

## **THE PROPOSED WELSH LANGUAGE (WALES) MEASURE 2010**

### **Explanatory Memorandum to the Proposed Welsh Language (Wales) Measure 2010**

This Explanatory Memorandum has been prepared by the Heritage Department of the Welsh Assembly Government and is laid before the National Assembly of Wales in accordance with Standing Order 23.18. It sets out the policy objectives and provisions of the Proposed Welsh Language Measure and explains its scope.

#### **Member's Declaration**

In my view the provisions of the Proposed Welsh Language (Wales) Measure, introduced by me on the 4 March 2010, would be within the legislative competence of the National Assembly for Wales.

#### **Alun Ffred Jones AM**

Minister for Heritage  
Assembly Member in charge of the Proposed Measure

4 March 2010

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## 1. Description

- 1.1 The Proposed Welsh Language (Wales) Measure 2010 (“the proposed Measure”) is intended to modernise the existing legal framework largely governed by the Welsh Language Act 1993 (“the 1993 Act”) regarding the use of the Welsh language in the delivery of public services.
- 1.2 The proposed Measure includes provision with regard to the official status of the Welsh language and establishes the office of Welsh Language Commissioner (“the Commissioner”) which will replace the Welsh Language Board (“the Board”) established under the 1993 Act.
- 1.3 The Commissioner will have the general function of promoting and facilitating the use of the Welsh language and to promote equality between the Welsh and English languages. This will include the power to investigate alleged interferences with individuals’ freedom to use Welsh with one another in certain circumstances. The Commissioner will be supported by an Advisory Panel.
- 1.4 The proposed Measure makes provision with regard to the development of standards of conduct relating to the Welsh language (“standards”) (explained at paragraph 3.19 below) which will gradually replace the existing system of Welsh language schemes (“schemes”) provided for by the 1993 Act.
- 1.5 The proposed Measure also includes provisions in respect of the enforcement of duties contained in standards and the ability of individuals to challenge those duties as they apply to them. This will include the creation of a Welsh Language Tribunal (“the Tribunal”).

## 2. Legislative background

### Competence

- 2.1 The power to make Assembly Measures is provided by Part 3 of the Government of Wales Act 2006 (“the 2006 Act”). Section 93 of that Part of the 2006 Act allows the National Assembly for Wales (“the Assembly”) to make Measures. Section 94 requires that the provisions of a Measure come within the Assembly’s legislative competence. The competence relied upon under section 94(4) of the 2006 Act for the proposed Measure is provided by Matters 20.1 and 20.2 of Part 1 of Schedule 5 to the 2006 Act. These Matters were inserted into Schedule 5 by The National Assembly for Wales (Legislative Competence) (Welsh Language) (Order) 2010 (“the LCO”).
- 2.2 The consent of the Secretary of State, in accordance with the requirements of Parts 2 and 3 of Schedule 5 to the 2006 Act as modified by the LCO, has been obtained.
- 2.3 Matters 20.1 and 20.2, as inserted into Schedule 5 of the 2006 Act by the LCO are reproduced below:

#### ***Matter 20.1***

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

- (a) public authorities;
- (b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;
- (c) persons providing services to the public established by an enactment;
- (d) persons established by prerogative instrument—
  - (i) to advance learning and knowledge by teaching or research or by developing or awarding qualifications;
  - (ii) to collect, preserve or provide access to recorded knowledge or to objects and things which further understanding;
  - (iii) to support, improve, promote or provide access to heritage, culture, sport or recreational activities;
  - (iv) engaged in promoting a wider knowledge and representing the interests of Wales to other countries;
  - (v) engaged in central banking;
- (e) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;

- (f) persons providing services to the public who receive public money amounting to £400,000 or more in a financial year;
- (g) persons overseeing the regulation of a profession, industry or other similar sphere of activity;
- (h) providers of social housing;
- (i) persons providing the public with the following kinds of services or with other services which relate to any of those services—
  - (i) gas, water or electricity services (including supply or distribution);
  - (ii) sewerage services (including disposal of sewage);
  - (iii) postal services and post offices;
  - (iv) telecommunications services;
  - (v) education, training (where the provider receives public money for its provision), or career guidance, and services to encourage, enable or assist participation in education, training or career guidance;
  - (vi) bus and railway services;
  - (vii) services to develop or award educational or vocational qualifications;
- (j) persons opting or agreeing to be subject to the imposition of the duties.

With regard to imposing duties in relation to paragraph (b), this matter only includes duties in respect of services to the public provided under an agreement, or in accordance with arrangements, made with a public authority.

A person who receives public money amounting to £400,000 or more in a financial year does not fall within paragraph (f) unless—

- (a) that person also received public money in a previous financial year, or
- (b) a decision has been made that that person will receive public money in a subsequent financial year.

With regard to imposing duties in relation to paragraph (i)—

- (a) this matter only includes duties in respect of the services and the other related services mentioned, and
- (b) in respect of the related services, this matter does not include the provision of related services in a shop, other than post office counter services and the sale of tickets or provision of timetables for bus and railway services.

This matter does not include imposing duties about broadcasting.

This matter does not include imposing duties on a person (other than on a Welsh language authority) unless there is a means for that person to

challenge those duties, as they apply to that person, on grounds of reasonableness and proportionality.

### ***Matter 20.2***

Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).

#### *Interpretation of this field*

In this field—

“broadcasting” means the commissioning, production, scheduling, transmission or distribution of programmes (including advertisements, subtitles, continuity announcements and teletext), access services, interactivity, online content and other output of a similar nature for television, radio, the internet or other online or wireless platforms;

“bus service” means a scheduled service, by public service vehicle (within the meaning of section 1 of the Public Passenger Vehicles Act 1981<sup>(1)</sup>), for the carriage of passengers at separate fares, other than a service—

- (a) for which the whole capacity of the vehicle has been purchased by a charterer for the charterer’s own use or for resale;
- (b) which is a journey or trip organised privately by any person acting independently of the vehicle operator; or
- (c) on which the passengers travel together on a journey, with or without breaks and whether or not on the same day, from one or more places to one or more places and back;

“enactment” includes any future enactment;

“shop” means any premises where the sale of goods is the principal trade or business carried on;

“postal services” means the service of conveying letters, parcels, packets or other articles from one place to another by post and the incidental services of receiving, collecting, sorting and delivering such articles;

“public authority” means each public authority within the meaning of section 6 of the Human Rights Act 1998<sup>(2)</sup>;

“public money” means—

- (a) moneys made available directly or indirectly by—
  - (i) the National Assembly for Wales;
  - (ii) the Welsh Ministers;
  - (iii) Parliament;
  - (iv) Ministers of the Crown; or

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(1) 1981 c.14  
(2) 1998 c.42

- (v) an institution of the European Communities;
- (b) moneys provided by virtue of any enactment;

“telecommunications service” means any service that consists of providing access to, or facilities for making use of, any system which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical, magnetic or electro-magnetic energy (including the apparatus comprised in the system), but does not include broadcasting, radio, or television;

“Welsh language authority” means a person upon whom an enactment confers or imposes functions of—

- (a) imposing or enforcing on other persons duties relating to the Welsh language,
- (b) determining the duties relating to the Welsh language that are imposed on other persons, or
- (c) deciding challenges to the duties relating to the Welsh language that are imposed on other persons.

## **General**

- 2.4 Successive UK Governments have recognised that legislation has a part to play in promoting and facilitating the use of the Welsh language. The Welsh Courts Act 1942 conferred limited rights upon any party or witness wishing to use the Welsh language in courts in Wales, while the Welsh Language Act 1967 conferred on any party, witness or other person an absolute right to use the Welsh language in the courts (subject to giving prior notice, other than in a magistrate’s court), and also empowered Ministers to prescribe Welsh or bilingual versions of statutory forms.
- 2.5 The most recent and substantial legislation in relation to the Welsh language are the 1993 and 2006 Acts (the latter of which includes provision about the use of the language by the Assembly, the Assembly Commission and the Welsh Ministers).

## **The 1993 Act – background**

- 2.6 The 1993 Act is founded upon two principles – the need to promote and facilitate the use of the Welsh language and the treatment of the English and Welsh languages on a basis of equality, so far as is both appropriate in the circumstances and reasonably practicable. The function of promoting and facilitating the use of the language is conferred by the 1993 Act upon the Board.
- 2.7 The 1993 Act lists certain categories of persons which the Board can require to prepare schemes. These schemes specify the measures that those persons propose to take, in the provision of services to the public in Wales, to give effect to the principle that the English and Welsh

languages should be treated on a basis of equality. The 1993 Act also confers powers on the Board to investigate alleged breaches of schemes and requires it to report on its investigations.

- 2.8 Most functions under the 1993 Act rest with the Board although Welsh Ministers have the power to appoint the Board's members; the power to add to the category of persons the Board can require to produce schemes; and the power to adjudicate where the Board and those required to produce a scheme fail to reach agreement on matters in relation to their schemes. The Welsh Ministers also have the function of approving guidelines as to the form and content of schemes produced by the Board.
- 2.9 The period since 1993 has highlighted the benefit of establishing clear responsibilities with regard to promoting and facilitating the use of the language. The Board has brought a clearer focus to the task of delivering bilingual services. The Board has highlighted the important role played by research; developed expertise in the field of language planning; and highlighted the benefits to the language of having a statutory champion independent of government.
- 2.10 The provisions set out in the proposed Measure are intended to build on and modernise the system of schemes created under the 1993 Act.

### **The 2006 Act - background**

- 2.11 Section 78 of the 2006 Act places a duty on the Welsh Ministers to adopt their own language scheme as well as a duty to adopt a strategy setting out how they propose to promote and facilitate the use of the Welsh language. The *Iaith Pawb* action plan for a bilingual Wales is the Welsh Ministers' current language strategy. Under section 61(k) of the 2006 Act, the Welsh Ministers may do anything they consider appropriate to support the Welsh language (although this does not extend to proposing or making legislation).
- 2.12 Under section 35 of the 2006 Act the Assembly must in the conduct of its proceedings give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality. In addition, section 156 provides that the English and Welsh texts of any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or any subordinate legislation which is in both English and Welsh when it is made, are to be treated for all purposes as being of equal standing.

### 3. Purpose and intended effect of the legislation

#### Building on the 1993 Act

- 3.1 For all of the successes that have been achieved under the 1993 Act, Welsh speakers can still face inconsistencies and difficulties in accessing services through the medium of Welsh.
- 3.2 In many areas, arrangements for delivering services to the public in Wales have changed since 1993. However, the framework set out by the 1993 Act does not enable these changes to be taken into account in a consistent way. For example, changes to the structure of certain, key public services and new ways of delivering services mean that the public face of some sectors and certain key services fall outside the scope of the 1993 Act. Although the Welsh Ministers have the power under the 1993 Act to add certain persons from within these sectors to the category that the Board can require to produce a scheme, this power does not cover the whole sector. This creates the potential for an uneven playing field within these sectors and uncertainty about the services that Welsh speaking customers can expect to receive.
- 3.3 Even where a person is within the category of persons in respect of whom the Board can require a scheme to be prepared, the Board's own experience since 1993 in developing, negotiating and agreeing schemes on a case by case basis has revealed the process to be resource-intensive. Schemes, once agreed, are also revisited and amended every three years or so. Since currently over 550 schemes are in existence, the task of ensuring that the content reflects developments in the way that services are delivered (e.g. technological change) on a case by case basis can be a bureaucratic burden.
- 3.4 In addition to being a resource-intensive exercise in terms of development, since the content of the schemes themselves are a product of negotiation, bodies providing similar services to the public in Wales, in the same or similar geographical area, may commit to offering varied levels of Welsh medium services. As a result, Welsh speakers can experience a lack of consistency from one body to the next – and the reason for any inconsistency cannot be easily understood by them.
- 3.5 Under the 1993 Act, Crown bodies, including government departments, cannot be added to the category of persons in respect of whom the Board can *require* schemes to be produced. In addition, these voluntary schemes are not subject to the full enforcement system established under the 1993 Act.
- 3.6 In terms of enforcement, the 1993 Act only provides for a single formal mechanism for investigating alleged breaches of schemes and does not provide for any graduated alternatives. A single mechanism may not be appropriate in all cases, and may not achieve the right results for all in each case. In addition, the Board lacks the power under the 1993 Act to

require persons to provide it with evidence and information that will assist it with its investigations.

### **Objectives of the proposed Measure**

- 3.7 A key commitment of the Welsh Assembly Government's *One Wales* programme of government was to seek "enhanced legislative competence on the Welsh language in order to legislate by Measure to: confirm official status for both Welsh and English; linguistic rights in the provision of services; and, the establishment of the post of Language Commissioner".
- 3.8 These *One Wales* commitments arose out of the need to revisit and update the current legislative framework which governs the use of the Welsh language in the provision of services to the public. The realisation of the *One Wales* objectives is one aspect of a larger purpose which lies behind the proposed Measure – remedying the inconsistencies and difficulties outlined above in Part 2 of this memorandum in respect of the 1993 Act.
- 3.9 Legislating in respect of the Welsh language is also intended to provide a foundation for the Welsh Ministers' delivery of policies in respect of the language. *Iaith Pawb* sets out the Welsh Assembly Government's vision of a truly bilingual Wales, a country where people can choose to live their lives through the medium of either Welsh or English and where the presence of both languages is a visible and audible source of pride and strength.
- 3.10 In legislating to update the current legislative framework, the Welsh Assembly Government's aims are:
- to provide greater clarity and consistency for Welsh speakers in terms of the services they can expect to receive in Welsh;
  - to reduce the administrative demands placed upon those subject to duties by moving the focus away from the preparation of schemes;
  - to establish a system that will ensure that duties imposed on bodies are both reasonable and proportionate;
  - within particular sectors, ensuring that there is greater consistency in terms of those bodies subject to duties with the aim of ensuring a level playing field;
  - to develop the responsibility of the Welsh Assembly Government and local authorities in Wales with regard to promoting the use of Welsh more widely;

- to develop a more effective enforcement regime in relation to any duties that will be imposed;
- to provide a strong and independent voice for the Welsh language through the establishment of the Commissioner as a champion and advocate for the language;
- to make further provision with regard to the official status of the Welsh language; and
- to make provisions with regard to investigating and reporting on instances of interference with people's freedom to use Welsh with one another.

## **Summary of the proposed Measure**

### ***Official status***

3.11 The proposed Measure's first section will explain that the Measure makes further provision about the official status of the Welsh language.

### ***The Commissioner***

3.12 The proposed Measure will establish the office of Commissioner, appointed by the First Minister. The Commissioner will have general functions and powers to promote and facilitate the use of the Welsh language and to promote equality between the Welsh and English languages.

3.13 The Commissioner will be assisted by an Advisory Panel appointed by the Welsh Ministers. The Advisory Panel will have a strategic role, advising the Commissioner with regard to wider policy issues, but it will not be involved with the day-to-day running of the office of the Commissioner or with any investigation conducted by the Commissioner into alleged breaches of standards (see paragraph 3.19 below).

### ***Freedom to use Welsh***

3.14 The proposed Measure gives the Commissioner the power to investigate certain alleged interferences with the freedom of persons in Wales to use Welsh with one another. He or she must also report annually to the Welsh Ministers about the adequacy and effectiveness of the law in protecting the freedom of persons in Wales wishing to use the Welsh language to do so with one another. The Commissioner may also produce and publish reports on particular investigations undertaken.

### ***Linguistic duties***

3.15 In addition, the proposed Measure sets out the Commissioner's role in respect of the continuation of schemes under the system created by the

1993 Act; the development and imposition of new standards of conduct relating to the Welsh language; and the enforcement of those standards. Decisions made by the Commissioner in respect of the application of standards to individual persons, and in respect of enforcing standards imposed upon persons will be capable of being appealed to the Tribunal.

3.16 Each individual part of the system outlined above in respect of the transition from the 'old' scheme system to the establishment and operation of the new system of standards will be explained in the following paragraphs.

### ***The Board***

3.17 Once the Commissioner has been appointed in accordance with the requirements imposed by the proposed Measure, he or she will effectively step into the Board's shoes. The Board will be abolished. The Board's general functions under Part 1 of the 1993 Act as well as its functions under Part 2 of that Act will become exercisable by the Commissioner. In effect, the processes related to existing schemes will be overseen by the Commissioner. Those provisions of the 1993 Act relating to the establishment of the Board will be repealed by the proposed Measure. The proposed Measure also provides that the Board's functions of promoting and facilitating the use of the Welsh language under section 3 of the 1993 Act may be transferred to the Welsh Ministers either instead of, or in addition to, the functions being transferred to the Commissioner.

3.18 The policy intention behind the proposed Measure is to establish a rolling programme for the replacement of schemes with a system of standards. As bodies and sectors begin to become subject to the duty to comply with standards under the Measure, those provisions of the 1993 Act in relation to schemes will cease to apply to them. Once standards have been imposed upon the entire range of bodies that currently operate schemes, that Part of the 1993 Act which deals with schemes will be repealed in its entirety.

### ***Standards***

3.19 Standards will take the form of particular duties in relation to the manner in which persons listed in the proposed Measure (see below) provide services through the medium of Welsh, and could include requirements to consider how the actions of certain persons would affect the Welsh language.

3.20 The proposed Measure will create the following types of standard:

- service delivery standards;
- policy making standards;
- operational standards;
- promotion standards; and

- record keeping standards.
- 3.21 While under the current system, the Board negotiates each individual clause of a body's scheme, duties under standards will be capable of being imposed upon individual bodies or on a sector-wide basis so as to provide the recipient of Welsh language services with certainty and clarity as to the level of service they can expect through the medium of Welsh. While standards will be duties that must be complied with (subject to the challenge process explained below), the system that the proposed Measure will establish will enable standards to take into account regional variations as well as provide for varied timescales for compliance across a sector.
- 3.22 A **service delivery standard** will be a type of duty imposed to promote or facilitate the use of the Welsh language or to promote or facilitate the treatment of the Welsh and English languages on the basis of equality in the following circumstances: when persons that are subject to the standard deliver services to others, or when they deal with others in connection with the delivery of those services.
- 3.23 A **policy making standard** will be a type of duty which will require persons to consider the effect of their policy decisions upon opportunities for other persons to use the Welsh language, or upon the treatment of the Welsh and English languages on the basis of equality.
- 3.24 An **operational standard** will be a type of duty imposed to promote and facilitate the use of the Welsh language in relation to the carrying out by a person of their functions, business or other undertaking.
- 3.25 A **promotion standard** will be a type of duty imposed in respect of taking steps to promote and facilitate the use of the Welsh language more widely.
- 3.26 A **record keeping standard** will be a duty imposed in respect of keeping and maintaining details regarding compliance with the other four standards as well as any other complaints concerning the language.
- 3.27 For duties in the form of particular standards to be imposed upon a person, certain conditions need to be met:
- the person must be capable of being required to comply with the standard;
  - the standard is of a kind that can be imposed upon the person;
  - the Welsh Ministers provide that the person may be required to comply with the standard; and
  - the Commissioner must provide the person with a compliance notice.

*Persons capable of being required to comply with the standard:*

- 3.28 Particular standards will be capable of applying to a person only if that person is listed in the first column of either Schedule 6 or 8 to the proposed Measure. Persons may be listed individually or fall within a general description in either Schedule. A person may be included in Schedule 6 if that person falls within one or more of the categories of person listed in the second column of Schedule 5. Similarly, in terms of Schedule 8, a person can be included only if they fall within the descriptions of persons (individually or as part of a group) in the second column of Schedule 7.
- 3.29 Schedules 5 and 7 to the proposed Measure reflect the competence conferred upon the Assembly by Matter 20.1 where duties in respect of the language may be imposed only upon those persons falling into one or more of paragraphs (a) – (j) of the Matter. Schedules 6 and 8 to the proposed Measure list persons within competence who are capable of being required to comply with particular standards.
- 3.30 The Welsh Ministers may not make regulations providing for a standard to be specifically applicable to a Minister of the Crown unless the Secretary of State consents to that provision.

*The standard is of the kind that can be imposed upon the person:*

- 3.31 Persons listed in Schedule 6 – and who fall within Schedule 5 – may be required to comply with particular standards that fall within one or more of the kind of standards dealing with service delivery, policy making, operational matters and record keeping.
- 3.32 A person can be required to comply with a particular standard only if that standard falls within the kind of standard listed in the second column adjacent to the person's description in the first column of Schedule 6.
- 3.33 A promotion standard is capable of being imposed only upon the Welsh Ministers, county borough councils and county councils.
- 3.34 The position in respect of those persons who fall within Schedule 5 – and those who fall within Schedule 7 – differs in respect of the particular standards with which they can be required to comply.
- 3.35 Those persons within paragraph (b) of Matter 20.1 of Schedule 5 to the 2006 Act – persons providing the public with services provided under an agreement, or in accordance with arrangements, made with a public authority – may have duties imposed upon them only in respect of those services provided under that agreement or in accordance with that arrangement.
- 3.36 Those persons within paragraph (i) of Matter 20.1 of Schedule 5 to the 2006 Act – persons providing the public with specific kinds of services or

with other services which relate to those services – may have duties imposed upon them only in respect of the services mentioned in the paragraph.

- 3.37 As a result, duties that are capable of being imposed upon those persons listed in Schedule 8 - and who fall within Schedule 7 - of the proposed Measure are limited to duties falling within two classes of standard only: service delivery and record keeping.

*The Welsh Ministers provide that the person may be required to comply with the standard:*

- 3.38 The system established by the proposed Measure will see the Welsh Ministers detail in regulations the particular standards under each of the five general classes of standard, and identify those persons that may be required to comply with each particular standard. In making decisions regarding the form and manner in which particular standards should apply to a person, Welsh Ministers will have to have due regard to any report produced by the Commissioner following the exercise by the Commissioner of specific powers of investigation into standards. Investigations will, amongst other matters, enable the Commissioner to examine which particular standards a person should have to comply with, and the form those standards should take.

- 3.39 If the Commissioner exercises his or her powers of investigation into standards in relation to a particular person, the Commissioner must consult that person in carrying out the investigation and have regard to the need to secure that requirements for persons to comply with particular standards are not unreasonable or disproportionate.

*The Commissioner provides the person with a compliance notice:*

- 3.40 Once provided with a compliance notice, the person will have to comply with the standard(s) detailed in the notice, subject to their right of challenge. If a challenge is mounted, the requirement to comply with the standard(s) being challenged will be postponed until that person has exhausted his or her right of appeal to the Tribunal.

*Right of challenge*

- 3.41 The person in receipt of the compliance notice may challenge the requirement to comply with a particular standard, as it applies to them, on the grounds of reasonableness and proportionality. Challenges can also be made where a person has been complying with a particular standard but is of the view that a change in circumstances has meant that continued compliance is unreasonable and/or disproportionate.
- 3.42 The challenge in the first instance will lie with the Commissioner, with a route of appeal available to the Tribunal. In the event that a requirement in a compliance notice to comply with a standard is determined to be

unreasonable and/or disproportionate, the Commissioner or, where necessary, the Tribunal must either revoke that notice; revoke and give a new compliance notice; or vary the existing compliance notice.

### *Codes of practice*

3.43 The proposed Measure provides the Commissioner with the power to issue codes of practice for the purpose of providing practical guidance with respect to the requirements of any particular standard.

### **Enforcement of standards**

3.44 The Commissioner will have the primary responsibility for enforcing compliance with standards. The proposed Measure establishes a system of graduated enforcement in order to secure compliance. Enforcement action under the proposed Measure can vary from the making of recommendations or giving advice to a person, to the imposition of a civil penalty not exceeding £5,000. The Welsh Ministers may, by order, substitute a different maximum amount.

3.45 To this end, the Commissioner is provided with the power to investigate and report upon whether a person has failed to comply with a particular standard. Where the Commissioner determines that a failure to comply has occurred he or she may take enforcement action.

3.46 A person in respect of whom the Commissioner has determined a failure to comply with a standard may appeal to the Tribunal on the ground that a failure to comply has not occurred. Where the Commissioner has taken enforcement action in respect of a person, that person may appeal to the Tribunal on the grounds that the enforcement action is unreasonable and/or disproportionate.

### **Explanation of provisions**

3.47 The information provided above in respect of the proposed Measure's operation has been provided in summary form. The individual provisions of this Measure are explained in the Explanatory Notes at Part 3 of this memorandum.

## 4. Consultation

- 4.1 Since publishing their *One Wales* commitments Ministers have engaged in extensive discussions with a wide range of stakeholders both with regard to legislation and their wider strategy for the development of the Welsh language. Ministers have drawn on these discussions in developing their proposals for a revised legislative framework to support the Welsh language. They have also been able to take into account views expressed as part of the National Assembly and Westminster scrutiny of their LCO proposal.
- 4.2 The provisions of this proposed Measure have not yet been the subject of formal consultation. The proposals to modernise schemes and over time to replace schemes with a system of standards has, however, drawn upon the experience of the Board and others in administering schemes under the terms of the 1993 Act.
- 4.3 It is also important to note that the content of standards and proposals to place organisations under a duty to comply with standards will be the subject of formal consultation with interested parties in due course.

## **5. Power to make subordinate legislation**

5.1 This section provides details of:

- those provisions of the proposed Measure which confer a power upon the Welsh Ministers to make subordinate legislation;
- an explanation of the reasons why it was considered appropriate to delegate the power;
- details of the relevant Assembly procedure (if any) which will apply to the exercise of each power; and
- an explanation of why it was considered appropriate to make it subject to that procedure.

5.2 It is appreciated that such powers to make subordinate legislation are not granted lightly, however it is felt that having such powers will preserve flexibility and will allow Welsh Ministers to make appropriate arrangements through subordinate legislation in a manner which is sensitive to how the nature of public services changes and so as to respond to the changing demands of Welsh speakers.

5.3 In recognition of the wide scope of the powers contained in the draft Measure, and in order to provide opportunity for further scrutiny by the National Assembly, the affirmative procedure will be used on each occasion that regulations are made under those sections that impose duties on persons. Prior to regulations being put before the Assembly, there would be a formal consultation on the detail of the new arrangements and how the regulations would underpin them along with the requisite regulatory impact assessment.

### **Subordinate legislation making powers**

5.4 The proposed Measure contains enabling powers for Welsh Ministers to implement and set out the detail of provisions in relation to:

- the abolition of the Welsh Language Board and the transfer of its functions;
- the criteria for appointment by the First Minister of the Commissioner and the Welsh Ministers of the members of the Advisory Panel and the Tribunal;
- the conduct by the Commissioner of his or her functions;
- joint and collaborative working between the Commissioner and prescribed ombudsmen or other authorities;

- the imposition of standards on persons specified in the Measure;
  - the imposition of civil penalties;
  - the Commissioner's annual report to Welsh Ministers on the freedom to use Welsh; and
  - the Tribunal's rules of practice and procedure.
- 5.5 Some of these powers avoid the need to set out inappropriate details on the face of the proposed Measure and they provide the flexibility to modify those details, as necessary. Other powers are needed to deal with matters or developments which are not known at this stage. This avoids the need to bring forward an amending Measure in future to deal with such issues.
- 5.6 The proposed Measure also contains powers for the Welsh Ministers to commence the majority of the provisions of the Measure by order and to make, by order, such transitional, transitory, consequential, saving, incidental and other provision as the Welsh Ministers think necessary or appropriate in connection with, or to give full effect to this proposed Measure. This power includes, but is not limited to, provision that amends, repeals or otherwise modifies any Act of Parliament, Assembly Measure or subordinate legislation.

### **The abolition of the Welsh Language Board and the transfer of its functions**

- 5.7 Schedule 12, paragraphs 1 and 2 contain two order making powers that will enable the Welsh Ministers to make provision:
- for the staff of the Board to transfer to the Commissioner or the Welsh Ministers; and
  - about the property, rights and liabilities of the Board, for example, to make provision in relation to the transfer of property, rights and liabilities of the Board to the Commissioner or the Welsh Ministers.
- 5.8 As the proposed Measure itself provides in principle for the abolition of the Board and the transfer of its functions to the Commissioner, subject to any element of those functions being transferred to the Welsh Ministers, we believe that it would be appropriate for the order making the detailed arrangements and giving effect to such transfers to be contained in subordinate legislation and subject to the **negative procedure**.

## **The criteria for appointment by the First Minister of the Commissioner and the Welsh Ministers of the members of the Advisory Panel and the Tribunal**

### *Appointment regulations in relation to the Commissioner*

- 5.9 The proposed Measure provides that the First Minister must appoint the Commissioner (section 2(2)), and Schedule 1 makes further provision about the Commissioner. Schedule 1, paragraph 3(1)(a) stipulates that the First Minister must comply with appointment regulations to be made by the Welsh Ministers under paragraph 7 of that Schedule. Paragraph 7 goes on to require the regulations to make provision for the establishment of a panel of persons who are to interview candidates and make a recommendation to the First Minister in relation to the appointment of the Commissioner. Paragraph 7 also provides that the regulations may deal with the principles to be followed in appointing the Commissioner, the knowledge and experience that the Commissioner will be required to have, and the application of any codes of practice that are concerned with appointments to public bodies.
- 5.10 The requirements in respect of appointing the Commissioner may change over time to reflect wider changes in the law or policy and practice in relation to appointments and, for these reasons, we believe that it is appropriate that such provisions are made by subordinate legislation. Since the principle to the appointment of the Commissioner will have been debated by the Assembly, then it is felt appropriate that the regulation making power contained in Schedule 1, paragraph 7, should be subject to the **negative procedure**.

### *Delegation of appointment functions*

- 5.11 Schedule 1, paragraphs 8(1)(a) and (b), provide that the First Minister may, by order, provide for the Welsh Ministers to exercise the First Minister's functions of appointing the Commissioner and any or all of the First Minister's other functions that relate to the Commissioner. Paragraph 8(2) provides that the provision may include, amongst other things, provision amending or otherwise modifying the proposed Measure. For example, the First Minister may be unable to act or it may be inappropriate for him to act. In such circumstances, under the provisions of the 2006 Act, the First Minister could only delegate the function of appointing the Commissioner to staff, in the absence of an express provision in the proposed Measure permitting the delegation of the function to the Welsh Ministers.
- 5.12 In such circumstances, we believe that the Measure needs to provide the flexibility for the power of appointment to be conferred on the Welsh Ministers without the need to bring forward an amending Measure. Where an order making power contained in Schedule 1, paragraphs 8(1)(a) and (b), proposes to amend or otherwise modify the proposed Measure, we believe that the order should be subject to the **affirmative**

**procedure.** Where the order does not contain provision amending the proposed Measure, we believe that the order should be subject to the **negative procedure.**

*Appointment regulations in relation to the members of the Advisory Panel and the Tribunal*

- 5.13 The proposed Measure provides that the Welsh Ministers must appoint the members of the Advisory Panel (section 22), and Schedule 4 makes further provision about the members of the Advisory Panel. Schedule 4, paragraph 1 stipulates that the Welsh Ministers must comply with appointment regulations to be made by them under paragraph 5 of that Schedule. Paragraph 5 provides that the Welsh Ministers must, by regulations make provision about the appointment of members of the Advisory Panel and that those regulations may make provision about principles to be followed in appointing the members of the Advisory Panel, the knowledge and experience those members must have, the application of any codes of practice concerned with appointments to public bodies, and any other provision relating to any such code. Paragraph 5 also provides that appointment regulations may confer functions on the Welsh Ministers as well as on any other person, including functions involving the exercise of a discretion.
- 5.14 The requirements in respect of appointing members of the Advisory Panel may change over time to reflect wider changes in the law or in policy and practice in relation to appointments and, for these reasons, we believe that it is appropriate that such provisions are made by subordinate legislation. Since the principle to the appointment of the Advisory Panel will have been debated by the Assembly, then it is felt appropriate that the regulation making power contained in Schedule 4, paragraph 5, should be subject to the **negative procedure.**
- 5.15 The proposed Measure provides that the Welsh Ministers must appoint the members of the Tribunal (section 109(3)), and Schedule 11 makes further provision about the members of the Tribunal. Paragraphs 3(1)(b), 4(1)(b) and 5(1) state that the Welsh Ministers may only appoint a person to be President, a legally qualified member or a lay member if the person satisfies any conditions applicable to the appointment that are specified in appointment regulations. Paragraph 9 of Schedule 11 provides that the Welsh Ministers may, by regulations make provision about the appointment of members of the Tribunal and that those regulations may make provision about principles to be followed in appointing the members of the Tribunal, the knowledge of, and proficiency in, the Welsh language those members must have, the application of any codes of practice concerned with appointments to public bodies, and any other provision relating to any such code. Paragraph 9 also provides that appointment regulations may confer functions on the Welsh Ministers as well as on any other person, including functions involving the exercise of a discretion.

5.16 The requirements in respect of appointing members of the Tribunal may change over time to reflect wider changes in the law or in policy and practice in relation to appointments and, for these reasons, we believe that it is appropriate that such provisions are made by subordinate legislation. Since the principle to the appointment of the Tribunal will have been debated by the Assembly, then the regulation making power contained in Schedule 11, paragraph 9, should be subject to the **negative procedure**.

### **The conduct by the Commissioner of his or her functions**

#### *Legal assistance: costs*

5.17 Section 9 of the proposed Measure deals with the recovery of the Commissioner's expenses incurred in providing legal assistance under section 8. Section 9(4) of the Measure provides that those expenses are to be calculated in accordance with such provision (if any) as the Welsh Ministers make for the purpose by regulations. Section 9(5) provides that such regulations may, amongst other things, provide for the apportionment of expenditure incurred by the Commissioner partly for one purpose and partly for another, or for general purposes.

5.18 We believe that the Measure needs to provide the flexibility for the calculation of expenses to be modified without the need to bring forward an amending Measure.

5.19 Since the principle in relation to this provision will have been debated by the Assembly we believe that the regulation making power contained in section 9 should be subject to the **negative procedure**.

#### *Integrity*

5.20 Part 8, Chapter 1 of the proposed Measure makes provisions in relation to the integrity of the Commissioner and the Deputy Commissioner. Section 129(1) provides that the Welsh Ministers may by regulations specify what interests are registrable interests for the purposes of this Chapter (section 129(1)(a)), and that the Welsh Ministers may make other provision for the purposes of the Chapter on Integrity (section 129(1)(b)). The matters contained in the Chapter on Integrity relate to the Commissioner and Deputy Commissioner and cover conflicts of interest and the creation, maintenance and publication of registers of interests.

5.21 We believe that the proposed Measure needs to provide for the flexibility for the provisions about such interests to be made and modified to reflect the circumstances in which the Commissioner and Deputy Commissioner are operating at any given time, without the need to bring forward an amending Measure. We also believe that it would be inappropriate for such detail to appear on the face of the proposed

Measure.

- 5.22 Since the principle in relation to this provision will have been debated by the Assembly, we believe that the regulation making power contained in sections 129(1)(a) and (b) should be subject to the **negative procedure**.

#### *Restrictions*

- 5.23 Section 133 states that the Commissioner is not authorised or required to exercise a particular function which, in light of an enactment, another person may also exercise. Section 133(2) gives the Welsh Ministers the power, by order, to identify the particular functions and the persons in question.
- 5.24 In such circumstances, we believe that the proposed Measure needs to provide for the flexibility for the provisions identifying the particular functions and persons in question to be prescribed swiftly, for example, as existing office-holders are given new functions or new office-holders and their functions are created, without the need to bring forward an amending Measure. We also believe that it would be inappropriate for such detail to appear on the face of the proposed Measure.
- 5.25 Since the principle in relation to this provision will have been debated by the Assembly we believe that regulation making power contained in sections 133 should be subject to the **negative procedure**.

#### **Joint and collaborative working between the Commissioner and prescribed ombudsmen or other authorities**

##### *Joint working between the Commissioner and the Public Services Ombudsman for Wales*

- 5.26 Section 19 of the proposed Measure makes provision in relation to joint working between the Commissioner and the Public Services Ombudsman for Wales (PSOW). Subsection (4)(a) gives the Welsh Ministers the power, by order, to provide for section 19 to apply in relation to any other person as it applies to the PSOW. Subsection (4)(b) gives the Welsh Ministers the power, by order, to make such other provision as the Welsh Ministers think appropriate in connection with, for the purposes of, or in consequence of an order made under subsection (4)(a).
- 5.27 Where an order made under section 19(4) amends primary legislation, we believe it appropriate that the order should be subject to the **affirmative procedure**. Where such an order does not amend primary legislation, we believe that the order should be subject to the **negative procedure**.

### *Collaborative working between the Commissioner and other ombudsmen*

5.28 Section 20 of the proposed Measure makes provision in relation to collaborative working between the Commissioner and other ombudsmen. Subsection (7) gives the Welsh Ministers the power, by order, to amend the definition of ombudsman in subsection (6). Subsection (8) gives the Welsh Ministers the power, by order, to make such other provision as the Welsh Ministers think appropriate in connection with, for the purposes of, or in consequence of an amendment made by order under subsection (7).

5.29 An order made under section 20(7) is subject to the **affirmative procedure**. Where an order made under section 20(8) amends primary legislation, we believe it appropriate that the order should be subject to the **affirmative procedure**. Where such an order does not amend primary legislation, we believe that the order should be subject to the **negative procedure**.

### *Power to disclose information*

5.30 Section 21(10) of the proposed Measure gives the Welsh Ministers the power, by order, to amend the definition of permitted person in subsection (9). An order made under this section is subject to the **affirmative procedure** given that amending the list of "permitted persons" in subsection (9) has implications as to the disclosure by the Commissioner of potentially sensitive information obtained in the exercise of any of his or her functions. This is consistent with the provisions of the Commissioner for Older People Act 2006.

## **The imposition of standards on persons specified in the Measure**

### *Specification of standards*

5.31 Section 25(1) of the proposed Measure gives the Welsh Ministers the power, by regulations, to specify standards and section 25(2) gives the Welsh Ministers the power, by regulations, to make other provision about such standards.

5.32 Regulations made under this section are subject to the **affirmative procedure** given that such regulations will specify the detail of the standards that will in due course be imposed on persons.

### *Amendment of persons and categories specified in Schedules 6 and 8*

5.33 Section 34 and 37 of the proposed Measure gives the Welsh Ministers the power, by order, to amend the Schedule 6 table and Schedule 8 table which specify the persons or categories of persons which are liable to be subject to standards.

5.34 Orders made under these sections are subject to the **affirmative procedure** given that such orders will affect a person's or a category of person's liability to comply with standards. However, orders which are made as a consequence of a change in a person's name will be subject to the **negative procedure**.

*Amendment to the amount of public money a person must receive to be included within the description of a person in entry (5) of Schedule 5*

5.35 Paragraph 1(1) of Schedule 5 to the proposed Measure gives the Welsh Ministers the power, by order, to amend entry (5) in the table by replacing the relevant amount of public money with any other amount that is not less than £400,000.

5.36 Orders made under these sections are subject to the **affirmative procedure** given that such orders will affect a person's or category of person's liability to comply with standards.

*Making standards specifically applicable to a person*

5.37 Section 38 of the proposed Measure gives the Welsh Ministers the power, by regulations, to authorise the Commissioner to give a compliance notice to a person requiring that person to comply with a standard.

5.38 Regulations made under this section are subject to the **affirmative procedure** given that following receipt of the compliance notice the person will be required to comply with the standard(s) detailed in the notice.

*Duty to make certain service delivery standards specifically applicable*

5.39 Section 41 of the proposed Measure gives the Welsh Ministers the power, by order, to amend the list of activities in Schedule 9 in relation to which service delivery standards must be specified.

5.40 Orders made under this section are subject to the **affirmative procedure** given that such orders will affect the nature and extent of the standards in relation to service delivery that a person may have to comply with.

*Supply of information to the Commissioner*

5.41 Section 68 of the proposed Measure gives the Welsh Ministers the power, by regulations, to make provision about the supply to the Commissioner of information contained in records kept by a person who is subject to a record keeping standard.

5.42 Orders made under this section are subject to the **affirmative procedure** given that such orders can extend to requiring a person to

supply the necessary information and the imposition of civil penalties for failures to supply such information.

### **The imposition of civil penalties**

5.43 Section 82 of the proposed Measure gives the Welsh Ministers the power, by order, to substitute a different amount for the maximum £5,000 civil penalty that could be imposed in respect of a breach of a relevant requirement (as defined in section 70(2)).

5.44 Orders made under this section are subject to the **affirmative procedure** given that such orders will directly affect persons subject to standards.

### **The Commissioner's annual report to Welsh Ministers on the freedom to use Welsh**

5.45 Section 108 of the proposed Measure gives the Welsh Ministers the power, by regulations, to make provision about reports by the Commissioner to Welsh Ministers on the applications made by an individual to the Commissioner requesting the investigation of alleged interferences with the freedom to use Welsh; the action taken by the Commissioner in response to each request; and the Commissioner's view of the adequacy and effectiveness of the law in protecting the freedom of persons in Wales wishing to use Welsh to do so with one another.

5.46 Regulations made under this section are subject to the **negative procedure** given that section 108 expressly requires the Commissioner to produce such reports and imposes requirements as to the content on the face of the proposed Measure.

### **The Tribunal's rules of practice and procedure**

5.47 Section 112 of the proposed Measure requires the Tribunal's President to make rules governing the practice and procedure of the Tribunal. The Welsh Ministers will have the power to allow or disallow the rules and lay the rules before the Assembly. This is consistent with the making of Tribunal Procedure Rules by Tribunal Procedure Committee under the Tribunals, Courts and Enforcement Act 2007.

5.48 Since the principle of establishing a Tribunal and the details of its composition as well as its role will have been debated by the Assembly, being contained on the face of the Measure, we believe that it is appropriate that rules governing the day to day operation of the Tribunal are contained in a statutory instrument subject to the **negative procedure**. The Statutory Instruments Act 1946 applies in relation to a statutory instrument containing rules made by the President of the Tribunal as it does in relation to subordinate legislation made by the

Welsh Ministers.

## **6. Regulatory Impact Assessment**

- 6.1 The proposed Measure does not, in itself, place any duties on bodies other than the Commissioner, the Deputy Commissioner, the President of the Tribunal, the Auditor General for Wales, the First Minister and the Welsh Ministers.
- 6.2 As mentioned above, the proposed Measure contains powers for Welsh Ministers to specify standards which will, in turn, see duties imposed on persons served with a compliance notice.
- 6.3 Given the need to consult interested parties before standards are made, draft regulations relating to standards will not be considered alongside this Measure. As described above, the Commissioner, who cannot be appointed until the proposed Measure becomes law, will be able to carry out standards investigations – and this process will involve consultation with those proposed to be subject to the standards. In the absence of those standards, it is not possible to predict in any detail the direct impact of the duties to be imposed by standards.
- 6.4 Each of those regulations will, in due course, be subjected to a full regulatory impact assessment.
- 6.5 However, in accordance with Standing Order 23.18(vi), a Regulatory Impact Assessment has been completed for this proposed Measure and follows at Part 2.

## Part 2: Regulatory Impact Assessment

This Regulatory Impact Assessment has been prepared in accordance with Standing Order 23.18(iii) and 23.18(vi).

### 7. Options

#### Introduction

- 7.1 In relation to the proposed Measure the relevant commitments in the *One Wales* programme of government are to “confirm the official status of Welsh and English, linguistic rights in the provision of services and to establish the post of Language Commissioner”. The Welsh Assembly Government is committed to achieving these aims and, in doing so, remedying the inconsistencies and difficulties outlined in Part 1 of this memorandum in respect of the 1993 Act.
- 7.2 This regulatory impact assessment discusses to what extent the following options would deliver these results:
- **Option 1:** Do nothing.
  - **Option 2:** Increase the investment in the regulatory work undertaken by the Welsh Language Board under the 1993 Act.
  - **Option 3:** Introduce a Measure to establish a Commissioner with a broad range of powers and functions; migrate from schemes to a standards based system with improved enforcement (including the establishment of a Tribunal); provide the Commissioner with the power to investigate complaints in relation to alleged interference with the freedom to use Welsh; and make further provision with regard to the status of the Welsh language.

## 8. Costs and Benefits

### General

8.1 This section examines the costs and benefits of the options described in the previous section.

### Option 1: Do nothing

8.2 Doing nothing would leave untouched the current legislative framework which has been in place since 1993 and, as such, the desired benefits outlined in Part 1 of this memorandum would not be realised.

8.3 The resource-intensive procedures involved in agreeing and amending schemes described in Part 1 would continue along with the current, limited, enforcement regime. Given that schemes are documents which contain a series of commitments made by organisations, rather than specific duties, the *One Wales* commitment of establishing rights in the provision of services (the consequence to the individual of a duty placed on an organisation) would not be dealt with.

8.4 The stated aim of establishing a Commissioner as an identifiable champion and advocate for the language would not be achieved.

8.5 This option would not enable further provisions to be made with regard to the status of the Welsh language or with regard to investigating and reporting on those instances of interference with people's freedom to use Welsh with one another.

8.6 This option would be cost neutral with the Welsh Assembly Government's sponsorship of the Board continuing (£13.8m in 2009-10).

### Option 2: Increase the investment in the regulatory work undertaken by the Board under the 1993 Act.

8.7 Increasing investment in the Board's regulatory work would allow the Board to agree more new and amended schemes. By doing this, however, the desired benefits outlined in Part 1 of this memorandum would not be realised and the resource-intensive procedures involved in agreeing and amending schemes would continue along with the current, limited, enforcement regime. In addition, the more schemes agreed, the greater the administrative burden will become for the Board.

8.8 Providing more resources to the Board is an approach which is not without precedent. In 2003, the Welsh Assembly Government provided additional funding to the Board to help implement *laith Pawb*. Some of this additional funding was used to strengthen the Board's team which worked with organisations to develop schemes. This resulted in an

increased number of schemes being agreed or amended each year.

- 8.9 Resources for any further investment in the Board's regulatory work would need to be found either by the Welsh Assembly Government or by the reallocation of resources by the Board itself (with the resulting impact on the Board's other areas of work aimed at promoting the use of Welsh). Such an investment would have to be on a recurring basis and, as described above, it would not address the issues discussed in Part 1.
- 8.10 As with option 1, the stated aim of establishing a Commissioner as an identifiable champion and advocate for the language would not be achieved.
- 8.11 This option would not enable further provisions to be made with regard to the status of the Welsh language or with regard to investigating and reporting on those instances of interference with people's freedom to use Welsh with one another.

### **Option 3: Introduce a Measure**

8.12 This option would introduce a Measure to:

- establish a Commissioner with a broad range of powers and functions;
- migrate from schemes to a standards based system with improved enforcement (including the establishment of a Tribunal);
- provide the Commissioner with the power to investigate complaints in relation to alleged interference with the freedom to use Welsh; and
- make further provision with regard to the status of the Welsh language.

8.13 The Welsh Ministers believe that introducing such a Measure will lead to a streamlined process for imposing duties upon organisations. This should allow those organisations to concentrate more of their efforts on delivering Welsh language services to their customers rather than on the processes associated with agreeing and implementing schemes.

### **Benefits**

#### *Establishing a Commissioner with a broad range of powers*

8.14 Ministers are clear that it is important that the Commissioner's role should be wider than imposing and enforcing standards. If the Commissioner is to have a positive impact on the Welsh language it is important that he or she can promote and facilitate the use of Welsh outside the regulatory framework which will be established by the proposed Measure. The Commissioner will be assisted by an Advisory Panel which will provide the Commissioner with a source of expertise,

advice and guidance in relation to the strategic direction of his or her work.

*Establishing a Tribunal*

- 8.15 Establishing a Tribunal will ensure that there is a means of challenge, independent of the Commissioner, with regard to the imposition and enforcement of duties.

*Migrating from schemes to a standards based system with improved enforcement*

- 8.16 As outlined in Part 1, the introduction of standards will provide greater clarity and consistency for Welsh speakers in terms of the services they can expect to receive in Welsh; reduce the administrative demands placed upon those subject to duties by moving the focus away from the preparation of schemes; establish a system that will ensure that duties imposed on bodies are both reasonable and proportionate; and that there is an appropriate degree of consistency in terms of the duties placed on bodies; develop the responsibility of the Welsh Assembly Government and local authorities in Wales with regard to promoting the use of Welsh more widely; and develop a more effective enforcement regime in relation to any duties that will be imposed.

- 8.17 Standards will also lead to the establishment of linguistic rights in the provision of services, meeting the commitments in *One Wales*.

- 8.18 An improved enforcement regime will provide a more effective means of dealing with alleged non-compliance with standards whilst also allowing for early and informal resolution of complaints as appropriate.

*Providing the Commissioner with the power to investigate complaints in relation to allegations of interference with the freedom of persons in Wales to use Welsh with one another*

- 8.19 This power of investigation includes reporting requirements which will allow the Commissioner to report to Welsh Ministers about the adequacy and effectiveness of the law in protecting this freedom.

- 8.20 The fact that the Commissioner will have the power to publish reports about any instances where he or she feels a person's freedom to use Welsh has been interfered with will raise awareness of bad practice and of the Commissioner's good practice recommendations.

*Making further provision with regard to the status of the Welsh language.*

- 8.21 The proposed Measure makes further provisions with regard to the status of the Welsh language.

## **Costs**

### *The implications for organisations of complying with standards*

- 8.22 The process for imposing standards has been explained in Part 1. That process will lead to standards being developed by the Commissioner and specified in subordinate legislation made by Welsh Ministers which will be subject to the scrutiny and approval of the Assembly. The process will require the Welsh Ministers to produce a Regulatory Impact Assessment on the effects of the proposed regulations to be tabled alongside the subordinate legislation. As such, the exact nature of the standards to be imposed on bodies under the framework established by the proposed Measure will become apparent only at the end of that process.
- 8.23 The following assessment of costs provides an initial examination of the implications for organisations of complying with standards. It is based on the assumption that organisations required to comply with standards will be required to meet any costs of doing so from their mainstream budgets. This reflects the assumption made during the passage of the 1993 Act through Parliament in relation to scheme compliance.
- 8.24 The overall cost of complying with schemes has not been routinely measured. The overall cost for organisations of providing their services to the public has been treated as the cost of providing the service bilingually. After all, the cost of using the English language to provide a service is not something that is routinely measured. The same principle should apply to the Welsh language.
- 8.25 The vast majority of organisations which fall within the scope of the 1993 Act and that provide services to the public in Wales already have schemes in place. They should, therefore, already be providing a range of Welsh language services to the public. Whilst the legislative framework will be updated by the introduction of a standards based system, the core principle will remain, as set out under the 1993 Act, that organisations should be expected to plan and deliver Welsh language services to the public. It is not, therefore, expected that the introduction of standards will lead to significant new financial burdens on those organisations affected.
- 8.26 Clearly, any organisations currently not operating schemes may face costs in respect of the language for the first time.

### *Estimate of costs for organisations placed under duties*

- 8.27 As already mentioned, the costs in relation to complying with the requirements under the 1993 Act has not been routinely measured and Welsh language service provision is increasingly seen as an integral part of mainstream service provision in Wales. As such, providing any accurate estimate of the costs associated with complying with duties is a

difficult task. However, the following points should be taken into account in this regard.

- (i) There are currently around 550 organisations with schemes. Those organisations vary enormously with regard to their size, their functions, the range of services they offer (in any language), their location and their levels of interaction with the public. Different types of provision therefore apply to different organisations and some have a greater cost implication than others.
- (ii) The proposed Measure will allow standards to be tailored so as to apply differently to different sectors and make specific provision for individual organisations.
- (iii) The approach chosen by an organisation in relation to how they plan and provide bilingual services can have an impact on costs. For example, it can be more costly if the Welsh element of service provision is bolted on to the English provision rather than being factored into each project or activity from the outset.
- (iv) The Commissioner will be given powers to produce codes of practice and guidance to help ensure that organisations take the most effective and efficient approach when developing services.
- (v) The approach taken by the Board with regard to agreeing schemes with bodies since the 1993 Act has been to allow bodies to gradually increase their Welsh language provision over time. Such an approach has allowed for costs of provision to be borne over a period of time. For example, replacing English-only road signs with bilingual signs only when a new sign would be required in any case.
- (vi) In general, there are many variables which impact on the costs associated with providing Welsh language services.

8.28 Recent research undertaken by the Board provides a snapshot of the range of costs, by way of illustration, that could be incurred by a range of organisations in implementing their schemes.

8.29 The Board looked at the steps taken by a range of organisations to provide services through the medium of Welsh. However, in seeking to identify the costs associated with providing Welsh language services, the Board experienced difficulty in obtaining figures from organisations that are currently covered by the 1993 Act. Typically they point to the fact that bodies have, since 1993, integrated the costs of bilingualism into their arrangements to such an extent that they are now unable to disaggregate those figures. The following information was obtained:

- *Small organisations*
  - (i) The information showed that organisations rarely expressed any concern about the cost of implementing a scheme. Although some of the organisations were not fully compliant with their schemes, it was rare that cost was cited as a reason.
  - (ii) The costs are estimated as not being higher than £1k a year. As a rule, small organisations do not employ staff to implement the scheme and translation costs are minimal.
- *Medium-sized organisations*
  - (iii) Typically an organisation employing some 100 staff administering a narrow range of functions, Wales-wide, having a Welsh language officer with specific responsibility for administering the scheme.
  - (iv) The responses to the Board's enquiry indicated that such organisations did not consider language costs separately from the organisation's mainstream operating costs.
  - (v) As a rule the costs are estimated as being no more than £100k a year.
- *Large organisations*
  - (vi) A number of such organisations, but not all, have appointed dedicated Welsh language officers to administer a scheme, but the responsibility for the day-to-day implementation of the scheme can vary from one organisation to another. For example, some local authorities place the responsibility with their communication department, some with the community strategies unit, and others with the equalities unit or the corporate policy unit.
  - (vii) In many authorities the equalities officer is responsible for the scheme in addition to all the other equality issues.
  - (viii) Some organisations employ internal translators whilst others follow the practice of outsourcing translation work to private sector translators on contract.
  - (ix) As a rule the costs are estimated as £200k a year. There were initial costs for local authorities: capital expenditure in the main e.g. installation of translation equipment in council chambers. Such capital expenditure was relatively small compared with the overall annual capital expenditure by an authority.

8.30 The figures provided by the Board give an indication with regard to the range of costs faced by organisations defined by the Board as small, medium and large. Even so, it would not be appropriate or accurate to

attempt to extrapolate from these figures to estimate the total costs for the types of organisations listed in Schedule 6 of the proposed Measure. The sample used by the Board was fairly small and many of the organisations concerned were Wales-based, with a high level of direct contact with the public in Wales. As such, it cannot be said that they fully represent the wide range of organisations listed in the Schedule. Some large organisations may have costs more akin to those associated by the Board with medium sized organisations; some organisations may have very little direct contact with the public, and so on. As mentioned in paragraph 4.3, however, the Commissioner will consult with each organisation as standards are prepared, and this will provide more accurate figures with regard to costs, which will be reflected in the Regulatory Impact Assessments to be tabled alongside the subordinate legislation in each case. In addition, it should be noted that many of the organisations in Schedule 6 already provide Welsh language services in accordance with their respective schemes. As such, some of the costs associated with implementing standards will represent a continuation of the current spend on implementing schemes.

8.31 Similarly, costs with regard to the Schedule 8 organisations (which have not previously been subject to schemes, and which are different in nature to Schedule 6 organisations), cannot be predicted prior to consultation with regard to the standards that will apply to them.

#### *Impact on small businesses*

8.32 Welsh Ministers' general policy, as reflected in the proposed Measure, is not to impose duties on the private sector, including small businesses. However, some private sector organisations will fall within the scope of the proposed Measure, reflecting the competence provided by Matter 20.1 of Schedule 5 to the 2006 Act (as reproduced in Part 1).

8.33 As described in paragraph 8.22, to the extent that any small businesses could be subject to standards, the exact nature of those standards will become apparent only at the end of the process established by the proposed Measure following consultation and the preparation of regulatory impact assessments. As such, the discussion at paragraphs 8.27 to 8.29 with regard to costs applies to small businesses.

#### *Costs in relation to their right of challenge to the imposition of standards*

8.34 As the process involved might vary from a simple exchange of letters between the organisation and the Commissioner to an appeal to the Tribunal, the costs involved for the organisation may range from the costs associated with preparing a letter to the cost of legal representation at the Tribunal (at a day rate of around £2k).

8.35 Given that the Commissioner will be required to consult with organisations prior to issuing a compliance notice and will need to ensure that those standards are reasonable and proportionate, the

number of challenges is expected to be low in number. It is not possible to predict the average cost of a challenge since the nature of each challenge will be a matter for the organisation involved to decide. We have given at paragraph 8.34, however, some indication of the range of costs that could be involved.

8.36 For the Commissioner, the costs would be similar and would need to be absorbed by the Commissioner's running costs.

*Costs in relation to investigating alleged breaches of standards*

8.37 As with challenging the imposition of standards, the graduated enforcement process established by the Measure means that the process of dealing with these cases might vary from a simple exchange of letters between the organisation and the Commissioner to an appeal to the Tribunal, the costs involved for the organisation may range from the costs associated with preparing a letter to the cost of legal representation at the Tribunal (at a day rate of around £2k).

8.38 It is not possible to predict the average cost of such an investigation since the nature of each case will vary. We have given at paragraph 8.37, however, some indication of the range of costs that could be involved.

8.39 With regard to onward appeals to the court on a point of law, the existence of the Commissioner's enforcement policy, and the Tribunal Rules and Practice Directions, should minimise the number of cases that are referred to the courts. As an illustration, however, if 10% of the cases considered by the Tribunal led to an appeal to the courts, based on the estimate at paragraph 8.48 below that the Tribunal would sit for 15 days, we can further estimate that it would listen to a total of between 30 and 50 cases on those days, this would result in 3 to 5 cases per annum being referred to the courts. Based on each case lasting a day at a rate for legal representation of £2k, this would give rise to costs of between £6k and £10k.

8.40 For the Commissioner, the costs would be similar and would need to be absorbed by the Commissioner's running costs.

8.41 As mention in 8.49 below, in line with normal convention, any costs incurred by the courts would be passed on to the Welsh Assembly Government, which again would be recovered from the existing £13.8m used to sponsor the Board.

*Running costs for the Commissioner*

8.42 Based on the costs associated with funding the Board, and the expectation that a similar level of resource will be required to fulfil the Commissioner's functions, it is anticipated that the running costs for the Commissioner's office would be broadly in line with the current Board

running costs. Our best estimate, therefore, is £4.0m. However, this figure includes the costs associated with the Board's work to promote the use of Welsh. Some of that work may transfer into the Welsh Assembly Government along with some of the Board's staff. The costs associated with running the office of the Commissioner and for establishing the new regulatory regime (as well as the costs associated with promoting the use of Welsh) would be covered by the current Welsh Assembly Government budgetary provision for funding the Board (£13.8m in 2009-10).

- 8.43 As discussed below, a small proportion of the £13.8m would also need to be allocated to cover the costs for appointing and remunerating the members of the Advisory Panel, the running costs of the Tribunal and for the Welsh Assembly Government to cover any incurred court administration costs. The rest of the Board's current budget would be used to continue funding existing programmes and grants aimed at promoting and facilitating the use of Welsh, whether responsibility for such activities ultimately transfers from the Board to the Commissioner and/or to the Welsh Ministers.

*Costs for appointing and remunerating the members of the Advisory Panel*

- 8.44 The costs associated with appointing and remunerating the members of the Advisory Panel would be very small. The costs per member would compare with the costs per member of the Board at present. Our best estimate, therefore, is that the costs, depending on the number of panel members appointed, would be between £40k and £70k per annum. Overall, however, given that the maximum number of panel members serving at one time will be five, there would be a small saving in comparison with costs of the Board where up to 15 members can serve.

- 8.45 These recurring costs would be recovered from the £13.8m currently used by the Welsh Assembly Government to sponsor the Board.

*Running costs for the Tribunal*

- 8.46 There is no precedent that can be drawn upon to gauge the number of cases that may be referred to the Tribunal in relation to the imposition of duties on persons. The estimated costs are informed by the experience of the Adjudication Panel for Wales.
- 8.47 To minimise costs, it is proposed that the secretariat function of the Tribunal be undertaken by the Welsh Ministers. The estimate therefore includes the staff costs consistent with the Adjudication Panel for Wales. This cost would need to be recovered from the existing £13.8m used to sponsor the Board.
- 8.48 The graduated enforcement system to be introduced by the proposed Measure is intended to ensure that the vast majority of challenges will be dealt with by the Commissioner. At this point in time, however, it is not

possible to predict with any accuracy how many of the Commissioner's decisions will be appealed to the Tribunal. Purely as an illustration (whilst bearing in mind that the Board dealt with around 100 complaints during 2008-09) the estimated running costs should the Tribunal be convened for a total of 15 days per year would be in the region of £115k, to be funded from the £13.8m with £20k needed for one-off costs (again funded from the £13.8m) to establish the Tribunal.

- 8.49 The possibility remains that cases could be referred to the courts system. In line with normal convention, any costs incurred by the courts would be passed on to the Welsh Assembly Government, which again would be recovered from the existing £13.8m used to sponsor the Board.

#### *One-off implementation costs*

- 8.50 The establishment of the new structure will have one-off cost implications. Costs associated with managing the implementation project (i.e. salary costs of circa £200k in year 1) will be borne by the Welsh Assembly Government from existing budgets (i.e. not from the £13.8m currently used by the Welsh Assembly Government to sponsor the Board).
- 8.51 Other costs associated with the implementation project such as training and induction costs, ICT costs, facilities and accommodation costs and information services costs are expected to approximate £270k. This amount will need to be reallocated from the Board budget allocation but can be spread over two financial years. (Following completion of the implementation project, this amount will again be available for programmes aimed at promoting and facilitating the use of Welsh.)
- 8.52 On the assumption that the Commissioner will inherit the Board's offices (reflecting the fact that the Commissioner will be dealing with the same range of organisations dealt with by the Board, and which are located throughout Wales), we do not anticipate that the proposed model would require any reorganisation of the Board's estate. Detailed decisions about the Commissioner's estate will, however, be a matter to be addressed by the Measure implementation project.
- 8.53 We do not foresee any cessation of the employment of the Board's staff as a result of introducing this proposed Measure, and therefore do not foresee that there will be any resulting costs with regard to cessation of employment. We foresee that the resources currently deployed by the Board to fulfil its functions under the 1993 Act will be required by the Commissioner to fulfil his or her functions. It is possible, however, that some of the Board's work to promote the use of Welsh will transfer into the Welsh Assembly Government along with some of the Board's staff. Detailed decisions about the distribution of such functions will, however, be a matter to be addressed by the Measure implementation project.

*Costs in relation to investigations by the Commissioner into alleged interferences with the freedom to use Welsh*

8.54 Any costs in relation to this provision will be borne from the Commissioner's core budget on a recurring basis. The cost of dealing with complaints will vary according to the number of complaints received and from one complaint to another depending on a complaint's complexity. Ultimately, it will be a matter for the Commissioner to allocate the necessary level of resource required to investigate complaints about alleged interferences with the freedom to use Welsh. As an estimate, the cost for an officer at higher executive officer grade at the Commissioner's office investigating a complaint for one day would be £150 (based on 2009-10 average grade costs). Historically, the number of cases referred to the Board and other organisations has been very low, reflecting the general acceptance by society of people's freedom to use Welsh with one another. The most recent figures suggest no more than 5 cases per year which would lead to total costs of £600.

*Costs in relation to the Commissioner's powers to provide an individual with legal assistance*

8.55 We do not foresee that there will be many occasions were an individual would become a party to actual or possible legal proceedings where the Commissioner would wish to provide legal assistance. Most matters in relation to the Welsh language are likely to be dealt with through the Commissioner's own enforcement powers. The cases where the Commissioner may wish to provide assistance are likely to be restricted to landmark cases which, by their nature, would be rare occurrences. At one end of the scale it is possible, therefore, that this power would not be used in a given year, and as such there would be no costs. However, a best estimate based on the Commissioner procuring legal assistance for five days a year, based on a day rate of £2k, would be £10k. The Commissioner would therefore need to allocate an appropriate contingency from the running costs of his or her office.

**Summary of financial costs of Measure proposals**

8.56 In summary, the direct costs for establishing the structure provided for by the proposed Measure will be borne from the £13.8m currently used by the Welsh Assembly Government to sponsor the Board with the exception of the one-off costs associated with managing the implementation project as described at paragraph 8.51.

8.57 Of that amount, as described above the best estimate of running costs for the structure provided for by the proposed Measure (based on 2009-10 figures) is £4.2m per annum. This includes the running costs for the Commissioner and staff (£4.0m – but see the note at paragraph 8.42 regarding the possibility of some staff transferring into the Welsh Assembly Government), the Advisory Panel (between £40k and £70k)

and the Tribunal (£115k).

8.58 The remaining Programme funding of £9.6m will continue to fund programmes aimed at promoting and facilitating the use of Welsh, whether by the Commissioner or the Welsh Assembly Government, minus an estimated £270k spread over two years which will pay for one-off implementation costs.

## 9. Competition assessment

- 9.1 As mentioned in the context of small business at paragraph 8.32 above, Welsh Ministers' general policy, as reflected in the proposed Measure, is not to impose duties on the private sector. However, some private sector organisations will fall within the scope of the proposed Measure, reflecting the competence provided by Matter 20.1 of Schedule 5 to the 2006 Act (as reproduced in Part 1).
- 9.2 In addition, the exact nature of standards will become apparent only at the end of the process established by the proposed Measure following consultation and the preparation of regulatory impact assessments.
- 9.3 With regard to the small minority of private sector companies that may be subject to standards, the Welsh Assembly Government's aim is to create, for them, a level playing field with regard to the provision of services in Welsh between companies operating within the same sector and providing the same or similar services. As such, the proposals set out in the proposed Measure should have a neutral effect on those companies with regard to competition.
- 9.4 Of the sectors potentially affected by duties imposed under the proposed Measure, some telecommunications, water, electricity and gas companies have more than 10% market share in Wales. Some of these also have more than 20% in Wales and the three water companies have, together, more than 50% market share in Wales.
- 9.5 The Welsh Ministers' initial assessment, therefore, is that the proposed Measure and any resulting subordinate legislation are unlikely to have a detrimental effect on competition.
- 9.6 Given that the principle which guides the Welsh Ministers' policy is that any Welsh language duties placed on a sector will need to provide for a level playing field for each company in that sector, the costs for each company within a sector should be similar. Of course, companies which already provide Welsh language services on a voluntary basis are already absorbing the costs of doing so. The cost to those companies of complying with the duties placed upon them will inevitably be less than cost to those companies which start from a lower base.
- 9.7 The Welsh Ministers do not believe that the proposed Measure and any resulting subordinate legislation will have a major impact on market structures or change the number and size of firms in a sector. In addition, any duties imposed may be challenged on the grounds of reasonableness and proportionality.
- 9.8 The provision of straightforward bilingual services such as signage and correspondence should not place a significant financial burden on companies. For services such as help lines and call centres, it may be

easier to locate Welsh language provision in Wales.

- 9.9 The Welsh Ministers have also considered whether the provisions in the proposed Measure and any resulting subordinate legislation will lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet. As discussed above, Welsh Ministers' general policy is not to impose duties on the private sector. For private sector organisations that do fall within the scope of the proposed Measure the extent and nature of any standards that will apply to them will become apparent only at the end of the process established by the proposed Measure following consultation and the preparation of regulatory impact assessments. As such, it is not possible to determine what impact any standards will have on set-up costs. In addition, any duties imposed may be challenged on the grounds of reasonableness and proportionality. The same would apply with regard to any ongoing costs.
- 9.10 The emergence of new technologies provides both challenges and opportunities with regard to the delivery of Welsh language services. The telecommunications sector in particular is characterised by rapid technological change. The Welsh Ministers believe that the provision of telecommunication services through the medium of Welsh plays a vital role in ensuring that the Welsh language is seen as a modern and vibrant language. Evidence from other countries suggests that telecommunications systems such as mobile phone handsets are already able to provide a multilingual service and that the cost of including an additional language is mainly the initial translation cost. The extent and nature of any standards that will apply to them will become apparent only at the end of the process established by the proposed Measure following consultation and the preparation of regulatory impact assessments.
- 9.11 International experience also suggests that language duties do not restrict suppliers from participating in those countries or regions. For instance, the Catalan government stated in their evidence to the Welsh Affairs Committee's pre-legislative scrutiny of the LCO that it does not have evidence to suggest that Catalan language duties has resulted in any negative impact on the region's economy.

## **10. Post implementation review**

- 10.1 It is a requirement of the proposed Measure that the Commissioner will need to submit reports for consideration by the Welsh Ministers and the Assembly. These include the Commissioner's annual reports and the 5-year reports on the position of the Welsh language.
- 10.2 The Commissioner will also have the power to conduct research and collect data as supporting evidence for such reports.
- 10.3 As mentioned elsewhere in this memorandum, the proposed Measure also places a duty on the Commissioner to include in each annual report the Commissioner's view of the adequacy and effectiveness of the law in protecting the freedom of persons in Wales wishing to use the Welsh language to do so with one another.

## **PART 3: EXPLANATORY NOTES**

### **PROPOSED WELSH LANGUAGE (WALES) MEASURE 2010**

These Explanatory Notes relate to the proposed Welsh Language (Wales) Measure as introduced to the National Assembly for Wales on 4 March 2010.

The Welsh Assembly Government's Department for Heritage has prepared these notes in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.

The Explanatory Notes should be read in conjunction with the proposed Measure. They are not intended to be a comprehensive description of the Measure. Therefore, where a section does not appear to require any explanation, none is given.

There are ten parts to the Explanatory Notes:

- Part 1: Official Status of the Welsh Language
- Part 2: The Welsh language Commissioner
- Part 3: Advisory Panel to the Welsh Language Commissioner
- Part 4: Standards
- Part 5: Enforcement of Standards
- Part 6: Freedom to Use Welsh
- Part 7: Welsh Language Tribunal
- Part 8: General
- Part 9: Welsh Language Board, Welsh Language Schemes etc
- Part 10: Supplementary

The power to make this Measure is provided by Part 3 of the Government of Wales Act 2006. The relevant Matters of Part 1 of Schedule 5 to that Act are 20.1 and 20.2 as inserted by the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010.

## **Part 1: Official Status of the Welsh Language**

This Part of the Measure makes further provision about the official status of the Welsh language in Wales.

### **Section 1: Official Status of the Welsh Language**

This section lists those Parts of the Measure and the sections of other legislation that make provision about the official status of the Welsh language in Wales. The status of the English language in Wales is unaffected by this Measure.

## **Part 2: The Welsh Language Commissioner**

The second Part of the Measure establishes the office of the Welsh Language Commissioner (referred to here as “the Commissioner”) and makes provision about the Commissioner’s general functions.

### **Section 2: The Welsh Language Commissioner**

This section establishes the office of the Commissioner and gives effect to Schedule 1 which makes further provision about the Commissioner. The Commissioner is appointed by the First Minister.

### **Section 3: Promoting and facilitating use of Welsh & promoting equality with English**

This section outlines the Commissioner’s general functions. *Subsection (1)* provides that the Commissioner may do anything that he or she thinks appropriate to promote the use of the Welsh language, facilitate the use of the Welsh language and promote equality between the English and Welsh languages.

### **Section 4: Production of 5-year reports**

This section places a duty upon the Commissioner to produce a report on the position of the Welsh language. A report must be produced in relation to each reporting period as defined in *subsection (5)*. The first report published after each census is to include an analysis of the results of the census in relation to the Welsh language.

### **Section 5: 5-year reports: supplementary**

This section makes additional provision about the production and publication of the 5-year reports.

### **Section 6: Inquiries**

This section provides the Commissioner with the power to conduct inquiries into any matter relating to any of his or her functions. This general power of inquiry is subject to *subsections (3) to (5)*. *Subsection (9)* gives effect to Schedule 2 which makes further provision about inquiries.

## **Section 7: Judicial review and other legal proceedings**

*Section 7* enables the Commissioner to institute or intervene in legal proceedings in England and Wales if it appears to the Commissioner that the proceedings are relevant to a matter in respect of which he or she has a function.

In addition to providing that the Commissioner's power to institute or intervene in legal proceedings is subject to any limitations and restrictions imposed by legislation or rules of court, *subsection (2)* makes clear that *subsection (1)* does not, of itself, create a cause of action.

## **Section 8: Legal assistance**

This section provides the Commissioner with the power to provide an individual with assistance if that person is, or may become, a party to actual or possible legal proceedings in England and Wales that are relevant to a matter in respect of which the Commissioner has a function. "Assistance" for the purposes of this section includes, but is not limited to, legal advice; legal representation and facilities for the settlement of a dispute.

## **Section 9: Legal assistance: costs**

In circumstances where the Commissioner has assisted an individual under *section 8* in relation to legal proceedings, and that individual becomes entitled to some or all of his or her costs in the proceedings, this section ensures that the Commissioner's expenses in providing the assistance are charged on sums paid to the individual by way of costs. Such sums may be enforced as a debt due to the Commissioner.

## **Section 10: Powers**

This section provides the Commissioner with a general power to do anything that he or she thinks is appropriate in connection with any of his or her functions including but not limited to those things listed in *subsection (2)*. *Subsection (2)* is subject to *subsections (4) to (6)*.

## **Section 11: Staff**

This section makes provision about the Commissioner's staff which must include a Deputy Commissioner.

## **Section 12: Exercise of Commissioner's functions by staff**

This section provides the Commissioner with the power to delegate any or all of his or her functions to a member of staff. The section also refers to those situations where the Commissioner's functions are exercisable by the Deputy Commissioner.

## **Section 13: Complaints procedure**

*Section 13* places a duty upon the Commissioner to establish a procedure for the investigation of complaints about acts or omissions relating to the exercise of the Commissioner's functions.

#### **Section 14: Seal and validity of documents**

This section deals with the execution of documents by the Commissioner and their use in evidence.

#### **Section 15: Welsh Ministers' power of direction**

This section provides the Welsh Ministers with the power to give directions to the Commissioner and places a duty on the Commissioner to comply with any such directions.

#### **Section 16: Consultation**

Where, in connection with the exercise of a function, the Commissioner consults the Advisory Panel or any other person in accordance with the Measure, the Commissioner must have regard to the consultation in exercising the function.

#### **Section 17: Annual reports**

*Section 17* requires the Commissioner to produce reports in relation to each financial year.

#### **Section 18: Annual reports: supplementary**

This section makes additional provision about the production and publication of the Commissioner's annual reports.

#### **Section 19: Working jointly with the Public Services Ombudsman for Wales**

Where the Commissioner undertakes or is entitled to undertake a standards enforcement investigation (as defined) the subject matter of which could also be investigated by the Public Services Ombudsman for Wales, if the Commissioner thinks it appropriate he or she must inform and consult the Ombudsman. The Commissioner and the Ombudsman may then co-operate with each other by doing any or all of the things listed in *subsection (3)*.

#### **Section 20: Working collaboratively with ombudsmen**

If the subject matter of a standards enforcement investigation (as defined) that the Commissioner undertakes, or is entitled to undertake, could not be investigated by a particular ombudsman but appears to relate to or raise a connected matter (within the meaning of *subsection (1)*) then the Commissioner must inform and consult that ombudsman.

Where the Commissioner undertakes his or her investigation and the relevant ombudsman investigates the connected matter, they may do any or all of the things listed in *subsection (4)*. For the purposes of this section "ombudsman" has the meaning provided in *subsection (6)*.

This section introduces Schedule 3.

### **Section 21: Power to disclose information**

This section prevents the Commissioner from disclosing information obtained in the exercise of any of his or her functions unless the disclosure is authorised by *subsection (2)*.

## **Part 3: Advisory Panel to the Welsh Language Commissioner**

This Part of the Measure provides for the appointment of an Advisory Panel to the Commissioner (“the Advisory Panel”).

### **Section 22: Advisory Panel**

This section makes provision about the appointment of the Advisory Panel and gives effect to *Schedule 4* which makes further provision about its members.

### **Section 23: Consultation**

This section provides the Commissioner with the power to consult the Advisory Panel on any matter.

## **Part 4: Standards**

This Part of the Measure establishes a new system for placing duties in relation to the Welsh language upon persons in the form of standards, which are defined in the notes for Chapter 2. This Part is divided into 9 Chapters:

- Chapter 1 explains when a person must comply with a standard;
- Chapter 2 provides the meaning of standards for the purposes of this Part;
- Chapter 3 explains which persons are capable of being required to comply with standards;
- Chapter 4 explains the type of standard that a person could be required to comply with;
- Chapter 5 deals with the Welsh Ministers’ role in making regulations specifically applying standards to a person or group of persons, and explains the process whereby standards are applied to persons by a compliance notice given by the Commissioner following authorisation by the Welsh Ministers;
- Chapter 6 gives details regarding the compliance notice the Commissioner may give for the purpose of applying standards to an individual;
- Chapter 7 explains the circumstances in which a person can challenge a notice given to them by the Commissioner, including detailing a route of appeal to the Welsh language Tribunal; (see Part 7);

- Chapter 8 details the Commissioner’s power to conduct investigations and produce reports in relation to standards; while
- Chapter 9 makes general provision for the purposes of this Part.

## **CHAPTER 1: DUTY TO COMPLY WITH STANDARDS**

### **Section 24: Duty to comply with a standard**

This section requires a person (referred to here as “P”) to comply with a standard of conduct if, and for as long as, the six conditions listed in *subsections (2) to (7)* are met.

- Condition 1 is that P is liable to be required to comply with standards. Provision about persons liable to be required to comply with standards is made in Chapter 3.
- Condition 2 is that the standard is potentially applicable to P. Provision about the classes of standard that are potentially applicable is made in Chapter 4.
- Condition 3 is that the standard is specifically applicable to P. Provision about standards that are specifically applicable is made in Chapter 5.
- Condition 4 is that the Commissioner has given a compliance notice to P. Provision about compliance notices is made in Chapter 6.
- Condition 5 is that the compliance notice requires P to comply with the standard (see Chapter 6).
- Condition 6 is that the compliance notice is in force (see Chapter 6).

The duty placed on P to comply with a standard is subject to the provisions of the compliance notice given to P (see Chapter 6).

## **CHAPTER 2: STANDARDS AND THEIR SPECIFICATION**

### **Section 25: Welsh Ministers to specify standards**

This section allows the Welsh Ministers to specify one or more service delivery standards, policy making standards, operational standards, promotion standards or record keeping standards.

Each of these standards is separately defined in *sections 27 to 31*.

### **Section 26: Specification of standards: supplementary provision**

This section allows the Welsh Ministers to specify a record keeping standard for complaints concerning the Welsh language other than complaints concerning a person’s compliance with other standards in certain circumstances. It also permits the Welsh Ministers to make regulations specifying different standards of the kind referred to in *section 25* in relation to different conduct.

### **Section 27: Service delivery standards**

This section defines “service delivery standard” to mean a standard of conduct that relates to a service delivery activity and is intended to promote or facilitate the use of the Welsh language, or to promote or facilitate the treatment of the Welsh and English languages on the basis of equality, when that activity is carried out.

“Service delivery activity” is defined in *subsection (2)* to mean a person delivering services to another person or dealing with any other person in connection with delivering services to that other person or to a third person.

### **Section 28: Policy making standards**

This section defines “policy making standard” to mean a standard that relates to a policy decision and which is intended to secure, or to contribute to securing, one or more of the following results:

- that the person making the policy decision considers what effect, if any, the policy decision would have on the opportunities for other persons to use the Welsh language, or on the treatment of the Welsh and English languages on the basis of equality;
- that the person making the policy decision considers how it could have positive effects or increased positive effects on opportunities for other persons to use the Welsh language or on the treatment of the Welsh and English languages on the basis of equality;
- that the person making the policy decision considers how the decision could be made so that it doesn’t have or reduces any adverse effects which the policy decision would have on opportunities for other persons to use the Welsh language or on the treatment of the Welsh and English languages on the basis of equality.

In this section positive or adverse effects can mean those experienced directly or indirectly.

A “policy decision” for the purpose of this Part means a decision by the person about the exercise of the person’s functions, or about the conduct of the person’s business or other undertaking.

### **Section 29: Operational standards**

This section defines “operational standard” to mean a standard that relates to the relevant activities of a person (referred to here as “A”) and is intended to promote or facilitate the use of the Welsh language:

- by A in carrying out A’s relevant activities;
- by A and another person in dealings between them in connection with A’s relevant activities; or

- by a person other than A in carrying out activities for the purposes of, or in connection with, A's relevant activities.

“Relevant activities” are defined to mean functions, or a business or other undertaking. A reference to the carrying out of relevant activities is to the exercise of functions, or about the conduct of a business or other undertaking.

### **Section 30: Promotion standards**

This section defines “promotion standard” to mean a standard (relating to any activity) that is intended to promote or facilitate the use of the Welsh language more widely.

### **Section 31: Record keeping standards**

This section defines “record keeping standard” to mean a standard relating to the keeping of records about other specified standards and records about complaints concerning a person's compliance with other standards or other complaints concerning the Welsh language. “Specified standard” means a standard specified by the Welsh Ministers in regulations under *section 25(1)*.

## **CHAPTER 3: PERSONS LIABLE TO BE REQUIRED TO COMPLY WITH STANDARDS**

### **Section 32: Persons liable to be required to comply with standards**

A person (“P”) is open to being required to comply with standards if P:

- falls within column (2) of the table in Schedule 5; and also within column (1) of the table in Schedule 6, or within a category of persons listed in those columns, or
- falls within column (2) of the table in Schedule 7 and is also within one of the descriptions in column (1) of the table in Schedule 8

### **Section 33: Persons who are within Schedules 5, 6, 7 and 8**

This section defines when a person falls within Schedules 5, 6, 7 or 8.

The persons and bodies in the Schedule 6 table (public bodies etc) have standards listed next to their names and are open to be required to comply with one or some of those standards. Persons and bodies listed in the Schedule 8 table (other bodies) have specified services listed next to their names, and are open to be required to comply with service delivery and record keeping standards in respect of those services. Simply being listed in these Schedules does not impose a duty to comply with standards.

The Welsh Ministers may make regulations stating which standards are to apply to which persons or bodies, and authorising the Commissioner to issue a compliance notice. Standards are imposed on a person or body when the Commissioner issues a compliance notice (*section 43*) requiring the person or body listed in the tables in Schedule 6 or 8 to comply with the standard or

standards as set out in the notice: the person or body then becomes under a duty to comply.

The tables in Schedule 5 (categories of person that may be added to Schedule 6) and Schedule 7 (categories of person that may be added to Schedule 8) give descriptions of persons or bodies that may be brought within the ambit of Schedules 6 or 8.

Persons or bodies falling within the category of persons in Schedule 5 may be added to Schedule 6, and persons falling within the descriptions of persons in Schedule 7 may be added to Schedule 8. This allows for the number of persons or bodies listed in Schedules 6 and 8 who may be open to comply with standards to be increased over time however, as explained above, persons will not become under a duty to comply with standards until the Commissioner gives them a compliance notice.

This section also provides that a change in the name of a person specified in Schedules 6 or 8 does not affect the operation of this Measure in relation to that person.

#### **Section 34: Amendments to persons and categories specified in Schedules 6 and 8**

This section provides the Welsh Ministers with an order making power to amend the tables in Schedules 6 and 8 in accordance with this section.

### **CHAPTER 4: STANDARDS POTENTIALLY APPLICABLE**

#### **Section 35: Persons within Schedule 6**

This section applies to a person (“P”) who is within column (1) of the table in Schedule 6. It provides that those standards which appear in column (2) of P’s entry in the Schedule 6 table are the type of standards which the Welsh Ministers could apply to P in regulations.

#### **Section 36: Persons within Schedule 8**

This section applies to a person (“P”) who is within column (1) of the table in Schedule 8, and provides that the only two types of standard which Welsh Ministers could apply to P are –

- certain service delivery standards; or
- certain record keeping standards.

#### **Section 37: Amendment of standards potentially applicable**

The Welsh Ministers may, by order, amend the tables in Schedules 6 and 8 in accordance with this section.

## **CHAPTER 5: STANDARDS THAT ARE SPECIFICALLY APPLICABLE**

### **Section 38: Standards that are specifically applicable**

A standard will apply to a person (“P”) if the Welsh Ministers provide in regulations that the standard applies to P, and authorise the Commissioner to give P a compliance notice requiring P to comply with the standard. Chapter 6 makes provision about compliance notices.

### **Section 39: Duty to make standards specifically applicable**

This section imposes a duty upon the Welsh Ministers to secure that the regulations made under *section 38* provide that the standard in question applies to one or more persons.

### **Section 40: Different standards relating to particular conduct**

If the Welsh Ministers specify a number of standards in relation to particular conduct, this section enables regulations under *section 38* to provide for one or more of the following:

- for one standard to be specifically applicable to one person, to two or more persons, or to a group of persons;
- for two or more standards to be specifically applicable to a particular person, to two or more persons, or to a group of persons;
- for different standards to be specifically applicable to different persons.

### **Section 41: Duty to make certain service delivery standards specifically applicable**

In the event that regulations made under *section 38* provide for any service delivery standard to apply to P (and that the Welsh Ministers have made regulations under *section 25(1)* specifying such a standard), this section requires the Welsh Ministers to ensure that those regulations provide for service delivery standards relating to all of the activities listed in Schedule 9 to apply (if, and to the extent that, P carries out those activities).

However, regulations made under *section 38* can also provide for other service delivery standards to apply to P.

### **Section 42: Limitation on power to make standards specifically applicable**

In accordance with this section, the Welsh Ministers may only provide, by regulations, that a standard applies specifically to a person or to a group of persons, if the standard belongs to the type of standard with which that person or each member of the group could potentially have to comply (see Chapter 4). The Welsh Ministers may not make regulations providing for a standard to be specifically applicable to a Minister of the Crown unless the Secretary of State consents to that provision.

## CHAPTER 6: COMPLIANCE NOTICES

### Section 43: Compliance notices

A “compliance notice” is defined by this section to mean a notice given by the Commissioner to a person (“P”) which sets out or refers to one or more of the standards specified by the Welsh Ministers in regulations made under *section 25(1)*, and requires P to comply with the standard or standards set out or referred to.

A compliance notice may require a person to comply with a particular standard in some circumstances, but not in other circumstances and/or in some area or areas, but not in other areas.

Where regulations produced by the Welsh Ministers under *section 38* provide that two or more standards are applicable to a particular person in relation to particular conduct a compliance notice may require the person to:

- comply with only one of the standards, or
- comply with different standards at different times, in different circumstances (whether at the same time or different times) or, in different areas (whether at the same time or different times).

### Section 44: Giving compliance notices to any person

The Commissioner may only give P a compliance notice if P is open to being required to comply with standards in accordance with Chapter 3.

A compliance notice given to P may set out, or refer to, a particular standard only if the standard:

- is a type of standard with which P could potentially be required to comply (in accordance with Chapter 4); and
- is specifically applicable to P (in accordance with Chapter 5).

Where P is given a compliance notice by the Commissioner, the Commissioner must give P a copy of any relevant code of practice issued under *section 66* and inform P of the right of challenge under Chapter 7. Provision about giving compliance notices to contractors is made in *section 47*.

### Section 45: Imposition days

Each standard specified in a compliance notice must state the imposition day(s). The imposition day, or the earliest of the imposition days, must fall after the end of 6 months beginning with the day on which the compliance notice is given.

In relation to a standard, “imposition day” means:

- the day from which a person is to be required to comply with the standard, or
- the day from which a person is to be required to comply with the standard in a respect.

### **Section 46: Consultation**

This section requires the Commissioner to consult a person before giving that person a compliance notice. This requirement does not apply if the Commissioner is satisfied that the person has already been consulted, or given the opportunity to be consulted, in connection with a standards investigation (see Chapter 8). If a person fails to take part in a consultation, this will not prevent the Commissioner from giving that person a compliance notice.

### **Section 47: Giving compliance notices to contractors**

This section applies to a compliance notice given to a person falling within column (2) of the table in Schedule 7 (“qualifying person”) who provides the public with services (“the relevant services”) provided under an agreement, or in accordance with arrangements, made with a public authority (“the relevant contract”). Such a notice can only set out, or refer to, a particular standard in relation to the provision of the relevant services under the relevant contract if the conditions in *subsection (2)* are met. The requirement for the qualifying person to comply with the particular standard must be the same as or no greater than the requirement for the public authority to comply with the standard.

### **Section 48: Varying compliance notices**

This section allows the Commissioner to vary any compliance notice.

### **Section 49: Revoking compliance notices**

This section allows the Commissioner to revoke any compliance notice.

### **Section 50: When compliance notice is in force**

A compliance notice given to P is in force from the day when the Commissioner gives the notice to P until such time as it is revoked.

### **Section 51: Publicising compliance notices**

The Commissioner must comply with the requirements for making copies of compliance notices accessible and available for inspection imposed by this section.

### **Section 52: Cessation of requirement to comply with standard**

As soon as practicable after P ceases to be under a duty to comply with a standard due to the fact that one or more of the conditions in *section 24* are not satisfied or the standard ceases to be specified by the Welsh Ministers under *section 25(1)*, the Commissioner must ensure that any compliance notices relating to P which remain in force reflect this change.

## **CHAPTER 7: RIGHT OF CHALLENGE**

### **Section 53: Challenging future duties**

Where a person (“P”) has been given a compliance notice which requires P to comply with a standard as from a future imposition day, P is allowed to apply to the Commissioner for a determination as to whether or not the requirement to comply with a standard, or to comply with it in a certain respect, is unreasonable or disproportionate.

### **Section 54: Challenging existing duties**

Where P is in receipt of a compliance notice which already requires P to comply with a standard, this section allows P to apply to the Commissioner for a determination as to whether or not the requirement for P to comply with a standard, or to comply with it in a certain respect, is unreasonable or disproportionate.

The Commissioner may refuse to accept an application under this section if he or she is satisfied that there has been no material change in P’s circumstances since the day on which P was first required to comply with that standard (wholly or in a particular respect) or since the day that the Commissioner determined the relevant question on a previous application under this section (if a previous application has been made).

In this section, “relevant question” means the question to which an application under this section relates of whether the requirement to comply with the standard, or to comply with the standard in a particular respect, was unreasonable or disproportionate.

### **Section 55: Applications to the Commissioner**

This section makes provision about the form and content of applications to the Commissioner which seek to challenge existing and future duties under section 53 or 54.

### **Section 56: Determining an application**

This section makes provision about the determination of any application to the Commissioner under section 53 or any application that the Commissioner does not refuse to accept under section 54. The onus is placed on P to show that the requirement for P to comply with the standard (wholly or in a particular respect) is unreasonable or disproportionate.

If the Commissioner determines in favour of P’s application the Commissioner must either (a) revoke the compliance notice (b) revoke the compliance notice and give a new compliance notice or (c) vary the existing compliance notice.

### **Section 57: Right of appeal**

If the Commissioner notifies P of a determination that the requirement challenged by P is not unreasonable or disproportionate this section allows P to appeal to the Tribunal for a determination as to whether or not that requirement is unreasonable or disproportionate.

Subject to *subsection (4)*, an appeal under this section must be made within 28 days beginning with the day when the Commissioner notified P of his or her determination of the application.

The Tribunal must notify both P and the Commissioner of its determination of an appeal made under this section.

If the Tribunal determines that the requirement is unreasonable or disproportionate, the Tribunal must either (a) revoke the compliance notice (b) revoke the compliance notice and give a new compliance notice or (c) vary the existing compliance notice.

### **Section 58: Postponement of imposition of duty**

If P applies to the Commissioner to determine whether or not the requirement to comply with a standard is unreasonable or disproportionate the requirement for P to comply with that standard does not apply unless and until the Commissioner has made a determination and P's rights of appeal are exhausted.

## **CHAPTER 8: STANDARDS INVESTIGATIONS AND REPORTS**

### **Section 59: Standards investigations**

A "standards investigation" means an investigation carried out in relation to a person ("P") for the purpose of determining one or more of the questions in paragraphs (a) to (e) of *subsection (1)*.

A particular standards investigation may be carried out in relation to a particular person or a group of persons.

### **Section 60: Power to carry out standards investigations**

This section empowers the Commissioner to carry out standards investigations subject to having provided each relevant person with an exploration notice at least 14 days before beginning the investigation.

An "exploration notice" means a written notice which states that the Commissioner is proposing to carry out a standards investigation and specifies the subject matter of that investigation.

A "relevant person" means:

- in the case of a standards investigation relating to a particular person, that person; and
- in the case of a standards investigation relating to a group of persons, such persons who appear to the Commissioner to be members of the group, and persons to whom the Commissioner thinks it appropriate to give exploration notices.

### **Section 61: Requirements when carrying out standards investigations**

The Commissioner, in carrying out a standards investigation, must have regard to the need to secure that requirements for persons to comply with standards are not unreasonable or disproportionate.

In carrying out a standards investigation, the Commissioner must consult each relevant person and the Advisory Panel. The Commissioner may also consult any other person which he or she considers to have an interest in the outcome of the investigation.

The failure of a person to participate in the Commissioner's consultation does not prevent the Commissioner from carrying out the standards investigation.

A "relevant person" means:

- in the case of a standards investigation relating to a particular person, that person; and
- in the case of a standards investigation relating to a group of persons, such persons who appear to the Commissioner to be members of the group, and persons to whom the Commissioner thinks it appropriate to consult.

### **Section 62: Standards report**

After carrying out a standards investigation the Commissioner must produce a document that sets out the conclusions of the standards investigation and the Commissioner's reasons for reaching those conclusions (a "standards report").

If an investigation concludes that standards should be specifically applicable to P, and any or all of those standards are not specified in regulations made by the Welsh Ministers under *section 25(1)*, the standards report must set out the standards that are not specified.

### **Section 63: Direction to carry out standards investigations**

Where Welsh Ministers exercise their power under *section 15* (see Part 2) to direct the Commissioner to carry out a standards investigation in respect of a person or a group of persons, the direction must specify the matters listed in paragraphs (a) – (d) of *subsection (2)*.

### **Section 64: Welsh Minister to have due regard to report**

Where the Commissioner has carried out a standards investigation and produced a standards report (whether or not at the direction or request of the Welsh Minister), this section requires Welsh Ministers to have due regard to the standards report in deciding whether, and how, to exercise the powers conferred on them by this Part.

## **CHAPTER 9: GENERAL**

### **Section 65: Exception for broadcasting**

This section provides that the Measure does not require and does not authorise a person to require a person to comply with a standard if, and to the extent that, the standard relates to broadcasting.

*Subsection (2)* defines “broadcasting” for the purpose of this section.

### **Section 66: Codes of practice**

This section provides the Commissioner with the power to issue a document intended to provide practical guidance (“standards code of practice”) with respect to the requirements of any standards specified by Welsh Ministers under *section 25(1)*. Standards codes of practice produced under this section are subject to consultation requirements as well as the approval of the Welsh Ministers.

### **Section 67: Failure to comply with codes**

By virtue of this section, a person’s failure to comply with a provision of an approved code of practice does not render that person liable to enforcement action of any kind.

However, if any action is taken under the Measure in respect of a failure of a person (P) to comply with a standard (“the alleged standards failure”), a failure by P to comply with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is liable for the alleged standards failure. Conversely, compliance with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is not liable for the alleged standards failure.

### **Section 68: Supply of information to Commissioner**

The Welsh Ministers may, by regulations, make provision about the supply to the Commissioner of information contained in records kept by a person in compliance with the duty under *section 24* to comply with a record keeping standard.

### **Section 69: Interpretation**

This section provides that references to:

- a person being liable to be required to comply with standards are to be read in accordance with *section 32*;
- a person’s entry in the tables in Schedules 6 or 8 are to be read in accordance with *section 33*;
- a standard being potentially applicable to a person are to be read in accordance with *sections 35 and 26*;
- a standard being specifically applicable to a person are to be read in accordance with *section 38*.

Definitions are also provided for the tables in Schedules 5, 6, 7 and 8.

## **Part 5: Enforcement of Standards**

This Part of the Measure establishes the procedure for the Commissioner to investigate a failure to comply with standards. Where the Commissioner determines that a person has failed to comply with a relevant requirement (as defined in *section 70*) the Commissioner is allowed to take enforcement action as listed in *section 76*. Enforcement action may include one or more of the following: requiring that the person prepares an action plan or takes steps; that the person or the Commissioner publicises the failure to comply; or that the Commissioner imposes a civil penalty. The Commissioner may also give recommendations or advice, or may enter into a settlement agreement (*section 89*) with that person instead of taking enforcement action. This Part is divided into 4 chapters:

- Chapter 1 explains that the Commissioner may investigate whether a person has failed to comply with a relevant requirement (defined in *section 70*) and explains that if an investigation is carried out (and not discontinued) the Commissioner must produce an investigation report. Following the investigation, if the Commissioner determines that there has been a failure to comply, the Commissioner must give the person a decision notice stating what that person must do. The Commissioner also has the discretion to take no further action even if a failure to comply is determined.
- Chapter 2 describes what is meant by a settlement agreement entered into by the Commissioner and a person in relation to a failure to comply with a relevant requirement. It states what must or may be included in that agreement.
- Chapter 3 explains the grounds of appeal that a person may have where the Commissioner has determined that the person has failed to comply with a relevant requirement. Appeals may be made to the Tribunal, and in certain circumstances to the High Court.
- Chapter 4 explains what the Commissioner must do when a valid complaint is made about a person's conduct. It makes provision about investigating whether that conduct amounts to a failure to comply with a standard.

### **CHAPTER 1: INVESTIGATING FAILURE TO COMPLY WITH STANDARDS ETC**

#### **Section 70: Investigating failure to comply with standards etc**

The Commissioner may investigate whether a person (referred to in this Part as "D") has failed to comply with a relevant requirement.

In this Part, a "relevant requirement" means any of the following:

- a duty to comply with a standard specified by the Welsh Ministers (see *section 24*);

- a requirement included in a decision notice by virtue of *section 78* (explained below);
- an action plan (see *sections 78* and *79*, explained below);
- a requirement included in a decision notice by virtue of *section 81* (explained below);

Schedule 10 provides further details about investigations.

### **Section 71: Discontinuing an investigation**

The Commissioner may, at any time, discontinue an investigation undertaken under *section 70*. If an investigation is discontinued, the Commissioner must inform each interested person, and inform D of the reasons for reaching the decision.

### **Section 72: Determination of investigation**

Where the Commissioner does not discontinue an investigation, he or she must determine whether or not D has failed to comply with the relevant requirement (see *section 70* above). In doing so, the Commissioner must:

- produce an investigation report (as defined by *section 73*), and provide each interested person with a copy; and
- give D a decision notice, and give a copy to any other interested person.

In making a determination under this section, the Commissioner must comply with the requirements imposed by *section 84* (consultation before final determination etc).

### **Section 73: Investigation reports**

An investigation report means a report on an investigation under *section 70* which includes all of the following:

- the terms of reference of the investigation;
- a summary of the evidence taken during the investigation;
- the Commissioner's findings on the investigation;
- the Commissioner's determination on whether or not D has complied with the relevant requirement;
- a statement of whether the Commissioner is taking further action
- if the Commissioner is taking further action, a statement of that action.

However the Commissioner may also include other matters in the report.

### **Section 74: Decision notices**

A decision notice means a notice stating the Commissioner's determination of whether or not D failed to comply with the relevant requirement (defined in *section 70*), although the Commissioner is not prevented from including other matters in the notice. Other sections within this Part of the Measure also require that the decision notice includes certain matters.

### **Section 75: No failure to comply with the relevant requirements**

The Commissioner may take no further action where he or she determines that D has not failed to comply with a relevant requirement. In such cases the Commissioner is permitted to give recommendations or advice to D or any other person. The Commissioner must also satisfy the requirements of *section 84*.

### **Section 76: Failure to comply with the relevant requirements**

This section lists the options available to the Commissioner where he or she has determined that D has failed to comply with a relevant requirement. The Commissioner may take no further action, or he or she may do one or more of the following under *section 76(3)*:

- require D to prepare an action plan (for the purpose in *section 78*)
- require D to take steps (for the purpose in *section 78*)
- publicise D's failure to comply
- require D to publicise the failure to comply
- impose a civil penalty on D

Under *section 76(4)* the Commissioner is permitted to give recommendations or advice to D or any other person or, if D has failed to comply with a standard, to enter into a settlement agreement with D. D is not obliged to enter into such an agreement, but if D declines the Commissioner is permitted to exercise his or her powers under this section differently. The Commissioner must also satisfy the requirements of *section 84*.

### **Section 77: No imposed enforcement action**

If the Commissioner determines that D has failed to comply with the relevant requirement and decides not to take further action, or gives advice or recommendations or enters into a settlement agreement with D under *section 76(4)*, the decision notice (defined in *section 74*) must give the Commissioner's reasons for the decision. The Commissioner must also satisfy the requirements of *section 84*.

### **Section 78: Requirement to prepare an action plan or take steps**

The purpose of the action plan and the steps is to prevent the continuation or repetition of D's failure to comply with the relevant requirement

If the Commissioner determines that D has failed to comply with a relevant requirement and requires D to prepare an action plan or to take steps, or both, then the decision notice must set out what the Commissioner requires D to do, the time limits involved, the consequences if D doesn't comply with requirements in the notice, and must inform D of the right to appeal under *section 91* (appeals to the Tribunal).

### **Section 79: Action plans**

Where the Commissioner gives D a decision notice requiring the preparation of an action plan, this section allows the Commissioner to approve the first draft plan, or to require a revised draft plan where the draft is not adequate. The Commissioner may apply to a county court for an order requiring that a

first draft plan or revised draft plan is given to him or her in accordance with the order.

An action plan comes into force—

- 6 weeks after a first or revised draft action plan is given to the Commissioner, (if the Commissioner does not issue a notice stating that the draft is not adequate and requiring a revised draft to be prepared, or does not apply to court for an order requiring a further revised draft plan to be prepared), or
- If the Commissioner does apply to court for an order requiring a further revised draft plan to be prepared, upon the court declining to make that order.

An action plan may be varied by agreement between the Commissioner and the person who prepared it.

### **Section 80: Publicising the failure to comply**

This section explains what is meant when the Measure refers to the Commissioner or D publicising D's failure to comply.

The Commissioner publicises D's failure to comply by publishing a statement the D has failed to comply with the relevant requirement or publishing the investigation report in relation to the investigation of D, or both.

When D is required to publicise his or her failure to comply with the relevant requirements he or she is being required to publicise any or all of the following: a statement that D has failed to comply with the relevant requirement, the investigation report produced, or other information relating to D's failure to comply.

### **Section 81: Requiring the failure to comply to be publicised**

Where the Commissioner determines that D has failed to comply with a relevant requirement and decides either to publicise D's failure or require D to publicise the failure, the decision notice must set out what the Commissioner is to do or what the Commissioner requires D to do. In addition the decision notice must inform D of the consequences of not complying with a requirement in the notice and of D's right to appeal under *section 91*.

The Commissioner must also satisfy the requirements of *section 84*.

### **Section 82: Civil penalties**

When determining whether to impose a civil penalty on any person, and the amount of any civil penalty, the Commissioner must have regard to the seriousness of the matter for which the penalty is being imposed, the circumstances of the person against whom the penalty is to be imposed, and the need to prevent the continuation or repetition of the failure to comply with

a relevant requirement. The Commissioner is not prevented from having regard to other matters.

This section also sets the maximum amount of a civil penalty.

### **Section 83: Imposition of civil penalties**

If the Commissioner determines that D has failed to comply with a relevant requirement, and decides to impose a civil penalty, the decision notice must set out the civil penalty, how it may be paid, and the period (which must be a period of not less than 28 days) within which it must be paid. The notice must also inform D of the consequences if D does not pay it, and of D's right to appeal under *section 91*.

The Commissioner must also satisfy the requirements of *section 84*.

### **Section 84: Consultation before final determination, etc**

This section applies if the Commissioner conducts an investigation under *section 70*. Before finally determining whether or not D has failed to comply with the relevant requirement, the Commissioner must give each interested person notice of the Commissioner's proposed determination.

Before finally deciding what, if any, action to take, under *subsection (3)* the Commissioner must give each interested person notice of whether or not the Commissioner is proposing to take further action, notice of any proposed action, a statement of the reasons for proposing to take any such action, and copies of the draft decision notice the Commissioner is proposing to issue. Before settling the investigation, the Commissioner must give each interested person a draft of the proposed investigation report and give D and any other interested person an opportunity to make representations about the determination or the proposed investigation report. D may also make representations about the proposals listed in *subsection (3)*.

The Commissioner must consider any representations by D or any other interested person before doing anything to which the representations relate. The period for making representations is determined by the Commissioner but must not be less than 28 days.

### **Section 85: When enforcement action takes effect**

This section sets out what happens if the Commissioner gives D a decision notice setting out the enforcement action the Commissioner has decided to take.

At the end of the 28 day period for making an appeal to the Tribunal under *section 91*, enforcement takes effect and D must prepare an action plan or take steps, publicise a failure to comply, or pay a civil penalty, as required by the decision notice, and the Commissioner may publicise D's failure to comply.

However, if an appeal is made to the tribunal, enforcement does not take effect until that appeal and any further appeal has been disposed of, and a further appeal may not be made, or may be made only with a court's permission.

**Section 86: Failure to comply with requirement to prepare action plan or take steps**

Where a decision notice requires D to take steps, this section allows the Commissioner to apply to a county court for an order requiring D to take those steps.

The Commissioner may apply to the court during a five year period beginning with the day when the decision notice was issued.

**Section 87: Failure to comply with action plan**

Where D has prepared an action plan as required in the decision notice, this section allows the Commissioner to apply to a county court for an order requiring D to comply with the action plan.

The Commissioner may apply to the court during a five year period beginning with the day when the action plan comes into force.

**Section 88: Failure to comply with requirement to publicise failure to comply**

Where a decision notice requires D to publicise a failure to comply, this section allows the Commissioner to apply to a county court for an order requiring D to publicise the failure as stated in the notice.

The Commissioner may apply to the court during a five year period beginning with the day when the decision notice was given.

**CHAPTER 2: SETTLEMENT AGREEMENTS**

**Section 89: Settlement agreements**

This section explains what is meant when the Measure refers to a settlement agreement between the Commissioner and a person (referred to as D) in relation to D's failure to comply with a standard.

A settlement agreement contains an undertaking by D:

- not to fail to comply with one or more standards;
- to take particular action;
- to refrain from taking particular action

and an undertaking by the Commissioner not to take enforcement action in respect of the failure.

The settlement agreement may include other provision and may also be varied or terminated by agreement of the Commissioner and D. However,

entering into a settlement agreement does not mean that D has admitted the failure.

### **Section 90: Failure to comply with settlement agreement**

The Commissioner is permitted to apply to a county court for an order requiring D to comply with a settlement agreement. The Commissioner may apply to the court during a five year period beginning with the day when the settlement agreement is entered into.

## **CHAPTER 3: APPEALS**

### **Section 91: Appeals to the Tribunal**

This section provides for a person's (referred to as D) grounds of appeal in circumstances where the Commissioner undertakes an investigation under *section 70* and determines that D has failed to comply with a requirement, Under *subsection (2)* D may appeal to the Tribunal on the grounds that D did not fail to comply with the relevant requirement. Under *subsection (3)* if the Commissioner takes enforcement action in relation to D's failure, D may appeal on the grounds that the enforcement action is unreasonable or disproportionate.

D may appeal on the grounds in *subsection (2)* or *(3)*, or both *subsections (2)* and *(3)*. Appeals must be made within 28 days beginning with the day on which the Commissioner gives D the decision notice required by *section 72*. The Tribunal may accept appeals after the 28 days if D makes a written application to it and if it is satisfied that there is a good reason for the failure to appeal before the end of that period, and for the delay (if any) in applying for permission to appeal out of time.

### **Section 92: Powers of Tribunal on appeal**

This section sets out what the Tribunal may do in relation to the Commissioner's determination or the Commissioner's enforcement action. Any decision taken by the Tribunal relating to an appeal has the same effect and may be enforced in the same way as a determination of the Commissioner.

### **Section 93: Appeals from Tribunal**

Where the Tribunal has decided an appeal the Commissioner or D may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the Tribunal's decision.

If the High Court finds that the Tribunal has made an error on a point of law, the High Court may set aside the decision of the Tribunal. If the case is set aside, the High Court must either remake the decision or refer the case to the Tribunal with directions for its reconsideration.

This section makes provision about the directions that the High Court may give to the Tribunal and states that when remaking a decision, the High Court

may make any decision the Tribunal could make, and may make findings of fact as the High Court thinks appropriate.

## **CHAPTER 4: GENERAL**

### **Section 94: Consideration of whether to investigate if conduct complained about**

When a person (referred to as P) makes a valid complaint to the Commissioner about the conduct of another person (referred to as D), the Commissioner must consider whether to conduct an investigation under *section 70* of whether D's conduct amounts to a failure to comply with a standard.

To be a valid complaint, the conditions in *subsections (3) to (6)* must be met. Even if the complaint is valid, the Commissioner is not under a duty to consider whether to carry out the investigation in the circumstances listed in *subsection (7)*.

However, in circumstances where the complaint does not satisfy all of the conditions for a valid complaint, or the Commissioner is not under a duty to consider whether to carry out the investigation, the Commissioner has discretion to consider whether to carry out the investigation.

### **Section 95: Notification if no investigation, etc**

Where P makes a complaint under *section 94* that D's conduct amounts to a failure to comply with a standard, in the following cases the Commissioner must notify P if the Commissioner decides not to investigate, and give reasons for those decisions:

- Case 1: where a complaint is made and the Commissioner is under a duty to consider whether to carry out an investigation, and decides not to carry out an investigation
- Case 2: where a complaint is made and the Commissioner is not under a duty to consider whether to carry out an investigation, and decides not to carry out an investigation
- Case 3: where a complaint is made and the Commissioner is under a duty to carry out an investigation, and decides to carry out an investigation but then decides to discontinue the investigation.

### **Section 96: Obstruction and contempt**

If the Commissioner believes that:

- a person has obstructed him or her in carrying out his or her duties under this Part, or
- in respect of an investigation under *section 70*, a person has acted in a manner that would be in contempt of court if the investigation were being dealt with by the High Court

the Commissioner can issue a certificate to the High Court. The High Court may inquire into the matter. If it is satisfied that a person's actions would be in contempt of court, it may deal with that person as if that person had committed contempt in relation to the High Court.

### **Section 97: Enforcement policy document**

The Commissioner must produce an enforcement policy document setting out his or her intended approach to exercising the Commissioner's functions under this Part. The document and any amendments to it must be approved by the Welsh Ministers.

This section also makes provision about the availability of the document for inspection and about publicising those arrangements.

### **Section 98: Register of enforcement action**

The Commissioner must create and maintain an up to date register of all enforcement action undertaken by him or her. This section states what the register must include.

This section also makes provision about the availability of the register for inspection and about publicising those arrangements.

### **Section 99: Interpretation**

This section defines "enforcement action" and "interested person" for the purpose of Part 5.

## **Part 6: Freedom to Use Welsh**

This part gives the Commissioner the power to investigate certain alleged interferences with the freedom of persons in Wales to use Welsh with one another. He or she must also report annually to the Welsh Ministers about the adequacy and effectiveness of the law in protecting this freedom, having regard to the experience of the Commissioner's office in using this investigatory power. The Commissioner may also produce and publish reports on particular investigations undertaken.

### **Section 100: Application to Commissioner**

Section 100 makes provision for an individual (referred to in the Measure and in this explanatory note as P) who considers that his or her freedom to undertake a Welsh communication with another individual (referred to in the Measure and in this explanatory note as R) has been interfered with by a third person (referred to in the Measure and in this explanatory note as D) to apply to the Commissioner to investigate the alleged interference. *Subsection (3)* sets out how the application should be submitted and *subsections (4) and (5)* specify the detail which must be included in the application.

### **Section 101: Welsh Communications**

This section defines 'Welsh communication' as a communication carried out in the Welsh language between two individuals who are located in Wales and

who wish to use the Welsh language with one and other in undertaking the communication.

### **Section 102: Interference with freedom to use Welsh**

This section sets out what, for the purposes of this part of the Measure, is an interference with the freedom to use Welsh which the Commissioner can investigate. An interference can take a number of different forms and these different forms are described in *subsections (2) to (8)*.

#### Case 1

*Subsection (2)(a)* allows the Commissioner to investigate cases of interference in which D has indicated to P or R that they must not undertake a particular communication in Welsh that falls within the definition of a Welsh communication.

The effect of *subsection 2(b)* is that the Commissioner will also be able to investigate instances where D, rather than indicating that a particular communication should not take place,

- (i) has indicated more generally that Welsh should not be used, and
- (ii) that D's more general indication catches within it communications which fall within the definition of "Welsh communication".

*Subsection (2)* is to be read with *subsection (6)*, the purpose of which is to recognise that there are a number of different ways in which D could indicate to P and R that they should not a particular communication or a category of communications. *Subsection (6)* makes it clear that giving an instruction is one such way, as is indicating that P or R will be subjected to a detriment (either imposed by D or by someone else) if they undertake the communication or category of communications. A further way is by D, or someone else at D's instigation, subjecting P or R to a detriment in connection with them having undertaken the communication or category of communications.

*Subsection (6)* is not intended to be an exhaustive list of the ways in which D could indicate that P and R should not undertake a particular communication or a category of communications. The indication could be made in a different way which is not one of those listed.

#### Case 2

*Subsection (3)(a)* allows the Commissioner to investigate cases of interference in which D has indicated that P or R will be subjected to a detriment (either imposed by D or by someone else) because they have undertaken a particular communication in Welsh that falls within the definition of a Welsh communication.

*Subsection 3(b)* performs an equivalent role to *subsection 2(b)* which has been explained above. It allows the Commissioner to investigate instances where D's threat that a detriment will be imposed relates to the use of Welsh

more generally, but catches communications which fall within the definition of a Welsh communication.

### Case 3

*Subsection (4)(a)* allows the Commissioner to investigate cases of interference in which D, or someone acting at D's instigation, has already subjected P or R to a detriment because they have undertaken a particular communication in Welsh that falls within the definition of a Welsh communication.

*Subsection 4(b)* performs an equivalent role to subsections 2(b) and 3(b) which have been explained above. It allows the Commissioner to investigate instances where D's (or someone else's at D's instigation) imposition of a detriment relates to the use of Welsh more generally, but catches communications which fall within the definition of Welsh communication.

*Subsection (5)* provides that in cases where more general indications catch communications which fall within the definition of Welsh communications, the Commissioner is only able to consider and reach a conclusion about D's action to the extent that it affects Welsh communications.

*Subsection (6)* has been explained above in the note dealing with *subsection (2)*.

*Subsection (7)* provides that the Commissioner's power to investigate an indication by D that a communication in Welsh must not be undertaken or that a detriment will be imposed, is in no way dependent on D or anyone else having the ability to carry through what has been indicated.

*Subsection (8)* makes it clear that being intimidated, bullied, harassed or humiliated is being subjected to a detriment for the purposes of this section.

### **Section 103: Deciding whether to investigate**

Where an application is made under *section 100* by P for the Commissioner to investigate an alleged interference, *section 103* states that it is for the Commissioner to decide whether or not to investigate. *Subsection (3)* lists matters which the Commissioner must consider or may consider in making that decision.

The Commissioner must take into account the context in which the alleged interference has occurred, including any relationship which exists between D and P, or D and R. The Commissioner is a public authority subject to the Human Rights Act 1998 and therefore must not act in a way which is incompatible with rights in the European Convention on Human Rights (ECHR). Article 8 of the ECHR deals with the right to respect for private and family life.

However the Commissioner is not limited to considering only the matters listed in *subsection (3)* when deciding whether or not to investigate an alleged

interference. There may be other factors which are relevant to his or her decision.

If the Commissioner decides to investigate, *subsection (5)* requires him or her to inform P and D of the decision to undertake the investigation and to give the “relevant information about investigations” (see below) to them. Should the Commissioner decide not to investigate the alleged interference he or she must inform P of the decision and the reason for it (*subsection (6)*).

*Subsection (8)* gives the meaning of ‘relevant information about investigations’.

### **Section 104: Investigations**

This section sets out what the Commissioner may do and must do if he or she decides to investigate the alleged interference.

### **Section 105: Discontinuing the Investigation**

This section allows the Commissioner to discontinue his or her investigation of the alleged interference at any time. *Subsection (2)* lists the steps the Commissioner must take if he or she decides to discontinue the investigation.

### **Section 106: Concluding Investigations**

This section applies in circumstances where the Commissioner decides to investigate the alleged interference and does not discontinue the investigation. *Subsection (2)* requires the Commissioner to determine whether or not D has interfered with P’s freedom to undertake a Welsh communication, as defined in *section 102*. If the Commissioner decides that an interference has occurred, he or she must give a view on the interference (including, but not limited to whether in his or her view the interference was justified (*subsection (3)*)).

Before making any determination under *subsection (2)* or giving views under *subsection (3)* the Commissioner must inform D of the determination he or she is proposing to make and of the views he or she is proposing to give, and, so far as is practicable, the Commissioner must give D the opportunity to respond. As soon as practicable after the determination has been made the Commissioner is required to notify P and D of it.

*Sub-section (7)* allows the Commissioner to give advice to P, D or any other person, about the alleged interference or any matter relating to it.

### **Section 107: Reports**

The Commissioner is not under a duty to produce a report when he or she concludes an investigation. If the Commissioner considers in a particular case that the appropriate action is to share his or her conclusions with P and D only, he or she is able to do that.

However, *subsection (2)* provides that the Commissioner may produce a report to be given to the Welsh Ministers on any application (not only ones

which he or she has investigated) made to him or her under *section 100*, and on the action taken by him or her in response to that application. If such a report is produced, *subsection (3)* places a duty upon the Commissioner to give a copy to P and D.

Where the Commissioner has produced a report to the Welsh Ministers under *subsection (2)*, *subsection (4)* allows the Commissioner to publish that report or, alternatively, another related document. He or she may publish a version of their report (for example, a summary version or one which anonymises the parties mentioned in it), or another document which relates to the report's subject matter.

*Subsections (5) – (8)* set out the requirements which must be met in order for the Commissioner to publish any document under *subsection (4)*. Both P and D must agree to the publication of a document or, if their agreement has not been obtained, the Commissioner must consider that publication is in the public interest. In considering whether it is in the public interest, the Commissioner must take account of the interests of P, D and any other appropriate person. If in any case the Commissioner decides that D did not interfere with the freedom to use Welsh as defined in *section 102*, the Commissioner is prohibited from identifying D in any document which he or she publishes under *subsection (4)*.

### **Section 108: Annual report to Welsh Ministers**

*Section 108* lists the types of information relating to applications to investigate alleged interferences that must be included in the Commissioner's annual report, required under *section 17* of the Measure.

*Subsection (1)(c)* requires the Commissioner to give a view on the adequacy and effectiveness of the law in protecting the freedom of persons in Wales wishing to use the Welsh language with one another.

*Subsection (2)* lists the matters the Commissioner must consider in formulating a view for this purpose, although he or she is not limited to those matters.

*Subsection (3)* enables the Welsh Ministers to make provision about the reports in regulations.

The effect of *subsection (4)* is that if the Commissioner's annual report referred to any cases in which he or she had decided that D did not interfere with the freedom to use Welsh as defined in *section 102*, the annual report must not identify D.

## **Part 7: Welsh Language Tribunal**

This Part of the Measure establishes a Welsh Language Tribunal ("the Tribunal") and makes associated provision.

### **Section 109: the Welsh Language Tribunal**

This section establishes the Tribunal and provides that the Tribunal is to consist of a President, legally-qualified members and lay members. The Welsh Ministers must appoint the members of the Tribunal. *Subsection (4)* gives effect to Schedule 11 which makes further provision about the Tribunal.

### **Section 110: Composition for proceedings before Tribunal**

*Section 110* makes provision regarding the Tribunal's composition to deal with proceedings. This section is subject to Tribunal Rules (see *section 112*).

### **Section 111: Hearings in public**

Tribunal proceedings are to be held in public subject to Tribunal Rules.

### **Section 112: Welsh Language Tribunal Rules**

*Section 112* requires the President to make rules ("Tribunal Rules") governing the practice and procedure to be followed in the Tribunal, which are subject to the approval of the Welsh Ministers.

### **Section 113: Power of Welsh Ministers to require rules to be made**

This section enables Welsh Ministers to require that Tribunal Rules include provision to achieve a specified purpose.

### **Section 114: Practice directions**

This section allows the President to give directions as to the practice and procedure of the Tribunal. Any directions given are subject to the approval of the Welsh Ministers unless they relate to the application or interpretation of the law or the making of decisions by members of the Tribunal.

### **Section 115: Guidance, advice and information**

*Section 115* allows the President to give guidance to other members of the Tribunal in relation to the exercise of their functions. Members of the Tribunal must have regard to any such guidance. The President may also give advice and information in respect of the Tribunal and its functions.

### **Section 116: Supplementary Powers**

This section provides the Tribunal with the same powers, rights, privileges and authority as the High court in relation to:

- the attendance and examination of witnesses;
- the production and inspection of documents; and,
- all other matter incidental to the Tribunal's functions.

*Subsection (4)* gives the Tribunal a power to direct that a party or witness is to be examined under oath or affirmation. The Tribunal may administer any oath, or take any affirmation, that is necessary for that purpose.

### **Section 117: Staff, accommodation and other resource of Tribunal**

*Section 117* requires the Welsh Ministers to ensure that the Tribunal is provided with the appropriate level of staff, accommodation and financial and other resources to exercise its functions.

### **Section 118: Specially qualified advisers**

This section allows the President to appoint specially qualified advisers to provide assistance to the Tribunal.

### **Section 119: Seal**

The Tribunal is to have an official seal. Documents carrying the seal are to be received in evidence in England and Wales without further proof.

### **Section 120: Financial Year**

This section defines the Tribunal's financial year.

### **Section 121: Vacancy in the office of the President**

In the event of vacancy in the office of President, this section makes provision allowing the Welsh Ministers to make appointments for the purpose of exercising the President's functions.

### **Section 122: President's annual report**

This section requires the President to produce an annual report on the Tribunal's exercise of its functions during that financial year and to give that report to the Welsh Ministers. The Welsh Ministers must lay the report before the National Assembly for Wales and afterwards send a copy of the report to the House of Commons and the House of Lords.

### **Section 123: Training etc for members of Tribunal**

This section places a duty upon the President to decide upon and maintain appropriate arrangements for the training, guidance and welfare of members of the Tribunal.

### **Section 124: Performance Assessments**

*Section 124* requires the President to assess the performance of other members of the Tribunal each year.

## **Part 8: General**

Chapter 1 of this Part of the Measure makes provision in relation to the integrity of the Commissioner and the Deputy Commissioner (referred to here as "relevant office holders").

Chapter 2 confers an absolute defence from defamation proceedings in respect of the publication of matters in defined circumstances.

Chapter 3 makes general provision.

## **CHAPTER 1: INTEGRITY**

### **Section 125: Register of interests**

This section places a duty upon each relevant officer holder to create and maintain an up to date register of interests.

### **Section 126: Publication of registers of interest**

This section imposes duties on the Commissioner in respect of the inspection and availability of a relevant office holder's register of interests.

### **Section 127: Conflicts of Interest**

This section prevents a relevant office holder from exercising a function if he or she has a registrable interest (defined in *section 130*) which relates to the exercise of that function. Where the relevant office holder is prevented from exercising a function, this section provides for how the function must be delegated (if the Commissioner is unable to act) or for arrangements to be made for the function to be exercised by another (if the Deputy Commissioner is unable to act).

### **Section 128: Validity of acts**

The validity of an act of a relevant office holder is not affected by a failure to comply with provision of, or made under, this Chapter of Part 8 of the Measure.

### **Section 129: Regulations**

The Welsh Ministers may make regulations specifying what interests are registrable interests and to make other provision for the purposes of this Chapter of Part 8 of the Measure.

### **Section 130: Interpretation of this Chapter**

"Registrable interest" and "relevant office holder" are defined in this Chapter.

## **CHAPTER 2: DEFAMATION**

### **Section 131: Absolute privilege**

The publication of matters falling within paragraphs (a) – (e) of *subsection (1)* have a complete defence in law (called an "absolute privilege") against a claim of defamation. The effect of absolute privilege is that persons publishing the matter are protected from any liability for defamation in the circumstances defined below:

- the publication of a matter by the Commissioner in the exercise of any of his or her functions;
- the publication of a matter by a member of the Advisory Panel in the exercise of any of his or her functions;
- the publication of a matter by a person in compliance with a requirement in a decision notice;

- the publication, in a communication between the Commissioner and a protected person of a matter in connection with an inquiry or investigation;
- the publication, in a communication between the complainant or person acting on behalf of the complainant and a representative with an investigation under Part 5 (Enforcement) or Part 6 (Freedom to use Welsh).

*Subsection (2)* provides that a reference to the Commissioner in this section includes the members of the Commissioner's staff or any person acting on the Commissioner's behalf or assisting in the exercise of the Commissioner's functions.

### **Section 132: Interpretation of this Chapter**

This section provides a number of definitions for the purposes of interpreting *section 131*.

## **CHAPTER 3: RESTRICTIONS**

### **Section 133: Restrictions**

This Measure does not authorise or require the Commissioner to exercise a prescribed function which by virtue of an enactment is also exercisable by a prescribed person. For the purposes of this section "prescribed" means prescribed in an order made by the Welsh Ministers.

## **Part 9: Welsh Language Board, Welsh Language Schemes etc**

This Part makes provision about the replacement of both the Welsh Language Board (referred to here as "the Board") and the Welsh language scheme arrangements provided for in the Welsh Language Act 1993 ("the 1993 Act"), and the repeal of the relevant provisions.

*Sections 134 to 136* make provision about a three-stage transition from the current regime (as set out in the 1993 Act) to the new regime as provided for in this Measure.

*Sections 137 to 138* and Schedule 12 make supplementary and other provisions relating to *sections 134 to 136*.

### **Section 134: Abolition of the Board and transfer of functions**

This section marks the beginning of the first stage of transition.

The Welsh Language Board is abolished and its functions under *section 3* of the 1993 Act are transferred to the Commissioner. The functions of the Board under *section 3* of the 1993 Act could be exercised by Welsh Ministers instead of or in addition to the functions being transferred to the Commissioner. This could be achieved by an order made under *section 143* of this Measure.

The functions of the Board contained in Part 2 of the 1993 Act (Welsh language schemes) are transferred to the Commissioner.

This section also repeals certain provisions of the 1993 Act

### **Section 135: Abolition of the Board's general functions & replacement of schemes with standards**

This section marks the beginning of the second transitional period. It provides for the move from the Welsh language scheme regime (Part 2 of the 1993 Act) and the functions of the Board (section 3 of the 1993 Act) to the new standards regime provided for in this Measure.

This section abolishes the functions of the Board under section 3 of the 1993 Act, including those which have been transferred under *section 134* during the first transitional phase.

Where a public body comes within Part 2 of the 1993 Act, and then becomes subject to the new standards regime under section 24(1) of this Measure, Part 2 will no longer apply to it.

This section also repeals certain provisions of the 1993 Act.

### **Section 136: Replacement of the Welsh language schemes with standards**

This section marks the end of the second transitional period which was commenced by *section 135*. The final stage begins as the final public body's Welsh language scheme is replaced by the application of standards as provided for in section 24(1) of this Measure.

The section provides for the abolishment of the Board's functions under Part 2 of the 1993 Act, which are exercised by the Commissioner or the Welsh Ministers under *section 134*. This provision is to be commenced only when all existing Welsh language schemes have been replaced by the application of standards as provided for in this Measure.

This section also repeals certain provisions of the 1993 Act.

### **Section 137: Other provision**

This section introduces Schedule 12 to the Measure which contains other provisions relating to the abolition of the Board.

### **Section 138: Supplementary**

This section provides that the Welsh Ministers' powers under other Parts of the Measure:

- are not limited by this Part;
- may be used to enable the Commissioner to exercise the functions of the Board until the Commissioner's new functions, as conferred by this Measure, are commenced;

- may amend or replace the provisions in this Part.

The Welsh Ministers' powers under other Parts of the Measure include, but are not limited to, their powers in orders made under *section 143* (transitional and consequential provisions etc), and orders under *section 145* (commencement).

## **Part 10: Supplementary**

This Part makes general provision in relation to the Measure.

### **Section 139: Orders and regulations**

Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument, the majority of which will be subject to the negative resolution procedure. The statutory instruments listed in *subsection (2)* must be made by affirmative procedure which means that the National Assembly for Wales has an opportunity to debate the matter and must approve the statutory instrument before it can be made. Statutory instruments to which the affirmative procedure applies include amongst others: orders amending Schedule 6 or 8, orders specifying standards, orders providing for the standards to be specifically applicable, orders altering the maximum amount of civil penalty and orders altering the amount of money specified in the Schedule 5 table.

The Welsh Ministers to Ministers' power to make an order or regulations under this Measure includes the power to:

- make different provision for different cases, different purposes or different geographical areas;
- to make provision generally or in relation to specific cases; and,
- to make such transitional, transitory, consequential, saving, incidental and other provision as the Welsh Ministers think necessary or appropriate.

Where the Welsh Ministers have power under *section 144(3)* to commence a repeal of provisions of the Welsh Language 1993, they may provide for different commencement for different jurisdictions.

In this section "primary legislation" means an Act of Parliament, or a Measure or Act of the Assembly.

### **Section 140: Directions**

Directions given by Welsh Ministers under this Measure:

- may be varied or revoked by a later direction;
- must be given in writing;
- may make provision generally or in relation to specific cases; and,

- may make different provision for different cases, different purposes or different geographical areas.

### **Section 141: Notices etc**

*Section 141* makes provision in relation to notices and other documents required or authorised to be given under this Measure.

### **Section 142: Interpretation of this Measure**

This section provides definitions of certain terms used in the Measure.

### **Section 143: Transitional & consequential provision etc**

This section gives the Welsh Ministers the power to make such provisions as they think necessary or appropriate in connection with the Measure or to give full effect to it. This power is exercisable by order.

This includes a power to amend, repeal or modify an enactment in connection with the Measure or to give full effect to it.

### **Section 144: Extent**

Subject to *subsection (3)*, the Measure extends to England and Wales only. *Subsection (3)* provides that a repeal of a provision of the Welsh Language Act 1993 has the same extent as the provision repealed.

### **Section 145: Commencement**

This section sets out the arrangements for commencing the provisions of the Measure. The provisions in *subsection (1)* enable the Welsh Ministers to begin preparations, immediately upon the making of the Measure, to appoint the Commissioner and the President of the Tribunal.

### **Section 146: Short Title**

The short title for this Measure is the Welsh Language (Wales) Measure 2010.

## **Schedule 1: The Welsh Language Commissioner**

Schedule 1 is introduced by section 2 of the Measure. Schedule 1 makes provision about the Commissioner's status, appointment, and financial matters.

### **Part 1: Status etc**

#### ***Paragraph 1: Status***

This paragraph makes provision regarding the Commissioner's legal status. The Commissioner is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown, and that the Commissioner's property is not to be regarded as property of, or property held on behalf, of the Crown.

***Paragraph 2: Validity of acts***

This paragraph ensures that the validity of acts undertaken by the Commissioner, or of a person exercising functions of the Commissioner, are not affected by a defect in the appointment of the Commissioner or any member of the Advisory Panel (or in the case of a person exercising functions on behalf the Commissioner, a defect in the appointment of that person).

**Part 2: Appointment**

***Paragraph 3: Appointment***

This paragraph sets out the parameters within which the First Minister must operate in appointing the Commissioner.

***Paragraph 4: Remuneration, allowances and pensions***

This paragraph allows the Welsh Ministers to pay remuneration, allowances, gratuities and pensions to the Commissioner, and amounts for or towards the pensions of persons who have been Commissioner.

***Paragraph 5: Terms of appointment***

This paragraph ensures that the Commissioner holds office subject to the terms of his or her appointment, subject to the other provisions of Schedule 1. *Sub-paragraph (3)* requires the terms of the Commissioner's appointment to provide for the Commissioner to hold office on a full-time basis.

***Paragraph 6: Duration of appointment***

This paragraph provides that a person appointed as Commissioner holds office for a period of 5 years subject to the provisions in Part 3 of Schedule 1 which deal with disqualification, and the Commissioner's resignation or dismissal from office.

***Paragraph 7: Appointment regulations***

This paragraph requires the Welsh Ministers to make provision about the appointment of the Commissioner by regulations ("appointment regulations").

***Paragraph 8: Delegation of appointment functions etc***

This paragraph provides the First Minister with the power, by order, to delegate the function of appointing the Commissioner and any or all of his or her functions that relate to the Commissioner to the Welsh Ministers.

**Part 3: End of appointment**

***Paragraph 9: Resignation***

This paragraph allows the Commissioner to resign his or her post by giving written notice to the First Minister of not less than 3 months.

***Paragraph 10: Disqualification***

A person ceases to be Commissioner if the person is disqualified from being Commissioner on grounds of employment.

***Paragraph 11: Dismissal***

This paragraph provides the First Minister with the power to dismiss the Commissioner in certain circumstances.

***Paragraph 12: Payments on ceasing to hold office***

This paragraph provides the Welsh Ministers with the discretion to make compensatory payment to a person who ceases to hold the office of Commissioner.

**Part 4: Disqualification from being a Commissioner**

***Paragraph 13: Disqualification from being a Commissioner***

This paragraph provides that a person employed in one of the listed offices is disqualified from being Commissioner.

**Part 5: Financial matters**

***Paragraph 14: Financial year***

This paragraph makes provision about the Commissioner's financial year.

***Paragraph 15: Accounting officer***

This paragraph makes provision about the Commissioner's responsibilities as accounting officer for the office of the Commissioner.

*Subparagraph (5)* provides the Public Accounts Committee of the National Assembly for Wales with the power, if requested to do so by the Committee of Public Accounts of the House of Commons ("the Parliamentary Committee"), to take evidence from the Commissioner on its behalf and to report on, and transmit, the evidence taken to the Parliamentary Committee.

***Paragraph 16: Estimates***

This paragraph places a duty upon the Commissioner to prepare an estimate of the income and expenses of the Commissioner's office for each financial year other than the first, and submit the estimate to the Welsh Ministers. The Welsh Ministers, in turn, must examine the estimate submitted to them and lay that estimate before the National Assembly for Wales.

***Paragraph 17: Accounts***

This paragraph places a duty upon the Commissioner to keep proper accounting records, and prepare accounts in respect of each financial year in accordance with directions given, with the consent of the Treasury, by the Welsh Ministers.

***Paragraph 18: Audit***

This paragraph requires the Commissioner to submit the accounts prepared for a financial year to the Auditor General for Wales.

The paragraph also requires the Auditor General for Wales to examine, certify and report on each set of accounts submitted to him and lay them before the National Assembly for Wales

***Paragraph 19: Examinations into the use of resources***

This paragraph provides that the Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which resources have been used in discharging the Commissioner's functions. In carrying out examinations under this paragraph, the Auditor General for Wales is not entitled to question the merits of the policy objectives of the Commissioner.

**Part 6: General**

***Paragraph 20: Interpretation***

This paragraph defines "appointment regulations" and "selection panel" for the purposes of this Schedule.

**Schedule 2: Inquiries by the Commissioner**

Schedule 2 is introduced by *section 6* of the Measure and makes supplemental provision about the Commissioner's powers of inquiry.

***Paragraph 1: Introduction***

Schedule 2 applies to inquiries that the Commissioner may undertake under *section 6*.

***Paragraph 2 to 5: Terms of reference***

Before conducting an inquiry, the Commissioner must prepare its terms of reference.

In accordance with *paragraph 3*, where the terms of reference relate to a particular person or category of person, those terms of reference must specify that person or category of person. A person specified in terms of reference of an inquiry and each person who, in the Commissioner's view, falls within a category of persons specified in terms of reference of an inquiry, are defined for the purposes of *paragraph 3* as a "relevant person".

Before settling the terms of reference under *paragraph 3*, the Commissioner must give each relevant person notice of the proposed terms and an opportunity to make representations about those terms. The Commissioner must consider any representations made by the relevant person.

After settling the terms of reference, the Commissioner must publish the terms of reference in accordance with the requirement imposed by *paragraph 3* as well as give notice of the terms of reference to each relevant person and the Welsh Ministers.

Where the terms of reference do not relate to a particular person or category of person, *paragraph 4* provides that the Commissioner must publish the terms of reference in accordance with the requirement imposed by *paragraph 4(2)(a)* as well as give notice of the terms of reference to the Welsh Ministers. *Paragraph 5* provides that *paragraph 3* or *4* applies to changes in the terms of reference as the paragraph would apply to the preparation of those terms.

### ***Paragraphs 6 and 7: Representations***

In accordance with *paragraph 6(1)*, the Commissioner must make arrangements for giving persons an opportunity to make representations in relation to inquiries.

*Paragraph 6(2)* provides that these arrangements must give the listed persons an opportunity to make representations in the course of an inquiry.

*Paragraph 7(1)* requires the Commissioner to consider representations made in relation to an inquiry by the persons listed.

The Commissioner must consider representations made by any other person in relation to an inquiry, unless the Commissioner thinks that it is appropriate to refuse to do so. Where the Commissioner refuses to consider representations he or she must give written notice to the person who made the representation of the decision to refuse to consider the representation made as well as the reasons for that decision.

### ***Paragraph 8: Reports on inquiries***

The Commissioner must prepare a report of his or her findings on any inquiry and send a draft of the report to the Welsh Ministers, which must comply with the requirements of *subparagraph (2)*. If the terms of reference specify a particular person or category of person, the Commissioner must also send a draft of the report to each relevant person (as defined by *paragraph 3(5)*). The Commissioner is required to give the Welsh Ministers, and any other person to whom a draft of a report is sent, an opportunity to make representations about the report. The Commissioner must consider any representations made on the draft report and, having settled the report, must publish it.

## **Schedule 3: Amendments about joint and collaborative working**

Schedule 3 is introduced by *section 20* in Part 2 of the Measure.

This Schedule makes amendments to the Care Standards Act 2000, Public Services Ombudsman (Wales) Act 2005, and the Commissioner for Older People (Wales) Act 2006 to make further provision about other commissioners and ombudsmen working jointly and collaboratively with the Welsh language Commissioner.

## **Schedule 4: Members of the Advisory Panel**

Schedule 4 is introduced by *section 22* of the Measure and makes further provision about the appointment of the Advisory Panel's members, as well as associated financial matters.

### **Part 1: Appointment**

#### ***Paragraph 1: Appointment***

This paragraph requires the Welsh Ministers to comply with appointment regulations (defined in *paragraph 5*) made by them. The Welsh Ministers are prevented from appointing a person to be a member of the Advisory Panel if that person is disqualified from appointment on grounds of employment. Those grounds are provided in *paragraph 10*.

#### ***Paragraph 2: Remuneration, allowances and pensions***

This paragraph allows the Welsh Ministers to pay remuneration, allowances, gratuities and pensions to members of the Advisory Panel, and amounts for or towards the pensions of persons who have been members.

#### ***Paragraph 3: Terms of appointment***

A member of the Advisory Panel holds office subject to the terms of his or her appointment, subject to the other provisions of this Schedule.

#### ***Paragraph 4: Duration of appointment***

This paragraph provides that a person appointed as a member of the Advisory Panel holds office for a period of 3 years, subject to the provisions in Part 2 which deal with disqualification, resignation or dismissal of members.

#### ***Paragraph 5: Appointment regulations***

The Welsh Ministers must make provision about the appointment of members of the Advisory Panel by regulations ("appointment regulations").

### **Part 2: End of appointment**

#### ***Paragraph 6: Resignation***

This paragraph allows a member of the Advisory Panel to resign from office.

#### ***Paragraph 7: Disqualification from membership***

A person ceases to be a member of the Advisory Panel if disqualified from membership on grounds of employment (defined in *paragraph 10*).

#### ***Paragraph 8: Dismissal***

This paragraph provides the Welsh Ministers with the power to dismiss a member of the Advisory Panel in certain circumstances. Before exercising their power of dismissal, the Welsh Ministers must consult the Commissioner.

***Paragraph 9: Payments on ceasing to hold office***

This paragraph provides the Welsh Ministers with the discretion to make a compensatory payment to a person who ceases to be a member of the Advisory Panel.

**Part 3: Disqualification**

***Paragraph 10: Disqualification on grounds of employment***

This paragraph provides that a person employed in one of the listed offices is disqualified from membership of the Advisory Panel on grounds of employment.

**Part 4: General**

***Paragraph 11: Interpretation***

This paragraph defines “appointment regulations” for the purposes of this Schedule.

**Schedule 5: Categories of Persons that may be added to Schedule 6**

Schedule 5 is introduced by *section 32* of the Measure. The Welsh Ministers may make an order adding the persons or categories of persons listed in column (2) to the table in Schedule 6 (Public Bodies etc: Standards) so that those persons become capable of being required to comply with standards.

The Welsh Ministers may, by order, amend the monetary threshold referred to in entry (5) of the table (persons providing services to the public who receive public money) by replacing the relevant amount with any other amount that is not less than £400,000.

This Schedule defines “consent” for the purpose of entry (8) (persons who consent to being specified in Schedule 6) in the table, and states that consent may be withdrawn subject to the agreement of Welsh Ministers.

Definitions of “enactment”, “public authority” and “public money” are also provided for the purposes of this schedule.

**Schedule 6: Public Bodies etc: Standards**

Standards are defined in Chapter 2 of Part 4 of the Measure.

Schedule 6 is introduced by *section 32* of the Measure. The persons or category of persons listed in column (1) of the table are capable of being required to comply with the classes of standards listed within column (2) of the table. They are not under a duty to comply with a standard or standards until the Commissioner has issued them with a compliance notice under *section 43* requiring them to do so.

Under *section 34* the Welsh Ministers may make an order amending Schedule 6 by:

- adding to column (1) a person or category of persons from the table in Schedule 5 (categories of person that may be added to Schedule 6)
- removing a person or category of person from column (1)
- making other amendments in accordance with *section 34* .

Under *section 37* Welsh Ministers may amend column (2) so that it includes or removes a reference to one of the following classes of standards: service delivery standards, policy making standards, operational standards, record-making standards.

Welsh Ministers may amend column (2) of the table to make the Welsh Minister, a county borough council or a county council capable of being required to comply with promotion standards.

Of the persons and categories listed in column (1), the entry of the table relating to government departments does not include anything that is within the entry relating to Ministers of the Crown, and the entry relating to persons exercising functions on behalf of the Crown does not include any person within any other entry.

Definitions are also provided for the purposes of this Schedule.

## **Schedule 7: Categories of Persons that may be added to Schedule 8**

Schedule 7 is introduced by *section 32* of the Measure. The Welsh Ministers may make an order adding the category of persons described in column (2) to the table in Schedule 8 (Other bodies: Standards) so that those persons are capable of being required to comply with standards relating to service delivery and record keeping, as provided in *section 36*.

The references in the table to related services do not include services provided in shops unless the services are:

- post office counter services, or
- the sale of tickets or the provision of timetables for bus and railway services.

Definitions are provided of certain terms used in the Schedule.

## **Schedule 8: Other Bodies: Standards**

Standards are defined in Chapter 2 of Part 4 of the Measure and explained in the explanatory note above.

Schedule 8 is introduced by *section 32* of the Measure. The persons or category of persons listed in column (1) of the table are capable of being required to comply with standards relating to service delivery and record keeping, as provided in *section 36*, in respect of the services listed in column (2). The persons or category of persons are not under a duty to comply with a standard or standards until the Commissioner has issued them with a compliance notice under *section 43* requiring them to do so.

Under *section 34* the Welsh Ministers may make an order amending Schedule 8 by:

- adding to column (1) a person or category of persons from the table in Schedule 7 (categories of person that may be added to Schedule 8)
- removing a person or category of persons from column (1)
- making other amendments in accordance with *section 34*.

The Welsh Ministers may amend column (2) so that it includes a reference to provision of a service only if certain conditions in *section 34* are met. They also have the power to remove any references in column (2).

Expressions used in this Schedule have the same meaning as in Schedule 7, other than references which have been defined or given specific meaning for the purposes of this Schedule.

### **Schedule 9: Activities in relation to which service delivery standards must be specified**

Schedule 9 is introduced by *section 41* of the Measure. Welsh Ministers may make regulations under *section 38* authorising the Commissioner to issue a compliance note requiring certain persons to comply with a standard. Where those regulations refer to a service delivery standard (defined in Chapter 2) *section 41* provides that the standard must relate to all of the activities listed in Schedule 9 (so far as such standards have been specified by the Welsh Ministers under *section 25(1)*) if, and to the extent that, the person carries out those activities.

### **Schedule 10: Commissioner's investigation of failure to comply with standards**

Schedule 10 is introduced by *section 70* in Part 5 of the Measure.

#### **Part 1: General**

##### ***Paragraph 1: Introduction***

This Schedule applies to investigations conducted under *section 70* of the Measure.

### ***Paragraph 2: Terms of reference***

This paragraph states that before conducting an investigation, the Commissioner must prepare the terms of reference which must specify the person who is being investigated, and the suspected failure to comply with a relevant requirement.

Before settling the terms of reference, the Commissioner must give certain persons notice of the proposed terms and an opportunity to make representations about them. The Commissioner must consider any representations made.

This paragraph makes provision for publishing the settled terms of reference and for giving notice of them to certain persons. This paragraph applies to the preparation of, and changes to, the terms of reference.

### ***Paragraphs 3 and 4: Representations***

*Paragraph 3* requires the Commissioner to make arrangements giving certain persons an opportunity to make representations, including oral representations, relating to investigations.

*Paragraph 4* requires the Commissioner to consider the representations made by the person being investigated or that person's legal adviser. The Commissioner must consider representations made by any other person, unless the Commissioner considers it appropriate to refuse to do so. This paragraph defines legal advisers as being an authorised person under the Legal Services Act 2007, or an advocate or solicitor in Scotland.

## **Part 2: Information, Documents & Oral Evidence**

### ***Paragraphs 5 and 6: Evidence notices***

In the course of an investigation, the Commissioner may give a person (referred to as A) an evidence notice, which may require A to do one or more of the following: to provide information in A's possession; to provide documents in A's possession; or to give oral evidence. However A cannot be compelled to do anything that A could not be compelled to do if the proceedings were before a High Court.

The paragraph sets out what the notice may or must contain, including informing A of the consequences for not complying with the notice and of the right of appeal under *paragraph 9*.

If a person (referred to as B) provides information, documents or gives oral evidence, the Commissioner has the discretion to make payments for expenses properly incurred and allowances by way of compensation for loss of B's time. Any such payments will be made in accordance with payment scales and conditions as may be determined by the Commissioner.

### ***Paragraphs 7 and 8: Confidentiality etc***

An evidence notice given under *paragraph 5* may not require a person to provide information which the person is prohibited from disclosing by virtue of an enactment and may not require a person to do anything that the person could not be compelled to do in proceedings before the High Court.

If A has been issued with an evidence notice, A must disregard it (and notify the Commissioner) if A believes that complying with the notice would require disclosing information classed as sensitive or other information relating to an intelligence service provided in *subparagraphs (a) to (e)*.

Intelligence service means the Security service, the Secret Intelligence service, and the Government Communications Headquarters.  
This paragraph also provides for what the Commissioner may do if notified by A that A is disregarding the notice.

### ***Paragraphs 9 and 10: Appeals***

A may apply to the Welsh Language Tribunal to have the notice cancelled if A can show that a requirement imposed by the notice is unnecessary in relation to the purpose of the investigation or otherwise unreasonable or disproportionate.

If a requirement is undesirable for reasons of national security which are not provided for in *paragraph 8(1)*, A may apply to the Tribunal to have the notice cancelled.

### ***Paragraph 11: Enforcement***

If the Commissioner believes that A has failed, or is likely to fail, to comply with the notice without having a reasonable excuse, the Commissioner may apply to a county court for an order requiring A to take steps as specified in the order to comply with the notice.

## **Part 3: Power of Entry and Inspection**

### ***Paragraph 12: Power of entry and inspection***

The Commissioner, or anyone authorised to act on his or her behalf, may enter and inspect a premises if the Commissioner thinks or the authorised person thinks it is necessary for the purpose of an investigation.

This power does not authorise entry to a dwelling, or to any premises that are not under the control of the person being investigated, nor does it authorise entry at a particular time if that time is unreasonable.

## **Schedule 11: The Welsh Language Tribunal**

Schedule 11 is introduced by *section 109* in Part 7 of the Measure. This Schedule makes further provision in relation to the Tribunal.

## **Part 1: Number of members of the Tribunal**

### ***Paragraph 1: Legally-qualified members***

This paragraph provides that the Welsh Ministers must from time to time determine the number of legally-qualified members which the Tribunal is to have, having first consulted with the President. The Welsh Ministers must, so far as it is reasonable to do so, secure that the number of legally-qualified members appointed to the Tribunal is equal to the number determined by them.

### ***Paragraph 2: Lay members***

This paragraph provides that the Welsh Ministers must from time to time determine the number of lay members which the Tribunal is to have, having first consulted with the President. The Welsh Ministers must, so far as it is reasonable to do so, secure that the number of lay members appointed to the Tribunal is equal to the number determined by them.

## **Part 2: Appointment**

### ***Paragraph 3: Appointment***

This paragraph makes provision regarding the eligibility of a person to be appointed as President.

### ***Paragraph 4: Legally-qualified members***

This paragraph makes provision regarding the eligibility of a person to be appointed as a legally-qualified member of the Tribunal.

### ***Paragraph 5: Lay members***

This paragraph makes provision regarding the eligibility of a person to be appointed as a lay member of the Tribunal.

### ***Paragraph 6: Remuneration***

The Welsh Ministers may pay remuneration, allowances, gratuities and pensions to members of the Tribunal.

### ***Paragraph 7: Terms of appointment***

A member of the Tribunal holds office in accordance with his or her terms of appointment, subject to the other provisions of this Schedule.

### ***Paragraph 8: Duration of appointment***

A person will be appointed to the Tribunal for a 5 year term with the discretion available to the Welsh Ministers to make shorter appointments.

### ***Paragraph 9: Appointment regulations***

The Welsh Ministers may make regulations in relation to the appointment of members of the Tribunal ("appointment regulations").

### **Part 3: End of appointment**

#### ***Paragraph 10: Resignation***

*Paragraph 10* makes provision for the resignation of Tribunal members

#### ***Paragraph 11: Disqualification from membership***

This paragraph makes provision regarding the disqualification of persons from membership of the Tribunal.

#### ***Paragraph 12: Dismissal***

This paragraph makes provision about the dismissal of members of the Tribunal by the Welsh Ministers.

### **Part 4: Disqualification from membership or appointment**

#### ***Paragraph 13: Disqualification from membership: employment***

This paragraph provides that a person employed in one of the listed offices is disqualified from membership of the Tribunal on grounds of employment.

#### ***Paragraph 14: Disqualification from membership: unsuitability***

This paragraph provides the grounds of unsuitability which will disqualify a person from membership of the Tribunal.

#### ***Paragraph 15: Disqualification from appointment: age***

A person is disqualified from appointment if he or she has already reached the age of 70 at the date of appointment.

#### ***Paragraph 16: Disqualification from appointment: previous appointment***

A person is disqualified from appointment as member of the Tribunal if they have already served a term of 10 years or more (whether in consecutive or non-consecutive appointments).

#### ***Paragraph 17: Disqualification from appointment: previous dismissal from office***

A person previously dismissed from the Tribunal by the Welsh Ministers under *paragraph 12* may not be reappointed as a member.

### **Part 5: General**

#### ***Paragraph 18: Interpretation***

This paragraph defines “appointment regulations”.

### **Schedule 12: Abolition of the Welsh Language Board: other provision**

This Schedule is introduced by *section 137* of the Measure.

***Paragraph 1: Staff of the Board***

The Welsh Ministers have the power make an order transferring the staff of the Board to either the Welsh Ministers or the Commissioner.

***Paragraph 2: Property, rights and liability of the Board***

The Welsh Ministers have the power to make an order about the property, rights and liabilities of the Board. This includes the power to transfer the property, rights and liabilities to the Commissioner or the Welsh Ministers. Definitions of “property” and “rights and liabilities” are also provided.