

WELSH LANGUAGE (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 114 – Deciding whether to investigate

235. Where an application is made under section 111 by P for the Commissioner to investigate an alleged interference, this section 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.
236. 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.
237. 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.
238. 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)).
239. Subsection (8) gives the meaning of ‘relevant information about investigations’.