

WELSH LANGUAGE (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 113 – Interference with freedom to use Welsh

222. 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

223. 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.

224. 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,

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

225. 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.

226. 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

227. 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.

228. 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

229. 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.
230. 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.
231. 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.
232. Subsection (6) has been explained above in the note dealing with subsection (2).
233. 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.
234. Subsection (8) makes it clear that being intimidated, bullied, harassed or humiliated is being subjected to a detriment for the purposes of this section.