



Welsh Language (Wales) Measure 2011

2011 nawm 1

PART 6

FREEDOM TO USE WELSH

111 Application to Commissioner

- (1) An individual (P) may apply to the Commissioner for the Commissioner to investigate whether a person (D) has interfered with P's freedom to undertake a Welsh communication with another individual (R) (the "alleged interference").
- (2) An application under this section must comply with the following requirements.
- (3) The application must be made in writing, unless P's personal circumstances are such that it would not be reasonable for P to make the application in writing.
- (4) The application must give an address at which the Commissioner may contact P (whether the address is postal, electronic or of another description).
- (5) The application must identify—
 - (a) D, and
 - (b) the alleged interference.

112 Welsh communications

In this Measure, "Welsh communication" means a communication in Welsh between two individuals, both of whom—

- (a) are in Wales, and
- (b) wish to use the Welsh language with one another in undertaking the communication.

113 Interference with freedom to use Welsh

- (1) For the purposes of this Measure, D is to be taken to interfere with P's freedom to undertake a Welsh communication with R in any of the following cases.

Status: This is the original version (as it was originally enacted).

- (2) Case 1 is where D indicates that P or R should not undertake—
 - (a) a particular communication in Welsh that is a Welsh communication, or
 - (b) a category of communications in Welsh consisting (wholly or partly) of one or more Welsh communications.
- (3) Case 2 is where D indicates that P or R will be subjected to a detriment (by D or any other person) because P or R has undertaken—
 - (a) a particular communication in Welsh that is a Welsh communication, or
 - (b) a category of communications in Welsh consisting (wholly or partly) of one or more Welsh communications.
- (4) Case 3 is where D, or a person acting at D’s instigation, subjects P or R to a detriment because P or R has undertaken—
 - (a) a particular communication in Welsh that is a Welsh communication, or
 - (b) a category of communications in Welsh consisting (wholly or partly) of one or more Welsh communications.
- (5) But, in a case falling within subsection (2)(b), (3)(b) or (4)(b), D is to be taken to interfere with P’s freedom to undertake a Welsh communication only insofar as the category of communications consists of one or more Welsh communications.
- (6) For the purposes of subsection (2), the circumstances in which D is to be taken to indicate that P or R should not undertake a particular communication, or a category of communications, include, but are not limited to, circumstances where—
 - (a) D instructs P or R not to undertake the communication or category of communications,
 - (b) D indicates that P or R will be subjected to a detriment (by D or any other person) if P or R undertakes the communication or category of communications, or
 - (c) D, or a person acting at D’s instigation, subjects P or R to a detriment in connection with P or R undertaking the communication or category of communications.
- (7) For the purposes of this section, it is irrelevant—
 - (a) whether or not D or any other person has authority to give an indication, and
 - (b) whether or not D or any other person has authority to enforce an indication.
- (8) In this section, references to P or R being subjected to a detriment include P or R being intimidated, bullied, harassed or humiliated.

114 Deciding whether to investigate

- (1) This section applies if P makes an application to the Commissioner under section 111.
- (2) It is for the Commissioner to decide whether or not to investigate the alleged interference.
- (3) When deciding whether to investigate the alleged interference, the Commissioner—
 - (a) must take into account the context in which interference is alleged to have taken place (including, but not limited to, the relationships, if any, that exist between D and P and between D and R);

Status: This is the original version (as it was originally enacted).

- (b) may ask P, D, or any other person, for information or views relating to the alleged interference; and
 - (c) must, if he or she asks P or D for information or views, give P or D the relevant information about investigations.
- (4) Subsection (3) does not limit the matters which the Commissioner may consider when deciding whether to investigate the alleged interference.
- (5) If the Commissioner decides to investigate the alleged interference, the Commissioner must—
- (a) inform P and D of the decision, and
 - (b) give P and D the relevant information about investigations (insofar as the Commissioner has not already given the information under subsection (3)(c)).
- (6) If the Commissioner decides not to investigate the alleged interference, the Commissioner must inform P of—
- (a) the decision, and
 - (b) the reasons for reaching the decision.
- (7) The Commissioner must comply with subsection (5) or (6) as soon as practicable after reaching the decision in question.
- (8) In this section “relevant information about investigations” means information about—
- (a) the procedure for carrying out investigations under this Part, and
 - (b) the Commissioner’s powers in relation to such investigations (including, but not limited to, the power under section 118 to produce and publish reports and other documents).

115 Investigations

- (1) This section applies if the Commissioner decides to investigate the alleged interference.
- (2) The Commissioner may ask P, D, or any other person, for information or views relating to the alleged interference.
- (3) The Commissioner must, so far as it is practicable, give D the opportunity to respond to the allegations made by P or any other person.

116 Discontinuing investigations

- (1) The Commissioner may, at any time, discontinue the investigation of the alleged interference.
- (2) If the Commissioner decides to discontinue the investigation, the Commissioner must—
 - (a) inform P and D of the decision, and
 - (b) inform P of the reasons for reaching the decision.
- (3) The Commissioner must comply with subsection (2) as soon as practicable after reaching the decision.

117 Concluding investigations

- (1) This section applies if the Commissioner—
 - (a) decides to investigate the alleged interference, and
 - (b) does not discontinue the investigation.
- (2) The Commissioner must determine whether or not D has interfered with P’s freedom to undertake the Welsh communication.
- (3) If the Commissioner determines that D has interfered with P’s freedom to undertake the Welsh communication, the Commissioner must also give his or her views on the interference (including, but not limited to, his or her views on whether the interference was justified).
- (4) Before the Commissioner makes a determination under subsection (2) or gives his or her views under subsection (3), he or she must—
 - (a) inform D of the determination which the Commissioner is proposing to make and of the views which the Commissioner is proposing to give, and
 - (b) so far as it is practicable, give D the opportunity to respond to the proposed determination and views.
- (5) The Commissioner must notify P and D—
 - (a) of the determination of P’s application, and
 - (b) if the determination is that D has interfered with P’s freedom to undertake the Welsh communication, of his or her views on the interference.
- (6) The Commissioner must comply with subsection (5) as soon as practicable after making the determination.
- (7) The Commissioner may give P, D, or any other person advice about—
 - (a) the alleged interference, or
 - (b) any matter that relates to the alleged interference.

118 Reports

- (1) This section applies in any case where an application is made under section 111.
- (2) The Commissioner may produce, and give the Welsh Ministers, a report on—
 - (a) the application, and
 - (b) the action taken by the Commissioner in response to the application.
- (3) The Commissioner must give copies of any such report to P and D.
- (4) The Commissioner may publish—
 - (a) a report given to the Welsh Ministers under subsection (2),
 - (b) a version of such a report, or
 - (c) another document that relates (whether wholly or partly) to the subject matter of such a report,(a “public document”), but only if the following conditions are met.
- (5) The first condition is that the Commissioner—
 - (a) notifies P and D of the intention to publish a public document, and

Status: This is the original version (as it was originally enacted).

- (b) so far as it is practicable, gives P, D, or any other person the Commissioner considers appropriate, the opportunity to provide the Commissioner with views about publication of a public document.
- (6) The second condition is that—
- (a) P and D agree to the publication of a public document, or
 - (b) the Commissioner considers that it is in the public interest to publish a public document.
- (7) In considering whether it is in the public interest to publish a public document, the Commissioner must take account of, amongst other things—
- (a) the interests of P and D, and
 - (b) the interests of any other persons which the Commissioner thinks it is appropriate to take account of.
- (8) In relation to any application in which the Commissioner determines that D has not interfered with P’s freedom to undertake a Welsh communication, a public document must not identify D.

119 Annual report to Welsh Ministers

- (1) The Commissioner must include in each annual report produced in accordance with Part 2 a report on—
- (a) relevant applications made to the Commissioner in the period to which the report relates,
 - (b) the action taken by the Commissioner in response to relevant applications made in that period, and
 - (c) 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.
- (2) In formulating a view for the purposes of subsection (1)(c), the matters which the Commissioner must consider include, but are not limited to—
- (a) all relevant applications made since section 111 came into force, and
 - (b) all action taken by the Commissioner in response to relevant applications made since section 111 came into force.
- (3) In relation to any relevant application in which the Commissioner determines that D has not interfered with P’s freedom to undertake a Welsh communication, the matters included in an annual report in accordance with this section must not identify D.
- (4) The Welsh Ministers may, by regulations, make provision about reports under this section.
- (5) In this section “relevant application” means an application made under section 111.