



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Judicial review and other legal proceedings

Section 8-10 Welsh Language (Wales) Measure 2011

A framework for instituting or intervening in legal proceedings and legal assistance 1

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1 Background

The principal aim of the Welsh Language Commissioner, an independent organization established under the Welsh Language (Wales) Measure 2011 (Welsh Language Measure), is to promote and facilitate the use of Welsh. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles will underpin the work:

- In Wales, the Welsh language should not be treated less favourably than the English language
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so

2 Purpose

- 2.1 This framework explains how and when the Welsh Language Commissioner (the Commissioner) proposes to execute his powers under sections 8-10 of the Welsh Language Measure in relation to instituting or intervening in legal proceedings and providing legal assistance.
- 2.2 Though not numerous, judgements have been made on important cases that have benefited the position of the Welsh language such as the case of *Boylan v Isle of Anglesey County Council*¹; *Gwynedd v Jones and Doyle*² and more recently *The Welsh Language Commissioner v National Savings and Investments*³.
- 2.3 Sections 8-10 of the Welsh Language Measure allows the Commissioner to institute legal action in England and Wales or to intervene in a case if a matter is relevant to the work of the Commissioner. Support can also be provided to individuals including legal assistance. This framework is in keeping with both the Welsh Language Measure and the Commissioner's Strategic Plan and Objective 2 in particular states that :

“The Commissioner will use this power if it is believed that a matter is of strategic importance to promote and facilitate the use of the Welsh language; where there is no other option to achieve the same aim and if the matter is clearly of public interest.”³

3 Promoting and Facilitating use of the Welsh language

3.1 The Commissioner has a range of powers at his disposal to achieve his main aim of promoting and facilitating use of the Welsh language. The ability to institute or intervene in legal proceedings or to provide support for individuals is but one means amidst his powers and functions. The Commissioner will not use his powers under section 8-10 where other powers of administration are specified in the Measure for specific purposes e.g. should a person fail to adhere to Welsh Language Standards, the Commissioner will exercise his enforcement powers. The Commissioner will consider and decide on the best means of pursuing resolutions on a case by case basis.

4 The legislative context

4.1 In exercising powers under sections 8-10 the Commissioner must act in accordance with the following provisions:

8. Judicial review and other legal proceedings

(1) The Commissioner may 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 the Commissioner has a function.

(2) Subsection (1)

(a) does not create a cause of action, and

(b) is subject to any limitation or restriction imposed by virtue of an enactment or in accordance with the practice of a court.

(3) In this section “legal proceedings” includes, but is not limited to, proceedings before any court or tribunal.

9. Legal assistance

(1) The Commissioner may provide an individual with assistance if the 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.

2) This section does not affect any restriction imposed in respect of representation—

(a) by virtue of an enactment, or

(b) in accordance with the practice of a court or tribunal.

(3) It is for the Commissioner to determine, for the purposes of this section, whether there are possible legal proceedings that are relevant to a matter in respect of which the Commissioner has a function.

(4) In this section “assistance” (“cymorth”) includes, but is not limited to the following things—

(a) legal advice;

(b) legal representation;

(c) facilities for the settlement of a dispute.

“legal proceedings” (“achos cyfreithiol”) includes, but is not limited to proceedings before any court or tribunal;

10. Legal assistance: costs

(1) This section applies—

- (a) if the Commissioner has assisted an individual under section 9 in relation to proceedings, and
- (b) if the individual becomes entitled to some or all of his or his costs in the proceedings (whether by virtue of a judgement or an agreement).

(2) The Commissioner's expenses in providing the assistance—

- (a) are charged on sums paid to the individual by way of costs, and
- (b) may be enforced as a debt due to the Commissioner.

(3) A requirement to pay money to the Commissioner under subsection (2) ranks below a requirement imposed by virtue of section 11(4)(f) of the Access to Justice Act 1999 (recovery of costs in funded cases).

(4) For the purposes of subsection (2), the Commissioner's expenses are to be calculated in accordance with such provision (if any) as the Welsh Ministers make for that purpose by regulations.

(5) Regulations made under subsection (4) may, amongst other things, provide for the apportionment of expenditure incurred by the Commissioner—

- (a) partly for one purpose and partly for another, or
- (b) for general purposes.

4.2 In exercising his powers under sections 8-10 the Commissioner must take account of any requirements pertaining to the wider legal system, e.g. Court rules and time limits for instituting cases vary. The Commissioner will act within the time limits of the courts and would need a good reason before requesting the court's permission to hearing a case outside any given time limits.

Family Procedure Rules

4.3 On 30 April 2020 the amendments to PD12G (Communication of Information) and PD14E (Communication of Information Relating to Proceedings) will enable disclosure of information from family proceedings held in private to the Welsh Language Commissioner to support the Commissioner in deciding whether to consider exercising his powers, without this disclosure being a potential contempt of court.

5 Considering instituting or intervening in legal proceedings and the provision of legal assistance to individuals

- 5.1 When the Commissioner becomes aware of actual or possible legal proceedings, she will consider whether or not to take action. The Commissioner will give full consideration without exception to all cases brought to his attention.
- 5.2 Before taking any formal action or making a final decision in relation to any proceedings under consideration, the Commissioner will usually seek appropriate advice and pay due regard to that advice.
- 5.3 Before seeking legal advice the Commissioner will normally refer to the following considerations to assist him in deciding whether she should institute, intervene or offer legal assistance in specific legal proceedings:

Instituting proceedings

- the likelihood of success in proceedings
- the likelihood of a settlement
- the resources necessary
- to what extent the Welsh Language Commissioner is the best organization to deal with the case
- the supportive evidence available to as to the benefits of a positive judgement
- are there other means of moving a matter forward
- efforts made to achieve a solution
- the likelihood of a court allowing proceedings to be instituted to what extent the case is one that lends itself to a court ruling
- that a positive result would set an important precedence for the Welsh language

Intervention in proceedings

Supplementary factors when considering intervention in legal proceedings:

- the extent to which the Welsh Language Commissioner is neutral or can contribute expert knowledge
- that clarity on a point of law would lead to systemic changes beyond the facts of the case

- the ability to identify another party that is intervening
- that the proposed evidence and representation comprises vital considerations relating to a court decision and are of substantial help to the court

Providing legal assistance

In considering the provisions of legal assistance and in addition to the above factors the Commissioner will also consider the following:

- the strength of the case
- the likelihood that the case would proceed without the Commissioner's Support
- the kind of assistance sought

6 Accepting requests for assistance from individuals

- 6.1 The Commissioner accepts requests for legal assistance. All requests are treated confidentially. They should be referred to the attention of the Welsh Language Commissioner.

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