

**REVIEW
OF
THE OFFICIAL LANGUAGES ACT 2003**

**Report by An Coimisinéir Teanga
under section 29 of that Act**

Commentary on the practical application and operation of
provisions of that Act

July 2011

Content

Introduction.....	3
Statutory background	5
Review	6
Core objective	8
Constitutional and court background	9
Classification of public bodies under the Act	11
State services through Irish in the Gaeltacht.....	12
Publications.....	13
Name, surname and address.....	13
Implementing the system of languages schemes or an alternative system?	14
Recruitment policy for the civil and public service	15
Other minor technical amendments	15

Introduction

This report examines the background to the Official Languages Act 2003 including its constitutional and judicial basis and it links that background to the language rights of the public. Irish is now an official language of the European Union and is taught as a required subject to most school students in the country. This report makes the case that provision should be made, in an organised and integrated manner, for the use of the language in the public life of the country by those people who wish to use the language and who have acquired it either as native speakers or through the education system.

The report discusses those elements of the Act that are working effectively including the direct provisions in relation to communications in Irish and the regulations regarding the use of official languages in the stationery and signage of state organisations. The Act also confirms in law important basic language rights in relation to the use of Irish in the courts and the Houses of the Oireachtas. In addition, the Act provides a legislative framework for the State's official placenames. It also puts in place a system for monitoring the compliance of state agencies with language obligations and a structure for the investigation and resolution of complaints in relation to breaches of statutory language duties.

This report suggests that it is now time to carry out a review of other elements of the legislation to ensure that these elements can be improved.

It is hoped that the outcome of this review will be an Act fit for purpose which serves the wishes of the Irish language community in an appropriate manner and ensures that meaning is given to the constitutional provision which provides that Irish is the first official language as it is the national language.

- It is recommended that public bodies be classified into different categories (A, B, C, etc.) in accordance with their range of functions and their level of interaction with the public in general, including the Irish language and Gaeltacht communities, and that the level of service through Irish to be provided by public bodies should depend on that classification.
- It is recommended that public bodies be obliged by statute to provide their services through Irish in Gaeltacht regions and that such services should be of a standard equal to those provided elsewhere through English.
- With regard to official publications provided through Irish, it is recommended that priority be given to those publications for which there is the greatest demand from the public, the Irish speaking and Gaeltacht communities included.
- It is recommended that statutory provision be made to ensure that people have the right to use their first name, surname and address in their choice of official language when dealing with public bodies.
- It is recommended that a renewed effort be made to ensure the proper implementation of the language schemes system on a strategic and consistent basis, or, as an

alternative, that a new “standards” system based on statutory regulations be developed, as is planned for the Welsh language in Wales.

- In addition, it is recommended that the most fundamental difficulty with the provision of state services through Irish, i.e. the lack of staff in the public sector competent in the two official languages of the State, be addressed by the introduction of a new system of recruitment and training. This recommendation is made in the knowledge that the current recruitment embargo will be relaxed in due course.

Statutory background

Section 29 of the Official Languages Act provides for the publication by An Coimisinéir Teanga of commentaries on the operation of the Act including commentaries based on the experience of the office holder:

“The Commissioner may prepare and publish commentaries on the practical application and operation of the provisions, or any particular provisions, of this Act, including commentaries based on the experience of holders of the office of Commissioner in relation to investigations and findings following investigations, of such holders under this Act.”

This commentary concerns the practical application and operation of provisions of the Act following a period of nearly eight years since the Houses of the Oireachtas enacted the legislation as:

“An act to promote the use of the Irish language for official purposes in the state; to provide for the use of both official languages of the state in parliamentary proceedings, in Acts of the Oireachtas, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of public bodies; to set out the duties of such bodies with respect to the official languages of the state; and for those purposes, to provide for the establishment of Oifig Choimisinéir na dTeangacha Oifigiúla and to define its functions; to provide for the publication by the Commissioner of certain information relevant to the purposes of this act; and to provide for related matters.”

In general, there is no doubt but that the legislation has ensured an increase in the quality and quantity of state services through Irish. In addition, we have seen instances where public bodies have excelled in providing specific services through Irish.

The Official Languages Act is designed to bring the Irish language from the margins to a more mainstream position in the public affairs of the State. This amounts to a normalisation process where the performance would match the promise with regard to the provision of state services through Irish. The status of the language is confirmed in the constitution and Irish is an official language of the European Union. The provision of state services on a bilingual, or indeed multilingual basis, is normal and by no means unique to this country.

The Irish language is a very important aspect of our culture and heritage. And it may be more important now than ever to affirm and confirm our sovereignty and historical self-determination.

Review

The Official Languages Act is a complex piece of legislation with a mix of direct provisions, regulations and a system of “languages schemes”. This leads to difficulties in understanding the rights and obligations confirmed in the legislation. In light of our experience with the implementation of the legislation, we now have a better understanding of the provisions which are succeeding and those which have led to difficulties.

I believe that it is opportune now to review the provisions of the Act.

A systematic review of the functioning of the state sector in general is currently underway to ensure that it is fit for purpose and that it provides value for money to the public. This is happening at a time when the country is experiencing an economic and monetary crisis, but considering the steps that are being taken to free the country from that threat, we live in hope of a positive economic future.

In the context of the current review of the state sector and in light of our experience of the implementation of the legislation, it is opportune now to assess and evaluate its provisions and their implementation.

Overall, it can be said that the legislation has proven successful and it is without doubt that its absence would have left matters far worse. Elements of the Act are effective, including the direct provisions in relation to communications in Irish as well as the regulations regarding the use of official languages in the stationery and signage of state organisations. The Act confirms in law basic and important rights in relation to the use of Irish in the courts and the Houses of the Oireachtas. It provides a legislative framework for the State’s official placenames. It establishes a system for monitoring the compliance of state agencies with language obligations and a structure for the investigation and resolution of complaints with regard to breaches of statutory language duties.

There appears to be no case for suggesting those elements of the Act require any amending.

However, this does not mean that the Act itself or its implementation is faultless or that a review could not ensure further progress.

Any amendments considered should be based on the following principles:

- preference should be given to those services through Irish for which there is most demand from the public, taking into account those services for which a demand would exist had they been provided in the first place;
- that Irish will not remain as a living, community language in Gaeltacht areas if the State continues to compel Gaeltacht communities to use English in their official dealings;
- that each time specific services through Irish are refused anywhere in the country that it furthers the drive towards “compulsory English” in state affairs;

- that the policy of promoting Irish throughout the country, the Gaeltacht included, and the teaching of Irish as a core subject in the education system is undermined if those who have consequently acquired the language are prevented from using it with ease with the State itself;

This review should ensure:

- That the Act serves the needs of Irish speakers and Gaeltacht communities;
- That the simplification and clarification of language rights and obligations will, as a result, ensure an increase in the use of state services through Irish;
- That the administrative and bureaucratic effort involved in implementing the provisions of the Act is rationalised and streamlined;
- That alternative systems as outlined in this document are provided to replace existing systems if they are thought not to be fully effective;
- That in seeking value for money, as is proper, in the provision of state services in general, that services through Irish should not be excluded from review, but that they should not be the sole focus.

Put simply, this review should ensure that the Act is fit for purpose and that it serves the wishes of the Irish language community in an appropriate manner to ensure that meaning is given to the constitutional provision that Irish is the first official language as it is the national language.

No additional spending should result from this review and, if it does not reduce expenditure then, at the very least, it should be cost neutral.

Core objective

The core recommendation in this document is that the State's public bodies should be classified in different categories in accordance with their range of functions and their level of interaction with the public in general, the Irish speaking and Gaeltacht communities included. The level of services through Irish to be provided would depend on the category in which the public body was placed.

Certain basic services through Irish would be provided by all public bodies but the vast majority of services would depend on the public bodies' classification for the time being. This system would be build on the current level of service provided by the State's public bodies. Specific provision would be made for the provision of state service through Irish in Gaeltacht areas and one of the most fundamental problems with regard to the provision of state services through Irish, i.e. the recruitment and training of staff with competence in the State's two official languages, would be addressed.

It is also proposed that the language rights confirmed in this legislation should be made more transparent to the public. The system of language schemes which are at the heart of the legislation would be re-organised, or if it were thought to be more efficient, an alternative system based on "standards" would be introduced. A similar system of standards is currently proposed for the Welsh language in Wales.

Constitutional and court background

The Act emanates from a constitutional background, from decisions of the Superior Courts, and from demands from the Irish language and Gaeltacht communities that their language rights be clearly confirmed in law.

Article 8 of the Constitution provides as follows:

1. The Irish language as the national language is the first official language.
2. The English language is recognised as a second official language.
3. Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.

The Supreme Court interpreted these provisions in *Ó Beoláin v Fahy. Ref 100/98 JR, The Supreme Court [Judicial Review]*:

“In my view the Irish language which is the national language and, at the same time, the first official language of the State cannot (at least in the absence of a law of the sort envisaged by Article 8.3) be excluded from any part of the public discourse of the nation or the official business of the State or any of its emanations. Nor can it be treated less favourably in these contexts than the second official language. Nor can those who are competent and desirous of using it as a means of expression or communication be precluded from or disadvantaged in so doing in any national or official context.”

An analysis of the significance of that Article of the Constitution and the courts’ interpretation of it is provided in the Guidelines under section 12 of the Official Languages Act 2003 published by the Department of Community, Rural and Gaeltacht Affairs in September 2004:

“The above passage can be translated into a constitutional right to transact all business with the State and its emanations, through Irish, at the election of the citizen. Consequently, the citizen is entitled, constitutionally, to transact all and every piece of his or her business, with the State through Irish and that language alone. Notwithstanding that constitutional position, however, in practice it is very difficult for citizens to obtain the bulk of public services through the Irish language and in the case of many public services, no effective provision has yet been made for the delivery of those services through the Irish language alongside their delivery through the English language.

The Courts have held that Article 8 gives rise, apart from any other effect it may have, to a constitutional imperative. It is clear that the approach taken by the Courts is that there are rights and duties. The right is that of the citizen. It is a right to use the national language on occasions of his or her choice. The duty is imposed on public bodies. It is a duty to respect that right in all dealing with the citizen and to promote and maintain the Irish language as the national language.

There is a duty on the State to maintain and promote the Irish language. It would be acting contrary to that duty if it permanently declared that certain functions of the State would only be transacted in English, regardless of the wishes of citizens competent and desirous of using

the Irish language in their dealings with the State and its emanations in that language in those functional areas.

The Act therefore has been drafted with the intention that the arena in which services are currently available exclusively through English will be progressively reduced over time so as to meet demand for services in the Irish language in all functional areas.”

Any proposed amendments to the practical application and operation of the provisions of the Official Languages Act must be viewed in the context of the constitutional and court positions.

Classification of public bodies under the Act

There are very significant differences between the various public bodies in the State and their level of interaction with the public in general, the Irish language and Gaeltacht communities included. Some have direct and regular contact with large sections of the public; this is not the case for others.

The classification of public bodies into categories (A, B, C, etc.) in line with their range of functions and their level of interaction with the public in general, including the Irish language and Gaeltacht communities, should be considered. The standards of service to be provided through Irish should be in accordance with a public body's classification for the time being. It would be anticipated that the category expected to provide the most comprehensive level of service through Irish would include Government departments and offices which have significant contact with the public in general, organisations with a specific national remit dealing with large sections of the public (e.g. the HSE, An Garda Síochána, the Revenue Commissioners, etc.) as well as public bodies with Gaeltacht regions in their functional areas, such as local authorities, etc.) The category to which a public body would be assigned could be altered with the passage of time in line with an increased expectation of service through Irish from that body.

In addition, the Act at present allows for the amendment by statutory instrument of the schedule of public bodies under its remit. Only one such amendment has happened – in 2006 – since the enactment of the legislation in 2003. A multiplicity of change has taken place in public bodies in the intervening period.

A simple amendment here could give a general definition of what constitutes a public body for the purposes of this legislation as has been done in other legislation. See, for example, subsection 2(1) of the Disability Act 2005. The advantage of this would be that all public bodies would come under the remit of the legislation as far as the provision of a basic level of service is concerned and the administrative and other effort required to continually amend the schedule of public bodies would cease.

Consideration should also be given to clarifying the statutory language obligations in situations where a public body appoints or authorises a private company or any other type of agency to function on its behalf in dealing with the public.

State services through Irish in the Gaeltacht

This review should ensure that a statutory obligation is placed on public bodies to provide their services through Irish in Gaeltacht regions and that such services are of a standard equal to those provided elsewhere through English.

The future of Irish as a living, community language is threatened in many Gaeltacht areas and this has been confirmed authoritatively in various reports. Proposals to tackle this through language planning initiatives are included in the 20-Year Strategy for the language.

The State cannot expect Irish to remain the language of choice of the people of the Gaeltacht if those people are continually left with no option but to transact their official business with state organisations through English.

Each time members of the public are refused the option of service in their native language in their communications with the state system, an additional blow is struck to the stance and credibility of Irish as a community language.

Rather than embarking on any costly initiatives, this could be overcome by reorganisation and planning through ensuring that only those who are fully competent in Irish are assigned by public bodies to Gaeltacht positions or to offices dealing with Gaeltacht communities.

This will not happen without planned and determined actions.

Such an amendment could be phased in over time by statutory regulations.

Publications

Public bodies frequently provide a range of publications to the public. If the right of the public to conduct business with the state sector in Irish is recognised, then public bodies must make provision for facilitating that right.

Indeed, it could be said that any state which claims to have two official languages should ensure that every official publication is provided in those languages. On that basis, the case would be made that if a document is sufficiently important to be provided in English then it should be provided in Irish also in recognition of the status of the language.

In any review of the provisions of the legislation, priority should be given to those publications for which there is greatest demand from the public, the Irish speaking and Gaeltacht communities included. As many as possible of those publications should, as best practice, be presented in bilingual format within one cover as distinct from being provided in separate English and Irish versions.

Decisions and choices would be required when evaluating priorities in identifying the documents most in demand by the public out of the full range of publications produced by public bodies (i.e. websites, leaflets, forms, brochures, interactive on-line services, cards, licences, reports, guidelines, booklets, etc.)

This amendment could be made and statutory regulations introduced to replace the current provisions. A range of different standards could be applied to various public bodies in line with their classification in accordance with certain established criteria.

Name, surname and address

Members of the public often encounter difficulties in seeking to use the Irish version of their first name, surname and address when dealing with public bodies.

A simple statutory provision should be enacted which would ensure that there would be no doubt as to the right to choose to use the version in either official language and that, as a consequence, public bodies would have an obligation to facilitate that choice.

Implementing the system of language schemes or an alternative system?

A system of “language schemes” lies at the heart of the Official Languages Act and while this system has led to some progress in the provision of services through Irish, it is evident that significant difficulties have arisen in its implementation. The difficulties arise not with the concept of the language schemes system but with its implementation.

As far back as 2008, my Office drew attention in our annual report to the problems which had come to light in operating the system of language schemes. The delay in confirming language schemes is a cause for concern. I believe that the way the system is currently being operated is not in keeping with what was planned in the provisions of the Act or in the statutory regulations made under the Act. A vacuum has been created which is not of benefit to the promotion of state services through Irish.

It is clear now that a renewed effort is required from the Department of Arts, Heritage and the Gaeltacht and from public bodies to ensure the proper implementation of the system of language schemes on a strategic and consistent basis.

A strong and sustained administrative effort is required to achieve this.

The schemes system is complex and it can be difficult for the public in general to identify the services through Irish to which they are entitled in accordance with schemes, and to know when such services will be provided. For this reason, a more strategic approach is required and at the very least common standards should apply to different schemes, particularly to those in the same sector. An integrated approach is necessary which would identify those services through Irish for which most demand would exist. A dedicated section within the Department would be required to coordinate the administration of the language schemes; in Wales, this work was undertaken by a staff of 18 in the section of the Welsh Language Board that dealt with their language schemes! In addition, state organisations would need to be empowered to provide services in Irish at the highest standards.

If those steps are not taken, there is a danger that members of the public will leave their language rights and wishes aside if it appears to them that English is the default working language of the State. This is then misinterpreted as showing little demand for services through Irish.

Another alternative system is worth considering, one which would reduce the administrative and bureaucratic workload involved in drafting, agreeing and confirming language schemes. This option would involve a “standards” system based on statutory regulations which could be introduced over a period of time and which would outline the level of services through Irish to be provided by public bodies in accordance with their classification by certain criteria. Such a system is under consideration for the Welsh language in Wales at present.

The second option would have the advantage of reducing significantly the Departmental staff requirement to deal with this matter once the regulations were in place. It would be much simpler to explain language rights and obligations under this system to the public in general and consistencies could be introduced across various sectors.

Recruitment policy for the civil and public service

The occasion of this review of the Official Languages Act should also be used to engage with the most fundamental problem in the provision of state services through Irish, i.e. the lack of staff in the public sector competent in the State's two official languages. This recommendation is made in the knowledge that the current recruitment embargo will be relaxed in due course.

The scale of the problem is highlighted in recent statistics from the Department of Education and Skills which revealed that only 1.5% of its administrative staff had sufficient competence in Irish to provide a service in that language. That Department is by no means exceptional and the lack of staff with competence in Irish is widespread in most Government Departments and state agencies.

No one is suggesting a return to the system of compulsory Irish but a compromise is required if English is not to become compulsory for the public in conducting their business with the State.

The State invests heavily in teaching Irish in the education system and requires the country's school students to study our official languages, as is the norm in other countries. But, on the other hand, the State fails to facilitate the subsequent use of Irish by those who have acquired it. There is a significant missing link in this approach and a statutory provision should be made in a reviewed Act to deal with this issue.

If a recruitment policy which properly recognised competence in the two official languages of the State were adopted, expenditure on translation and other services would be reduced over time.

In addition, it is evident that a competent system of education and training is also essential to develop the language capacity of staff in the State's public bodies. Provision should be made for such a service which would accurately certify competence in the official languages of the State. Staff who availed of this education and training facility should be required subsequently to provide their services to the public through Irish.

Other minor technical amendments

There are some minor technical amendments which should also be considered since the opportunity presents itself.