

ANNUAL REPORT 2007

To the Minister for Community, Rural and Gaeltacht Affairs

In accordance with Section 30 of the Official Languages Act 2003, this report for the year 2007 is being presented by An Coimisinéir Teanga.

Seán Ó Cuirreáin
An Coimisinéir Teanga
Márta/March 2008

CONTENTS

Mission Statement	page 3
Foreword	page 4
Background	page 7
Information Services	page 9
Irish in the Houses of the Oireachtas	page 13
Mailshots	page 15
Language Schemes under the Act	page 16
Complaints: Problems and Difficulties – Statistics	page 23
Investigations	page 26
Summaries of Investigations 2007	page 28
• Department of Education and Science	page 29
• An Garda Síochána	page 39
• Department of Social and Family Affairs	page 45
• Health Service Executive	page 50
• State Examinations Commission	page 53
• National Disability Authority	page 62
• Bus Éireann	page 70
• Fingal County Council	page 75
• Houses of the Oireachtas Commission	page 78
• Department of Justice, Equality and Law Reform	page 83
Financial Matters	page 86
Staff and Contact Details	page 87

MISSION STATEMENT

“Protecting Language Rights”

To provide an independent quality service whilst fulfilling our statutory obligations to ensure State compliance in relation to language rights.

To ensure fairness for all by dealing, in an efficient, professional and impartial manner, with complaints regarding difficulties in accessing public services through the medium of Irish.

To provide clear and accurate information:

- to the public in relation to language rights, and
- to public bodies in relation to language obligations.

FOREWORD

For the second successive year over 600 complaints were made to my Office by members of the public who felt they had cause to complain because of difficulties or problems associated with accessing state services through Irish.

My Office has consequently dealt with nearly 2,000 complaints since its establishment in 2004.

Some of the complaints during 2007 were of a complex nature and difficult to resolve, and led in some cases to a requirement to undertake official investigations.

An investigation is an official enquiry carried out on a formal statutory basis in accordance with the provisions of the Official Languages Act.

An investigation is not normally carried out unless attempts at resolving the issue in hand through the Office's informal complaints resolution mechanism have failed or it appears that the issue cannot be resolved satisfactorily without an investigation.

The investigation process is a complex procedure, the completion of which may require a substantial amount of time and resources from both the public body concerned and my Office, and is not normally undertaken without substantive cause.

Of the 12 investigations launched during 2007, two were still ongoing at year end. Summaries of the 10 other investigations are contained in this report. In one specific case I had to decide to discontinue the investigation – without making findings or recommendations – for reasons that are detailed in the appropriate summary in this report.

The investigations, complaints and other actions of my Office during the year suggest that it is not necessarily sufficient in itself to have provisions in legislation to ensure that obligations confirmed in those provisions are adhered to. It appears that this may be particularly true in the case of statutory language provisions.

Decisions

As a result of an investigation I found that the Department of Education and Science had failed to comply with a requirement of the Education Act 1998 when current, up-to-date, syllabuses in Irish were not available in print or electronically for all post-primary school subjects. A further breach of the same legislation was the provision of English-only versions of the rules and programmes for secondary schools, which are the official guidelines for the sound administration and management of schools, including Gaeltacht and all-Irish schools.

As a result of an investigation An Garda Síochána decided to develop its system for dealing with Fixed Charge Notices (penalty points) as a bilingual system, and in the meantime, to end the practice which had recently commenced of refusing to provide this service in Irish to those who sought it.

Another investigation found that the Department of Social and Family Affairs failed to comply with a provision of the Official Languages Act, which requires simultaneous publication in both languages of public policy proposals, by publishing the green paper on pensions in English when the Irish language version was as yet unavailable.

The Health Service Executive, as a result of an investigation, apologised for providing public health dental services in English only for a Gaeltacht school in breach of an agreed statutory obligation.

The State Examinations Commission accepted the recommendations in a report following an investigation which found it to be in breach of a provision of the Education Act 1998 whereby Leaving Certificate examination papers answered in Irish were being marked by reference to marking schemes in English.

Another investigation found the National Disability Authority to be in breach of a provision of the Official Languages Act in the methodology it chose to distribute a booklet as a mailshot throughout the country.

Bus Éireann was found to be in breach of a provision of the Transport Act 1950 concerning the printing of tickets fully in Irish or bilingually for its school transport scheme.

Fingal County Council apologised when an investigation concluded that it had failed to comply with a provision of the Official Languages Act in replying to electronic communications in the same language in which it was received.

In the case of an investigation at the request of eight members of the Oireachtas, I found that the non-availability of Irish versions of bills during the enactment process of legislation was not a breach of a provision of the Official Languages Act.

Language Schemes

During the year my Office continued the process of auditing or reviewing each scheme that was a year or more in force and reports were issued as a result of this work to 25 public bodies, in addition to the 9 reports that were issued the previous year. The aim of this project was to identify any problems associated with the implementation of the provisions of such schemes, and to make the management of public bodies aware of them so that they could take the necessary steps to ensure compliance with their statutory obligations.

31 new language schemes were confirmed during 2007 covering a total of 60 public bodies. This meant that since the legislation was enacted 74 schemes had commenced, covering a total of 131 public bodies.

The process of preparing new schemes in the case of public bodies whose first 3 year scheme was almost ended also commenced during the year.

General

It is clear to me that some progress is being made in many state organisations in relation to the provision of services through Irish. I applaud those organisations and their staff agus I thank them for their support for the language and the legislation. There are, however, other cases where the threshold for the supply of services through Irish is very low and where the role of the language in the provision of such services to customers is perceived as being marginal and provided reluctantly.

There is no denying the fact that the ability of the state sector to provide services through Irish fell disastrously with the ending of “compulsory Irish” more than 30 years ago.

I am not at all making the case for a return to compulsory Irish for state employees but I do believe that a policy of compulsory English is not adequate either when members of the public deal with state bodies.

I think that the link needs to be clarified and reinforced between the learning of Irish in the country’s education system and the subsequent use of the language in communications generally, and particularly in the state sector.

It does not appear now that the current recruitment and training regime in the state sector is sufficient to ensure that an adequate number of staff are competent in the Irish language so as to be able to provide its services through Irish as well as English.

I believe that a “rebalancing” action is required to ensure an adequacy of staff with competence in Irish in the civil and public service. A system to help achieve cross-community rebalancing through positive discrimination was found for the Police Service of Northern Ireland as a result of the Patten report. A similar effort would be required here, even temporarily, to have a positive effect in rebalancing staffing levels of those in the state sector with competence in Irish and in English.

Such a move should have no additional cost implications; in fact, it would be more economical for the state sector to employ people with competence in both Irish and English than the current system, which in many state organisations requires resorting to external commercial translation agencies to deal with the simplest of letters in Irish.

BACKGROUND

The President formally appointed me as Coimisinéir Teanga on 23 February 2004 on the advice of Government following a resolution passed by Dáil Éireann and Seanad Éireann recommending the appointment.

The process of establishing the new Office began soon afterwards and this is the Office's 4th annual report. A detailed account of the work of the Office to date is available in the annual reports for 2004, 2005 and 2006 which are available from the Office or from its website. Annual accounts for the same years are similarly available.

The Office of the Coimisinéir Teanga is an independent statutory office whose responsibility it is to monitor the manner in which the State's public bodies comply with the provisions of the Official Languages Act 2003, and to take all necessary measures to ensure that public bodies fulfil their obligations under the Act.

The Office investigates complaints from the public in cases where it is believed that public bodies may have failed to fulfil their obligations under the Official Languages Act 2003 or under any other enactment which deals with the use or status of Irish.

The Office provides advice to the public about their language rights and to public bodies about their obligations under the Act. The primary objective of the Act is to ensure the provision of additional and higher quality services through Irish by the civil and public service.

It is expected that the implementation of the Act will create new space for the language within the public administration of the country. It forms one element of the State's support of the language, the main thrust of which is to promote Irish in education, broadcasting, the arts, Gaeltacht life and in public life generally.

The Official Languages Act was signed into law on 14 July 2003 by the President and all provisions of the Act not already commenced by Ministerial order came into effect on 14 July 2006. That meant that from that date on, every provision of the Act had statutory basis although it did not mean that the legislation was yet in full effect.

The Minister for Community, Rural and Gaeltacht Affairs is authorised under the Act to make regulations and to have language schemes confirmed.

By the end of 2007 regulations had not yet been made under section 9(1) of the Act in relation to the use of Irish and English in the advertising, stationery, oral announcements and signage of state organisations although draft regulations were published and brought before the Houses of the Oireachtas.

During the year additional language schemes under the Act confirmed by the Minister brought to 74 the number in place by the end of 2007. This covered a total of 131 public bodies. An additional 42 draft schemes covering 79 public bodies were prepared for confirmation by the end of 2007.

There are, however, almost 650 public bodies subject to the legislation and, although the same urgency need not apply to having schemes confirmed in the case of smaller public bodies which may not have many dealings with large sections of the public, it is clear that a significant number of language schemes have yet to be agreed and confirmed.

The full effect of the legislation cannot be evaluated until the regulations are made under the Act and language schemes confirmed in a very significant share of state organisations.

INFORMATION SERVICES

During 2007 my Office continued with various campaigns to promote awareness of the Official Languages Act 2003 and the work of the Office itself. This included seminars and other public occasions, advertising campaigns, media interviews, exhibitions at Irish language events, website development and other activities.

Seminars

I addressed 12 seminars or other public events during the year at various venues throughout the country.

Media

I undertook 54 media interviews with journalists during the year to provide details of the work of the Office, the implementation of the Act and related matters.

The media outlets that conducted interviews or sought information during the year included:

Nuacht TG4, RTÉ Raidió na Gaeltachta, The Irish Times, Foinse, Irish Examiner, Irish Independent, Irish Daily Mail, Lá Nua, RTÉ Radio 1, Nuacht RTÉ, Newstalk, BBC Radio Ulster, Raidió na Life, Connacht Tribune, Highland Radio, 103 FM Cork, WLR FM, Donegal News, Donegal Democrat, Donegal on Sunday, Monaghan Echo, Galway Independent.

I would like to thank all the journalists who showed such an interest in the work of the Office during 2007 and who helped to progress that work through their reports in English and in Irish.

Exhibitions

My Office had an information stand at various Irish language events during the year, including **an tOireachtas** (Westport, Co Mayo: 1-4 November 2007) and at a **Seachtain na Gaeilge** event (Dublin: 18 March 2007).

Advertising

A number of advertising campaigns were organised on television and radio and in the newspaper sector during the year. The television advertising was directed mostly at TG4 although RTÉ 1 and RTÉ 2 were also used. Radio advertising was primarily on RTÉ Radio 1 and on local radio stations throughout the country. Print advertising was mostly focused on the Irish language publications including the newspapers Foinse and Lá Nua and in The Irish Times, in conjunction with its Irish language column “Tuarascáil”.

Website

The development of the website www.coimisineir.ie continued throughout the year in order to ensure that it was always accurate and up to date in relation to all aspects of the legislation and the work of the Office.

The website serves as a “one stop shop” or central information point in relation to the Official Languages Act and the Office of An Coimisinéir Teanga.

In the course of the year from January to December 2007 the number of “hits” on the website (460,000) exceeded that of any previous year.

Nearly 8,000 people downloaded bilingual copies of the Office’s 2005 and 2006 annual reports during 2007.

Gold Medal

My Office is associated with the MA degree course in Bilingual Practice in Fiontar, Dublin City University, where the Coimisinéir Teanga’s Gold Medal is presented annually to the graduate who receives the highest marks for a postgraduate thesis.

The 2007 Gold Medal was presented to Máiréad Nic Ealagóid for her thesis on attitudes to compulsory Irish and was presented at the graduation ceremony in Fiontar, Dublin City University, on 6 November 2007.

The aim of the MA course, of which Dr. Peadar Ó Flatharta is director, is to train staff working in the public and voluntary sectors in the management and delivery of quality bilingual customer service, and in particular to respond to the requirements of the Official Languages Act.

This programme provides participants with the knowledge and skills necessary to ensure that the public is provided with a quality bilingual service according to international standards.

Support Network

During 2007 my Office continued to facilitate the organisation of a support network for public bodies who had confirmed language schemes.

The language schemes are at the core of the Official Languages Act and it is in such schemes that public bodies outline on a statutory basis the steps they guarantee to undertake – beyond the direct provisions of the Act – to develop their services through Irish on a gradual basis over a three year period.

My Office provides administrative assistance for the support network, the members of which met on 2 occasions during 2007 – in Dublin and in Galway – to discuss issues in relation to their language schemes and other provisions of the legislation.

Youth

During the summer of 2007 representatives from my Office visited a number of Gaeltacht Summer Colleges to distribute specific information brochures to students attending Irish language courses. The objective of this exercise was to encourage young people to choose the Irish language at an early stage of their lives for their interactions with state organisations wherever possible.

Advice to Public Bodies

It is one of the functions of this Office to provide advice or other assistance to public bodies who come within the scope of the legislation with regard to their obligations under the Act.

During 2007 my Office was contacted by officials of public bodies on 161 separate occasions with specific questions or seeking comprehensive briefings on their obligations under the Act.

The more advice and clear accurate information that is provided to public bodies regarding their obligations under the Act, the easier it will be to ensure compliance with the provisions of the Act.

Accredited Panel of Translators

Foras na Gaeilge continued to develop its panel of accredited translators during 2007 and by year end 98 people had achieved recognition as accredited translators. This official panel ensures that public bodies can easily access a list of translators in the knowledge that they can have full confidence in the members' ability and work quality.

International Cooperation

During 2007, my Office continued to develop relations with comparable organisations, particularly with those involved in the area of language planning internationally.

My Office has established a particular link with the Office of the Official Languages Commissioner in Canada and we have agreed an annual exchange of a staff member for a period of one week to increase our understanding of each others work practices as a tool towards establishing norms of best practice.

During May 2007 Ms. Damhnait Uí Mhaoldúin, Office Manager, spent one week working in the office of the Official Languages Commissioner in Ottawa in exchange for a week spent by Mr. Gilbert Langlier in my Office in An Spidéal, Co. Galway the previous year. The Office of the Official Languages Commissioner in Canada has accepted an invitation to have another member of its staff work with us for a week during 2008.

During 2007 my Office continued with our associate corporate membership of the British and Irish Ombudsman Association – an association focused on improving

relationships and understanding amongst those engaged with ombudsman services in these jurisdictions. I was awarded membership during 2007 of the International Academy of Linguistic Law, which is composed of individuals throughout the world who are involved with issues of statutory linguistic rights.

Staff Matters

Negotiations were completed in early 2007 on the staffing levels required by my Office and new senior appointments were sanctioned. Recruitment interviews were not held to fill the positions until late in 2007, however, and the year ended with the same staff levels with which the Office was first established in 2004, although offers of appointments were about to be issued.

IRISH IN THE HOUSES OF THE OIREACHTAS

During the year 2007, the general election for the 30th Dáil was held on 24 May. Although the new Dáil met on seven occasions in June and July it was clear that the serious work of the new session would commence after the summer break on 26 September. In September also, the members of the 23rd Seanad, both elected and nominated, met for the first time. I considered therefore that it would be timely in September 2007 to contact all 226 members of the Houses of the Oireachtas in writing to remind them of the specific rights which were confirmed in law under section 6 of the Official Languages Act 2003 in relation to the use of Irish in the work of the Oireachtas.

Members of either House of the Oireachtas have the right to use Irish or English in any debate or other proceedings in that House or of a committee of either house, a joint committee of both houses or a sub-committee of such a committee or joint committee. This right was already recognised in the Standing Orders of the Houses of the Oireachtas, but was given legal status by the commencement of this section of the Act on 19 January 2004. This was the first new Dáil and Seanad to hold office since the commencement of that new status.

I reminded the members of the Oireachtas that a simultaneous translation system was operational in the Houses of the Oireachtas to ensure that any person who did not understand Irish would not be put at a disadvantage; an English translation of anything that was said in Irish was available on headphones. I also said the following:

“It is obvious that only a very small percentage of the work of the Oireachtas is undertaken through Irish in the Houses of the Oireachtas at present. It is clear, however, from the participation in debates in the Irish language media, both on radio and television, that a significant number of TDs and Senators are capable of debating in Irish, but for one reason or another, the vast majority of debates are in English in both Houses.

My objective in issuing this reminder on statutory rights in relation to the use of Irish is to seek to encourage members of the Dáil and Seanad to choose to use more Irish in the Houses of the Oireachtas. The importance of developing an additional place and space for the language in parliamentary affairs can not be underestimated. This would provide a significant encouragement to others in other spheres of public life and would ensure that the language would not be marginalised in the most important institutions in the life of this country.

As you know, Irish is recognised in the constitution as the first official language as it is the national language. It has been spoken here for 2,000 years and is considered to be the oldest written language in Europe which still survives as a living language. It is unique to this country and hugely important to the country’s identity and to world heritage.”

In the same communication I also referred to the opportunities being provided in Leinster House by Gaeleagras, an organisation under the aegis of the Department of Finance, to assist those without Irish or whose grasp of the language was rusty and who wished to receive help.

Members of the Oireachtas contacted me subsequently to say that it was their intention to use more Irish in the work of the Dáil and Seanad and I was particularly pleased to hear from Gaeleagras that 33 people, TDs and Senators, had registered with them to undertake courses in Irish.

When this number is added to those in the Oireachtas who already have an ability to debate in Irish there is no question but much more use could be made of the Irish language in the work of the Houses of the Oireachtas.

Later in the year, in November, a group of 8 members of the Oireachtas, 2 Senators and 6 TDs, complained to me that there was a serious obstacle to their right to use the Irish language in debates and other proceedings of the Houses of the Oireachtas and in committees and sub-committees as provided for by Section 6 of the Official Languages Act 2003 since bills were published in English only in the vast majority of cases.

These Oireachtas members claimed that they were not being accorded equal rights with TDs and Senators who were prepared to use English always, that it may have been that their constitutional rights were being infringed and that, in their opinion, Section 7 of the Official Languages Act 2003 in relation to the publication of Acts of the Oireachtas simultaneously in each of the official languages was not being complied with.

I investigated their complaint and issued a report to the appropriate parties on 13 December 2007. A summary of that investigation is available in the chapter of this annual report pertaining to investigations.

MAILSHOTS

2007 was the first full year in which there was a statutory basis to the obligation on public bodies to ensure that mailshots issued by them, in certain circumstances, were in Irish or bilingual (Irish and English). As a result of this, there was without doubt a substantial increase in the number of bilingual mailshots issued by public bodies during 2007.

This new obligation was brought into effect on 14 July 2006 by the commencement of Section 9(3) of the Official Languages Act 2003.

There has been a significant increase over the years generally in the use of mailshots – leaflets, brochures, booklets, etc. – to provide information to the public in general.

With the commencement of Section 9(3) of the Official Languages Act 2003 public bodies are no longer allowed, in certain circumstances, to distribute unilingual English mailshots, previously a common occurrence.

The following is the provision in Section 9(3):

“Where a public body communicates in writing or by electronic mail with the general public or a class of the general public for the purpose of furnishing information to the public or the class, the body shall ensure that the communication is in the Irish language or in the English and Irish languages.”

It is clear that the obligation in this section pertains to a particular type of communication:

- the communication must issue from a public body
- the communication must be in writing or by electronic mail
- the communication must be with the public in general or with a class of the public in general
- and the purpose of a communication must be to furnish information to the public or to the class.

It was clear from numerous mailshots examined by my Office during the year 2007 – a small number of examples of which are to be seen here – that there was a substantial increase in the number of bilingual mailshots issued by public bodies.

A number of mailshots in English only from public bodies also came to the attention of my Office and in the majority of those cases the breach occurred as the result of errors, misunderstandings or gaps in the information of the public body. In those particular cases my Office agreed appropriate steps with the public bodies in question and received undertakings that similar breaches would not occur in the future.

One public body during 2007 interpreted the provision in Section 9(2) of the Act in a way that was at odds with my Office’s interpretation. The issue was resolved

following an investigation and a report on that investigation is included in the chapter of this annual report concerning investigations.

LANGUAGE SCHEMES UNDER THE ACT

My Office continued the process during the year of auditing or reviewing each scheme that was a year or more in force and reports were issued as a result of this work to 25 public bodies, in addition to the 9 reports that were issued the previous year. The aim of this project was to identify any problems associated with the implementation of the provisions of the scheme and to make the management of public bodies aware of them so that they could take the necessary steps to ensure compliance with their statutory obligations.

31 new language schemes were confirmed during 2007 covering a total of 60 public bodies. This meant that since the legislation was enacted 74 schemes had commenced, covering a total of 131 public bodies.

In addition to this, there were a further 42 draft schemes from various public bodies, covering a total of 79 public bodies, with whom the process of agreement and confirmation had yet to be completed at the end of 2007.

The process of preparing new schemes in the case of public bodies whose first 3 year scheme was almost ended also commenced during the year.

The implementation of the language schemes is central to the Official Languages Act 2003 as the public bodies are given the opportunity in their schemes to identify and organise their priorities for improving their services through Irish. Schemes under the Act are statutory language plans aimed at increasing the number and standard of services available through Irish in an organised and measured way over a period of time.

For the second consecutive year it was the lack of communication which was the most significant weakness noted in the implementation of some of the current schemes. This lack of communication left some of the staff of public bodies unaware of their public body's specific language obligations as agreed in their schemes, and left the public unaware of the services in Irish to which they were entitled from that public body.

In addition some public bodies had difficulty complying with deadlines that they themselves had agreed as part of their schemes and it was not always clear that they understood the legal significance of those deadlines. It is the intention of my Office to keep a close eye on the implementation of such schemes.

Confirmed by the end of 2007

Name of Public Body

Department of Community, Rural and Gaeltacht Affairs

Office of the President

Office of the Commission for Public Service

Commencement Date of the Scheme

22/09/2004

28/04/2005

30/05/2005

Appointments

Office of the Ombudsman and Office of the Information Commissioner	01/07/2005
Department of Arts, Sports and Tourism	01/07/2005
The Arts Council	01/07/2005
County Donegal Vocational Education Committee	01/07/2005
Office of the Director of Public Prosecutions	01/07/2005
Kerry Local Authorities	26/07/2005
The Courts Service	31/07/2005
Waterford County Local Authorities	01/08/2005
Department of Environment, Heritage and Local Government	15/08/2005
County Galway Local Authorities	23/08/2005
Department of the Taoiseach	<u>01/09/2005</u>
Health Service Executive, Western Area	01/09/2005
National University of Ireland, Maynooth	19/09/2005
Galway-Mayo Institute of Technology	28/09/2005
Office of the Revenue Commissioners	01/10/2005
National University of Ireland, Galway	01/10/2005
Donegal Local Authorities	01/10/2005
The Public Appointments Service	03/10/2005
The Referendum Commission	from the date on which the next Commission is established
Department of Education and Science	01/12/2005
Department of Finance	01/02/2006
Dublin City University	03/04/2006
Kerry Education Services	15/05/2006
University of Limerick	01/06/2006
Department of Agriculture and Food	01/06/2006
Department of Justice, Equality and Law Reform	30/06/2006
Dublin City Council	13/07/2006
County Galway Vocational Education Committee	01/08/2006
Meath Local Authorities	01/09/2006
Galway City Council	01/09/2006
The Defence Forces	01/09/2006
Department of Communications, Energy and Natural Resources	02/09/2006
Fingal Local Authorities	01/10/2006

Central Bank and Financial Services Authority of Ireland	01/12/2006
University College, Cork	01/12/2006
Department of Foreign Affairs	01/12/2006
South Dublin County Council	20/12/2006
Mayo Local Authorities	22/12/2006
Leitrim County Council	01/01/2007
Local Government Computer Services Board	02/01/2007
Department of Defence	26/02/2007
Office of the Data Protection Commissioner	01/04/2007
Property Registration Authority	02/04/2007
Western Development Commission	10/04/2007
Cork City Vocational Education Committee	30/04/2007
Institute of Public Administration	10/04/2007
Local Government Management Services Board	23/04/2007
Department of Transport	30/04/2007
Department of Social and Family Affairs	01/06/2007
The Commissioners of Public Works	08/05/2007
Galway City Vocational Education Committee	01/06/2007
Legal Aid Board	28/05/2007
North Tipperary Local Authorities and County Tipperary Joint Libraries Committee	01/06/2007
Office of the Attorney General. Office of the Parliamentary Counsel to the Government. Chief State Solicitor's Office	20/06/2007
Dún Laoghaire-Rathdown County Council	01/07/2007
Clare Local Authorities	20/08/2007
An Bord Pleanála	01/09/2007
Roscommon Local Authorities	01/10/2007
Letterkenny Institute of Technology	26/09/2007
Limerick City Council	01/10/2007
Cork Local Authorities	01/10/2007
City of Dublin Vocational Education Committee	01/10/2007
Westmeath Local Authorities	01/10/2007
Church of Ireland College of Education	01/11/2007
Central Statistics Office	05/11/2007

Cork City Council	31/10/2007
Louth Local Authorities	20/11/2007
Teagasc	01/01/2008
Limerick County Council	01/02/2008
The National Lottery	02/01/2008
The Training and Employment Authority (FÁS)	02/01/2008

Draft Schemes to be prepared – Second Scheme

On 14 November 2007, the Minister for Community, Rural and Gaeltacht Affairs instructed the following bodies to review their schemes and to prepare and submit new draft language schemes to him within 6 months:

Office of the President

Office of the Commission for Public Service Appointments

Office of the Ombudsman and Office of the Information Commissioner

County Donegal Vocational Education Committee

Office of the Director of Public Prosecutions

The Arts Council

Department of Arts, Sports and Tourism

The Department of Community, Rural and Gaeltacht Affairs is also preparing a new language scheme on its own behalf.

On 20 December 2007, the Minister for Community, Rural and Gaeltacht Affairs instructed the following bodies to review their schemes and to prepare and submit new draft language schemes to him within 6 months:

Department of the Environment, Heritage and Local Government

Kerry Local Authorities

The Public Appointments Service

The Courts Service

Donegal Local Authorities

Galway-Mayo Institute of Technology

Waterford Local Authorities

Office of the Revenue Commissioners

Department of the Taoiseach

National University of Ireland, Maynooth

National University of Ireland, Galway

County Galway Local Authorities

Draft scheme to be prepared in 2008

A draft scheme was required to be submitted for confirmation by the Minister for Community, Rural and Gaeltacht Affairs during 2008 by:

Electricity Supply Board

Draft schemes to be prepared by the end of 2007

Draft schemes were required to be submitted by public bodies for confirmation by the Minister for Community, Rural and Gaeltacht Affairs during or by the end of 2007, as follows:

Comhairle
Irish Film Board
County Dublin Vocational Education Committee
The Health Service Executive
Office of the Director of Consumer Affairs
Foras na Mara
Laois Local Authorities
Offaly Local Authorities
Monaghan Local Authorities
Wicklow Local Authorities
Wexford Local Authorities
Kildare Local Authorities
Longford Local Authorities
Waterford City Council
Kilkenny Local Authorities
Cavan Local Authorities
Carlow Local Authorities
An Garda Síochána

Draft schemes to be prepared by the end of 2006

Draft schemes were required to be submitted by other public bodies for confirmation by the Minister for Community, Rural and Gaeltacht Affairs during or by the end of 2006, as follows:

Department of Health and Children
National Library of Ireland
Ordnance Survey Ireland
Sligo Local Authorities
National Museum of Ireland
Chester Beatty Library
Heritage Council
Equality Authority

Equality Tribunal
 Companies Registration Office
 Office of the Registrar of Friendly Societies
 Office of the Director of Corporate Enforcement
 State Examinations Commission
 Office of the Comptroller and Auditor General
 Cork County Vocational Education Committee
 Institute of Technology, Tallaght
 Institute of Technology, Tralee
 National Concert Hall
 National Gallery of Ireland
 Abbey Theatre (National Theatre Society Ltd.)
 Higher Education Authority
 South Tipperary Local Authorities
 County Clare Vocational Education Committee

Reviews completed and reports issued 2007

Office of the Director of Public Prosecutions
The Courts Service
Waterford County Local Authorities
Department of Environment, Heritage and Local Government
County Galway Local Authorities
Department of the Taoiseach
Health Services Executive, Western Area
National University of Ireland, Maynooth
Galway-Mayo Institute of Technology
Office of the Revenue Commissioners
National University of Ireland, Galway
Public Appointments Service
Department of Education and Science
Department of Finance
Dublin City University
Kerry Education Services
Limerick University
Department of Agriculture and Food
Department of Justice, Equality and Law Reform
Dublin City Council
County Galway Vocational Education Committee
Galway City Council
The Defence Forces
Department of Communications, Energy and Natural Resources

Statistics – Schemes		
Year	Schemes	Public Bodies Included
2004	1	1
2005	21	34
2006	21	36
2007	31	60
Total	74	131

Statistics – Draft Schemes		
Year	Draft Schemes	Public Bodies Included
2005	16	25
2006	71	129
2007	42	79

Statistics – Second Scheme		
Year	Draft Schemes	Public Bodies Included
2007	20	33

Statistics – Review		
Year	Schemes	Public Bodies Included
2006	09	16
2007	25	43
Total	34	59

COMPLAINTS: DIFFICULTIES AND PROBLEMS – STATISTICS

622 New Complaints in 2007

In 2007 I received 622 new cases in which members of the public considered they had reason to complain because of difficulties or problems associated with getting service through Irish from public bodies. This was the second successive year where the number of complaints exceeded 600.

In 282 of those cases specific advice was given to the complainant. In a further 400 cases (including 60 cases from 2006) steps were taken to try and resolve the cause of the complaint – often based on the “spirit of the legislation” rather than on the basis of actual obligations arising from the provisions of the Act. Some 378 of these 400 cases were finalised during the year, leaving 22 others to be brought forward to 2008.

Amongst the most common complaints were: forms in English only (13%), lack of Irish on road signs (13%), difficulty with the use of name and/or address in Irish (10%), leaflets or circulars in English only (10%), lack of Irish on signage or advertisements (9%), replies in English to correspondence in Irish (8%), absence of Irish on websites (5%), election issues (4%), publications in English only (3%), official identity cards in English only (3%) and provisions of language schemes (2%).

Almost a third of the complaints came from Co. Dublin (32%) and another 55% came from the following eight counties – Galway (24%), Kerry (12%), Donegal (6%), Leitrim (5%), Cork, Wicklow, Clare and Meath (2%). Forty percent of the complaints came from the Gaeltacht with the remainder from areas outside the Gaeltacht (60%).

It should be mentioned that not all the complaints received during 2007 referred to breaches of legal obligations under the Official Languages Act 2003, and that others related to general difficulties and problems experienced by those attempting to transact business through Irish with State institutions. It was an interim strategy of this Office until the legislation came into full effect to deal with these problems and complaints under the “spirit” of the legislation in order to provide as much assistance as possible to people who felt they had grounds for complaint.

There would be little sense in continuing with this strategy in future when the Act is fully in force – when the regulations are made under the Act in respect of the use of Irish in advertising, signage, stationery and oral announcements and when a greater percentage of language schemes are confirmed under the Act.

Complaints in 2007

New complaints 2007

622

Complaints brought forward from 2006	60
Total complaints– problems and difficulties	682

	2005	2006	2007
Advice provided in relation to complaints	176	285	282
Complaints examined and resolved	246	294	378
Complaints brought forward	28	60	22
TOTAL	450	639	682

An analysis of the various cases is provided in statistics and illustrations which follow:

Percentage of Complaints by Type

	2005	2006	2007
Forms in English only	21%	19%	13%
Lack of Irish on road signs	13%	16%	13%
Problem with use of name and/or address in Irish	14%	16%	10%
Leaflets or circulars in English only	4%	5%	10%
Lack of Irish on signage/advertisements	6%	6%	9%
Replies in English to correspondence in Irish	10%	14%	8%
Lack of Irish on websites	4%	3%	5%
Election issues	-	-	4%
Publications in English only	4%	3%	3%
Official identity cards in English only	3%	1%	3%
Provision of language scheme	-	-	2%
Other (individual issues)	21%	17%	20%
TOTAL	100%	100%	100%

Complaints by County

	2005	2006	2007
Dublin	36%	38%	32%
Galway	17%	17%	24%
Kerry	9%	4%	12%
Donegal	4%	7%	6%
Leitrim	-	3%	5%
Cork	6%	3%	2%
Wicklow	-	4%	2%
Clare	2%	1%	2%
Meath	3%	2%	2%
Others	23%	21%	13%
TOTAL	100%	100%	100%

Complaints: Gaeltacht and non-Gaeltacht

2005	2006	2007
-------------	-------------	-------------

An Gaeltacht	34%	30%	40%
Non-Gaeltacht	66%	70%	60%
TOTAL	100%	100%	100%

Complaints by Type of Public Body

	2005	2006	2007
Government Departments	30%	27%	23%
Local Authorities	20%	28%	27%
Health Authorities	7%	6%	9%
Other State Organisations	43%	39%	41%
TOTAL	100%	100%	100%

INVESTIGATIONS

I have been given the authority and powers as Coimisinéir Teanga under the provisions of the Official Languages Act to carry out investigations in cases where it would appear that public bodies may have failed to comply with their statutory obligations under the Act or under provisions of other enactments relating to the status or use of Irish.

An investigation is an official enquiry carried out on a formal statutory basis in accordance with the provisions of the Act.

An investigation may be carried out pursuant to a complaint from an individual, on request by the Minister for Community, Rural and Gaeltacht Affairs or on my own initiative.

An investigation is not normally carried out unless attempts at resolving the issue at hand through the Office's informal complaints resolution mechanism have failed or it appears that the issue cannot be resolved satisfactorily without an investigation.

The investigation process is a complex procedure, the completion of which may require a substantial amount of time and resources from both the public body concerned and my Office, and is not normally undertaken without substantive cause.

Public bodies have a statutory obligation during investigations to provide me with information and records which concern the subject of the investigation. Normally a public body would be required to provide me with access to the organisation's files in relation to the subject matter of the investigation as well as providing a written report on the subject.

An individual from a public body may be required to attend before me to provide information for the purposes of an investigation. A person providing information to an investigation is entitled to the same immunities and privileges as if he or she were a witness before the High Court.

The Act provides for a fine not exceeding €2,000 or imprisonment for a term not exceeding 6 months or both for a person convicted of failing or refusing to cooperate with an investigation or who hinders or obstructs such an investigation.

An investigation could involve the failure of a public body to comply with a direct provision of the Act, regulations made under the Act (if made), or with the provisions of a language scheme confirmed under the Act.

In addition to this, an investigation could involve the failure of a public body to comply with its obligations in relation to the provisions of any other enactment relating to the status or use of Irish. Since "enactment" is defined as a statute or an instrument made under a power conferred by a statute, it is clear that a wide range of legislation on the Irish statute book could include such provisions.

An investigation normally concludes with a report which is provided to the appropriate parties (the public body concerned, the complainant and the Minister for Community, Rural and Gaeltacht Affairs). My decision in relation to the complaint and appropriate recommendations would be included in such a report. Appeals can be made to the High Court on a point of law against the decision within a period of 4 weeks.

During the year 2007 my Office developed its investigation procedures and commenced 12 official investigations in accordance with the provisions of the Act. Two of those investigations were still ongoing at the end of 2007. Summaries of the 10 investigations completed during the year 2007 are available here. In one case I had to decide to discontinue the investigation – without making findings or recommendations – for reasons which are explained in the summary.

It should be clearly understood that the summaries of investigations are merely condensed accounts of the actual investigations, cases which were at times of a complex and technical nature and which were often based on legal and practical arguments. They are summaries of the official reports issued in accordance with Section 26 of the Act to the relevant parties in Irish as a result of the investigations.

It is in those official reports, and in those reports alone, that the authoritative accounts of investigations can be found. Copies of any official report can be requested by contacting my Office.

SUMMARIES OF INVESTIGATIONS 2007

The summaries of investigations are merely condensed accounts of the actual investigations, cases which were at times of a complex and technical nature and which were often based on legal and practical arguments. They are summaries of the official reports issued in accordance with Section 26 of the Act to the relevant parties in Irish as a result of the investigations. It is in those official reports, and in those reports alone, that the authoritative accounts of investigations can be found.

DEPARTMENT OF EDUCATION AND SCIENCE

Subject of Investigation

Is the provision in Section 7(2)(d) of the Education Act 1998 – being a provision relating to the status or use of an official language – being complied with, in relation to the availability of certain publications of the Department of Education and Science for recognised schools providing teaching through Irish?

Complaint

The principal of a recognised post-primary school providing teaching through Irish made an official complaint to me on 26 June 2007 that Irish versions of certain publications of the Department of Education and Science were not available. These publications were readily available in English as a support service to schools operating through the medium of that language.

The principal was of the view that teachers and pupils in schools providing teaching through Irish were at a disadvantage as a current version in Irish of the guidelines, “Rules and Programmes for Secondary Schools” and copies (print and electronic) in Irish of the syllabuses for the various subjects were not available.

Legislation

It was clear to me that no direct provisions of the Official Languages Act 2003 or any regulations made under that Act placed a duty on the Department of Education and Science to provide a current edition of “Rules and Programmes for Secondary Schools” in Irish or to ensure the availability of print and electronic copies in Irish of every appropriate syllabus for schools providing teaching through Irish.

A language scheme under Sections 11-19 of the Official Languages Act 2003 is in force in the case of the Department of Education and Science but again it was clear to me that no provision of that scheme required the provision in Irish of the publications that were the subject of the complaint.

There is, however, a particular provision in the Education Act 1998 relating to the status and use of Irish, i.e., Section 7(2)(d):

Section 7 (2) *“Without prejudice to the generality of subsection (1) each of the following shall be a function of the Minister:*

(d) to provide support services through Irish to recognised schools which provide teaching through Irish and to any other recognised school which requests such provision.”

In the interpretation section, Section 2, of that Act the word “functions” is defined as to include powers and duties.

In the same interpretation section, “support services” are defined as follows: *‘support services’ means the services which the Minister provides to students or their parents, schools or centres of education in accordance with section 7 and shall include any or all of the following:*

(m) curriculum support services.....”

In the definition in Section 30 of the same Act “curriculum” is stated to be

“(b) the syllabus of each subject.”

Investigation

I decided to investigate the matter.

The following publications were the subject of the investigation:

- Irish version of “Rules and Programmes for Secondary Schools” (current edition);
- Irish version of the current syllabus as a print copy (up to date) for every post-primary subject;
- Irish version of the current syllabus (up to date) for every post-primary subject in electronic form on the website of the Department of Education and Science.

Replies of the Department of Education and Science

The information provided by the Department of Education and Science in its first reply on 7 August 2007 was not sufficient for the investigation and I was uncertain as to the accuracy of some of that information. For example, the Department gave to understand that most of the syllabuses were in print in Irish. In addition to that, it could be construed from what was said that an Irish version of the “Rules and Programmes for Secondary Schools” was available.

It was clear to me that the Department had not specifically directed its attention to furnishing answers to some of the questions which were central to this investigation.

I sought further information in reply to a series of questions.

The second reply from the Department on 3 September 2007 gave a completely new insight into matters and is the basis for the following.

Rules and Programmes for Secondary Schools

An Irish version of this publication had not been made available since 1991 although the latest English version had been published in 2004. Up to date editions of the English version had been published regularly during that period and, indeed, since the

Education Act came into force in 1998, 6 separate editions in English of “Rules and Programmes for Secondary Schools” had been published (1998, 1999, 2000, 2001, 2002 and 2004) without any edition in Irish since 1991.

The 1991 edition of “Rules and Programmes for Secondary Schools”, the only source of Irish versions of syllabuses for 15 of the subjects on the state examinations’ programme, was **out of print** and was not available to be purchased.

The Department stated that that publication was being updated at present and that it would make arrangements to send the Irish version of the amended document to the second level schools to which it applied.

Syllabuses

The following was the true picture regarding the availability of **print copies** of the various syllabuses at the time of this investigation:

- Of the 32 subjects for which syllabuses were available in English for the Leaving Certificate (excluding the specific examination subjects of English and Irish) Irish versions of 19 of those were not available – in the usual meaning of that word;
- Of the 26 subjects for which syllabuses were available in English for the Junior Certificate (excluding the specific examination subjects of English and Irish) Irish versions of 8 of those were not available – in the usual meaning of that word.

Of the 58 appropriate subjects in total between the Leaving Certificate and Junior Certificate, **print copies of the Irish versions** of the syllabus were not available – in the usual meaning of that word – at the time of this investigation for 27 of them.

The following is the number of subjects for the Leaving Certificate and Junior Certificate for which **no syllabus in Irish** was available – in the usual meaning of that word – at the time of this investigation:

- Print Copies 27 subjects
- Electronic Copies 42 subjects

The number of subjects for the Leaving Certificate and Junior Certificate for which **no syllabus in Irish (print copy or electronic copy)** was available – in the usual meaning of that word – was 27 at the time of this investigation.

Discretion and Resources

If the various publications which were the subject of this investigation were not available in Irish in the different formats as a support service for recognised schools providing teaching through Irish and for any other schools requesting such a provision, I wished to establish whether or not this contravened certain provisions of the Education Act 1998.

The Department of Education and Science stated: (translation)

“The Department is mindful that it is necessary to provide support services through Irish under the relevant provisions of the Education Act having regard to its capability and resources and excellent progress has been made in that regard.”

“The Department does not accept that it is necessary for the Minister to provide every support service through Irish under Article 7(4) of the Education Act 1998. The Minister has reasonable discretion in the performance of her functions and in making judgements in relation to the extent of the provision of any support service. Particular circumstances influence this discretion, the availability of resources included.”

The Department stated also that the non-availability of electronic copies in Irish of every syllabus on the Department’s website was not a contravention of the Education Act.

Support Services and Statutory Functions

There can be no doubt but that the “Rules and Programme for Secondary Schools” (print copy) and the syllabuses for the various subjects (print copy and electronic copy) are provided as a support service under the Education Act 1998.

These are core publications with a statutory basis and the educational system could not function without them.

It should be taken into account that the Department of Education and Science made no case in this investigation to refute this.

The following definition of “support services” is given in the interpretation section, Section 2, of the Education Act 1998:

“‘support services’ means the services which the Minister provides to students or their parents, schools or centres of education in accordance with section 7 and shall include any or all of the following:

(m) curriculum support services...”

In the definition in Section 30 of the same Act “curriculum” is stated to be

“(b) the syllabus of each subject”

In the interpretation section, Section 2, of that Act the word “functions” is defined as to include powers and duties and the following is provided for in Section 2(3): *“Any reference in this Act to the performance of functions, includes, in respect to powers and duties, a reference to the exercise of powers and the carrying out of duties.”*

The functions of the Minister under the legislation are set out in Section 7 of the Act and include:

*“(c) to plan and co-ordinate –
(ii) support services.”*

Specific reference is made in Section 7(2)(a) to the Minister’s function regarding the provision of support services and in Section 7(2)(d) to the Minister’s function regarding the provision of support services through Irish:

Section 7(2) *“Without prejudice to the generality of subsection (1), each of the following shall be a function of the Minister:*

(a) to provide funding to each recognised school and centre for education and to provide support services to recognised schools, centres for education, students, including students who have a disability or who have other special educational needs, and their parents, as the Minister considers appropriate and in accordance with this Act;

(d) to provide support services through Irish to recognised schools which provide teaching through Irish and to any other recognised school which requests such provision.”

Section 6 outlines the purposes for which the Act was enacted and each one of them is relevant to this investigation, including, Section 6(c), (i), (j), (k):

Section 6 *“Every person concerned in the implementation of this Act shall have regard to the following objects in pursuance of which the Oireachtas has enacted this Act:*

(c) to promote equality of access to and participation in education and to promote the means whereby students may benefit from education;

(i) to contribute to the realisation of national policy and objectives in relation to the extension of bilingualism in Irish society and in particular the achievement of a greater use of the Irish language at school and in the community;

(j) to contribute to the maintenance of Irish as the primary community language in Gaeltacht areas;

(k) to promote the language and cultural needs of students having regard to the choices of their parents;”

In performing the Minister’s functions under the Act the Minister must have regard to the resources available and to the need to reflect variety in the educational services provided:

Section 7(4) *“In carrying out his or her functions, the Minister shall have regard*

(i) to the resources available...

(iii) the need to reflect the diversity of educational services provided in the State...

In addition to that, the following description of the Education Act 1998 is given in the long title of that act as an act *“To make provision in the interest of the common good for the education of every person in the state...”* and as an act *“that respects the diversity of values, beliefs, languages and traditions in Irish society...”* (emphasis added).

It appeared that the core of the argument of the Department of Education and Science in this investigation was that the Minister was not required to provide every support service through Irish under Section 7(4) of the Education Act 1998.

The Department provided further development of that position when examining a draft of the report on the investigation.

The Department stated: (translation)

“In summary, the Department’s position is that it is a function (as distinct from a duty) of the Minister to provide support services. In that regard the Minister is inevitably faced with a number of competing demands. It is the role of the Minister, and the Minister alone, to reconcile those competing demands and determine what educational and support services to provide. This involves necessarily the exercise of a discretion by the Minister. It is only if the exercise of that discretion is arbitrary, capricious, or unreasonable that the Minister can be said to be acting unlawfully and (by extension) in breach of the section.

“The statutory provisions confer a discretion on the Minister and a corresponding obligation to consider a number of factors including the resources available.”

The Department referred to a court case, *Carolan v Department of Education and Science*, in which the difference between functions and duties was alluded to.

Overview of the Investigation

As an introduction to this overview I should put on record the appreciable differences between the true picture provided in the correspondence of 3 September 2007 from the Department of Education and Science and the presentation given in the Department’s initial correspondence of 7 August 2007.

It was a matter of disappointment to me, especially having regard to the legislative basis of this investigation, that there was a lack of clarity and transparency in some of the approach to providing information and replies in the beginning.

Core Argument of the Department of Education and Science

There was no doubt about the core argument made by the Department of Education and Science in this investigation: that the Minister was not required to provide every support service through Irish under Section 7(4) of the Education Act 1998 as the

Minister had discretion in this matter and that certain circumstances, including the availability of resources, had to be taken into account.

Counter Arguments

The case could be made that the Minister for Education and Science had discretion regarding the provision of support services in general under Section 7(1)(a) and Section 7(2)(a) and in accordance with the available resources (Section 7(4)(a)(i). If the Minister were to decide to provide certain support services under these sections, had the Minister discretion **not** to provide the same services through Irish under Section 7(2)(d)?

The case could be made that fostering equality, promoting bilingualism, increasing the use of Irish at school and in the community, and supporting the language in the Gaeltacht were central to the intention of the Oireachtas in enacting this legislation and that the Minister's function regarding the provision of support services through Irish must be weighed in this context.

These publications are made available without question in various formats in English for schools providing teaching through English. But those same publications through **English** are, in the main, made available also to recognised schools providing teaching through Irish.

The Department's view was that a distinction could be made between a "function" of the Minister and the Minister's "duty" under the Act. Regarding this view, however, it is affirmed in the interpretation section, Section 2, of the Act that "functions" include powers and duties.

The Department referred to a court action that it contended supported its position.

High Court judgement in *O'Carolan v Minister for Education*

"It will be seen that Section 7(1)(a) provides for 'a function' of the Minister. It does not impose a duty."

But the next sentence from the same judgement could be put forward to suggest the opposite. The following is the appropriate reference:

"However even if such a duty were imposed I find as a matter of fact and law that the proposal.... .. will, if observed, comply with any statutory duty imposed on the Minister under that section" [Emphasis added]. [2005 IEHC 296]

A judgement of the Supreme Court should also be taken into account. In **Sinnott v Minister for Education** (2001) IESC 63, Chief Justice Keane, C.J., referred as follows to the defendants (Department of Education):

"They acknowledge that, by virtue of s. 7(1) of the 1998 Act, the Minister is obliged 'to ensure, subject to the provisions of this Act, that there is made available to each person resident in the State, including a person with a disability or who has other special educational needs, support services and a level and quality of

education appropriate to meeting the needs and abilities of that person ...”
[Emphasis added].

In the same case, **Sinnott v Minister for Education** [2001] IESC 63, Hardiman, J., refers to a number of different sections of the Education Act 1998, section 7(1)(a) included, and says: *“It appears that these provisions, together with those of the Equal Status Act, 2000 and the Education (Welfare) Act, 2000 impose duties on public authorities which may be relevant to a person in the position of.....”* [Emphasis added].

But even Section 7(2)(d) involved a “function” rather than a “duty” and if the provision of support services through Irish was wholly at the Minister’s discretion and conditional on resources being available, was there really a case that the provision of these publications in Irish could not be afforded?

It appeared from the Revised Estimates of the Department of Education and Science for 2007 that the Department would have a total budget of €8,385, 331,000 for that year. Little of that financial resource or of that of previous years since 1991 onwards would be required to provide an Irish version of core publications available through English as a support service.

The Department gave it to be understood that the Minister was afforded special scope in performing her functions in references in the Act such as *“as the Minister considers appropriate”* and *“in whatever manner the Minister considers appropriate”*, as well as *“in as much as it is practicable and having regard to the resources available”* and so on.

In support of that position the Department stated (translation): *“It therefore falls to the Minister to decide what is appropriate having regard to various (and often competing) considerations. One of the matters the Minister must have regard to is the issue of resources. If the Minister exercises her discretion reasonably she is acting lawfully and with the terms of section 7.”*

As a counter argument, it could be asked if the Minister was functioning “reasonably” when only English versions of “Rules and Programmes for Secondary Schools” were available for schools providing teaching through Irish. Was it “reasonable”, *inter alia*, that an Irish version of that document was not published for 16 years, although new English editions were published regularly? Was it reasonable that a photocopy of the out of print version in Irish be offered to schools seeking that publication and that, in regard to the provision of syllabuses for curricula taught through Irish, teachers and schools would each be required to translate their own individual versions?

It appeared to me that there was no ambiguity in the provision in Section 7(2)(d) of the Education Act 1998. Having regard to the usual meaning of the words, irrespective of whether these provisions were interpreted literally or objectively, it was my strong opinion that the obligation placed on the Minister for Education and Science was very clear.

If, however, there was ambiguity – and I do not concede that there was – and if the provision of support services through Irish was fully conditional on the Minister’s discretion and on the availability of resources only, it appeared to me that no realistic case whatsoever was made to this investigation that the country’s financial and educational systems could not afford to provide for this need.

Finding of the Investigation

The following was the finding of the investigation:

- that the provision in Section 7(2)(d) of the Education Act 1998 – a provision relating to the status and use of Irish – was and is being contravened in relation to the provision of those Department of Education and Science publications which were the subject of this investigation.

Recommendations of the Investigation

Having regard to the investigation, the following were the recommendations I made as Coimisinéir Teanga:

1. That the Department of Education and Science would ensure its adherence from now on to its statutory functions under Section 7(2)(d) of the Education Act 1998.
2. That the Department of Education and Science would ensure that an up to date version in Irish of “Rules and Programmes for Secondary Schools” would be provided simultaneously with the next English version of that publication made available after the date of the report of this investigation.
3. That the Department of Education and Science would ensure, in reparation for the neglect over the years, that an appropriate number of the up to date versions of “Rules and Programmes for Secondary Schools” in Irish would be distributed free to every school providing teaching through Irish – at the same time as the English version became available – so that principals, teachers and members of boards of management could obtain this publication easily.
4. That the Department of Education and Science would ensure that, every time new editions in English of the “Rules and Programmes for Secondary Schools” were updated or revised or reprinted, the same would be done simultaneously in the case of Irish versions.
5. If the “Rules and Programmes for Secondary Schools” in English was made available on the website of the Department of Education and Science electronically, or on any other website under the aegis or control of that Department, or if the publication was made available in other formats (for example, CD Rom), the same would be done simultaneously in the case of the Irish version.

6. That the Department of Education and Science would ensure that up to date Irish versions of every syllabus subject taught through Irish would be made available as print copies.
7. That the Department of Education and Science would ensure that up to date Irish versions of the syllabus for every subject taught through Irish would be made available as electronic copies on the Department's website and on any other website under the aegis or control of the Department having English versions of the appropriate syllabuses.
8. That without prejudice to the full obligation that I considered to be at issue, the Department of Education and Science would ensure that Irish versions of the syllabuses in Recommendations 6 and 7 (above) would be made available appropriately as print and electronic copies before **17 March 2008**.
9. That the Department of Education and Science would ensure that every time syllabuses in English were updated or revised or reprinted, the same would be done simultaneously with the Irish versions.
10. That the Department of Education and Science would ensure that nothing in the findings or recommendations of this investigation would be used to reduce or delay any developments of services through Irish referred to in the correspondence the Department sent to me on 7 August 2007 and 3 September 2007.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court within 4 weeks on a point of law but no such appeal was made.

Investigation launched: 11 July 2007

Report issued: 17 October 2007

AN GARDA SÍOCHÁNA

Subject of Investigation

Did an Garda Síochána contravene the statutory obligation confirmed in Section 9(2) of the Official Languages Act 2003 when replying in writing in English to a communication in writing in Irish from a person in Co. Galway on 19 June 2007?

Foreword

A man from the Gaeltacht (a native speaker of Irish who wished to carry out as much as possible of his official business with the state system in that language) complained to my Office that his rights under Section 9(2) of the Official Languages Act 2003 had been contravened when An Garda Síochána replied in English to correspondence in Irish from him. Section 9(2) of the Act states:

“Where a person communicates in writing or by electronic mail in an official language with a public body, the public body shall reply in the same language.”

Substance of the Complaint

The complainant wrote in Irish to An Garda Síochána about a case relating to a fine and penalty points being imposed on him for using a mobile phone while driving a car.

An English version of a document referred to by An Garda Síochána as a “Fixed Charge Notice” had been sent to the complainant and he was obliged to complete that form and pay a fine of €60 within 28 days from the date of the notice.

He wrote to An Garda Síochána on 14 June 2007 explaining that he wished to do his business through Irish and he sent a cheque for €60 with the letter and the form in English (which he had not signed). Through human error he put the incorrect date, 14/07/2007 (instead of 14/06/2007), on the cheque and letter.

In reply to that communication he received an answer in writing in English dated 19 June 2007 on behalf of an Inspector of An Garda Síochána explaining to him that his payment could not be processed as he had not signed the Fixed Charge Notice (in English).

The same Fixed Charge Notice in English, the cheque for €60 and his original letter in Irish to An Garda Síochána were all returned to him.

The following was stated in the letter in English sent to him

“You may resubmit a correct Fixed Charge Notice along with the appropriate payment in the enclosed envelope provided that it is received within the statutory 56-day period permitted. Please note that where a standard fixed penalty was submitted, the increased amount will be due if the resubmitted payment is received later than the 28 days from the original date printed on the Fixed Charge Notice.

PLEASE NOTE THAT THE OFFENCE IS STILL OPEN AND THAT YOU RISK A HIGHER FINANCIAL PENALTY OR COURT SUMMONS IF YOU DO NOT ACT UPON THIS LETTER IMMEDIATELY.

I decided to undertake an investigation.

Answer from An Garda Síochána

The conclusion on behalf of the Commissioner of An Garda Síochána in relation to the complaint was stated as follows:

“Having regard to what has been said, it is not considered that An Garda Síochána contravened its statutory obligation under Section 9(2) of the Official Languages Act 2003 in relation to this case.”

The arguments of the Commissioner of An Garda Síochána in relation to this matter can be summarised under the following headings:

- Automatic system in English only for issuing and processing Fixed Charge Notices;
- Complainant’s letter asking for service through Irish answered in English;
- Development of Garda Síochána service through Irish intended in a draft language scheme under the Act.

Automatic System

The Commissioner of An Garda Síochána confirmed that Fixed Charge Notices used to be issued in Irish on application from members of the public when only two offences (speeding and safety belts) were involved and that, at that time, the issuing and processing of notices and payments were done at Garda stations.

About 30 other offences were brought in under this system from April 2006 and the issuing of Fixed Charge Notices and the administration of payments were privatised. TiCO and An Post (the companies contracted to do this work) administer this matter now through English only, on behalf of An Garda Síochána, by means of a computerised electronic system. Since then Garda stations have no involvement with this part of the matter.

The Commissioner of An Garda Síochána indicated anxiety about the additional major cost of new procurement processes or changes in the TiCO and An Post contracts in order to deal with matters through Irish in addition to English.

Counter Argument

Among the counter arguments that can be made is the one that it is not sufficient to have privatised the administration of this service and changed to an automatic, electronic system to end the custom and practice that existed whereby Fixed Charge Notices could be issued in Irish. It should be taken into consideration that this service was available through Irish when the Official Languages Act was enacted as “an Act to promote the use of Irish for official purposes in the State...”.

A reduction in service through Irish instead of “promoting the use of Irish” would be in question if it were accepted that this service would be in English only from now on.

Letter Answered in English?

The Commissioner of An Garda Síochána confirmed that the standard letter (in English) was issued to the complainant from the automatic system on 19 June 2007. It was stated also that An Garda Síochána had no indication that the complainant wrote in Irish seeking service through Irish.

Counter Argument

The counter argument can be made that it stands entirely to reason that An Garda Síochána had “no records of any other correspondence” in this case as the complainant had confirmed that all of the communication that he had sent to an Garda Síochána had been returned to him, including his own original letter in Irish.

Draft Language Scheme under the Act

The Commissioner of An Garda Síochána stressed that the language schemes’ system (An Garda Síochána were at that stage preparing a draft scheme) permitted time for public bodies to develop technological information systems to provide services through Irish.

Counter Argument

The counter argument can be made that it is not necessary that this service should be by means of a technological information system as the service had been available through Irish manually up to then.

Meeting with an Garda Síochána

At the request of the Commissioner of An Garda Síochána a meeting was arranged as part of the investigation between the management of An Garda Síochána and my Office to discuss “the important issues”, as they were referred to by the Commissioner of An Garda Síochána, that had come to light as a result of this complaint and a number of other cases in which Fixed Charge Notices had been issued in English only.

The matter was discussed in the context of the following: language rights under the constitution and in legislation, long-established custom and practice of An Garda Síochána in relation to Irish, assurances over the years of the Commissioner of An Garda Síochána and Ministers for Justice on rights to service through Irish from the force, the practical difficulties requiring to be solved to ensure that this service could be provided through Irish, the appreciable cost to the State of judicial reviews to the

High Court that the State had not attempted to defend in this area, the danger of an appreciable increase in applications for judicial reviews in this area and the high risk and dire consequence for the Fixed Charge system in general of the “important issues” raised by this investigation.

The following was agreed at the meeting:

- No legal or policy difficulty prevented the issuing of Fixed Charge Notices through Irish.
- There were practical difficulties in providing and processing Fixed Charge Notices automatically and electronically through Irish in view of the contracts agreed by An Garda Síochána but An Garda Síochána would start work immediately to resolve those difficulties.
- An Garda Síochána would take the appropriate steps immediately to ensure that arrangements would be made so that people wishing to do this part of their business through Irish with An Garda Síochána would not be denied that opportunity.
- That An Garda Síochána desired to issue all Fixed Charge Notices bilingually and that they would work to that end in conjunction with information technology personnel and in accordance with the arrangements that would be in the Garda Síochána language scheme (being drafted at that stage).
- Until the technological arrangements had been made for handling this work automatically and electronically or otherwise, an interim system would be implemented immediately to provide this service through Irish.
- The appropriate time periods (28 days and 56 days) would be given to people from the date of the issue of the Fixed Charge Notice in Irish (rather than from the date of the version in English) to pay the appropriate fines where a request was made to do this business through Irish.

General Overview of the Investigation

The investigation showed two separate aspects in relation to the complaint – the matter of the letter in Irish from the complainant and the more general question of the issuing of the Fixed Charge Notices in English only.

Letter

As a result of the evidence presented to me by the complainant, I accepted that there was no doubt that he sent a letter in Irish to An Garda Síochána and that the reply he received was in English.

The complaint gave me an opportunity to investigate a wider matter of importance to a significant group of people in the community and to the Garda Síochána force, that is, the provision of Fixed Charge Notices in English only.

Fixed Charge Notices in English only

No provision of the Official Languages Act directed that Fixed Charge Notices must be issued and processed in Irish as no language scheme for An Garda Síochána had been confirmed at that time.

It appeared that there had been an omission in not taking the Irish language requirement into account when the Fixed Charge system was privatised.

Finding of the Investigation

The following was the finding of the investigation:

1. An Garda Síochána contravened the statutory obligation confirmed in Section 9(2) of the Official Languages Act 2003 in replying in writing in English to a communication in writing in Irish on 19 June 2007.

Recommendations of the Investigation

Having regard to the investigation the following were the recommendations I made as Coimisinéir Teanga:

- As it appeared that this statutory contravention was as a result of human error rather than done on purpose or with malice, An Garda Síochána should remind those acting on its behalf in dealing with Fixed Charge Notices of people's statutory right to get replies in Irish to a communication in writing in Irish.
- An Garda Síochána should proceed immediately to implement the arrangements agreed at a meeting with me in relation to the issuing of Fixed Charge Notices through Irish. (See under "Meeting with An Garda Síochána" above.)
- An Garda Síochána should reconsider, if appropriate, whether the case against the complainant should be proceeded with as the investigation gave an opportunity to An Garda Síochána to deal with "important issues" of long term implication and in recognition of the assistance the complainant gave in that matter.
- However, if An Garda Síochána were to decide to proceed with the case against the complainant, an apology should be made to him for the initial reply in English which he received (letter of 19 June 2007) and the case should be progressed by way of an Irish language version of the Fixed Charge Notice and the appropriate time periods (28 days and 56 days) should be given to him from the date of issue of the version in Irish to pay the fine.
- If An Garda Síochána were to decide that it was appropriate not to proceed with the case against him, the complainant should reflect on whether he should of his own volition pay a sum of money not more than the fine in this case to a voluntary organisation involved with road safety or language rights.

Appeals to the High Court

I noted in the report that any party to the investigation had the statutory right to appeal the decision to the High Court within 4 weeks on a point of law but no such appeal was made.

Investigation launched: 2 July 2007

Report issued: 21 August 2007

DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

Subject of Investigation

Did the Department of Social and Family Affairs contravene the statutory language obligation in Section 10(a) of the Official Languages Act 2003 by publishing in English only the document entitled “Green Paper on Pensions”, a document setting out public policy proposals, when an Irish language version was not available simultaneously?

Background

A member of the public complained to me on 23 October 2007 that an Irish version of the document entitled “Green Paper on Pensions” published the previous week by the Department of Social and Family Affairs was not available.

Under Section 10(a) of the Official Languages Act 2003, public bodies, including the Department of Social and Family Affairs, are obliged to ensure that any document setting out “public policy proposals” are published simultaneously in each of the official languages, Irish and English.

I understood that the “Green Paper on Pensions” had been prepared under the aegis of the Department of Social and Family Affairs and that the complete document was published in English only on 17 October 2007, although an executive summary had been prepared in English and Irish and published simultaneously in those two languages.

In this case the complainant was seeking the Irish version of the full document rather than the executive summary.

The Investigation

Having verified the basis of the complaint I decided to investigate on 26 October 2007.

I wanted to put beyond doubt whether or not the Department of Social and Family Affairs had contravened the statutory obligation in Section 10(a) of the Official Languages Act 2003 by failing to publish the document entitled “Green Paper on Pensions” simultaneously in each of the official languages, Irish and English.

First Reply from the Department

It was clear from the Department’s first reply that it accepted that *“the Irish version of the Green Paper on Pensions should have been published on the same day as the English version was launched (17 October 2007), as required by Section 10(a) of the Official Languages Act 2003.”* (translation)

The Department advised that it had made strenuous efforts and had spent considerable time and energy in attempting to achieve that intention.

The Department also advised that the difficulty arose as a result of problems with the commercial translation company engaged by it for the task:

“We had arranged 11 October with the supplier as the target date for the translation of the Green Paper. This gave us sufficient time to publish it simultaneously on the day of the launch, 17 October 2007. The translation company was aware of the importance of this target date, which had been approved by the Government. The Taoiseach, Tánaiste and Minister for Social and Family Affairs were to launch the document together on that date, as their diary commitments are such that it is extremely difficult to re-arrange their events’ schedule.

“Despite this there were numerous errors and omissions in the version given to the Department late on 12 October. In fact, the corrected text was still being delivered on 17 October, the day of the launch. In addition, we discovered afterwards that this version had not been proof-read and that that task would take a further fortnight. The translation company gave us the proof-read document on 5 November 2007. On examining this, further errors were discovered in the document and these were forwarded to the translators. As a result the final version was not available until 8 November...” (translation)

Additional Information Sought

Although the first material from the Department outlined the case to some degree, I was of the view that it was insufficient for the investigative process and I sought further information.

Second Reply from the Department

The Department explained that the Government had decided on 2 October 2007 to publish and launch the Green Paper on Pensions on 17 October 2007.

The Department advised that it came to light *“shortly before the occasion”* (translation) that the complete Irish version of the document would not be ready. In this regard it was stated on behalf of the Department:

“I am disappointed that this happened and I well understand that a member of the public had cause for complaint....” (translation)

It confirmed that no consideration was given to postponing the occasion temporarily until such time as the statutory obligation under Section 10(a) of the Official Languages Act 2003 could be fulfilled:

“There was never any question of postponing the occasion to facilitate the delay in relation to the Irish version. This would have inconvenienced many people and caused the waste of public funds.” (translation)

The Taoiseach, Tánaiste and Minister for Social and Family Affairs participated in the launch of the Green Paper on Pensions. The Department of Social and Family Affairs confirmed that neither the Taoiseach, Department of the Taoiseach, Tánaiste nor Department of Finance had been informed that a complete Irish version of the Green Paper would not be available for the launch nor that a statutory provision of the Official Languages Act 2003 would be contravened.

A deadline of 11 October 2007 had been agreed with the translation company as the date for the provision of the Irish translation. Although there were at most only 6 days between that date and the launch date of the Green Paper, the Department was sure that that period of time was sufficient to design, lay out, print and bind the document of more than 360 pages.

In reply to a question as to why a longer period of time was not left between the target date for the translation and the launch, the Department stated:

“... individual chapters were sent to the translators as they were agreed between the Government Departments. The translators received the final chapter on 27 September, and afterwards confirmed that the final version would be returned to the Department on 11 October.” (translation)

The Department’s position was that there was no question of the target date not being adhered to, that confirmation to that effect had been received from the translation company and that there would be sufficient time to have the complete Irish version ready for the launch.

The Department confirmed that, when tenders were being sought for the translation service, it was not a requirement that the translator be a member of the accredited panel of translators.

General Overview of the Investigation

Among those documents to which a statutory obligation applies, under Section 10(a) of the Official Languages Act 2003, to publish simultaneously in Irish and English is *“any document setting out public policy proposals.”*

There is no doubt whatsoever that a green paper issued by a government department is a document setting out public policy proposals.

The Department of Social and Family Affairs did not make any case that it did not have a statutory obligation to publish this document simultaneously in Irish and English.

It was clear, however, that the Department had failed to fulfil that statutory obligation, and the reason given was that difficulties and delay occurred in obtaining the text, appropriately translated, from the commercial company appointed following a tendering process.

It is a matter for the Department, and the Department alone, to manage its relations with any commercial company in a way of its own choosing but, at the end of the day, it falls to the Department to ensure that it complies with its statutory obligations.

Problems, even if they were not fully within the control of the Department itself, were not a sufficient excuse to annul, limit or amend a statutory obligation confirmed in law by the Oireachtas.

The tight schedule between the target date for the provision of the translation and the date of publication of the Green Paper gave little opportunity to rectify unexpected problems.

It appeared that a final version of the document in Irish was not available until 8 November 2007, more than 3 weeks after the official launch of the English version on 17 October 2007.

It was evident that there were elements of uncertainty in the understanding between the translation company and the Department regarding certain aspects of their arrangement, including issues relating to the verification or proofing of the document, the format in which the final document would be provided (in separate chapters or in one document) and so on.

The Department confirmed also that no consideration had been given to postponing the launch of the Green Paper temporarily until such time as the statutory obligation under Section 10(a) of the Official Languages Act 2003 could be complied with.

It is difficult to understand why a government department would consider that it could ignore the wishes of the Oireachtas, that it was correct for it to continue with the launch of a document in one language only and to expend public money on the occasion in the knowledge that a statutory obligation was being contravened.

The Department of Social and Family Affairs expects members of the public with whom it is in contact to adhere appropriately and correctly to the Department's regulations and directions in respect of schemes administered by it. In the same way, the Department is also obliged to follow the proper regulations and directions, especially those confirmed in law by the Oireachtas.

Finding

The finding of the investigation was as follows:

- That the Department of Social and Family Affairs contravened the statutory language obligation in Section 10(a) of the Official Languages Act 2003 by publishing in English only the document entitled "Green Paper on Pensions" – a document setting out public policy proposals – on 17 October 2007, when an Irish version was not simultaneously available.

Recommendations of the Investigation

Having regard to the investigation the following recommendations were made by me as Coimisinéir Teanga:

1. That the Department of Social and Family Affairs would ensure that it would adhere henceforth to its obligations under the Official Languages Act 2003.
2. That the Department of Social and Family Affairs would ensure that, where any document was being published by it, or under its authority, from then on setting out public policy proposals, such a document would be published simultaneously in each of the official languages, as provided for in Section 10(a) of the Official Languages Act 2003, and that the publication of such a document would not proceed for any reason unless it was certain that this obligation would be properly complied with.
3. That the Department of Social and Family Affairs would send an information memorandum (in writing or by electronic mail) within 6 weeks of the date of this report to those members of the Department's staff who could henceforth be responsible for preparing documents setting out public policy proposals for publication, stating that:
 - This investigation had found that the Department had in this case contravened its statutory obligation under Section 10(a) of the Official Languages Act 2003; and
 - The Department had a duty to ensure that this would not be permitted to happen again.
4. The Department of Social and Family Affairs would, as soon as possible but not later than 6 weeks from the date of this report, appropriately and accurately, in writing or by electronic mail, inform the Department of the Taoiseach and the Department of Finance – as participants in the launch of the Green Paper – of the finding and recommendations of this investigation.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court on a point of law within 4 weeks but no such appeal was made.

Investigation launched: 24 October 2007

Report issued: 28 December 2007

HEALTH SERVICE EXECUTIVE

Subject of Investigation

Did the Health Service Executive adhere to its statutory language obligation under paragraph 4.15 of the Health Service Executive's (Western Region) Language Scheme, a scheme confirmed under the Official Languages Act 2003, in a case in which it is alleged that community services were provided in English only in the Gaeltacht?

A parent of a child attending a national school in the Gaeltacht complained to my office at the end of April 2007 that a Health Service Executive dentist working in the school on 24 April dealt with her child through English.

The parent considered that a service such as the school dental service should be provided through Irish by the Health Service Executive for children raised with Irish in the Gaeltacht.

At the outset my office endeavoured to deal with the complaint on an informal basis with the Health Service Executive (Western Region) but that attempt did not succeed in settling the case.

It finally became clear to me that I had no choice but to instigate a statutory investigation in accordance with the provisions in the Official Languages Act 2003 in relation to the allegation in the complaint.

Statutory Background

The Minister for Community, Rural and Gaeltacht Affairs agreed a statutory language scheme with the Health Service Executive (Western Region) and confirmed it to take effect from 1 September 2005. The Health Service Executive is obliged (Section 18(1) of the Official Languages Act 2003) to implement that language scheme.

The following provision is confirmed in Paragraph 4.15 of the Health Service Executive's (Western Region) Language Scheme:

Paragraph 4.15 "A system will be established to ensure that families raising their children with Irish will be able to access various examinations and tests through Irish in 2007."

First Reply from the Health Service Executive

I considered that a letter received from the Health Service Executive in relation to the investigation did not answer the complaint clearly and, in fact, I thought that it gave rise to further questions. It appeared that yet another provision of the Health Service Executive's (Western Region) Language Scheme had been contravened also: Paragraph 4.2 regarding "policy and recruitment practices for all vacancies in the Mayo and Galway Gaeltacht (in force from September 2004)."

The following is stated in Paragraph 4.2 of the scheme:

“All vacancies will be advertised in Irish in the Irish language newspapers and/or bilingually in other newspapers. It will be stated specifically in every advertisement that fluency in Irish is an essential qualification for the post. The application forms will be in Irish and English. The interviews for the vacancies in the Gaeltacht will be conducted in Irish and/or in Irish and English.”

The above-mentioned letter gave to understand that the Health Service Executive appointed a dental surgeon to the Gaeltacht area in question in March 2007 and that *“Irish was not a specific requirement for the post”* although the surgeon and the dental nurse had indicated that they were able to provide services through Irish to their patients.

I sought clarification on this matter.

Admission

The Health Service Executive admitted then that they had contravened their statutory obligations under the language scheme and the Official Languages Act 2003.

The Executive affirmed that steps had been taken to ensure that the language scheme would not be contravened again regarding the recruitment of staff in the Gaeltacht areas concerned.

The Executive confirmed also that the health provisions involved in their dental services were being offered now in Irish as a first choice to the community in the Gaeltacht.

The Executive apologised also to the people who had been wronged by the failure of the Executive to serve them in the language of their choice.

Overview of the Investigation

It appeared that the communication undertaken by the Health Service Executive in relation to the provisions of the language scheme had been insufficient in informing the appropriate staff in the organisation of their statutory obligations.

Investigation’s Finding

The finding of the investigation was as follows:

- The Health Service Executive had contravened Section 18 of the Official Languages Act 2003 by not implementing certain provisions of its language scheme that had been confirmed in the case of the Health Service Executive (Western Region).

Investigation’s Recommendations

Having regard to the investigation the following were the recommendations I made as Coimisinéir Teanga:

1. That the Health Service Executive should ensure adherence from now on to its statutory obligations under the Official Languages Act 2003 and the Health Service Executive (Western Region) Language Scheme.
2. That the Health Service Executive should send an information memorandum within 6 weeks of the date of this report to every person in the organisation with responsibility for the recruitment of staff to be based in the Galway and/or Mayo Gaeltachtaí in which the following would be affirmed:
 - That this investigation had found that the Health Service Executive had contravened statutory obligations under the Official Languages Act 2003;
 - That the organisation had apologised for that contravention;
 - And that the organisation had an obligation to ensure that such a contravention would not occur again.
3. That a copy of the information memorandum in question in Recommendation 2 above should be sent to me as Coimisinéir Teanga within 6 weeks of the date of issue of the report on this investigation.
4. That the Health Service Executive should ensure adherence to the commitment given regarding offering dental services in Irish as a first choice to the community in the Gaeltacht.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court on a point of law within 4 weeks but no such appeal was made.

Confirmation from the Health Service Executive

The Health Service Executive confirmed that they had accepted the investigation's finding and recommendations.

Investigation launched: 10 July 2007

Report issued: 29 September 2007

STATE EXAMINATIONS COMMISSION

Subject of the Investigation

Is there a statutory obligation under the Education Act 1998, or under any other enactment, to provide Irish language versions of marking schemes for the Leaving Certificate examinations?

If Irish language versions of marking schemes are not being provided for the Leaving Certificate examinations, is any provision of the Education Act 1998 or any other enactment relating to the status or use of Irish being infringed?

Background

An official complaint was made to my Office that Irish language versions of the marking schemes for the Leaving Certificate examinations were not available. The case was made that, if an examination paper was answered in Irish and the marking scheme was available to the examiner in English only, students with Irish could be at a disadvantage.

One of the two complainants made enquiries about the matter with the Minister for Education and Science and with the State Examinations Commission. It was affirmed to her that marking schemes for the Leaving Certificate examinations were provided in English only¹. The complainants questioned if this system contravened the Official Languages Act or any other legislation.

Official Languages Act 2003

It was evident to me that no provision or regulation under that Act directly required the State Examinations Commission to provide Irish language versions of marking schemes.

In addition, no language scheme had been confirmed in the case of the Commission under Sections 11-19 of the Official Languages Act 2003 in which the services that would be provided through Irish only, through English only and bilingually were set out as well as the actions that would be taken to provide a service that was not yet available through Irish.

Accordingly, it appeared to me that the Commission had no statutory obligation under the Official Languages Act at this stage to provide marking schemes in Irish.

Having perused the Education Act 1998 (Section 7(2)(d) and Section 2(1)) I considered that there could be the possibility that there might be a statutory obligation to provide such a service (i.e. marking schemes) through Irish in the provisions of that Act.

I decided to investigate the matter.

¹ As regards Irish in the Leaving Certificate, the definitive marking scheme is published in Irish only. For European and other languages, the marking schemes are in English with a good number of references in the relevant language.

Commission's Viewpoint

Marking Scheme

The marking scheme is a document that is primarily directed at examiners, although candidates and teachers use the marking schemes when the marking is over.

English or Irish

Regarding the provision of the marking schemes in English only, the Commission stated that it was important that there should be only one definitive document in order to reduce the confusion attached to two marking schemes (one in English and one in Irish) being provided during the consultative and marking periods. The Commission stated (translation):

“It is most likely, if such were attempted, i.e. if it were possible to so do, that the two versions would not be in harmony with one another as regards meaning. Not only would that mislead the examiners in regard to operating the scheme correctly, but there would be a great danger that the public's confidence in the integrity and standard of the examination service in general which is the Commission's mission to provide for the public would be damaged.”

The Commission stated also (translation): *“If there were any fault with the published Irish language marking scheme – for example a difference in meaning between it and the marking scheme in English – there would be no way to rectify the flaw.”*

“Would not candidates seek to gain an advantage from such an error claiming that they should be awarded marks in accordance with the Irish language marking scheme? It is most likely that a court would decide that such a claim should be conceded.”

As regards providing for Gaeltacht and Irish language schools by making schemes in Irish (i.e. translations) of the marking schemes available to them the Commission also stated that the marking scheme in English was the most suitable and authoritative for marking purposes.

Commission's Position

The Commission's position, therefore, after careful consideration and examination of the issue of marking schemes through Irish and obtaining legal advice, was that it would not be sensible or proportional, in all the circumstances, to provide marking schemes in Irish of the kind in question. The Commission stated:

- that the marking schemes were a very important part of the process relating to state examinations;
- that it would be very difficult to provide marking schemes in Irish that would be completely accurate and faithful to the English version;

- that such a venture would be high risk at a time that the Commission’s translation service had not been perfected and when a private sector translation service that could be relied on totally was not available;
- that the consequence of that risk would be dire for the examination system and the service provided by the Commission, for the educational system, (third-level education included), training courses and recruitment and the candidates and public in general; and
- that it was not certain that the Commission was obliged by law to provide marking schemes in Irish.

Examination of the Commission’s Main Arguments

The Commission’s main arguments in relation to the provision of marking schemes in Irish can be summarised in two parts:

- legislative uncertainty;
- practical problems.

In the case that the Commission had no statutory obligations to provide marking schemes in Irish, it would not be necessary to undertake any close analysis of the practical problems as, without that statutory obligation being specified in law, no authority could cause the Commission to operate outside its statutory jurisdiction.

On the other hand, if the Commission had statutory obligations to provide marking schemes in Irish, no practical problems in question would of themselves be sufficient to reduce, ameliorate or limit statutory obligations specified in law by the Oireachtas.

The Commission’s position on this was that a distinction could not be made between what they said about the legislative aspect and the high risk and dire consequence associated with providing two versions of the marking schemes.

Legislative Uncertainty – The Commission’s Case and Counter Arguments

ARGUMENT 1

Section 7(2), of section 2(1) and of Part VIII of Education Act 1998 – The Commission’s Viewpoint

The Commission considered that “examination paper”, which is defined in part VIII of the Act, does not include marking schemes (translation).

“The Commission’s conclusion from the examination it made of what is said in the Act about examinations is that ‘examination paper’ does not include marking schemes.”

Section 7(2), of section 2(1) and of Part VIII of Education Act 1998 – Counter Argument

The Minister for Education and Science is obliged in Section 7(2)(d) *“to provide support services through Irish to recognised schools which provide teaching through Irish and to any other recognised school which requests such provision.”*

In the interpretation in Section 2(1) of the same Act the following definition is given of support services *“‘support services’ mean the services which the Minister provides to students or their parents, schools or centres of education in accordance with section 7 and shall include any or all of the following:*

(l) examinations provided for in Part VIII.”

It was evident that “examination” and “examination paper” were not the same and two very different definitions of them are given in the Act.

The case could be made that the examination *“relating to post-primary education... conducted from time to time in accordance with procedures determined by the Minister or by a body of persons established by the Minister...”* is what is intended to be provided as “a support service through Irish” under Sections 7(2)(d) and 2(1)(1) rather than the “examination paper” only.

ARGUMENT 2

Legal Advice – The Commission’s Viewpoint

The Commission stated that it always understood that the Education Act 1998 did not place an obligation on it to provide marking schemes in Irish. After the launching of this investigation, the State Examinations Commission sought legal advice. In accordance with the advice received, the Commission was of the view that it could be understood from Section 7(2)(d) that it possibly had an obligation to provide marking schemes in Irish.

The Commission stated, however, in the context of the above advice, although it could be understood from Section 7(2)(d) that it possibly had an obligation to provide marking schemes in Irish that “it was not at all certain that such an obligation had been placed on it” (translation).

The Commission stated also (translation):

“The Coimisinéir Teanga should clearly understand that the State Examinations Commission does not accept that it is obliged by law to provide marking schemes in Irish. According to the legal advice provided to the Commission it could possibly be understood from Section 7(2)(d) that that section places an obligation on the Commission to provide marking schemes in Irish. The advice provided to the Commission, however, was that it was not possible to give a definite answer to the question ‘has the Commission such an obligation?’

“Let there be no doubt about it, the State Examinations Commission does not accept that Section 7(2)(d) places an obligation on it to provide marking schemes in Irish. It accepts that a statutory obligation might possibly be in question under one interpretation that could be made of that statutory provision. That is not the one and only interpretation that could be made.”

Legal Advice – Counter Argument

“Legal privilege” applies to the legal advice received by the Commission and I have not seen that advice but it was clear from the above information that it was admitted that (translation) “*it could be understood from Section 7(2)(d) that it was possibly obliged to provide marking schemes in Irish.*” It did not appear from that legal advice that any strong argument was being made that such an understanding could not be taken from Section 7(2)(d).

ARGUMENT 3

Intention of the Oireachtas – The Commission’s Viewpoint

In support of its position that the draftsman or the Oireachtas could not possibly have intended, when the Education Act 1998 was being drafted or enacted, that an Irish version of the marking schemes would have to be prepared, the Commission highlighted that marking schemes used not be provided to candidates or their teachers (but to examiners only) at that time.

The Commission stated (translation) “*It would be difficult to envisage that members of the Oireachtas would ignore the dire calamitous consequence of such an action to the examinations’ system, the educational system, the training and recruitment sectors, candidates and their families.*”

Intention of the Oireachtas – Counter Argument

The case could be made that in drafting this legislation the Oireachtas wanted to ensure some equality for recognised schools that provide teaching through Irish and for any other recognised school that requests that kind of provision through providing a particular support service through Irish for them, including the state examination system.

No provision was evident in the legislation stating that it was sufficient to provide the marking schemes in English only for examiners and no judgement has been made in any legislative forum up to now on the case that marking schemes in English are sufficient for examiners correcting papers in Irish to ensure the equality intended by the Oireachtas in relation to “support services” through Irish.

The marking schemes in English were being provided publicly to candidates, their teachers and all as a support service even if that was not the intention of the Oireachtas. Did not that mean that the same support service should be provided through Irish?

Proposal from the Commission

The Commission made the following proposal in relation to marking schemes through Irish in a letter to me of 25 April 2007 which was with the amendments recommended on a draft of this report submitted to them (translation):

“As part of the policy to advance the services of the Commission through Irish the Commission could provide a definitive English marking scheme publicly, i.e., the marking scheme that would be used by the examiners during the marking. An Irish translation could then be provided publicly. It would have to be understood, however, that it was a translation; that it would be a draft and that it could be corrected at any time if a difference of any kind was noticed between the Irish translation and the definitive marking scheme in English. It would be necessary that a difference between the Irish translation and the definitive marking scheme would not be a matter of legal contention, i.e. a matter of dire consequence as explained in our reply. It would be our intention to refer to all those aspects in the Irish document. It would be stated clearly on the English marking scheme that it was the definitive scheme.”

Overview of the Investigation

It did not appear to me that there was any ambiguity attaching to the provision in Section 7(2)(d) of the Education Act 1998 or in the provision in Section 2(1)(1) of the same Act. Having regard to the usual meaning of the words, irrespective of whether these provisions were interpreted literally or objectively, it was my strong opinion that the statutory obligation placed on the Commission was very clear.

The Commission’s worry about the high risk and the dire consequence of providing marking schemes in Irish and in English was closely bound to its view that the two versions would not be in harmony as regards meaning. It gave it to be understood that it would be impossible or very difficult at the least to provide an accurate translation in the two official languages of the State within the timescales in question.

I could not concur with that position. If that position were accepted it would be the same as accepting the position that the State could not operate effectively and efficiently except on the basis of one language.

Official documents of all kinds are being proffered in the two official languages regularly, accurate translations of the Acts of the Oireachtas included. Institutions of the European Union are accommodating many various languages appropriately and on an equal basis daily without question.

I returned to the clear meaning of the provisions of the Education Act 1998 and the intention of the Oireachtas to affirm that certain support services would be provided through Irish and to the specific reference to state examinations among those support services.

Pupils are given the opportunity to undergo the state examinations through Irish and in addition bonus marks are given to pupils who answer the examination papers through Irish.

There was a very clear discrepancy between that position and the arrangement whereby the tool used by examiners to assess the pupils' work in Irish was available in English only. Under the present system the pupils' work provided in Irish only is being assessed with a tool or measurement in another language.

Findings of the Investigation

The following were the findings of the investigation:

1. That the Minister for Education is obliged in accordance with Section 7(2)(d) of the Education Act 1998 *“to provide support services through Irish to recognised schools which provide teaching through Irish and to any other recognised school which requests such provision.”*

In the interpretation in Section 2(1) of the same Act the following definition is given of support services:

“‘support services’ means the services which the Minister provides to students or their parents, schools or centres of education in accordance with section 7 and shall include any or all of the following:

(1) examinations provided for in Part VIII.”

2. That the State Examinations Commission was established with establishment order SI 373 of 2003 under Section 54 of the Education Act as a body *“to it perform, subject to subsection (2) functions in or in relation to the provision of support services...”*
3. That the State Examinations Commission is responsible for developing, assessing, accrediting and certifying the state second level examinations and that the Commission has the statutory obligations in relation to the provision of support services through Irish relating to state examinations provided for in Part VIII of the Education Act 1998.
4. That the marking schemes are a very important part of the process relating to the state examinations and that the examinations' system could not operate without marking schemes being available to the examiners and, in addition, that the marking schemes have a central role after the examination process itself, in the case of an appeal, as an aid for teachers, students, their parents and schools or centres of education.
5. That the State Examinations Commission has a statutory obligation under the Education Act 1998 to provide examiners engaged in correcting Leaving Certificate examinations answered through Irish with Irish versions of marking schemes.
6. Unless Irish versions of marking schemes are provided for Leaving Certificate examinations, provisions of the Education Act 1998 relating to the status or use of Irish are being infringed.

Recommendations of the Investigation

Having regard to the investigation the following were the recommendations made by me as Coimisinéir Teanga:

1. That the State Examinations Commission should ensure that they comply with their statutory obligations by providing examiners with an accurate version in Irish of every marking scheme for every subject answered through Irish in the Leaving Certificate examinations.
2. That, where the Irish version is not the original version, the Irish version of every marking scheme should be an “official translation” and that the State Examinations Commission should set out a protocol to avoid difficulties in the exceptional case of there being a discrepancy between the two versions.
3. That the State Examinations Commission should establish a system so that the Irish versions of marking schemes are provided simultaneously and set out to the same standard as the marking schemes in English.
4. That the State Examinations Commission should provide the Irish versions of marking schemes on an equal basis and simultaneously with those in English to candidates examining their scripts through Irish as part of the appeal process and that they should be made available on the State Examinations Commission’s website at the same time as those in English.
5. That the State Examinations Commission should accept that nothing in this investigation’s recommendations requires that any references or extracts in other relevant languages in marking schemes for examinations for European or other Languages on the Leaving Certificate programme answered through Irish be translated into Irish.

In recognition of the case made by the State Examinations Commission regarding the practical difficulties and, in the view of the Commission, the high risk and dire consequence attaching to the provision of marking schemes through Irish at a time when the Commission’s translation services had not been perfected and having regard to the investigation, the following were the recommendations I made as Coimisinéir Teanga in regard to a timescale for the provision of marking schemes through Irish without prejudice to the overall obligation that I considered to exist:

- that the marking schemes through Irish as specified above should be available for at least one-third of the subjects most generally answered through Irish for the 2008 Leaving Certificate examinations;
- that the marking schemes through Irish as specified above should be available for at least two-thirds of the subjects most generally answered through Irish for the 2009 Leaving Certificate examinations;

- that the marking schemes through Irish as specified above should be available for all subjects answered through Irish for the 2010 Leaving Certificate examinations and for every year thereafter.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court on a point of law within 4 weeks but no such appeal was made.

The State Examinations Commission confirmed that it accepted the findings and recommendations of the investigation.

Investigation launched: 2 March 2007

Report issued: 29 May 2007

NATIONAL DISABILITY AUTHORITY

Subject of Investigation

Did the National Disability Authority contravene the statutory obligation confirmed in Section 9(3) of the Official Languages Act 2003 in communicating in writing with the general public during the course of delivering the booklets “New Disability Plans”/“Pleananna Nua Míchumais”?

Background

A person residing outside the Gaeltacht complained to me that the National Disability Authority had sent him through the postal system in May 2007 a copy in English only of the booklet “New Disability Plans”.

The complainant was of the opinion that, in accordance with the provisions of the Official Languages Act 2003, he should have been sent a copy in Irish or a bilingual copy.

Statutory Background

Section 9(3) of the Official Languages Act 2003 obliges public bodies to ensure that communication in writing or by electronic mail with the general public or with a class of the public is done in Irish or in Irish and English if the purpose of that communication is to furnish information to the public or the class.

Understanding

I understood that the National Disability Authority prepared English and Irish versions of “New Disability Plans”/“Pleananna Nua Míchumais” and that their choice of versions was available to the public on the organisation’s website.

I understood also that printed copies in Irish of the booklet were delivered to houses in certain Gaeltacht areas but that copies in English only were delivered to other houses throughout the entire country. People could obtain printed copies of the booklet in Irish by asking the National Disability Authority. This was advertised in the various communication media.

As the National Disability Authority indicated to my Office that it understood that the steps taken to distribute the booklet satisfied the statutory obligations under Section 9(3) of the Act, I decided to investigate the complaint in accordance with the provisions of the legislation to ascertain if the National Disability Authority had or had not failed to fulfil the provision in Section 9(3) of the Act.

Prior Discussion

In the context of the distribution of the booklet “New Disability Plans”/“Pleananna Nua Míchumais” to the general public, my Office provided the National Disability Authority with initial advice orally and in writing, at their request, in relation to there

being or not being an obligation in respect of the Irish language under Section 9(3) of the Act. (See under the headings “National Disability Authority’s Viewpoint – Sifting the Information” and “General Overview of the Investigation” in this summary in relation to that request.) The Authority was advised also, in the event that it was in doubt still about its Irish language obligation in relation to the distribution of the booklet, to consult its own legal advisors independently of my Office and that, having regard to that advice, it could seek a further opinion from my Office then.

National Disability Authority’s Viewpoint

Sifting the Information

The information from the National Disability Authority established some basic facts, including:

- That the National Disability Authority decided to raise awareness among people with disabilities in relation to various elements of the national disability strategy by distributing an information booklet to the general public through the postal system.
- That an English language text of the booklet was prepared in conjunction with various Government Departments and other state organisations.
- That a tendering process in accordance with European Union requirements had been completed for printing over 1.7 million copies of the booklet in English before the National Disability Authority took notice of any language requirement regarding obligations under the Official Languages Act 2003.
- That c.1.7 million copies of the booklet in English were printed and distributed through the postal system, that 85,000 copies in Irish were printed and that c.29,000 copies of these were distributed through the postal system in certain Gaeltacht areas.
- That Irish and English versions of the booklet were made available on the National Disability Authority’s website.
- That printing a bilingual edition of the booklet or the same number of copies in Irish and English would cost more than printing an English version only.
- That distributing a bilingual booklet rather than a version in one language would not cost more (except that that would need to be done over two weeks instead of one week) but that distributing two separate editions of the booklet (one in Irish and one in English) would cost more.

National Disability Authority’s Arguments

It was evident that the National Disability Authority was fully certain of the position adopted in this case.

“The National Disability Authority is of the view that it is not in breach of any statutory obligation under Section 9(3) of the Official Languages Act 2003.”

In summary, the National Disability Authority’s arguments in relation to the question can be divided into two parts:

- **practical arguments** based on experience, practice, public cost and principles of proportionality;
- **arguments based on advice** and legal interpretation.

Practical Arguments

The National Disability Authority stated that communicating with people with disabilities was a complex process as they were not a homogeneous group or class of people.

To that end the Authority decided on a targeted approach by distributing the booklets in various formats (standard version in simple English, Irish version, Easy to Read version, audio-equipment version, Braille version and a Big Print version) to the various targeted groupings.

The reasons for deciding not to publish the booklet bilingually included the organisation’s experience in dealing with people with disabilities.

The National Disability Authority stressed the following also:

“The National Disability Authority had both Irish and English versions of the booklet simultaneously available; The National Disability Authority had distributed copies of both in a targeted fashion; The National Disability Authority had in advance of the distribution placed ads on national and regional radio informing people that such were available as well as placing an ad in Foinse; The National Disability Authority had a system in place to distribute both English and Irish versions to any person of the public who may have requested same by e-mail, in writing or by phone to a dedicated telephone Lo-call telephone number established for this initiative; and the National Disability Authority placed English and Irish language versions on the National Disability Authority’s website.”

It was clear also that the National Disability Authority believed that there would be financial and timescale implications if they acted in accordance with the advice received at the outset from the Government Services Agency and from my Office. The Government Services Agency had advised that it was necessary to prepare the booklet in bilingual form.

The records in the organisation’s files indicated that the Director of the National Disability Authority advised the organisation’s Chairperson in an e-mail of 13 March 2007 that they had no choice but to publish the booklet bilingually:

“We discovered this week that we are legally obliged to ensure that the mailshot on National Disability is produced as bilingual publication which means it has to have

32 pages instead of 16 pages to include the full Irish translation. This has major implications for costs and timing but we have checked with Commission and the DJELR and seems to be no way out of this.”

(It appears that “Commission” above refers to the Office of An Coimisinéir Teanga and “DJELR” above to the Department of Justice, Equality and Law Reform.)

Arguments Based on Advice and Legal Interpretation

Part of the advice given by my Office to the National Disability Authority referred to seeking independent legal advice where there was still doubt about the statutory obligation following consideration of the matter by reference to particular criteria provided.

The National Disability Authority did not accept this advice and confirmed that “legal advice from legal advisors on contract” was not received.

The National Disability Authority sought additional advice from the senior management of the Department of Justice, Equality and Law Reform regarding the implications of the advice received up to then (see the extract from Director’s e-mail quoted above, for example) and the actions being recommended by them, i.e. to distribute English versions nationally to the general public and Irish versions in some Gaeltacht areas and the Irish version to be available on application and on the website. It was confirmed to the National Disability Authority that “the Minister considered that the National Disability Authority’s proposed actions fulfilled the requirements of the Act by ensuring that both an Irish version and an English version were available at the same time and that availability was promoted in both languages. This had been considered by reference to legal principles in addition to the public expense issue and the principle of proportionality.”

It was decided to continue with the printing and distribution of the English and Irish versions as had been arranged in the original plan from the outset before any debate or discussion at all commenced in the National Disability Authority about statutory language obligations.

General Overview of the Investigation

The investigation in the case of the National Disability Authority involved the provision in Section 9(3) of the Official Languages Act:

“Where a public body communicates in writing or by electronic mail with the general public or a class of the general public for the purpose of furnishing information to the public or the class, the body shall ensure that the communication is in the Irish language or in the English and Irish languages.”

I weighed every possible interpretation that could be made of the above provision. It did not appear to me that there was any ambiguity in the provision. Having regard to the usual meaning of the words, irrespective of whether a literal or objective meaning was taken from the provision, it was my strong opinion that the statutory obligation placed on public bodies, the National Disability Authority included, was very clear.

Section 9(3)

A language obligation under Section 9(3) applies to a particular kind of communication:

- The communication must be issued from a public body;
- The communication must be in writing or by electronic mail;
- The communication must issue to the general public or to a class of the general public;
- And the communication must be for the purpose of furnishing information to the public or the class.

In this particular case the following could be affirmed definitely:

- That a public body was engaged in the communication – the National Disability Authority is listed as a public body in the First Schedule of the Act;
- That the communication was in writing – a printed booklet was being distributed through the postal system;
- That the communication was with the general public – over 1.7 million copies were being distributed to every premises in the State;
- That the communication was for the purpose of furnishing information to the public – this is clear from the booklet’s text and confirmed by the National Disability Authority itself.

Accordingly, the National Disability Authority was obliged to ensure that this communication in writing to furnish information to the general public should be in Irish or in English and Irish.

Distribution of the Booklet

Active communication with the general public in over 1.7 million premises was being undertaken in English only, rather than in English and Irish. This is equivalent to over 98% of the public at large who were communicated with. The communication in Irish was with less than 2% of the public. In the particular circumstance in question, rather than undertaking communication with the general public in “English **and** in Irish”, it could be argued that the communication was done in English **or** Irish.

Any one of those who received this communication in English only, if they wished the state to do its business with them in Irish in this case, would have had to take further steps to contact the National Disability Authority in pursuit of an Irish version of the booklet.

It can be argued that this was contrary to the objective of Section 9(3) of the Act.

The Public

Even if it were acceptable under a particular interpretation of Section 9(3) of the Act – something I did not accept – that communication could be effected on a targeted basis with the Irish language “community” in every part of the Gaeltacht and throughout the whole country, it would be impossible to devise a system to that end without wholly omitting a major portion of that targeted group.

No separate distinction is made between the Gaeltacht and the rest of the country in this particular provision of the Act.

Cost

It appeared that at the outset no estimate was sought, under the usual procedures and practices relating to tendering processes in force in the member states of the European Union, of the cost of printing the booklet as a 32 page bilingual booklet – or as two separate 16 page booklets, one in Irish and one in English.

That appeared to be the case as a result of a gap in the National Disability Authority’s information in relation to the organisation’s statutory obligations under the Official Languages Act 2003 at the start of this project.

It is worth noting that the translation cost in this case was under €472 in a project which involved a total budget of €375,000.

Advice

The National Disability Authority received advice in respect of their obligation in this case from various sources that were generally in agreement with one another, including:

- The Government Services Agency;
- The Office of An Coimisinéir Teanga;
- A civil servant of the Department of Justice, Equality and Law Reform.

It appeared that it was because of doubt about the accuracy of that advice or as a result of the various implications relating to operating in accordance with that advice – cost, delay, inconvenience, etc. – that yet further advice was sought, this time at top management level of the Department of Justice, Equality and Law Reform.

It appears that this oral advice (in a telephone call) was not “legal advice” in the usual sense but advice from the management of a parent Department to an independent statutory agency under its aegis.

A civil servant of the Department of Justice, Equality and Law Reform had previously recommended that a “legal interpretation” should be sought to avoid doubt but it is clear that this legal interpretation was not sought from the National Disability Authority’s independent legal advisors.

Finding

The finding of the investigation was as follows:

- **That the National Disability Authority contravened the statutory obligation confirmed in Section 9(3) of the Official Languages Act 2003 in communicating in writing with the general public during the course of the delivery of the booklets “ New Disability Plans”/“Pleananna Nua Michumais.”**

Investigation’s Recommendations

Having regard to the investigation the following were the recommendations I made as Coimisinéir Teanga:

- That where the National Disability Authority communicated in writing with the general public or a class of the general public from then on in order to furnish information to the public or class it would ensure that:
 - that communication, unless it was totally in Irish, would be bilingual (under one cover only or in two separate parts, in Irish and English);
 - that communication would be delivered to all of the general public or all of the class of the general public simultaneously – without discrimination – if separate versions in Irish and English of the communication were involved.
- That the National Disability Authority should accept now that it was too late and not in the public or state interest at this stage, having regard to all the circumstances of the case, to print additional copies of the Irish version of the booklet for distribution to the general public throughout the country to nullify or reduce the harm caused by the contravention of statutory obligations.
- That the National Disability Authority would take all appropriate steps to ensure that it was aware of its statutory obligations under the Official Languages Act 2003 and that it would comply fully and appropriately with the provisions of the Act.
- That the management of the National Disability Authority would make the following aware in writing appropriately and accurately of the finding and recommendations of this investigation as soon as possible but not later than 6 weeks from the date of this report:
 - Staff, members and chairperson of the board of the National Disability Authority;
 - Department of Justice, Equality and Law Reform as the organisation’s parent Department;

- Every person who was a member of the Senior Officials' Group from various government departments and offices associated with this information project;

and a copy of that communication in writing should be sent to me simultaneously as Coimisinéir Teanga.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court on a point of law within 4 weeks but no such appeal was made.

The National Disability Authority confirmed that it had accepted the investigation's finding and recommendations.

Investigation launched: 10 May 2007

Report issued: 17 August 2007

BUS ÉIREANN

Subject of Investigation

Is the provision in Section 57(2) of the Transport Act 1950 – a provision relating to the status or use of an official language – being complied with by Bus Éireann in regard to certain travel tickets under the school transport scheme?

Background to Complaint

The principal of a gaelscoil complained to me on behalf of a parent/pupil of that school that the language usage on a particular travel ticket issued on behalf of Bus Éireann did not comply with the statutory language requirement affirmed in Section 57(2) of the Transport Act 1950.

The following is the appropriate section of that Act:

“All passenger card tickets issued by the Board for journeys within the State shall be printed in the Irish language but may be printed in both the Irish and English languages.”

It was clear that section 57(2) of the Transport Act 1950 was a provision of an enactment relating to the status or use of an official language.

It was clear from a copy of the appropriate travel ticket sent to me that a large part of it was printed in Irish and English but that a particular part of it was printed in English only.

My Office attempted to settle this complaint informally with Bus Éireann but that process did not succeed in reaching a satisfactory outcome.

I decided to undertake an investigation in order to be establish whether or not Bus Éireann was in compliance with the provision in Section 57(2) of the Transport Act 1950 – a provision relating to the status or use of an official language – in regard to particular travel tickets under the school transport scheme.

The investigation was initiated on 4 October 2007.

Bus Éireann’s Reply

Bus Éireann gave practical and legal arguments in relation to the subject matter of the investigation.

Practical Arguments

Bus Éireann suggested that:

- the company’s computerised information technology system had difficulties in regard to the provision of wholly bilingual tickets,

- issues would arise regarding the capability of some of the company’s bus staff who were foreigners without Irish to validate tickets unless they contained clear instructions in a language that they would understand,
- serious issues of child safety could arise if there were a danger that a child would be left on the side of the road because the school bus driver did not understand the language and validity of the ticket.

Legal Arguments

Bus Éireann argued that it was the company’s position, after its legal advisors had considered the matter, that it did not accept that it was statutorily bound under Section 57(2) of the Transport Act 1950 in relation to provision of passenger tickets wholly in Irish or wholly bilingual.

It stated that the term “*passenger card tickets*” in Section 57(2) of the Transport Act 1950 applied to a kind of ticket no longer in use.

Bus Éireann stressed that the company’s position was that it was not contravening the Official Languages Act in any way in this case or any other enactment relating to the status or use of an official language.

Concluding its reply to the investigation Bus Éireann stated:

“In this context, we will endeavour to find out if suitable alterations, such as has been sought, can be made to the ticket.” (translation)

Overview of the Investigation

Bus Éireann’s main arguments in relation to the subject matter of this investigation could be divided into two parts:

- Legal arguments
- Practical matters

Legal Arguments

It was clear that Bus Éireann did not accept that the school transport travel ticket for the School Transport Scheme was the same as the “passenger card tickets” referred to in Section 57(2) of the Transport Act 1950.

Bus Éireann stated that the “passenger card tickets”, as referred to in Section 57(2) of the Transport Act 1950, no longer existed.

Counter Legal Arguments

The appropriate section of the Transport Act, i.e. Section 57(2), came into force almost sixty years ago and, although often over the years, various amendments were

made to other provisions of the same Act, the Oireachtas did not consider amending this provision.

It was clear that in enacting this provision the Oireachtas intended that the “card tickets” issued to passengers for travel within the State would be printed in Irish or bilingually (Irish and English).

It appeared that the “card ticket” referred to that instrument given to a passenger to prove that such person has a permit, licence, voucher or warrant authorising travel on a particular journey. It was the permission or authority bestowed by this instrument on the person that was central in this provision and not the material (card or paper) on which it was printed.

If, however, the meaning of this paragraph was vague or ambiguous or the distinct intention of the Oireachtas was unclear from it – which I did not accept – the Interpretation Act 2005 (Section 5(1)) provided that the provision be given “*a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole*” and it was clear from Section 57 in its totality that it provided for the use of Irish in elements of the company’s work, such as, permanent notices and signs and tickets.

In considering the case that a “card ticket” as mentioned in the Transport Act and a present day “ticket made from paper” were not the same, Section 6 of the Interpretation Act 2005 had to be taken into account:

“In construing a provision of any Act or statutory instrument, a court may make allowances for any changes in the law, social conditions, technology, the meaning of words used in that Act or statutory instrument and other relevant matters, which have occurred since the date of the passing of that Act or the making of that statutory instrument but only in so far as its text, purpose and context permit.”

Practical Matters – Counter Arguments

Information Technology Systems

Problems as a result of the use of information technology systems were clearly not sufficient as a justification for amending or modifying the wishes of the Oireachtas affirmed in law.

Section 57(2) of the Act did not require that an information technology system be used to generate the bilingual tickets.

The argument could be also made also that it was not the language (Irish) that caused the problem for the information technology system but a design problem that could be rectified by an alternative design solution.

Foreign Bus Drivers Without Irish

Section 57(2) gives the choice of printing the tickets in Irish or bilingually (Irish and English). If tickets were totally bilingual there would be no requirement that all drivers would have to understand Irish and English. It would be sufficient to understand one of those official languages to be able to validate bilingual tickets.

Bus Éireann would also be able to ensure – as part of the induction and staff training process – that every driver, foreign and Irish, would be made familiar with the bilingual design of the ticket.

Child Safety

This investigation fully recognised the importance of child safety and the major responsibility Bus Éireann had in that regard.

The counter argument could be advanced, however, that a bilingual ticket designed and provided professionally by a public body could not cause any danger of a child being left on the side of the road because the school bus driver did not at the least understand one of those official languages and, accordingly, the validity of the ticket.

General

It is clear that in general Bus Éireann requires passengers to fulfil their own obligations when undertaking bus journeys, especially the obligation to pay the correct fare in exchange for travel rights.

Bus Éireann must fulfil its own obligations, particularly those affirmed in law by the Oireachtas, including Section 57(2) of the Transport Act 1950.

Finding of the Investigation

The following was the finding of the investigation:

- **That the provision in Section 57(2) of the Transport Act 1950 – a provision relating to the status or use of an official language – is not being complied with by Bus Éireann in regard to the specific travel tickets under the school transport scheme at issue in this investigation.**

Recommendations of the Investigation

Having regard to the investigation the following were the recommendations I made as Coimisinéir Teanga, that:

1. Without prejudice to the full obligation that I considered to be at issue, Bus Éireann would ensure that it would take the appropriate steps as soon as possible to comply from then on with the language obligation affirmed in Section 57(2) of the Transport Act 1950 by ensuring that the passenger tickets

which were the subject of this investigation be printed fully in Irish or fully bilingually (in Irish and in English) and a realistic plan would be prepared and implemented with specified time targets to achieve this.

2. Bus Éireann would ensure that the proposed improvement and development of its information technology system would include that system's capability to print tickets fully bilingually and that the clarity of design of the bilingual tickets would be such as to ensure no possibility of any threat to child safety.
3. Bus Éireann would ensure that bus drivers would be made familiar with the bilingual form and design of the tickets during training or in service courses.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court on a point of law within 4 weeks but no such appeal was made.

Investigation launched: 4 October 2007

Report issued: 13 December 2007

FINGAL COUNTY COUNCIL

Subject of Investigation

Had Fingal County Council contravened that public body's obligation under Section 9(2) of the Official Languages Act 2003 by acknowledging in English a communication in Irish and afterwards by not replying to the communication in Irish over a period of 3 months?

Background to the Complaint

A person with an address in the Malahide area of County Dublin complained to me about a fruitless attempt made by her to correspond in writing in Irish with the local county council, Fingal County Council.

The following is provided for in Section 9(2) of the Official Languages Act 2003:

“Where a person communicates in writing or by electronic mail in an official language with a public body, the public body shall reply in the same language.”

The complainant sent an e-mail in Irish to the County Council on 24 July 2007 complaining about the lack of Irish on the signs at the recycling centre and about the lack of Irish on the Council's website. In addition, she sought information in regard to the Council's Irish language policy.

The complainant received an acknowledgement in English on 1 August 2007 stating *“Your recent e-mail is being translated and a reply will issue shortly.”*

Although she contacted the Council twice again by e-mail in Irish about the case the only reply she received to her questions was a note in Irish by e-mail on 24 August 2007 stating (translation) *“Thank you for contacting us. We will contact you again soon.”*

When she had not received a reply to her communication in Irish on 30 September 2007 she complained to my Office.

My Office attempted without success to settle this complaint informally with Fingal County Council.

Therefore I had no alternative but to initiate an investigation under the provisions in the Official Languages Act 2003 to ascertain if Fingal County Council had or had not failed to comply with the provision in Section 9(2) of the Act.

The investigation was initiated on 17 October 2007.

The Council's Reply

In his letter to me of 14 November 2007 the County Manager, Fingal County Council, declared that it was clear that the Act had been contravened in this case. He stated

that he was particularly disappointed that the Council had failed to rectify the matter despite the organisation being given every opportunity to so do.

The County Manager gave the following explanation: (translation)

“A number of factors occurring simultaneously caused this failure, in particular the position of Head of Corporate Affairs being vacant and, unfortunately, the person acting in this position being ill for a considerable period.

“I would hope that this failure would not be taken as reflecting the council’s attitude or policy in general.”

The County Manager gave to understand that a new Head of Corporate Affairs was about to commence work and that he had asked that person “to direct his personal attention to the manner in which we are fulfilling our obligation under the Act and in relation to any correspondence from your office.” (translation)

With the letter from the Manager was a copy of a letter from the new Head of Corporate Affairs to the complainant apologising formally to her for what happened. That same letter dealt with the substance of the matter raised by her and an invitation was extended to her, if she so wished, to meet with the Head of Corporate Affairs to discuss matters.

Overview of the Investigation

It was clear that whatever system was in force, or thought to be in force, by Fingal County Council to ensure compliance with Section 9(2) of the Official Languages Act 2003, which provides that a person has the right to receive an reply in Irish to a communication in writing or by electronic mail in that same language, had failed utterly.

It appeared from my examination of the organisation’s file that the substance of the matter in the complainant’s original e-mail in Irish was totally disregarded until this investigation was initiated.

It was not something of which the Council could be proud that it was the first public body in the country that my Office had to formally investigate in relation to a breach this specific section of the Act.

Finding of the Investigation

The investigation found as follows:

- That Fingal County Council contravened the provision in Section 9(2) of the Official Languages Act 2003 by issuing an acknowledgement in English of a communication in Irish by electronic mail and then by not answering the communication over a 3 month period.

Recommendations of the Investigation

Having regard to the investigation the following were the recommendations I made as Coimisinéir Teanga:

1. That Fingal County Council would ensure that it henceforth complied with its statutory obligations under the Official Languages Act 2003.
2. That Fingal County Council would send an information memorandum (in writing or by electronic mail) within 6 weeks of the date of the report of the investigation to its staff members in each of the Council's divisions who dealt with written communications from the public, in which the following would be affirmed:
 - That this investigation had found Fingal County Council to be in contravention of its statutory obligation under Section 9(2) of the Official Languages Act 2003;
 - That the organisation had apologised for this contravention;
 - And that the organisation was obliged to ensure that such a contravention would not be allowed happen again.
3. That the system now in place to facilitate staff to deal appropriately from now on with any communication in Irish in writing or by e-mail, particularly where staff members did not have Irish, would be set out clearly in the information memorandum referred to in Recommendation 2 above.
4. That a copy of the information memorandum referred to in Recommendations 2 and 3 above would be sent to me within 6 weeks of the date of this report.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court on a point of law within 4 weeks but no such appeal was made.

Fingal County Council accepted the finding and recommendations in the report.

Investigation launched: 17 October 2007

Report issued: 19 November 2007

HOUSES OF THE OIREACHTAS COMMISSION

Subject of Investigation

Is the practice of not providing Irish language versions of bills during the enactment process of legislation in the Houses of the Oireachtas a contravention of Section 7 of the Official Languages Act?

Foreward

A group consisting of eight members of the Oireachtas – two Senators and six Dáil Deputies – complained to me of a major obstacle to exercising their rights under Section 6 of the Official Languages Act 2003 to use Irish in debates and other proceedings of the Houses of the Oireachtas and in committees and sub-committees of the Houses of the Oireachtas in that the vast majority of bills were published in English only.

Those members of the Oireachtas contended that they were not being treated fairly in comparison with Dáil Deputies and Senators who were prepared to use English always, that there might be an infringement of their constitutional rights and that Section 7 of the Official Languages Act 2003 was being contravened.

Section 7 of the Official Languages Act 2003 relates to printing and publishing the text of acts of the Oireachtas simultaneously in Irish and in English. The following is the specific wording of that section:

Section 7. *“As soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the official languages simultaneously.”*

The complainants asked me to investigate this issue as they believed that *“section 7 of the Official Languages Act 2003 is being contravened.”*

Substance of the Complaint

The complainants referred to difficulties in relation to terminology when a bill was published in English only:

“There is often specific and brand-new terminology in bills. Accordingly, it is very difficult to debate properly in Irish a bill published in English only. Worse still, it is not permitted to propose amendments in Irish to a bill in English.

“We believe that we are not being treated fairly compared to the Dáil deputies and senators who are prepared to use English always. When a bill is published in Irish, it is published in English also: as it should. An Irish version of a bill in English is not available to us, even when we ask for it.” (Translation)

The complainants referred to their constitutional rights also.

Canadian Legislation

The complainants compared the provision in Section 7 of the Official Languages Act 2003 to the statutory provision in Canada which was, in their opinion, “*very similar*”.

They were referring to Section 133 of the British North America Act [Constitution Act], 1867:

“The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both [English and French].”

In support of their position they drew attention to a legal interpretation of that provision:

*“In the 3rd edition of **Driedger on the Construction of Statutes**, Toronto, 1994, by Professor Ruth Sullivan she states on page 215: -*

*...In **A.G. of Quebec v. Blaikie** (1979) 2 S.C.R. 1016, at 1022, the Supreme Court of Canada wrote: -*

It was urged before this Court that there was no requirement of enactment in both languages, as contrasted with printing and publishing. However, if full weight is to be given to every word of s.133 it becomes apparent that this requirement is implicit. What is required to be printed and published in both languages is described as ‘Acts’ and texts do not become ‘Acts’ without enactment.

(Emphasis in the original version)

*“The Supreme Court of Canada concurred with that interpretation in **Re Manitoba Language Rights/Renvoi: Droits Linguistiques Au Manitoba** (1985) 1 S.C.R. 721,” they stated.*

The complainants compared that with Section 7 of the Official Languages Act 2003 and stated:

“Therefore, the Houses of the Oireachtas, in accordance with Section 7 of the Official Languages Act, must enact legislation in both official languages.”
(Translation)

The Investigation

I decided to investigate the complaint on 9 November 2007.

I wanted to put beyond doubt whether the failure to provide Irish versions of bills during the enactment process of legislation in the Houses of the Oireachtas contravened Section 7 of the Official Languages Act 2003.

Reply of Houses of the Oireachtas Commission

The reply of the Houses of the Oireachtas Commission made it very clear that it did not at all accept that the non-provision of Irish versions of bills to the complainants during the enactment process in the Houses of the Oireachtas contravened Section 7 of the Official Languages Act 2003.

The Commission directed attention to the words “**after the enactment of any Act of the Oireachtas**” in the provision in Section 7 in order to emphasise those words:

“As soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the official languages simultaneously.”

Having regard to the wording in this statutory provision, the Commission stated that it was very clear that the obligation to print and publish Acts arises after the enactment process.

The Commission also stated the following:

“The following is set down in section 4(2A) of the Commission of the Houses of the Oireachtas Acts 2003 and 2006:

‘It shall also be a function of the Commission to provide translation services from one official language into the other in respect of Acts of the Oireachtas.’ (Translation)

Regarding the major obstacle to using Irish in debates faced by the complainants as a consequence of the publication of bills in English, the Houses of the Oireachtas Commission said that the legal right to use either of the official languages in debates and other proceedings of the Houses was “*a distinct right and a right that is separable from the obligation set out in Section 7 of the Official Languages Act 2003.*” (Translation)

The Commission denied that the complainants were being treated unfairly compared to Dáil Deputies and Senators who were prepared to use English always.

Regarding the comparison made by the complainants between the provision in Section 7 of the Official Languages Act 2003 and the legal interpretation made of similar provisions in language legislation in Canada, the Houses of the Oireachtas Commission stated the following:

“The Commission refutes the relevance of the case entitled AG of Quebec v Blaikie (1979) 2 SCR 1016. It is clear that an interpretation by Canadian courts of their own statutory provisions cannot be taken as imposing a requirement on Ireland’s courts. The obligation to translate Acts of the Oireachtas to one of the official languages of the State is a Constitutional obligation. No court except Irish Courts can interpret the Constitution of Ireland.

“In the context of Ireland, a differentiation can be made between the obligation to translate Acts and to print and publish them in the two languages and the obligations placed upon the parliament of Canada, in so far as the element of the timing during the enactment process at which the obligation arises is defined clearly by the Irish provisions.

“It is clear that it arises after the enacting process in accordance with the Constitution and in accordance with the Legislation. Unlike the Canadian provision, therefore, the Irish provisions are specific in terms of time and substance.

“The Commission accepts that it is clear that Article 25.4.3^o of the constitution presumes that a Bill will be enacted in either of the two official languages or in both official languages; but there is no constitutional obligation or statutory obligation to translate, print or publish in the two languages until a Bill is enacted after the President has signed it into law.”
(Translation)

Overview of the Investigation

As regards the reference made by the complainants to their opinion that there might be an infringement of their constitutional rights when bills were made available in English only, it did not come within my remit to make any sort of judgement on this issue as the Constitution of Ireland provides that it is a matter for the Courts alone to deal with constitutional issues.

My obligation as Coimisinéir Teanga in this case was to decide whether or not the statutory obligation under Section 7 of the Official Languages Act 2003 was being contravened.

It was clear to me that Section 7 of the Act -

Section 7. *“As soon as may be after the enactment of any Act of the Oireachtas, the text thereof shall be printed and published in each of the official languages simultaneously”*

provided a statutory framework for the constitutional obligation affirmed in Article 25.4.4^o of the Constitution of Ireland:

“Where the President signs the text of a Bill in one only of the official languages, an official translation shall be issued in the other official language.”

It did not appear to me that there was any ambiguity in the provision in Section 7.

It appeared to me that Section 7 set down the following clearly:

- **What requires to be done with any Act of the Oireachtas?**

The printing and publishing of the text simultaneously in Irish and in English.

- **When is this action to be taken?**

As soon as may be after the enactment of any Act of the Oireachtas.

There is no reference in Section 7 to the use of the official languages in bills or during the enactment process.

As regards the comparison made by the complainants between the provision in Section 7 of the Official Languages Act 2003 and the legal interpretation made of similar provisions in language legislation in Canada, I would support the viewpoint of the Houses of the Oireachtas Commission in that regard. It did not appear to me that the case referred to could provide any precedent that would give the meaning to Section 7 of the Official Languages Act 2003 claimed by the complainants.

In all, I did not believe that any honest legal construal of Section 7 would permit me to interpret it in such a way as to require bills – rather than acts after their enactment – to be provided simultaneously through Irish and English.

Finding of the Investigation

The following was the finding of the investigation:

- The practice of not providing Irish language versions of bills during the enactment process of legislation in the Houses of the Oireachtas is not a contravention of Section 7 of the Official Languages Act.

Recommendations of the Investigation

Having regard to the finding of this investigation, since there was no contravention of the statutory provision in Section 7 of the Official Languages Act 2003, no recommendations were made by me in this case.

Appeals to the High Court

I stressed in the report that any party to the investigation had the statutory right to appeal the decision to the High Court on a point of law within 4 weeks but no such appeal was made.

Investigation launched: 9 November 2007

Report issued: 13 December 2007

DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

Discontinued Investigation

Subject of Investigation

Had the provision in Section 71 of the Courts of Justice Act 1924 – a provision relating to the status or use of an official language – been fulfilled in the process relating to the assignment of a district justice to District No. 1 (Co. Donegal) at the end of 2006/beginning of 2007?

Background

Conradh na Gaeilge complained to me that one could not be certain that sufficient effort had been made to find a person with the language skills specified in Section 71 of the Courts of Justice Act, 1924, to fill a vacancy as a justice in District No.1 (Co. Donegal) to satisfy the provision of that legislation.

Section 71 of that Act states:

“So far as may be practicable having regard to all relevant circumstances the Justice of the District Court assigned to a District which includes an area where the Irish language is in general use shall possess such knowledge of the Irish language as would enable him to dispense with the assistance of an interpreter when evidence is given in that language.”

It was clear that this was a provision of an enactment relating to the status or use of an official language. It was clear also that District No. 1 (Co. Donegal), in which there is an official Gaeltacht area, was *“an area where the Irish language is in general use”*.

I decided to investigate the matter.

The Investigation

I sought the various files in the possession of the Department of Justice, Equality and Law Reform in relation to the matter being investigated as well as a report in writing from that Department in which there would be answers to the following questions:

- Had or had not the justice appointed recently to District No. 1 (Co. Donegal) such knowledge of the Irish language as would enable him to dispense with an interpreter when evidence was given in that language?
- What system was used to assess the justice’s ability in Irish?

I enquired also in the event that the person appointed had not the language skills specified in Section 71:

- What particular efforts had been made to actively seek a person for the vacancy who had the language skills specified in Section 71?
- Had it been taken into account, when a decision was being made to appoint three new justices at the end of 2006, that a justice with the language skills specified in Section 71 should be appointed to District No. 1 (Co. Donegal). If so, details to be given.
- Had it been taken into account that one of the three new justices to be appointed at the end of 2006 would be assigned to District No. 1 (Co. Donegal) under the provision in Section 27(2)(b) of the Courts and Court Officers Act 2002 in force at that time. If so, details to be given.
- Was any person qualified in every other way for appointment as a justice and having the language skills specified in Section 71 also available when a decision was made to appoint three new justices at the end of 2006?
- Were other statutory alternatives available when a justice was to be assigned to District No. 1 (Co. Donegal), including, alternatives under Section 2(2) of the Sixth Schedule of the Courts (Supplemental Provisions) Act 1961?
- What circumstances caused a vacancy to be filled in District No. 1 (Co. Donegal) and when did it become clear that there would be a vacancy to be filled there?
- As the language obligation provided for in Section 71 is conditional on “*so far as is practicable having regard to all the relevant circumstances...*” what were all the circumstances relating to the question that were taken into account to ensure that the appointment would not contravene the language requirement in Section 71 and what procedure was used to weigh the balance between the language skills requirement and “all relevant circumstances”?
- In correspondence with the complainant “great pressure of work” was mentioned as “a matter that had to be taken into account” in relation to the vacancy in District No. 1 (Co. Donegal). What evidence was there that this “great pressure of work” was different and unusual from pressure of work in other districts of the same size?

First Reply on behalf of the Tánaiste and Minister for Justice, Equality and Law Reform

It was stated that the Government and the Tánaiste wished to fill the vacancy in question without delay and that, in the absence of an application from a serving justice for transfer to the District, a newly appointed justice was assigned permanently. It was stated also that the records held by the Department about this matter related to Government proceedings and that, therefore, it was not necessary, in accordance with Section 22(1)(b) of the Official Languages Act 2003 to make them available. A certificate signed by the Secretary General of the Department was sent to me certifying that the files related to proceedings of the Government.

It was clear to me that I could not accept that certificate as Section 22(1)(b) of the Official Languages Act 2003 provides for a certificate to be given by the Secretary General to the Government only. Accordingly, I again required of the Tánaiste and Minister for Justice, Equality and Law Reform that the files be provided to me.

Information and Records Sought Again

As a result of seeking the information outlined above again, the Department of Justice, Equality and Law Reform provided me with a schedule listing the records available in that Department relating to the appointment and subsequent assignment of a justice to District No. 1 (Co. Donegal) as well as a valid certificate from the Secretary General to the Government in relation to most of the records in that matter. Copies of the other documents in the schedule were made available to me. Those documents did not relate specifically to the investigation.

Under Section 22(1)(b) of the Official Languages Act 2003 an obligation to make information or records available to me does not need to be fulfilled if the Secretary General to the Government certifies that the information or records in question relate to decisions or proceedings of the Government.

Report on Discontinuance of Investigation

On 18 June 2007 I decided to discontinue the investigation as most of the records of the Department of Justice, Equality and Law Reform that I had sought as part of the investigation had been withheld as they related to Government proceedings. In the absence of the relevant records being available to me, I decided that it would be unsafe to make findings and to issue recommendations.

I informed Conradh na Gaeilge, who had made the original complaint to me in this case, of this decision and of the reason for it.

Investigation launched: 2 March 2007

Decision to discontinue investigation made: 18 May 2007

FINANCIAL MATTERS

A budget of €842,000 was provided for the Office for the year 2007. The accounts of the Office have been submitted to the Comptroller and Auditor General for audit in accordance with Section 8(2) of the Second Schedule of the Official Languages Act 2003.

As soon as may be after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister for Community, Rural and Gaeltacht Affairs may specify, together with the report of the Comptroller and Auditor General on the accounts, shall be presented to the Minister. Copies of the documents shall be laid before each House of the Oireachtas. They will be published also on the Office's website.

STAFF AND CONTACT DETAILS

STAFF

Seán Ó Cuirreáin – An Coimisinéir Teanga

Damnait Uí Mhaoldúin – Office Manager

Órla de Búrca – Higher Executive Officer

Cáit Uí Mhaoilriain – Executive Officer

Laura Pathe – Clerical Officer

Edel O'Connor – Clerical Officer (Temporary)

CONTACT DETAILS

Contact can be made with this Office by post, fax, email or telephone at the cost of a local call, as follows:

POST: **An Coimisinéir Teanga**
An Spidéal
Co. Galway
Ireland

PHONE: **091-504 006**

LO-CALL: **1890-504 006**

FAX: **091-504 036**

EMAIL: eolas@coimisineir.ie

WEBSITE: www.coimisineir.ie

The Irish language version is the original text of this report.