit, pay a person that has provided information, presented documents or aural evidence to him:
- sums in respect of expenses properly incurred by the person and
  - allowances by way of compensation for the loss of the person's time.
- 6.12 The sums paid in respect of expenses are restricted to the true costs attached to providing information, producing documents or giving oral evidence. That may include any printing, copying, posting, telephone or travelling costs.
- 6.13 The allowance paid by way of compensation for the loss of the person's time is restricted to £25 an hour for the person's time in locating and extracting or providing the relevant information, document or evidence.
- 6.14 The Commissioner will only pay the allowance by way of compensation for the loss of the person's time when the cost of complying with the evidence notice would be higher than £450. (18 hours: £450 / £25) When the cost of complying with the evidence notice is less than £450, the only costs that can be claimed are the sums in respect of expenses.
- 6.15 The person must apply to the Commissioner if he wishes to claim any costs in this respect. Further details regarding how to make such an application will be given when giving the evidence notice to the person.

### Power of entry and inspection

- 6.16 The Commissioner, or any person authorised by the Commissioner, has the power to enter premises under the control of a relevant person who is under investigation. Inspection of the premises must be necessary for the purposes of the investigation in

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<sup>14</sup>

<http://www.comisiynyddygyraeg.org/English/Publications%20List/Freedom%20of%20Information%20Act%202000%20The%20Welsh%20Language%20Commissioner%27s%20Policy.pdf>

<sup>15</sup> See Schedule 10, paragraph (11)(1)(b) Welsh Language Measure

the Commissioner's view or that of the authorised person. However this power does not extend to dwellings<sup>16</sup>.

- 6.17 The Commissioner does not have to make an appointment and may enter without giving notice, at a reasonable time. However, the Commissioner will try to give notice to any relevant person, where it is reasonable to do so. If the Commissioner, or someone on her behalf, conducts an inspection without notice, the relevant person being inspected will be expected to ensure someone appropriate is present during the investigation and to help the person investigating to comply with health and safety regulations, and similar considerations.

### Contempt of court

- 6.18 If a person has committed any act that would constitute contempt of court if the investigation were proceedings in the High Court, the Commissioner may issue a certificate to that effect to the High Court.
- 6.19 The High Court may inquire into the matter and, if satisfied that the Commissioner's conclusions are correct, may deal with the person in any manner in which it could have dealt with the person had he committed contempt in relation to the High Court.
- 6.20 This power also extends to a case in which a person, without legal excuse, has prevented the Commissioner from carrying out any one or more of its functions under Part 5 Welsh Language Measure.

### Deciding to discontinue a statutory investigation

- 6.21 The Commissioner may decide to discontinue a statutory investigation at any time. The reasons for deciding to discontinue a statutory investigation may include, but are not restricted to, circumstances such as the following:
- the investigation indicating disproportionate use of the Commissioner's resources;
  - evidence that a complainant had submitted false information or evidence and had done so in an illegal way;
  - the investigation indicating early on that the relevant person had not failed to comply and therefore no justification for using resources to continue with the investigation;
  - if the Commissioner decides it would be beneficial, in her opinion, to discontinue the investigation in the public's interest; or
  - the relevant person is revoked.
- 6.22 On the occasions when the Commissioner decides to discontinue a statutory investigation, the Commissioner will inform those parties noted in clause 6.3 above as soon as possible after the decision is made, together with the reasons for doing so. If the statutory investigation follows a complaint made under section 93 Welsh Language Measure, the complainant will be informed of his right, with the Tribunal's permission, to apply to it to review that decision.

### Determination of statutory investigation

- 6.23 Before finally determining a statutory investigation, the Commissioner will give the parties mentioned in clause 6.3 above an opportunity to make representations about any proposals attached to the determination the Commissioner is proposing to make, together with the determination itself. Those parties will be able to make

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<sup>16</sup> See Schedule 10, paragraph (12)(3)(a) Welsh Language Measure

representations, within a period of 28 days<sup>17</sup>.

6.24 Those parties will be able to make representations about the following proposals:

- notice of the determination which the Commissioner is proposing to make;
- draft of the proposed statutory investigation report.

6.25 Having given due regard to any representations made, the Commissioner will provide final copies of the decision notice and the statutory investigation report to the parties.

6.26 The relevant person will also be able to make representations about the following proposals:

- 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;
- 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
- copies of the draft of the decision notice which the Commissioner is proposing to give.

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<sup>17</sup> See Section 85(7) Welsh Language Measure



## 7 Determination of a statutory investigation into a suspected failure of a relevant person to comply with a standard

- 7.1 Having undertaken a statutory investigation into a suspected failure of a relevant person to comply with a standard, the Commissioner must make a final determination.
- 7.2 The various actions the Commissioner may take, depending on the kind of determination made, are explained below. The Commissioner will inform the relevant person and the complainant (if the investigation follows a complaint made under section 93) of the determination, by giving a decision notice to them.

### No failure to comply with a standard

- 7.3 Where it is determined **that the relevant person has not failed** to comply with a standard, the Commissioner may do the following:
- (i) take no further action; or
  - (ii) give the relevant person or any other person recommendations and/or advice.
- 7.4 If the investigation that led to the determination followed a complaint made under section 93 Welsh Language Measure, the complainant may appeal to the Tribunal against the determination on the grounds that the relevant person did fail to comply with a standard. An appeal must be made before the end of a 28 day period beginning with the day on which the Commissioner gives the decision notice<sup>18</sup>. More details about this right will be given when giving the decision notice to the complainant. In an appeal of this kind, the relevant person may apply to the Tribunal to be added as a party to the proceedings.

### Failure to comply with a standard

- 7.5 Where it is determined **that the relevant person has failed** to comply with a standard, the Commissioner may do the following:
- (i) take no further action; or
  - (ii) one or more of the following:
    - require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure
    - require the relevant person to take steps for the purpose of preventing the continuation or repetition of the failure
    - publicise the relevant person's failure to comply with a standard
    - require the relevant person to publicise the failure to comply with a standard
    - impose a civil penalty on the relevant person; or
  - (iii) one or more of the following:

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<sup>18</sup> The Tribunal may, on a written application by the complainant, allow an appeal to be made after the end of the relevant period of 28 days, in accordance with the requirements of section 99(4) Welsh Language Measure.



- give the relevant person or any other person recommendations
- give the relevant person or any other person advice
- seek to enter into a settlement agreement<sup>19</sup> with the relevant person.

- 7.6 Where the Commissioner determines that the relevant person has failed to comply with a standard, that relevant person may appeal to the Tribunal against the determination on the grounds that he did not fail to comply with a standard. An appeal must be made before the end of a 28 day period beginning with the day on which the Commissioner gives the decision notice<sup>20</sup>. More details of this right will be given when giving the decision notice to the relevant person. In such an appeal, and if the statutory investigation that led to the decision followed a complaint made under section 93 Welsh Language Measure, the complainant may apply to the Tribunal to be added as a party to the proceedings.
- 7.7 If any one or more of the actions noted in clause 7.5(ii) above are imposed on the relevant person, the relevant person may appeal to the Tribunal against those actions on the grounds that they are unreasonable and disproportionate. Similarly, an appeal must be made before the end of a 28 day period beginning with the day on which the Commissioner gives the decision notice<sup>21</sup>. More details of this right will be given when giving the decision notice to the relevant person.

### Explanation of the powers available to the Commissioner

#### **Take no further action**

- 7.8 When the Commissioner decides to take no further action, the relevant person will not be required to take any further action. However, the duty to comply with the standard will continue.

#### **Give recommendations and/or advice**

- 7.9 When the Commissioner decides to give the relevant person or any other person recommendations and/or advice as a result of a determination of a failure to comply, it will do so with the intention of providing guidance in relation to how to prevent the continuation or repetition of that failure. Where it is determined that there was no failure to comply, the Commissioner can give the relevant person or any other person recommendations and/or advice for the purpose of ensuring continuous compliance.

#### **Requirement to prepare an action plan for the purpose of preventing the continuation or repetition of the failure**

- 7.10 When the Commissioner decides to require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure, the decision notice will set out what he is required to do. The decision notice will also specify the timetable for giving the first draft plan to the Commissioner, and the consequences if he does not comply with that requirement.
- 7.11 If the first draft plan given to the Commissioner is not adequate for the purposes of preventing the continuation or repetition of the failure, the Commissioner will give the relevant person a notice to that effect and require him to give the Commissioner a revised draft within a specified time. The Commissioner may also make recommendations about the content of that revised draft.

<sup>19</sup> See Section 91 Welsh Language Measure

<sup>20</sup> The Tribunal may, on a written application by the relevant person, allow an appeal to be made after the end of the relevant period of 28 days, in accordance with the requirements of section 95(6) Welsh Language Measure.

<sup>21</sup> Again, the Tribunal may, on a written application by the relevant person, allow an appeal to be made after the end of the relevant period of 28 days, in accordance with the requirements of section 95(6) Welsh Language Measure.

- 7.12 In considering whether a draft action plan is adequate the Commissioner may issue an evidence notice to any person and/or enter into the premises of the relevant person as it may do in relation to a statutory investigation as noted in clauses 6.6 – 6.17 of this policy.
- 7.13 The Commissioner may also apply to a county court for an order requiring the relevant person to give the Commissioner a first draft plan or revised draft plan by a time specified in the order. In respect of a revised draft plan, the order may also specify any directions about the plan's content.
- 7.14 An action plan comes into force either:
- at the end of a 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 giving a notice to the relevant person as noted in clause 7.11 above or without the Commissioner applying to the county court as noted in clause 7.13 above; or
  - upon a county court declining to make an order as noted in clause 7.13 in respect of a revised draft of the plan.

**Requirement to take steps for the purpose of preventing the continuation or repetition of the failure**

- 7.15 When the Commissioner decides to require the relevant person to take steps for the purpose of preventing the continuation or repetition of the failure, the decision notice will set out what he is required to do and the consequences if he does not comply with that requirement. The specific action takes effect at the end of the period of 28 days for making an appeal.

**Publicising the failure<sup>22</sup>**

- 7.16 In deciding to publicise the failure of the relevant person to comply with a standard, the Commissioner may decide to publicise any one or more of the following:
- a statement that the relevant person has failed to comply with a standard; or
  - the statutory investigation report.
- 7.17 Similarly, when the Commissioner requires the relevant person to publicise his failure to comply, he may be required to publicise any one or more of the above or any other information relating to the relevant person's failure to comply with a standard.
- 7.18 The decision notice will set out what the Commissioner is to do and/or what the relevant person is to do in order to publicise, and the consequences if the relevant person does not comply with that requirement. The duty to publicise will take effect at the end of the period of 28 days for making an appeal.

**Civil penalties**

- 7.19 When the Commissioner decides to impose a civil penalty on the relevant person, the maximum penalty will be £5,000. Note, however, that Welsh Ministers may, by order, substitute a different amount to this maximum penalty.
- 7.20 All civil penalties received will be paid into the Welsh Consolidated Fund<sup>23</sup>.

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<sup>22</sup> See Section 81 Welsh Language Measure

<sup>23</sup> The Fund was established by the Government of Wales Act 2006. It is a fund of public money allocated to Wales through various sources.

7.21 In respect of a civil penalty, the decision notice will set out the following details:

- the sum of the civil penalty;
- how the civil penalty may be paid;
- the period within which the civil penalty must be paid;
- the consequences if the civil penalty is not paid.

7.22 See section 9 of this policy for more details about the Commissioner's decisions in respect of civil penalties.

### **Settlement Agreements**

7.23 In entering into to a settlement agreement the Commissioner will agree not to take enforcement action in respect of the failure whilst the relevant person agrees not to fail to comply with one or more of the standards; to take particular action; or to refrain from taking particular action.

7.24 The relevant person does not have to enter into a settlement agreement but if he refuses to do so, the Commissioner may decide to exercise other enforcement powers.

7.25 The relevant person is not to be taken to have admitted the failure by reason only of entering into a settlement agreement.

### **Appeals by the complainant and the relevant person**

7.26 Clauses 7.4, 7.6 and 7.7 of this policy gives details of the right of the relevant person, and a complainant, if the statutory investigation follows a complaint made under section 93 Welsh Language Measure, to appeal against the Commissioner's decisions in respect of a determination of a statutory investigation. In determining an appeal, the Tribunal may affirm or annul the Commissioner's determination. In an appeal as noted in clause 7.7, the Tribunal may affirm, vary or annul the enforcement action.

7.27 Any decision of the Tribunal on an appeal has the same effect, and may be enforced in the same manner, as a determination of the Commissioner.

7.28 If neither the relevant person, nor the complainant, if the statutory investigation follows a complaint made under section 93 Welsh Language Measure, are parties in an appeal, the Commissioner will inform them of the Tribunal's decision.

7.29 The Commissioner, the complainant or the relevant person, may afterwards, with the permission of the Tribunal or the High Court, appeal to the High Court on a question of law arising out of the Tribunal's decision.

7.30 The High Court may affirm the Tribunal's decision or set its decision aside. If the High Court sets the Tribunal's decision aside, it must either remit the case to the Tribunal for reconsideration or re-make the decision itself.

7.31 Note that the appeals are subject to the Tribunal Rules. Further details about those rules together with details of how to appeal can be obtained by contacting the Tribunal directly.

## 8 Failure to comply with a standard

- 8.1 Where it is determined, at the end of a statutory investigation into a suspected failure of a relevant person to comply with a standard, that the relevant person has failed to comply with a standard, the Commissioner will go about deciding what action is to be taken in response to that failure.
- 8.2 As the circumstances of each failure will be different, the Commissioner will consider the facts of each case individually. The Commissioner will decide how action should be taken, in order to prevent a failure from continuing or being repeated.
- 8.3 To this end, the Commissioner may take action in one or more of the following ways<sup>24</sup>:
- (i) restore compliance following the failure;
  - (ii) enforce compliance following the failure; including
  - (iii) imposing a civil penalty for the failure.
- (i) Restore compliance following the failure
- 8.4 As far as possible, the Commissioner will try to ensure that a relevant person restores compliance voluntarily following the failure. The Commissioner will need adequate assurance regarding the willingness of the relevant person to co-operate and to take steps to prevent the continuation or repetition of the failure.
- 8.5 To this end, there are several steps the Commissioner may decide to take, namely:
- take no further action; or
  - give the relevant person or any other person advice and/or recommendations; and/or
  - seek to enter into a settlement agreement with the relevant person.
- 8.6 The exact steps the Commissioner decides to take will depend on the exact nature of the failure in question together with the associated circumstances.
- (ii) Enforce compliance following the failure
- 8.7 Where it is not possible to ensure that a relevant person restores compliance voluntarily as a result of the failure, the Commissioner will take steps to enforce him to comply.
- 8.8 To this end, there are several steps the Commissioner may decide to take, namely:
- require the relevant person to take specific steps for the purpose of preventing the continuation or repetition of the failure; and/or
  - require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure; and/or

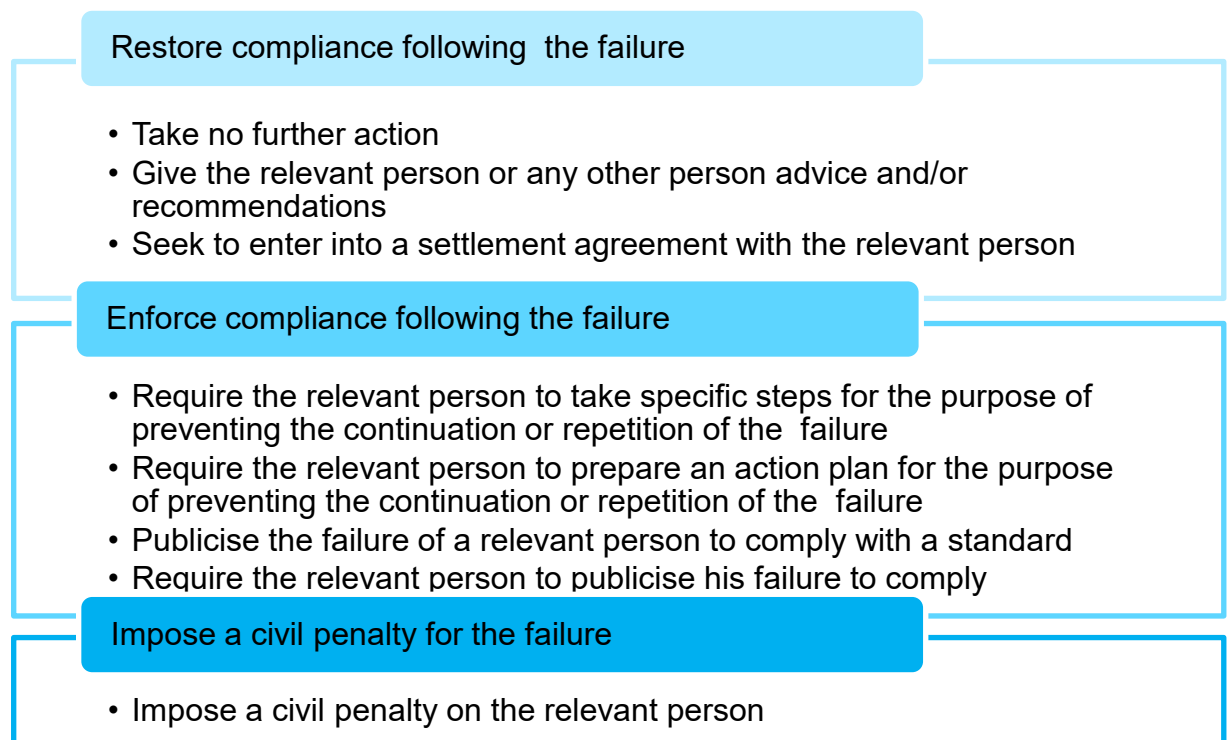
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<sup>24</sup> See Section 77 Welsh Language Measure

- publicise the failure of a relevant person to comply; and/or
- require the relevant person to publicise his failure to comply.

(iii) Impose a civil penalty for the failure

- 8.9 With the most serious failures, the Commissioner will be of the opinion that it is necessary to impose a civil penalty on the relevant person together with other enforcement action, in order to prevent the continuation or repetition of the failure. Imposing a civil penalty on a relevant person will also be a means for the Commissioner to ensure that the rights of Welsh speakers are protected. Again, the circumstances of each failure will vary from one case to another.
- 8.10 The figure below provides an overview of the steps the Commissioner will mostly take. The figure also reflects the Commissioner's aim of concentrating on results in regulating, and to use the civil penalty with the most serious failures only.



## 9 Civil penalty

- 9.1 The Welsh Language Measure places a specific duty upon the Commissioner to have regard to specific matters in considering whether it will impose a civil penalty on a relevant person for failing to comply with the amount of that penalty.
- 9.2 Those specific matters which the Commissioner must have regard to are the following:
- the seriousness of the matter in respect of which the civil penalty is to be imposed;
  - the circumstances of the person on whom the civil penalty is to be imposed; and
  - the need to prevent the continuation or repetition of the matter in respect of which the civil penalty is to be imposed.
- 9.3 The above shall not prevent the Commissioner from dealing with other matters. None of these matters are more important than each other.

### Other relevant matters:

- 9.4 The Commissioner may have regard to any other matter that is relevant, in the Commissioner's view, in deciding whether a civil penalty should be imposed on a relevant person or not.
- 9.5 As a matter of policy, after the Commissioner has decided to impose a civil penalty upon a relevant person, the penalty can be any amount up to a maximum of £5,000. In using the civil penalty, the Commissioner hopes to ensure an adequate deterrent in relation to the failure; prevent other relevant persons from failing to comply in the same manner and ensure that the rights of Welsh speakers are adequately protected.

# 10 Failure to comply with an enforcement action or a settlement agreement

- 10.1 In cases where the Commissioner has entered into a settlement agreement with the relevant person or imposed one or more enforcement actions on him, the Commissioner will verify compliance with those requirements in order to ensure that the regulatory objectives are achieved.
- 10.2 It may become apparent in some cases that a relevant person has failed to comply with these requirements. In such cases, the Commissioner will respond by taking further action against the relevant person.

## Failure to comply with a settlement agreement

- 10.3 If it becomes apparent through evidence that a relevant person has failed to comply with a requirement in a settlement agreement, the Commissioner may apply to a county court for an order requiring the relevant person to comply with that requirement.
- 10.4 Please note that the Commissioner's right to apply to a county court for an order to require compliance with a settlement agreement remains in force for a relevant period of 5 years<sup>25</sup> beginning on the day when the settlement agreement is entered into.

## Failure to comply with an enforcement action

- 10.5 If it becomes apparent that a relevant person has failed to comply with an enforcement action imposed on him, there are several different steps the Commissioner may take against the relevant person. As with the above, the Commissioner may apply to a county court for an order to require the relevant person to comply with the enforcement action. The Commissioner's right to apply to a county court for an order to require compliance with an enforcement action remains in force for a period of 5 years beginning on the day when the decision notice is given to the relevant person, or when the enforcement action is to prepare an action plan, the day when the action plan comes into force.
- 10.6 The Commissioner may also undertake a further statutory investigation into whether a relevant person has failed to comply with an enforcement action imposed upon him. The Commissioner may only undertake an investigation into those matters listed in section 71(2) of the Measure – and this does not include a civil penalty.
- 10.7 Unlike a statutory investigation undertaken into a suspected failure of a relevant person to comply with a standard, the Commissioner does not have to suspect that a relevant person has failed to comply with an enforcement action in order to undertake a statutory investigation as outlined in 10.6.
- 10.8 If the Commissioner has evidence of a failure to comply with an enforcement action, the Commissioner will not give the relevant person an opportunity to respond to the allegations before deciding whether or not to undertake the investigation. Except for this, the same processes will be followed as outlined in sections 6 - 9 of this policy, excluding any references to a complainant and reading any reference to a 'standard'

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<sup>25</sup> See Section 92(2) Welsh Language Measure

as a reference to an 'enforcement action'. Note that the Commissioner has the same powers available as is in a statutory investigation into a suspected failure of a relevant person to comply with a standard.<sup>26</sup>

- 10.9 Section 10 of this policy is not relevant in respect of failure to comply with a civil penalty imposed. However, the Commissioner may recover an unpaid civil penalty as a debt owed to the Commissioner. This may include taking legal action against the relevant person in the Civil Court.

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<sup>26</sup> Note that only in respect of failure to comply with a standard may the Commissioner seek to enter into a settlement agreement with a relevant person.



# 11 Working with the Ombudsman and other commissioners

11.1 Sections 20 and 21 Welsh Language Measure outline to what degree the Commissioner may work collaboratively with the Ombudsman<sup>27</sup> and other commissioners<sup>28</sup>.

11.2 If it appears to the Commissioner that the subject matter of the Commissioner's statutory investigation is a matter which could also be subject to an investigation by the Ombudsman or another commissioner, the Commissioner, if of the opinion that it is appropriate, will do the following:

- inform the Ombudsman or the relevant commissioner of the statutory investigation, including the Commissioner's proposals for undertaking the investigation; and
- consult with the Ombudsman or the relevant commissioner in relation to the statutory investigation.

11.3 If it becomes apparent, as a result of the above, that both parties are investigating matters that are related, they may do any or all of the following:

- co-operate with each other in relation to their separate investigations;
- conduct a joint investigation; and
- prepare and publish a joint report in relation to their separate investigations or their joint investigation.

11.4 If the Commissioner does not undertake a statutory investigation, the Commissioner, if thinks it appropriate, will give the person seeking to bring the case information regarding how to refer the connected matter to the Ombudsman or another relevant commissioner. The Commissioner will also give that information to any other person interested in the case.

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<sup>27</sup> Namely the Public Services Ombudsman for Wales.

<sup>28</sup> Namely the Children's Commissioner for Wales, the Older People's Commissioner for Wales and the Equality and Human Rights Commission at present. Welsh Ministers can add to this list of Ombudsmen and Commissioner's by order.

## 12 Register of enforcement action

- 12.1 In accordance with section 109(1) Welsh Language Measure, the Commissioner must maintain a register of enforcement action noting details of every statutory investigation undertaken by the Commissioner.
- 12.2 A copy of the current register is available for inspection at the Commissioner's office and an electronic copy is available on the Commissioner's website.
- 12.3 The register includes the following details:
- a description of every statutory investigation undertaken by the Commissioner;
  - the Commissioner's findings on the statutory investigations;
  - the Commissioner's determination on the statutory investigations;
  - a statement noting whether or not the Commissioner took further action;
  - if the Commissioner took further action, a statement of that action;
  - details of decision notices; and
  - details of appeals made to the Tribunal under Part 5 Welsh Language Measure.
- 12.4 The Commissioner will keep the register up to date. The details in the register will be kept in accordance to the Commissioner's Document Information Retention and Disposal Policy.

## 13 Glossary of terms

13.1 The following glossary of terms does not include legal definitions but provides a concise explanation of their meanings.

Term	Explanation
<b>Enforcement action</b>	Enforcement action is the name given for the following actions: <ul style="list-style-type: none"><li>○ a requirement upon a relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of a failure to comply;</li><li>○ a requirement upon the relevant person to take specific steps for the purpose of preventing the continuation or repetition of a failure to comply;</li><li>○ the Commissioner publicising a failure of the relevant person to comply;</li><li>○ a requirement upon the relevant person to publicise his failure to comply; and</li><li>○ a civil penalty imposed on the relevant person.</li></ul>
<b>Register of enforcement action</b>	This is the name given to the register which the Commissioner must maintain. See section 12 of this policy for more details.
<b>Commissioner</b>	All references to the Commissioner in this document are references to the Welsh Language Commissioner, a post created under the Welsh Language (Wales) Measure 2011.
<b>Frivolous or vexatious complaints</b>	The intention in such cases is to prevent any complaints which are obviously completely unsubstantiated, when the complaints are possibly ones which have been presented previously, or there is no hope or basis to consider whether the complaint will succeed.
<b>Complaint</b>	A complaint any person may submit to the Commissioner about the conduct of a relevant person in relation to a standard with which he is required to comply. See section 4 of this policy for more details.
<b>Settlement agreement</b>	Seeking to enter into a settlement agreement is one of the steps the Commissioner may take after determining, as the result of a statutory investigation, that a relevant person has failed to comply with a standard. See clauses 7.23 - 7.25 of this policy for more details.
<b>Imposition day</b>	The day from which a person is to be required to comply with a standard or with a standard in a respect as specified in a Compliance Notice.
<b>Compliance notice</b>	A notice given to relevant persons by the Commissioner detailing the specific standards they must comply with, together with the imposition days for those standards – as specified in that notice.
<b>Evidence notice</b>	A notice the Commissioner may give to a person in a statutory investigation. An evidence notice may include a requirement upon a person to do one or more of the following: <ul style="list-style-type: none"><li>○ provide information in his possession;</li></ul>

	<ul style="list-style-type: none"> <li>○ produce documents in his possession; and</li> <li>○ give oral evidence.</li> </ul> <p>See clauses 6.6 – 6.10 of this policy for more details.</p>
<b>Welsh Language Measure</b>	All references to the Welsh Language Measure in this document are references to the Welsh Language (Wales) Measure 2011.
<b>Relevant person</b>	Relevant person is the name given to an organization that is under a duty to comply with one or more standards of conduct.
<b>Enforcement Policy</b>	<p>This document. It is a document which the Commissioner is required to produce under section 108 Welsh Language Measure and which sets out advice and information on the Commissioner's intended approach to the exercise of the Commissioner's functions under Part 5 Welsh Language Measure.</p> <p>The Commissioner may not produce or amend the document without the approval of the Welsh Ministers.</p>
<b>Power of entry and inspection</b>	<p>A power the Commissioner has in respect of a statutory investigation. The Commissioner may enter premises controlled by a relevant person who is under investigation if of the opinion that it is necessary to inspect them for the purposes of the investigation. See clauses 6.16 and 6.17 for more details.</p> <p>This power also applies in relation to consideration by the Commissioner of the adequacy of a draft action plan. See clause 7.12 for more details.</p>
<b>Standards</b>	<p>All references to standards in this document refer to standards of conduct specified by the Welsh Ministers by regulations. Standards will operate in the five following classes:</p> <ul style="list-style-type: none"> <li>○ service delivery;</li> <li>○ policy making;</li> <li>○ operational;</li> <li>○ promotion; and</li> <li>○ record keeping.</li> </ul>
<b>Regulatory functions</b>	This is the name given to describe the Commissioner's duties and powers under Part 5 Welsh Language Measure.
<b>The Tribunal</b>	All references to the Tribunal in this document are references to the Welsh Language Tribunal. The Tribunal was established by the Welsh Language (Wales) Measure 2011 to deal with appeals and applications for reviews of some of the Commissioner's decisions. More information can be obtained by contacting the Tribunal directly.
<b>Statutory investigation</b>	A statutory investigation is an investigation undertaken by the Commissioner under section 71 Welsh Language Measure in order to determine whether or not a relevant person has failed to comply with a requirement imposed on him. Such a requirement may be a standard with which a relevant person is required to comply with or an enforcement action imposed upon him as the result of a previous statutory investigation. This does not include a failure to comply with a civil penalty.

## 14 Complaints procedure about the actions of the Commissioner

- 14.1 The Commissioner has a specific complaints procedure available if any person wishes to complain about acts or omissions relating to the exercise of the Commissioner's functions.
- 14.2 This procedure has been established in accordance with section 14 Welsh Language Measure.
- 14.3 Further details regarding this procedure are available on the website or by contacting the Commissioner directly and available in the Commissioners offices.
- 14.4 The Commissioner can be contacted using the details below:
- Tel: 0845 6033 221
  - E-mail: [post@welshlanguagecommissioner.org](mailto:post@welshlanguagecommissioner.org)
  - Website: [welshlanguagecommissioner.org](http://welshlanguagecommissioner.org)

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