



Llywodraeth Cymru
Welsh Government

From: [Hepgorwyd yr wybodaeth –
adran 40(2)]
Cymraeg 2050

Cleared by: [Hepgorwyd yr wybodaeth –
adran 40(2)]

Date: 13/03/2026

MINISTERIAL ADVICE – MA/MDFWL/0731/26

For decision by: Cabinet Secretary for Finance and Welsh Language

Subject	Welsh Language Commissioner's Enforcement Policy
100 word summary	To approve the Welsh Language Commissioner's draft revised Enforcement Policy.
Timing	Routine
Recommendation	<p>The Cabinet Secretary is asked to approve:</p> <ul style="list-style-type: none"> the Welsh Language Commissioner's ('the Commissioner') draft revised Enforcement Policy (attached at docs 2a and 2b). <p>subject to approval, the Cabinet Secretary is asked to:</p> <ul style="list-style-type: none"> sign and issue the attached letter informing the Commissioner of your decision to approve the draft revised Enforcement Policy (attached at doc 3).
Decision report	This decision does require a Decision Report, which may be published at any point.

ADVICE

Background

1. Section 108 of the Welsh Language (Wales) Measure 2011 ('the Measure') states that the Commissioner must produce an Enforcement Policy setting out advice and information on her intended approach to the exercise of her functions under Part 5 of the Measure. Section 108(4) provides that the Commissioner cannot produce (or amend) such a policy unless it has been approved by Welsh Ministers.
2. On 16 December 2025, the Commissioner sent a draft revised Enforcement Policy for Welsh Ministers' approval (see letter attached at doc 1). This is following a consultation on a draft revised Enforcement Policy between December 2024 and January 2025.
3. The Commissioner's current Enforcement Policy was approved by the Welsh Ministers on 26 March 2015.
4. On 21 December 2020, Welsh Ministers gave their consent to amend clause 4.9 of the Commissioner's Enforcement Policy as follows (EM/00937/20 refers):

"4.9. The Commissioner will acknowledge receipt of all written complaints received relating to the conduct of a relevant person within 5 working days. The acknowledgement will inform the complainant whether or not the complaint is valid under section 93 as soon as possible thereafter."

Changes made to the Enforcement Policy

5. The revised draft Enforcement Policy reflects the Commissioner's commitment to co-regulation. This approach is based on the principles of collaboration and partnership, and means working with bodies with the aim of offering support and advice to bodies along with clear guidance to ensure compliance. The draft Enforcement Policy also reflects her increasing focus on regulatory outcomes that place her work in the context of the national goal of creating one million Welsh speakers and doubling the use of the language. The revised draft Enforcement Policy states that the outcomes will inform the Commissioner's regulatory approach and methods, and that she will allocate resources where the risks to achieving these outcomes are greatest. Further details regarding the main differences between the current Enforcement Policy and the draft revised Enforcement Policy are outlined in paragraphs 19 and 22.

Concerns regarding revised draft Enforcement Policy and enforcement approach

6. Cymdeithas yr Iaith have expressed that they do not approve of the Commissioner's new approach to enforcement. We received a copy of their response to the Commissioner's consultation on the draft revised Enforcement Policy.
7. On 7 February 2026 you received correspondence from Cymdeithas yr Iaith (MDFWL/00044/26) noting concerns about the final proposals from the Commissioner for her draft revised Enforcement Policy. They also noted concerns regarding the reduction in the number of statutory investigations being conducted.

A response was issued by you on 19 February. In the response you noted that you would consider their views: *“Rwy'n nodi, fodd bynnag, eich pryderon ynghylch y polisi ddiwygiedig drafft sydd wedi ei chyflwyno ataf a byddaf yn rhoi sylw i rheiny wrth ei ystyried.”* Paragraphs 26 – 32 of this advice set out below considerations given to specific points raised by Cymdeithas yr Iaith.

8. Senedd Members (namely Adam Price MS and Heledd Fychan MS) have also raised similar concerns regarding the Commissioner's draft revised Enforcement Policy and her new approach to enforcement.

Freedom of Information ('FOI') request

9. Cymdeithas yr Iaith has submitted a FOI request (ATISN 26547) regarding the Commissioner's Enforcement Policy. The request asked for the following information:

“Unrhyw ohebiaeth / dogfennau / cofnodion yn ymwneud â chynigion Comisiynydd y Gymraeg ar y pryd ar gyfer ei Pholisi Gorfodi cyntaf i'w gymeradwyo gan Weinidogion Cymru. Er eglurder, mae hyn yn cynnwys drafftiau o'r Polisi ac unrhyw drafodaeth yn ei gylch o fewn y Llywodraeth A rhwng y Comisiynydd a/neu ei swyddogion.”

10. A full response was issued on 12 March 2026. The response included the release of 22 documents including Welsh Government's comments on the original Enforcement Policy in 2015.

Advice

11. Officials have considered the draft revised Enforcement Policy and are content that it satisfies the requirements set out under the Measure. The recommendation therefore is that you approve the draft revised Enforcement Policy.
12. Officials have been mindful that the Enforcement Policy is the Commissioner's document. The Commissioner is an independent regulator and section 16 of the Measure prohibits the Welsh Ministers from giving the Commissioner any directions relating to the enforcement of standards. Officials also recognise that Welsh Ministers themselves are subject to the Enforcement Policy as a body that is subject to comply with standards. We have therefore taken deliberate care in assessing the draft revised Enforcement Policy not to influence or interfere with the Commissioner's independent judgement or her preferred approach to enforcing the standards.

Consultation on draft revised Enforcement Policy

13. The consultation on a draft revised Enforcement Policy drew a diverse range of views, with Cymdeithas yr Iaith, for example, expressing strong views against some of the proposed changes. We are content that the Commissioner has considered the responses received, and that changes to the final revised policy have been made to reflect some of the feedback provided.
14. Colleagues responsible for Welsh Ministers' compliance with Welsh Language Standards ('the standards') responded to the consultation on a revised Enforcement Policy and submitted a response from an internal compliance

perspective. Their response has not been considered as part of the analysis undertaken on the draft revised Enforcement Policy.

15. The main changes to note from the draft revised Enforcement Policy subject to consultation include:

- Continuing the current practice of inviting bodies to respond to complaints directly to the Commissioner before deciding whether to investigate;
- No longer considering whether the complainant has referred the complaint to the body when deciding whether to investigate (this is not included in the current policy but was proposed by the Commissioner in the version consulted upon);
- Adjusting the interpretation of vexatious and frivolous complaints;
- Committing to provide more information about the Commissioner's complaints and investigations procedure on its website;
- Clarifying where civil penalties will be paid;
- Providing further clarity on its arrangements to ensure the accessibility of the process and its commitment to making reasonable adjustments (e.g. enabling verbal complaints where necessary).

16. Cymdeithas yr Iaith have welcomed that the draft revised Enforcement Policy does not include a previous proposal to rely on a body's complaints procedures in the first instance.

17. The Commissioner has also published a post-consultation report, a procedure for dealing with complaints and investigations, along with a new form to facilitate the submission of complaints. An equality impact assessment on the revised policy has also been published. Officials are content that the Commissioner has undertaken a robust consultation with bodies subject to the standards and the public before submitting the revised policy for approval by Welsh Ministers.

Policy analysis

18. Cymraeg 2050 officials have reviewed the draft revised Enforcement Policy from a general policy perspective and have analysed it in the context of the requirements set out in section 108 of the Measure.

19. From a general policy perspective, the draft revised Enforcement Policy is considered more concise and user-friendly, adopting clearer, everyday language that is easier for the public to understand. Compared to the current policy (35 pages and 14 sections), the revised version is streamlined to 24 pages and 10 sections.

20. In reviewing the draft revised Enforcement Policy from a policy perspective, we did so bearing in mind that section 16(2)(b) of the Measure makes provisions which prohibits Welsh Ministers from giving directions to the Commissioner relating to the enforcement of standards. In considering the first Enforcement Policy in 2015, some policy and legal matter were raised with the Commissioner before issuing approval. Importantly, Welsh Ministers accepted the then Commissioner's decision whether to accept or reject our comments based on enforcement being the Commissioner's role. The then Commissioner rejected some of our suggestions for proposed changes to the policy.

21. Officials are conscious of the importance of respecting the Commissioner's independence in her enforcement of the standards system. We are content that the draft revised Enforcement Policy sets out advice and information on the Commissioner's intended approach to the exercise of the Commissioner's functions under this Part 5 of the Measure, as required under section 108(3). We note that the draft revised Enforcement Policy, includes the following information, all of which can be implemented under the standards system:

- sets the Welsh Language Standards and the Commissioner's regulatory work in the context of the national vision to increase the number of Welsh speakers and increase the use of the language (Paragraphs 2.1-2.10);
- that the policy will be kept under review and made available on the Commissioner's website and in all offices (Paragraph 1.8);
- that complainants are not required to complain to the body before submitting a complaint to the Commissioner (Paragraph 3.4);
- the policy includes information regarding submitting a valid complaint (Paragraphs 3.7 – 3.12 and Paragraphs 3.20-3.22);
- that the Commissioner will consider conducting a statutory investigation into every valid complaint and will use powers under Part 5 of the Measure if regulatory support fails (Paragraph 2.7);
- the factors that will be considered when the Commissioner decides whether to investigate a complaint (Paragraphs 3.14–3.15);
- information on conducting, terminating and deciding on an investigation (Paragraphs 4.1- 4.2 and Paragraphs 4.6 – 4.8);
- the range of actions the Commissioner can take following an investigation (Paragraphs 4.8 – 4.33);
- information on the rights of bodies and complainants to appeal to the Welsh Language Tribunal (Paragraphs 2.15, 3.19, and Section 6);
- the procedure for raising concerns about the Commissioner's work and decisions (Paragraph 2.16 and Section 7);
- details of the register of enforcement action and its purpose (Paragraph 2.19 and Section 5); and
- that the Commissioner may work with Ombudsmen and other Commissioners during investigations (Paragraph 2.21 and Section 4)

22. We note that sections 4 - 11 within the current Enforcement Policy have been condensed to two sections within the draft revised Enforcement Policy (section 3: Complaints and section 4: Investigation). As a result, some of the detailed procedural information on complaints and investigations has been removed from the draft revised Enforcement Policy and replaced with links to the Commissioner's complaints and investigations procedure on her website or to the Welsh Language Tribunal's website in relation to appeals. We note that some links are broken and will ask the Commissioner to ensure that these are corrected before the policy is published. Key statutory timescales (e.g. the 28-day period to appeal to the Tribunal) and the glossary have also been removed. Other considerations are highlighted in paragraphs 25-32 below. We consider that it is a matter for the Commissioner to decide what level of detail she wants to include within her Enforcement Policy and do not consider that these amendments affect the Commissioner's compliance with the duties in section 108 of the Measure. We are content that the draft revised Enforcement Policy

gives the public adequate detail to allow them to fully understand the Commissioner's enforcement process.

23. The Commissioner's co-regulatory approach focuses on working collaboratively with bodies to prevent non-compliance in the first place. We believe that the policy achieves an appropriate balance between promoting compliance and effective enforcement. We are also confident that the policy demonstrates that the Commissioner is prepared to act when there is suspicion of failure to comply with a standard, using the most appropriate and proportionate action to ensure that bodies are complying with the duties imposed on them.
24. Having considered the draft revised Enforcement Policy and the provisions in Part 5 of the Measure we are content that the policy sufficiently satisfies the requirement in Section 108(3) to set out advice and information on how the Commissioner intends to approach exercising her functions under Part 5 of the Measure.
25. Officials also met with the Commissioner's officials and discussed the following:
- The use of "organisations" rather than "persons". We are content with the Commissioner's explanation that the term 'organisation' is sufficiently clear and more user-friendly to the intended audience of this document (i.e. members of the public and bodies subject to standards);
 - Paragraph 1.4 - suggestion to add "*under the Measure and the relevant Standards*" after "duties" in the second sentence to provide greater clarity. Paragraphs 1.1 and 1.2 of the draft revised Enforcement Policy reference the Measure and standards. We are satisfied that "duties" is clear enough in this context without the additional wording;
 - Paragraphs 2.7, 2.15, 3.3, 3.13, 4.2 (6th bullet point), 4.3, Settlement agreements, 4.29, 4.32 (2nd bullet point), 5.1, 6.1, and 7.1 – suggestion to add footnotes to these paragraphs referencing the relevant section of the Measure. We agree with the Commissioner that such references are not essential for the users' understanding of the document. We are content that the current wording is sufficiently clear as drafted;
 - Paragraph 4.2 (paragraph after bullet points) – a suggestion to set out the "duties". We note that the paragraph already references the relevant Schedule and Part of the Measure (i.e. Schedule 10, Parts 1-3 of the Measure). We consider that this sufficiently allows readers to cross-reference to the Measure should they wish to do so and that there would be little added benefit in explicitly noting the "duties" within the Enforcement Policy;
 - Paragraph 4.16 (providing advice and recommendations) – question whether using "usually" is satisfactory and transparent enough. Having considered we are content that the wording is appropriate. We consider it provides sufficient clarity while retaining flexibility for the Commissioner to exercise her functions proportionately and in line with the circumstances of each case.

Points raised by Cymdeithas yr Iaith

26. In their correspondence to you on 7 February, Cymdeithas yr Iaith noted the Commissioner's willingness to hold discussions with them however they continue

to consider that the draft revised Enforcement Policy submitted for approval by Welsh Ministers is not fit for purpose and that further changes are required before the draft revised Enforcement Policy should be approved. They noted the following 7 points specifically in relation to the draft revised Enforcement Policy:

- There is no clear link between the enforcement of the standards and the “rights” of Welsh speakers. They state that paragraph 2.1 does not recognise the central role of regulation in maintaining and realising the rights of speakers;
- Paragraphs 3.15 and 4.11 fail to incorporate or commit to considering the impact of non-compliance on rights to use the Welsh language when the Commissioner decides whether or not to open an investigation, and in determining the enforcement action following an investigation where there has been a failure to comply;
- The policy defines the statutory investigation function too narrowly, and fails to fully reflect the range of purposes for carrying out an investigation, stating that the Commissioner is only required to publish information in the register of Enforcement Action when she has conducted an investigation;
- Considers that there is an attempt to formalise early-resolution discussions in a way that deprives complainants from responding and undermining an open, transparent investigation process;
- The policy misrepresents the Commissioner’s two tiers of enforcement by implying a preference towards the weakest enforcement action, claiming a “written warning” step is not provided for in the legislation to accompany advice and guidance, and that there is a failure to commit to giving reasons when choosing softer enforcement instead of stronger measures;
- The policy fails to make the connection between any of the enforcement actions and the rights of Welsh speakers;
- The policy does not provide advice or information to explain that obstructing an investigation may constitute contempt of court, nor does it state, unlike the current Enforcement Policy, that the same criteria apply when the Commissioner considers opening an investigation of her own accord or following a complaint;

27. Three of the points raised related to the lack of reference to the “rights” of Welsh speakers. Officials do not consider that the draft revised Enforcement Policy must explicitly use the word “rights”. The draft revised Enforcement Policy sets out the Commissioner’s statutory regulatory functions in relation to Part 5 of the Measure, and these functions inherently serve to protect and advance the rights and interests of Welsh speakers. In this context, we consider the connection between the Commissioner’s duties and the safeguarding of linguistic rights is already sufficiently clear.

28. Cymdeithas yr Iaith is correct that the Commissioner is only required to publish information in the Register of Enforcement Action when she has conducted an investigation. They have publicly raised concerns that the number of investigations conducted has significantly decreased. Officials do not consider that this limits the Commissioner’s ability to operate openly and transparently. Where she determines that opening an investigation would not be reasonable or proportionate, the Commissioner is still able to communicate, provide assurances and transparency through other appropriate mechanisms.

29. Officials disagree that there is an attempt to deprive complainants from responding and consider that the arrangements in the draft revised Enforcement Policy enable a clearer and more structured process that benefits all parties. By clarifying and resolving issues swiftly there is an opportunity to ensure a timely resolution and proportionate use of resources. Importantly, complainants retain full rights to respond and to engage meaningfully should the matter proceed to a statutory investigation, where the safeguards of an open and transparent process continue to apply in full. The revised approach therefore enhances efficiency without weakening procedural fairness or limiting complainants' ability to participate.
30. The draft revised Enforcement Policy reflects the statutory enforcement framework and emphasises the principle of proportionality when it comes to imposing enforcement action. Section 77 of the Measure sets out the range of enforcement actions the Commissioner can take if she determines that a body has failed to comply with a standard. The Commissioner may choose between effectively three levels of action: taking no further action, using enforcement measures under section 77(3), or taking lighter, advisory measures under section 77(4). Under section 77(3), the Commissioner can require the body to prepare an action plan, take specific steps to prevent further non-compliance, publicise the failure, require a body to publicise it, or impose a civil penalty. Under section 77(4), the Commissioner may instead give recommendations or advice to the body or others, or seek to enter a settlement agreement with the body. Section 78 provides that the Commissioner must give reasons for deciding to take no further action or to act under section 77(4) and not under section 77(3).
31. Officials do not consider that the Measure prevents the Commissioner from issuing a "written warning" as part of providing advice and guidance. Section 5 of the draft revised Enforcement Policy also sets out that the register of Enforcement Action will include a statement indicating whether further action was taken and what that action was. This ensures an appropriate level of transparency.
32. The draft revised Enforcement Policy has been streamlined with some information within the current policy removed or conveyed elsewhere. However, officials are content that it contains a sufficient level of detail to ensure that the public and bodies understand how the Commissioner intends to undertake enforcement activity, including the principles and processes followed when regulating compliance.

Financial implications

33. There are no financial implications associated with this advice.

Legal issues, powers and statutory duties

34. [HEPGORWYD YR WYBODAETH – ADRAN 42]

35. [HEPGORWYD YR WYBODAETH – ADRAN 42].

Communications

36. Cymdeithas yr Iaith have previously publicly stated their concerns in the press suggesting that the Commissioner has *"lost sight of her core function as an independent regulator for the Welsh language and an advocate for the rights of Welsh speakers."*¹
37. As a result, we anticipate that there may be some media attention if the policy is approved by Welsh Ministers.

¹ English Translation of Original text *"colli golwg ar ei swyddogaeth graidd fel rheoleiddiwr annibynnol dros y Gymraeg ac eiriolwr dros hawliau siaradwyr Cymraeg."*:
<https://www.bbc.com/cymrufyw/erthyglau/crklv2qg4xvo>

Annex 1: ASSURANCE AND COPY RECIPIENTS**CLEARANCE TRACKING**

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Budget & Government Business Division?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	Legal issues?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, **[Hepgorwyd yr wybodaeth – adran 40(2)]**, have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account, appropriate impact assessments have been undertaken and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

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