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A COMMENTARY ON THE  
LANGUAGE SCHEME SYSTEM  
TRÁCHTAIREACHT AR CHÓRAS  
NA SCÉIMEANNA TEANGA

*Report by An Coimisinéir Teanga in accordance with  
Section 29 of the Official Languages Act, 2003*

*Tuairisc an Choimisinéara Teanga faoi Alt 29  
d'Acht na dTeangacha Oifigiúla, 2003*

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# PREFACE

The *Statement on the Irish Language* published by the Government of Ireland in 2006 states that the Official Languages Act would be used “to achieve a significant improvement on a phased basis, over a period, in the level of services through Irish provided by the State.” That objective was reaffirmed in the 20 Year Strategy for the Irish Language when it referred to “the right of the public to use Irish in dealings with the State” and sought to “increase the number of people that use State services through the Irish language”.

Provisions of the Official Languages Act 2003<sup>1</sup> (and the regulations made under the Act) set out certain duties that public bodies must adhere to in relation to the use of the Irish language. Those basic duties principally relate to aspects of communication and to giving the appropriate status to the Irish language. Apart from that, the language schemes agreed with public bodies under the Act are the principal mechanism under the legislation for improving the number, range and standard of services provided by public bodies through Irish to the public or to citizens who wish to conduct their business with the State through the medium of Irish - “a core instrument by which bilingual services are to be provided” in the wording of the Strategy.

It is clear to me, that many public bodies, take a quite basic approach when preparing schemes. In the words of Dr John Walsh: “The commitments made are minimalist, sometimes in the extreme, reflecting the nature of the legislation, the role of Irish in the body’s governance and, arguably, the sociolinguistic position of Irish in Irish Life.”<sup>2</sup>

The process is not achieving its primary goal; it has gone astray and come to a standstill. And as a result, the credibility of the process is being eroded.

At a conference of the International Association of Language Commissioners in 2016, Professor Colin Williams summarized the discussion that took place

on the system of language schemes in Ireland: “for some the current implementation of the language scheme system was a national disgrace while for many others it was a complete irrelevance.”

It would be remiss of me in my role as An Coimisinéir Teanga not to draw attention to my concern about the operation of this system which is supposed to add to the range and standard of public services through the medium of Irish. Since I was appointed to this role I have made a number of public statements on the matter, I have drawn attention to it in the annual reports of the Office and have included it in my accounts to various Oireachtas committees.

Those statements were based on evidence coming to light as individual schemes were published. In order to arrive at a definitive view on the subject, I decided that it was necessary to carry out a thorough analysis of those schemes confirmed during the last two years, to identify what specific trends, if any, were to be discerned.

I decided, based on the results, to present them to the public in the form of a commentary on the practical functioning of the Act, as permitted under Section 29 of the Official Languages Act. The analysis, presented in Part I of this commentary, throws light on the dysfunctionality of the language scheme system.

I relayed my concerns regarding the deficiencies in the language scheme system to the Standing Joint Committee on the Irish Language, the Gaeltacht and the Islands, most recently on 4 October 2016. That Oireachtas committee requested that I submit proposals to it about ways in which public service provision through the medium of Irish could be administered more effectively. In Part II of this commentary, I propose an alternative approach in relation to some of the subjects being discussed under the language scheme system and other related matters which would, in my estimation, add considerably to the effectiveness of the legislation.

*Rónán Ó Dombnaill*  
*An Coimisinéir Teanga*

<sup>1</sup> “The Act” henceforth.

<sup>2</sup> Walsh, J. (2012) “Language policy and language governance: a case-study of Irish language legislation.” *Language Policy*

# MAIN FINDINGS AND RECOMMENDATIONS

## MAIN FINDINGS

### ADMINISTRATION OF THE LANGUAGE SCHEME SYSTEM

#### 1. 122 requests to agree language scheme still outstanding at 31/12/2016

- 56 language schemes from a total of 116 expired; 6 of those for a period exceeding 7 years.
- 7 requests outstanding for a period of 9 years or more.
- On average, 20 language schemes per annum have been agreed in the last two years. It would take more than 6 years to clear the requests outstanding at the end of 2016 alone.

#### 2. A substantial period of time involved in agreeing language schemes

- On average it takes 3.5 years from the time a public body is requested to prepare a language scheme until it is agreed and 4 years for a second language scheme.

#### 3. Failure to prepare or agree a language scheme

- No public body has been reported to the Houses of the Oireachtas owing to its refusal or its inability to prepare or agree a language scheme.

### THE QUALITY OF LANGUAGE SCHEMES

#### 1. Regressing from commitments given in language schemes

- Commitments that were the subject of an investigation were reduced or set aside in 64% of the following language schemes agreed.
- In the case of one public body, Westmeath County Council, a commitment that was the subject of an investigation and reported upon to the Houses of the Oireachtas was changed.
- Regression in commitments in 52% of the second or third language schemes agreed in 2015 and 2016.

#### 2. No progress from one language scheme to the next

- Of the 23 second or third language schemes agreed during 2015 and 2016, substantial improvement in relation to any range of commitments could be detected in only 17% of them.

#### 3. Posts specified with an Irish language requirement

- Only 17.5% of language schemes confirmed in 2015 and 2016 had posts designated with an Irish language requirement.
- Only 7.5% of language schemes confirmed in 2015 and 2016 had definite arrangements for the recruitment of staff with Irish.

#### 4. Provision of services in the Gaeltacht

- Of the 28 language schemes (of the total number of schemes agreed) where it is estimated that services to Gaeltacht communities would apply, a third of them made no commitment in relation to the provision of services in the Gaeltacht.
- A date confirming Irish as the working language was specified by only 11 of the 17 public bodies with a confirmed language scheme believed to have offices or centres located in the Gaeltacht.

## MAIN RECOMMENDATIONS

### RECRUITMENT

1. Implement a new recruitment policy that rebalances the number of state employees who can provide services through Irish.
2. Ensure that a minimum level of staff with Irish (as measured against a recognised framework) are available in every state body to provide services to the public.
3. Adopt measures immediately to increase the number of staff with Irish in the public sector.
4. Implement a long-term recruitment policy based on a comprehensive plan for the provision of services through Irish.

5. Establish an independent monitoring process that reports to the Houses of the Oireachtas as to the operation and effectiveness of the recruitment policy.

### COMPREHENSIVE PLAN FOR THE PROVISION OF PUBLIC SERVICES THROUGH IRISH

1. Prepare a comprehensive plan, based on research, involving language experts and experts in public administration, on the provision of public services through Irish.
2. Detail the services that will be provided by the State in Irish, how those services will be provided, the resources necessary to implement the plan and the legislative framework that best supports it.

### THE GAELTACHT

1. Establish a link between language planning and language rights by way of a legislative provision that requires state employees who are based or who regularly work in the Gaeltacht to have fluency in the Irish language.

### REGULATIONS, CLASSIFICATION AND PUBLIC BODIES

1. Reduce the functional scope of language schemes, over time, by regulating the provision of more service through regulations. This would ensure a natural evolution to common standards of services and would reduce the administrative burden of agreeing individual language schemes.
2. Classify public bodies based on their importance and their level of interaction with the public in general, including the Irish language and Gaeltacht communities. The highest standards in relation to the use of Irish would be placed, by way of regulations, on those organisations that provide most services to the public.
3. Public bodies to be automatically subject to the legislation rather than relying on updating a schedule as is the case at the moment.

# SUMMARY

In accordance with the provisions of the Official Languages Act, An Coimisinéir Teanga may publish a commentary on the practical functioning and operation of the provisions of the Act. In the thirteen years which have elapsed since the Office of An Coimisinéir Teanga was established this is the second commentary published by virtue of that provision. The publication of a commentary of this type is normally undertaken when it is necessary to focus attention on the implementation of the Act or on a particular aspect of it.

This commentary relates to the system of language schemes, a system that is central to the operation of the Act, which is not achieving its stated objective in a satisfactory manner. The objective of the language schemes is to gradually increase and improve the services provided by State organisations through the medium of Irish until equality is achieved in the way the State provides services to speakers of both Irish and English, and so that Irish speakers need not revert to English when conducting their business with the State.

As far back as 2008, my Office drew attention to the defects in the language scheme system and, since I was appointed An Coimisinéir Teanga, the standard and value of the schemes being agreed has been a matter of concern to me. I have voiced that concern in various fora since my appointment to this role because of its central importance in the provision of public services through the medium of Irish. My Office, accordingly, has carried out a fuller review on the operation of the scheme system, including a detailed analysis of the forty language schemes confirmed under the Act in the years 2015 and 2016.

The conclusion that must be drawn is that the language scheme system is not achieving its stated objective. This commentary describes the principal ways in which this system is not succeeding.

## Administration of the language scheme system

The principal of agreement is central to the operation of the language scheme system. In certain instances the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs succeeds in reaching agreement with a particular public body to

confirm a language scheme in a reasonable length of time. But in a substantial number of cases there is a huge delay in agreeing a language scheme. The analysis undertaken in this commentary shows that, on average, there is a period of three and a half years between the time a public body is requested to agree its initial scheme and the completion of that process. A similar length of time, or a little longer, is involved in requests for second and third schemes.

The analysis also shows that the system is not robust enough to deal with requests to prepare a language scheme that have been outstanding for a long period of time. At the time this commentary was being prepared, there were seven requests to agree a first language scheme outstanding for a period in excess of 9 years. The same pattern can be seen in requests to agree the second scheme.

In total, there were 122 requests for various types of language scheme still outstanding at the end of 2016. Even if it were possible to agree 20 schemes per year on a consistent basis, it would take some 6 years to meet the number of requests outstanding. That of course, does not take account of any new requests to agree a scheme or indeed the renewal of existing schemes.

The main difficulty, as I see it, is that the language scheme system is rooted in a process of negotiations and that a considerable level of human resources and goodwill would be required to complete the task properly. If a public body decides to dig its heels in and not engage with the process, then there is little in practical terms that the Minister can do, apart from reporting that failure to the Houses of the Oireachtas, an action which has not been taken to date.

The primary responsibility for ensuring that this system achieves its objectives rests with the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs. It is also significant that no circumstance arose whereby the failure to agree the terms of a language scheme with a public body required its reporting to the Houses of the Oireachtas, despite the continuing unsatisfactory delay in agreeing language schemes. Overall, I find it difficult to imagine that confidence can be restored in the language scheme system.

### **Lack of progress and regressive modifications of commitments**

From the analysis presented in this commentary there is, in general, little progress to be noted in the undertakings given by public bodies from one language scheme to the next. Of the 23 second or third language schemes agreed during the years 2015-16, there were only 4 instances in which a significant improvement was discerned (in comparison with the previous scheme). Consequently, we are not progressing towards the goal of having a greater number of services available through the medium of Irish, over time. In fact the main focus of language schemes is directed at methods of communication rather than the provision of actual services. Aspirations are frequently affirmed rather than clear commitments made; and commitments are couched in a manner designed to avoid any liability on the part of the organisation should it fail to provide those services.

I am gravely concerned that the system of language schemes allows for the modification or withdrawal of commitments given by public bodies in their language scheme, when they come to agree their next language scheme. In this way the public body concerned is in a position to reduce its statutory obligations to provide a certain service through the medium of Irish. This contravenes the spirit and the purpose of the Act.

Based on the analysis carried out by my Office, a commitment which was the subject of an investigation was changed in the next scheme agreed, in the case of 64% of the language schemes investigated. This is extremely unsatisfactory and confirms the dysfunctional nature of the system.

This commentary also highlights other regressive modifications which are agreed from scheme to scheme, and to the limiting or qualifying of previous commitments. It is obvious to me that this happens in some cases following monitoring by my Office of the implementation of the scheme. Instead of a public body implementing what they have undertaken, the response to monitoring in certain

instances is to reduce the commitment (in the case of 12 out of the 23 second or third schemes agreed during 2015-16).

### **Identification of jobs having an Irish language requirement, and recruitment issues**

The lack of staff with adequate competence in Irish is one of the main reasons why public bodies are unable to provide services through the medium of Irish. It is stated in the *20 Year Strategy for the Irish Language, 2010-2030*, that language schemes would identify posts that would require a competency in Irish. This is not happening at all satisfactorily.

The analysis carried out by my Office indicates that posts with an Irish language requirement were properly identified in only 17.5% of the (40) language schemes agreed during the years 2015-16. The most typical approach was to leave it up to the public body concerned to identify those posts (where they exist) by a date during the period of the scheme or by the end of that period. One imagines that such work would more properly be carried out as part of the preparation of a scheme, rather than giving prior approval to whatever result the individual public body's analysis yielded.

The system of language schemes is not addressing recruitment issues either. Out of the 40 language schemes agreed during the years 2015-16, only three of the schemes included definite arrangements for recruitment of staff with Irish. In most of the schemes recruitment was referred to in vague statements which were difficult to interpret or evaluate.

### **The Gaeltacht**

Apart from provisions relating to the use of Gaeltacht placenames, the Gaeltacht is mentioned in only two other provisions of the Act, both in the context of language schemes. The Act requires that a public body, when preparing a language scheme, needs:

- to ensure that the particular language needs are met which relate to provision of services in Gaeltacht areas and

- to ensure that Irish will be the working language of its Gaeltacht offices not later than whatever date it decides with the consent of the Minister.

There is no specific provision in the legislation requiring that public bodies to provide their services through the medium of Irish in the Gaeltacht. We consequently depend on whatever is undertaken in each individual language scheme. In the analysis carried out by my Office, those language schemes which do not have direct contact with the people of the Gaeltacht were excluded. Of the 28 schemes which came under the scope of the analysis, almost a third had no specific commitment relating to service provision in the Gaeltacht. Even in the cases where such a commitment was made, there was considerable difference between the various schemes in relation to type of commitments made.

Approximately 17 in total of the public bodies which have language schemes have offices or locations in the Gaeltacht. Irish was the working language, or a specific date mentioned by which it would be the working language, in the case of 11 of these bodies.

It is often the case that language schemes don't address the need to have Irish as the default language in the State's communication with the people of the Gaeltacht. At a time when Gaeltacht communities are engaging in language planning, this is a fundamental deficiency.

### Recommendations

I make a series of recommendations in this commentary about ways in which the legislation and the provision of services to the public through Irish could be improved for those who require them.

In order to effect any noticeable improvement, the major shortage of staff with competence in Irish in the public service must be addressed. The recruitment policy introduced in 2013 in relation to the civil service is not operating satisfactorily and action needs to be taken immediately to change that policy. It has to be acknowledged as well that arrangements previously in place for promotion competitions a number of years ago and subsequently abandoned, had little effect.

It is necessary, in my opinion, to increase the provision of staff competent in Irish throughout the public service by specifying a necessary minimum level of staff with competence in Irish, especially in the case of those organisations involved in service provision to the public. To create confidence in this system, I propose independent monitoring of its implementation, and that an annual report on the matter be laid before the Houses of the Oireachtas.

Sectors with specific requirements must be addressed also, and we must ensure that they have access to a supply of people with appropriate qualifications and competence in Irish.

It seems to me that a good deal of the effort in this area is directed at the level of the individual public body. It is not clear that that effort is being driven by a clear plan which establishes the direction in which we are going or the targets we need to achieve. As a result, we have a system which is disorganised and unsatisfactory. I propose that a plan be prepared at a national level for the provision of state services in Irish. In any plan to be prepared, it stands to reason that the recruitment system and staffing levels would have to be addressed. That is no excuse however, to not take steps immediately and rebalance the staff numbers with competence in Irish in the public service.

This commentary relates mainly to the system of language schemes and the reasons for its failure to increase public service provision through the medium of Irish. Fundamental structural changes to this system are required to substantially reduce the number of services and methods of communication to be dealt with under the language schemes. I propose bringing more services under the remit of a system of regulations, as has been done already in relation to signs, stationery and recorded oral announcements. The obligations under the regulations would be graded according to categories of public bodies with the highest standards in relation to the use of Irish, expected from public bodies with the greatest interaction with the public, including Irish speakers and Gaeltacht residents. Such an approach would ensure that it was unnecessary to rely upon a system of negotiation for a broad range of services, especially for services

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that do not depend on human resources (websites, electronic services, forms etc). This would provide more certainty for the provision of services to the citizen and would have the additional advantage of reducing the administrative burden.

Under my proposal, the language scheme system would still have a place, but over time it would deal with far fewer services due to the introduction of a regulations based system. This approach would ensure continuity in the evolution from one system to another. The language scheme system would eventually be dealing with services specific to the individual organisation, and for which it might not be easy to formulate general or sectoral regulations. Until the appropriate staffing level with competence in Irish is in place in the public service, I would envisage that the language scheme system would make provision for those services which depend on human resources at organisation level.

I have made a number of other practical proposals which focus on problems and gaps in the current system which I and my Office have noticed. Included, yet again, is the proposal that a clear obligation needs to be laid down in the legislation to the effect that public servants based in or working in the Gaeltacht must be fluent in Irish. No other approach is credible at a time when it is expected that Gaeltacht communities will develop and implement language plans in order to preserve their Gaeltacht status.

It is now thirteen years since the provisions in the Official Languages Act pertaining to the system of language schemes came into effect. It is appropriate and timely therefore to look back over our experience during that period and amend the system in ways which will tackle those deficiencies which have become apparent. I believe that if what I propose were put into effect, that progress could again be made in relation to service provision through the medium of Irish for speakers of the language, strengthen the use of Irish in the public life of the country, and achieve greater equality in the manner in which the State deals with both official language communities.

# PART I: ANALYSIS OF LANGUAGE SCHEMES

The language schemes are the principal mechanism under the legislation to improve and increase services provided in Irish by public bodies. It is the Minister's function to request a public body to prepare a language scheme. When a public body receives a request, it has six months, or whatever period the Minister may specify, to prepare and submit a language scheme. When a public body is preparing a language scheme, it must refer to the statutory Guidelines published under Section 12 of the Official Languages Act, 2003. In addition to the guidelines, in recent years the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs has provided a non-statutory template to assist in the preparation of a language scheme.

A language scheme confirmed under the Act, is for a period of three years; and at the end of that time the public body in question is requested to prepare a new scheme. The intention is that with each new scheme agreed, there should be an increase and an improvement in the services provided in both official languages.

In the Guidelines published by the Department of Community, Rural and Gaeltacht Affairs<sup>3</sup> under Section 12 of the Act, it is explained that the Courts ruled that Article 8 of the Constitution creates a right for the citizen “*to use the national language on occasions of his or her choice*”, including during transactions with the State. The Article, therefore, creates a duty “*to respect that right in all dealing with the citizen.*”

Accordingly, the Guidelines state that the aim of the system of language schemes is to gradually increase the services provided in Irish by a public body so that, over the lifetime of a number of schemes, the body will be in a position to provide all its services to the public in Irish on request.

Under Section 11 of the Act therefore, when a public body is requested to prepare a draft scheme, a public body must specify:

- i. the services (Section 11(1)(a)) and the methods of communication (Section 11(2)(a)) which they intend to provide in Irish or in Irish and English, and the services which they intend to provide in English only (Section 11(1)(a)(ii));  
and
- ii. the measures the body proposes to adopt to ensure that any service that is not provided through the medium of Irish will be so provided (Section 11(1)(b)).

The guidelines clarify that “*longer-term aims and a timeframe*” should be set out in relation to the services which cannot be provided through Irish during the lifetime of the scheme being drafted.

Section 13 of the Act requires that a public body must ensure that sufficient number of its staff are competent in Irish language so as to enable them to provide its service in Irish as well as in English (Section 13(2)(c)).

The most significant weakness in this process is that schemes are drafted which do not adequately comply (or sometimes, do not comply at all) with the requirements of Sections 11 and 13 of the Act as interpreted in the Guidelines. If one concedes that such “defective” schemes can be confirmed, and that those confirmed schemes are legitimate, the declared aim of the process is being frustrated in such cases.

It is my considered opinion that this statutory process is not fit for purpose nor in accordance with the schema envisaged both in the legislation itself and in the statutory Guidelines made under Section 12 of the Act.

My Office carried out an analysis on the operation of the language scheme system which included a detailed analysis of 40 language schemes confirmed under the Act during the years 2015 and 2016. I will outline below, in brief, some of the principal weaknesses identified.

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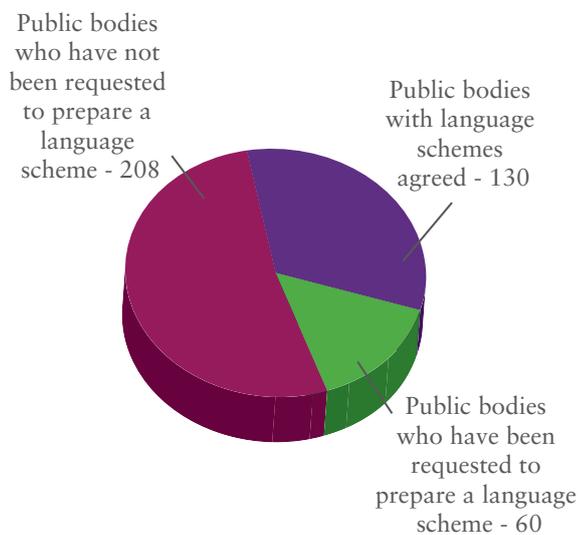
<sup>3</sup> The title of the Department at the time.

## 1. Public bodies being brought under the process of language schemes for the first time

The public bodies covered by the Official Languages Act are not being brought under the language scheme system at a satisfactory rate.

It is difficult to know with absolute certainty the number of public bodies that currently come under the remit of the Act due to the many changes that have occurred to public sector bodies since the First Schedule to the Act was first compiled and last updated in May 2006. My Office's records indicate that there are 398 public bodies, at least. By the end of 2016, there were 116 language schemes in force, encompassing 130 public bodies. There were 60 other public bodies who had been requested to prepare a language scheme under Section 11 of the Act but whose scheme had not yet been agreed.

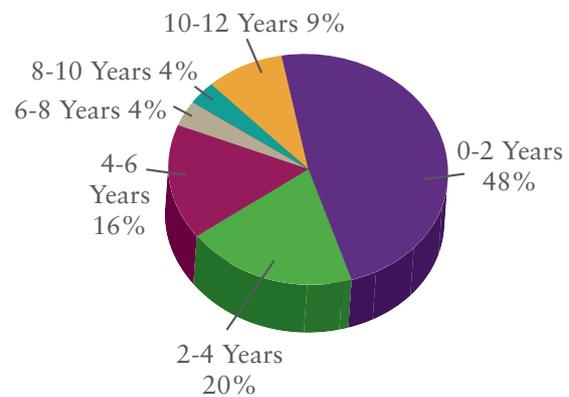
*Figure 1. Number of public bodies under the Act (31 December 2016).*



Thirteen years after the relevant provisions of the Act came into effect, language schemes have been agreed with only about one third of the public bodies that come under the Act, and more than half of them have not yet been requested to prepare a scheme.

17 first schemes were approved during the years 2015-16, with an average time lapse of three and a half years from the time the public bodies were requested to prepare a draft scheme until confirmation of such scheme. At the end of 2016, 56 requests had been made to prepare a first draft scheme which had not yet been agreed. Here again, the average time lapse following a request to prepare the draft scheme was three and a half years to the end of 2016.

*Figure 2. Requests for preparation of initial draft scheme not yet agreed (31 December 2016), by the time elapsed since the request to prepare the draft scheme was made (56 requests).*



As illustrated in Figure 2 above, there is a noticeable number of requests to prepare a language scheme which the system (as it functions at present) appears incapable of effectively completing. There are seven cases, in particular, where a draft scheme was requested more than nine years ago that have yet to be confirmed (Figure 3).

*Figure 3. Public bodies requested to provide a draft scheme more than 9 years ago and where a language scheme has not yet been agreed (31 December 2016).*

Public Body	Date requested to prepare draft scheme	Years since request
The Abbey Theatre	21/09/2006	10.3
The National Concert Hall	21/09/2006	10.3
The National Museum of Ireland	27/09/2006	10.3
The Heritage Council	27/09/2006	10.3
The National Library	27/09/2006	10.3
The Health Service Executive	10/06/2007	9.6
Offaly County Council	10/06/2007	9.6

## 2. Lack of progress

In order for this scheme system to work effectively, the succeeding scheme ought to be confirmed in a timely fashion following on the expiry of the scheme preceding it, and each succeeding scheme should show substantial incremental improvements in relation to the services being provided in both languages. I am concerned that neither of these things are happening satisfactorily.

### “Expired” language schemes

By the end of 2016, 55 of 116 language schemes in force had expired. Four and a half years had passed, on average since these schemes expired, and a period of more than seven years in the case of six first schemes.

Although a confirmed language scheme remains in force until a new one has been agreed, when there is an inappropriate delay in agreeing a language scheme, the legitimacy of the of the language scheme system may be compromised.

*Figure 4. Public bodies whose initial language scheme is more than 7 years expired and which have not yet agreed a second scheme (31 December 2016).*

Public Body	Expiry date of the most recent language scheme	Years expired
The Arts Council	30/06/2008	8.5
Health Service Executive (Western Region)	31/08/2008	8.3
Dublin City University	02/04/2009	7.7
Department of Justice and Equality	29/06/2009	7.5
Meath Local Authorities	31/08/2009	7.3
Department of Foreign Affairs and Trade	30/11/2009	7.1

Figure 5 below shows the comparison between (a) the periods of time since the expiry of the scheme in cases where the succeeding scheme had not yet been agreed, and (b) the periods of time since the expiry of the original scheme until the current scheme was agreed, in the case of second and third schemes approved during the years 2015-16.

According to the analysis undertaken, it is significant that a period of 6 years or more had elapsed since the expiry of a scheme and where no new scheme had been confirmed, in the case of almost a third of the public bodies required to provide such. The evidence

suggests that the system is capable of agreeing the subsequent scheme within a number of years in the majority of cases, but that there is a particular set of cases which are older and which the system is incapable of addressing effectively.

To date, no public body has been reported on to the Houses of the Oireachtas for refusing to prepare a draft scheme or for not agreeing the terms of a scheme with the Minister, despite such a provision being available in the Act.

*Figure 5. The percentage of (a) expired language schemes where no new scheme has been agreed, and (b) second and third schemes agreed during the years 2015-16, by length of time since expiry of scheme until 31 December 2016 in the case of (a) and until date of current scheme coming into effect in the case of (b).*



### Improvements and Section 11(1)(b) of the Act

Overall, there is no significant improvement in the new language schemes being agreed, as regards practical services being provided to the public in Irish. Having examined the second and third schemes confirmed during 2015 and 2016 (23 schemes), I am of the opinion that, apart from 4 of them, there were no amendments or additions which would significantly improve the service intended to be provided in Irish to the public. Of course, what

constitutes significant improvement in a scheme's commitments is a matter of judgement. In arriving at my determinations, I refer to commitments that give additional value over and above previous commitments as would make a difference to the citizen in terms of the service or the means of communication involved. In the absence of this momentum or sense of improvement, the process becomes pointless and confidence in it is lost.

As regards the total of 40 schemes agreed during the years 2015 and 2016, it appeared to me that none of them contained measures, to ensure that the services provided in English only will be provided in both official languages in the future (for the purpose of Section 11(1)(b) above). The dynamic and the direction of the process is lost when measures prescribed for draft schemes, under Section 11, are omitted from the schemes confirmed.

### Retrograde steps

There has been a development which probably could not have been anticipated when the system of schemes was being designed, whereby the preparation and confirmation of the subsequent scheme is used as an opportunity to curtail or qualify commitments given in the original scheme, or even to remove the commitment entirely. Such a practice runs counter to the declared purpose of the Act which was to further the use of the Irish language. Instead of increasing and improving the services available in Irish, they are being reduced.

Based on the analysis carried out by my Office, there is evidence that the preparation of a new scheme is being used as an opportunity to qualify commitments (given in the previous scheme) or to withdraw them.

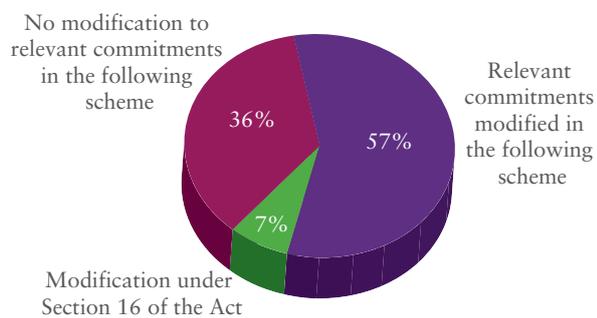
### Retrograde steps following on investigations

A particular cause for concern arises from situations where An Coimisinéir Teanga, during a statutory investigation under the Act, has made findings that a public body acted contrary to the Act by not fulfilling commitments given in a language

scheme, and where the relevant commitment was subsequently curtailed, qualified or removed completely from the next scheme.

Since the Act came into effect, An Coimisinéir Teanga has carried out 27 statutory investigations which inquired into the fulfilment of commitments given in language schemes and where findings were made. In 14 of these cases, no new language scheme has been agreed yet (subsequent to the investigation). Out of 13 cases where a new scheme has been agreed, a commitment (or commitments) which formed the subject of investigation was curtailed, qualified or completely excluded in 8 of them. In addition, a commitment in the language scheme of the Department of Justice and Equality was amended under Section 16 of the Official Languages Act (although no second language scheme has yet been agreed in the case of that Department). In cases where An Coimisinéir Teanga makes a finding in a statutory investigation concerning non-fulfilment of a commitment in a scheme, the most frequent response is to modify the commitment or to withdraw it.

**Figure 6. Public bodies where commitments made in their language scheme were the subject of investigation and whether the commitments (or some of the commitments) were modified in the subsequent scheme agreed (or under Section 16 of the Official Languages Act)**



It is well worth focusing on some of these cases to illustrate certain points.

#### a. Galway County Council

Section 13(2)(d) of the Act specifies that where a public body is preparing a draft scheme, they must ensure that *“the particular Irish language requirements associated with the provision of services in Gaeltacht areas are met”*. In the guidelines issued by the Minister under the Act, it is explained that a public body must set out the measures to be adopted in order to ensure that Irish would be the default language of service delivery in the Gaeltacht.

County Galway has the largest Gaeltacht in the state and the Gaeltacht with the largest number of Irish speakers. In the first language scheme confirmed in the case of the Galway County Council (County Galway Local Authorities) in 2005, a commitment was given that any officer appointed to any post connected to the Gaeltacht, or dealing with the Gaeltacht, would have fluent Irish.

*“As regards any post connected to a Gaeltacht area, dealing with a Gaeltacht area or based in a Gaeltacht area, it will be felt absolutely necessary for an officer to have fluency/ competency in Irish to a standard sufficient to enable him or her to have dealings with a native speaker/ fluent speaker with ease and to converse easily with him/her.”*

An Coimisinéir Teanga carried out an investigation concerning this matter in 2009 and the finding of the investigation was that the Local Authority had acted contrary to this undertaking in relation to the appointment of a community warden in south Conamara.

When its second scheme was confirmed in the case of the County Council in 2014, that specific commitment was replaced with an undertaking to give *“appropriate consideration”* in relation to posts connected to *“strong and vibrant Gaeltacht areas”* when placing recruits *“competent in Irish”*:

*“In the placement & recruitment of staff with an appropriate ability in Irish the Council will ensure that appropriate consideration is given to posts located in or specifically related to strong and vibrant Gaeltacht areas.”*

When the Commission for the Gaeltacht first investigated the effect of local authority activities on language use in the Gaeltacht in 1925, they recommended that recruits with Irish be appointed to work in the Gaeltacht. When a decision was taken to amend this commitment in 2014 what actually happened was that a condition imposing an Irish language requirement for posts in the Gaeltacht or for posts dealing with the people of the Gaeltacht was abandoned. Consequently Galway County Council under their present Language Scheme, is under no obligation to specify an Irish language requirement in relation to any Gaeltacht post.

#### b. Westmeath County Council

The case of Westmeath County Council illustrates very well the weakness of the scheme system under the legislation. An Coimisinéir Teanga, in an investigation under the Act, made findings that Westmeath County Council (Westmeath Local Authorities) had failed to implement commitments in their first scheme. Those commitments included the provision of application forms, brochures and information leaflets in both languages, as well as the Council's website:

*“All website content will be simultaneously published in Irish and in English.”*

When the County Council failed to implement the findings of the investigation in relation to the website, a report was submitted to the Houses of the Oireachtas under Section 26(5) in 2013. That is the ultimate step that may be taken in order to compel a public body to fulfil a statutory obligation.

In the second language scheme agreed in the case of Westmeath County Council in 2016, there was a very significant reversal in relation to the website. Instead of making all content available simultaneously in both official languages on the website, the Council only undertook to make the static material available on the home page and on some other pages that were not specified:

*“The static material on the home page and on specific pages on the Westmeath County Council’s website will be available in English and in Irish.”*

The Council acted contrary to a statutory obligation by not implementing the undertaking agreed in the Language Scheme. They acted contrary to another obligation when they did not implement the recommendations of An Coimisinéir Teanga in his statutory investigation and the case was submitted to the Houses of the Oireachtas. The response to the efforts of An Coimisinéir Teanga was to dispense with the County Council's obligation almost completely in the next language scheme.

#### c. The Department of Education and Skills

In the first language scheme agreed with the Department (of Education and Science) in 2005, there was an undertaking given to require a higher standard of Irish from those recruited to the Inspectorate:

*“To enhance the provision of a bilingual inspection service, the Department, through the Public Appointments Commission, will recruit Inspectors to each area of service who will continue and indeed enhance the delivery of service through Irish. The Department will review the selection and appointments processes to the Inspectorate with a view to:*

- *Requiring a higher standard of Irish for recruitment to the Inspectorate”*

An Coimisinéir Teanga made a finding in an investigation in 2010 that the Department had acted contrary to this commitment as an Irish language requirement was not included for the post of Chief Inspector when that post was advertised.

When a second language scheme was agreed in 2016, the undertaking was limited to “recruitment grades” instead of all grades in the Inspectorate, as had been the case:

*“To continue to enhance the provision of a bilingual inspection service, and as resources permit, the Department, through the Public Appointments Service, will appoint inspectors at the recruitment grade level who will continue, and indeed enhance, the delivery of service through Irish. The Department will continue to include proficiency in Irish among the criteria used in the selection appointments processes to the Inspectorate at recruitment grade level with a view to:*

- Enhancing the capacity of the Inspectorate to deliver an inspection service through Irish”*

### **Regression in relation to the schemes agreed in the years 2015-16**

From the analysis carried out by my Office, there is evidence to suggest that it is not by any means unusual for commitments to be reduced or withdrawn in succeeding schemes. Of the second and third schemes confirmed in the years 2015-16 (23 schemes) we have noticed regression (both major and minor) in the case of 12 of them. Some examples given below illustrate this tendency.

#### **a) Department of Agriculture, Food and the Marine**

The statutory Guidelines emphasise the importance of providing information of interest to the public on the website of a public body. It is indicated also, that it is an “essential requirement” that “any new interactive services which allow the general public to make applications or receive benefits on line must be introduced simultaneously in both languages.” In the first language scheme confirmed in the case of the Department of Agriculture and Food in 2006, the Department undertook to make the appropriate arrangements to ensure that any new interactive on line systems would be provided bilingually:

*“The Department does not currently provide an online bilingual service to customers but arrangements will be put in place in the course of the scheme to allow all new online web-based systems to be provided to customers bilingually.”*

Ten years after the publication of that first scheme, the Department’s second scheme was confirmed. In that second scheme there is no commitment given in relation to interactive services. As this scheme replaces the first scheme the Department is therefore no longer under any obligation to make such services available in Irish.

In the case of the same Department (The Department of Agriculture, Food and the Marine), there was a commitment given in the first language scheme to provide on the website summarized details in Irish of any new scheme or service to be introduced, and to provide complete bilingual texts over the period of that language scheme:

*“Details of schemes are not currently available in Irish on the Department’s website. As new schemes / services are introduced, the Department will initially provide summary details on the website in both Irish and English, with a view to providing full bilingual texts over the period of the Plan.”*

In their second scheme, approved in 2016 however, in place of what had been undertaken previously, there was now a vague commitment which is difficult to assess. They have only undertaken to increase the number of documents available in Irish on the site:

*“A number of key documents and forms of interest to the public are available in Irish on the website. The Department plans to expand the number of documents available in Irish over the lifetime of the scheme.”*

#### **b) South Dublin County Council**

When in 2016 my Office monitored the second language scheme in the case of South Dublin County Council, some of the commitments not complied with (or not fully complied with) pertained to the publication of application forms, leaflets and other documents. The following changes in the third scheme, approved in 2016, are of interest as they represent a regressive modification to service levels previously undertaken:

## APPLICATION FORMS

A commitment was made in the second scheme to make application forms, as well as the information leaflets accompanying them, available in both languages:

*“It is the policy of the Council to ensure that all application forms and associated documentation which are available bilingually will continue to be made available in both official languages on our website.*

- The practice that all new Publications, Information Leaflets and Posters contain a short Introduction and Summary in the Irish language to convey general information on the communication will continue.*
- The practice that all Application Forms and any associated/accompanying information leaflets produced by South Dublin County Council are available in Irish and English will continue.”*

In the third scheme, there is no such commitment, but merely to provide a preface and summary in Irish on information leaflets:

*“All information leaflets will contain a short introduction and summary in the Irish language.”*

## MAJOR POLICY DOCUMENTS

Section 10 of the Act places a duty on public bodies to publish certain documents simultaneously in both official languages. The Council affirmed that they would make other policy documents (which do not come under Section 10) available bilingually as a general practice but that the Council could choose, in the event that the cost was too high, to provide only the executive summary in bilingual format in the publication:

*“Major Policy documents – other than those under Section 10*

- These publications are, in general, made available bilingually. If the cost of bilingual publication in any individual case is deemed*

*excessive due to the size of the document, the Council will continue to use its discretion to publish only the executive summary/ recommendations in bilingual format.”*

The third scheme refers only to the documents coming under Section 10, where there is already a statutory obligation to publish them bilingually and makes no reference to other policy documents:

*“Documents setting out public policy proposals, audited accounts or financial statements, annual reports and strategy statements will be published simultaneously in Irish and English.”*

### c) The Department of Social Protection

Under Section 13(2)(e) of the Act, public bodies need to ensure that Irish is the working language in their Gaeltacht offices by a date to be agreed with the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs. In relation to the Department (of Social and Family Affairs), when the first scheme was agreed in 2006, the year 2020 was mentioned in that context:

*“By the end of 2020 Irish will be the working language in offices located in the Gaeltacht.”*

In the second scheme agreed in 2016 however, the undertaking had changed to an aspiration and the date by which it was to be accomplished was put back without referring to any year:

*“By these and other means it is intended that Irish will become the working language of our Gaeltacht offices over the lifetime of several schemes.”*

## 3. Evasive language, qualifications, vagueness

I notice increasingly the use of language which avoids or mitigates any definite commitment in the wording of the schemes being confirmed. It is clear that this is being done deliberately so that the public body is under no obligation, and certain commitments are worded in the form of aspirations (rather than firm commitments):

*“The Department aims to ensure that if a member of the public wishes to conduct his/her business with the Department through the medium of Irish by telephone that an official of the Department with proficiency in the Irish language will, if possible, be available for such a person.”* (Department of Jobs, Enterprise and Innovation).

*“The Department will endeavour to ensure that Irish becomes the working language in offices located in Gaeltacht areas by the end of 2020...”* (Department of Agriculture, Food and the Marine).

*“The Institute acknowledges that clients have the right to request services in the Irish language and it will use its best efforts, consistent with viability considerations, to facilitate all such requests.”* (Institute of Public Administration).

*“The Departments plans....”*

*“It is proposed ...”*

*“The Department will seek...”*

*“It is our intention...”*

*“...it is anticipated...”*

*“In General...”*

Another aspect of that same evasive language are the qualifications added to the commitments (or aspirations):

*“Arrangements are in place so that Reception staff can put members of the public in touch, without delay, with the relevant official(s) responsible for providing the service required through Irish, where available.”* (Department of Jobs, Enterprise and Innovation)

*“Where available, Irish speaking members of the Council staff will deal with Gaeltacht customers in Irish as required.”* (Waterford City and County Council)

*“Where the Irish Language Media request an interview, a knowledgeable, media trained Irish speaking interviewee will be provided where possible.”* (Galway City Council)

*“Depending on the availability of staff members with fluent Irish language skills, RTÉ HR staff will offer general HR services in both the Irish and English languages, where possible.”* (Raidió Teilifís Éireann)

*“While every effort will be made to maintain this level of service, it is subject to wider government policy on recruitment and deployment of staff in the public service sector and on the necessary budget provisions.”* (Department of Social Protection)

One language scheme agreed during the years 2015-16 was conditional in its entirety on certain circumstances:

*“However, the prevailing public service context must be taken into account and in this regard, the constraints on resources and on public sector recruitment, allied with budgetary constraints, may impact on the level of progress that can be achieved.”* (Department of Agriculture, Food and the Marine)

In most cases where such evasive language is used, there is an element of personal or person to person contact involved in the provision of the relevant service. It is obvious that the real reason for the reluctance or unwillingness discernible in such wording, is the small number of staff available with competence in Irish, the lack of arrangements in relation to allocation or distribution of staff with Irish and the way in which public bodies must depend on the voluntary cooperation of certain staff members.

The most usual arrangement is to compile a list of staff willing and able to provide a service through Irish. The list is made available to the reception staff and if someone on the list happens to be available to deal with the customer in relation to the particular service he/she needs, the customer will be attended to in Irish. An arrangement of this type was included in 25 of the 40 language schemes confirmed in 2015-16. In the case of some of these public bodies, additional arrangements are committed to which should increase the likelihood that the customer seeking a service in Irish might be attended to. On the whole however, there is a movement away from the schema of the system of language schemes in the legislation,

whereby the scheme would announce the services proposed to be made available in Irish and the appropriate arrangements (including staff and other resources) would be made accordingly.

*“Libraries now delivering a bilingual service include Blanchardstown, Swords, Rush, Malahide, Howth and Library HQ (note that this is liable to change if staff are transferred between libraries)”* (Fingal County Council).

*“A list of staff members who can provide a service through Irish will be made available at all schools, centres, and administrative offices.”* (Laois and Offaly Education and Training Board)

*“Limerick City and County Council will provide staff with guidance on handling telephone calls from Irish speaking members of the general public.”*

*“Not all services are fully available bilingually and training and/or recruitment will continue until this can be achieved.”* (Galway City Council)

Because of this vagueness, an important core objective of the legislation is being frustrated insofar as it is extremely difficult for customers who might wish to conduct their business through Irish, to know which services they could expect to obtain in Irish. As Dr John Walsh succinctly put it:

*“Rendering the schemes unclear or incomprehensible does nothing to encourage the uptake of services in Irish.”<sup>4</sup>*

#### 4. Lower quality service through the medium of Irish

There is no provision made in the Guidelines for the provision of service in Irish of a lower quality than the services provided in English (in fact there is reference to *“Procedures and policies which will ensure quality service provision in the language*

*of choice”*). In a small number of the schemes examined, additional arrangements had been specified dealing with the provision of counter services or calls from the public in the eventuality of staff members with Irish not being available. The advantage to this is that there is a commitment to the provision of some sort of service and there is more clarity about the quality of service to be expected. It has to be accepted however that quality of service is of more importance to the customer than the language in which it is delivered and, depending on the importance or urgency of the service to the customer, it is unlikely that he/she would choose a service of lower quality in Irish.

I have set out below some examples that demonstrate how a reduced level of service in Irish is given statutory effect in language schemes:

*“Customers who wish to conduct their business through the medium of Irish, will be provided with the opportunity to make an appointment to do so.”* (Tipperary Education and Training Board)

*“We will respond in Irish to callers who wish to speak in Irish, where possible, or offer to have the call returned within 1 working day by a member of staff who can deal with queries in Irish.”* (Department of Education and Skills)

*“In these offices, where an Irish speaking member of staff is not available at the time of the customers phone call/ visit to the office an appointment will be offered to the customer for the provision of face to face and/or telephone services through Irish.”* (Department of Social Protection)

#### 5. Recruitment of staff with competence in Irish

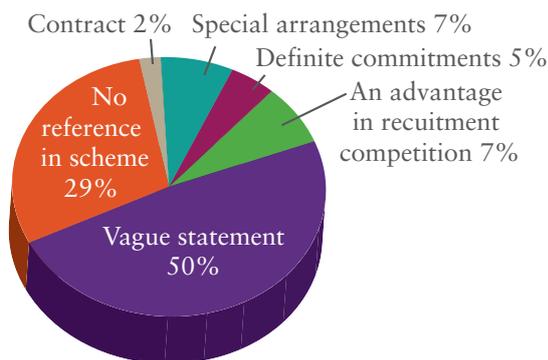
Much of the vagueness and uncertainty in relation to the undertakings discussed at 3 and 4 above clearly results from lack of suitable arrangements and policies in relation to the provision and allocation of staff with competence in Irish.

<sup>4</sup> Walsh, J. (2012) “Language policy and language governance: a case-study of Irish language legislation.” *Language Policy*

It is clear that what was intended in the legislation was that an unambiguous commitment be given to provide service in both official languages and that it would be ensured, in accordance with Section 13(2)(c) of the Act, “that an adequate number of its staff are competent in the Irish language so as to be able to provide its service through Irish as well as English,”

Instead, however, public bodies are relying on the Irish language ability of staff who happen to be available at any given time (rather than making proper provision to ensure an adequate complement of staff with Irish), and offering a service which is conditional on the availability of competent staff.

**Figure 7. Language schemes agreed 2015-16: Competency in Irish as a skill in recruitment (40 Language Schemes)**



In the analysis carried out by my Office of the 40 language schemes agreed in 2015-16, special arrangements to recruit new members of staff with competence in Irish were mentioned in the case of three of them. A definite undertaking was given in two other schemes, although the arrangements to be put into effect were not specified. In a further three schemes a commitment was made that competence in Irish would be an advantage in competitions for recruitment (for particular posts). The issue was not mentioned in 12 of the schemes but the most common approach (49%) was to make a vague statement whose value is difficult to assess:

*“Our recruitment policy...will have regard to the need to improve...”*

*“ITT will be conscious of its obligations under the Act when recruiting staff.”*

*“...have regard to proficiency in the Irish language...”*

*“...Fingal County Council will review recruitment policy...”*

*“...will examine the issue of the Irish Language and our obligations...”*

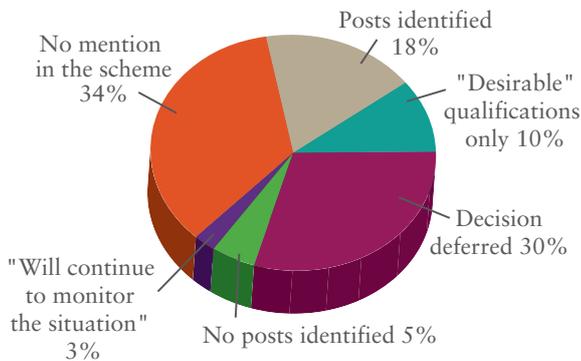
*“The Institute’s recruitment policy will continue to be informed by the need...”*

In most of those vague undertakings it is maintained that the discretion of the public body concerned is subject to “the framework of agreed national recruitment procedures.”

#### Posts specified with an Irish requirement

The 20 Year Strategy for the Irish Language declared that “language schemes will specify the posts within an organisation that require an Irish language competency requirement.” In the analysis carried out by my Office of the 40 Language Schemes agreed in the years 2015-16, posts for which ability in Irish was a requirement were only specified in 7 cases (3 Departments of State, 2 Local Authorities and 2 Education and Training Boards). In the case of 4 other Education and Training Boards, Irish was mentioned as a desirable qualification (principally for the staff of Gaelcholáistí and education centres in the Gaeltacht).

**Figure 8. Language schemes agreed 2015-16: Specifying posts requiring ability in Irish (40 Language Schemes)**



Two public bodies deemed it unnecessary to specify any post. It was explained in one scheme that it was not necessary to specify any post on the basis that they had eight staff already with competence in Irish. These are two specific but distinct issues; identifying jobs with an Irish requirement and the availability of staff with Irish which they happen to have at this point in time.

In the case of almost a third of these schemes, instead of researching the issue while the draft scheme was being prepared, it was agreed in the scheme itself that those posts would be identified (if any) by some date during the term of the scheme or by the end of the scheme. I believe this is a bad precedent as it accepts in advance any decision made by the public body; statutory responsibility is being devolved to the public body itself to confirm the arrangements without agreement.

More than a third of the schemes contained no reference whatever to posts with an Irish language requirement.

## 6. Service for the Gaeltacht

### Service through Irish for the Gaeltacht community

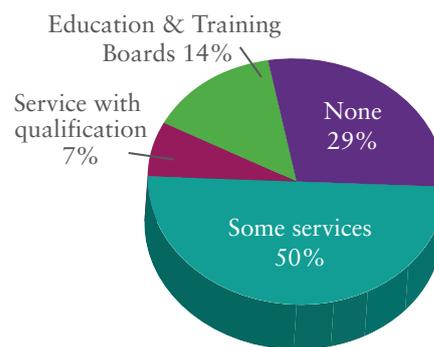
Under subsection 13(2)(d) of the Act, a public body when preparing a scheme, must “ensure that the particular Irish language requirements associated

<sup>5</sup> The Department of Social Protection however maintains that services are “currently” available in its Gaeltacht offices.

with the provision of services in Gaeltacht areas are met.” It is emphasised in the Guidelines that the aim here is that “Irish becomes the default language of service delivery in the Gaeltacht.”

Of course, public bodies have varying levels of interaction with the people of the Gaeltacht: there are public bodies whose focus is not primarily on services to the community, public bodies which provide services on a national basis, including the Gaeltacht, and public bodies which supply services on a regional basis. Of the 40 public bodies which had language schemes agreed during the years 2015-16, it appears to us that 12 of them would have minimal or no contact with the people of the Gaeltacht.

**Figure 9. Language Schemes agreed 2015-16: undertakings in relation to provision of services in Gaeltacht areas (28 language schemes).**



In 8 of the other 28 schemes, no specific undertaking was given in relation to supply of service to the people of the Gaeltacht.<sup>5</sup> As regards the other schemes there was a stronger commitment in some schemes than in others. Some of those schemes contained undertakings to provide certain services in Irish but, in the main, they do not achieve the target set out in the statutory Guidelines.

The Education and Training Boards’ schemes constitute a separate category. Apart from second level schools in the Gaeltacht, it is not clear to me from the details given in those schemes which services precisely are being offered through Irish to the people of the Gaeltacht.

### The working language in offices in the Gaeltacht

A public body is under an obligation (under subsection 13(2)(e) of the Act) to ensure that Irish is the working language of its offices in the Gaeltacht on a date not later than a date which it shall determine, with the agreement of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs.

My Office examined all the language schemes which have been confirmed to date. It is not possible to be precise, however we estimate that approximately 17 public bodies have offices situated within Gaeltacht areas.<sup>6</sup>

These public bodies are listed in Figure 10 below:

*Figure 10. Public Bodies giving a date by which Irish will be the working language in their Gaeltacht offices.*

Status of Irish as a working language in Gaeltacht Offices (as committed to in a language scheme)	Public Body
Implemented	<ul style="list-style-type: none"> <li>• The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (specific sections)</li> <li>• National University of Ireland, Galway</li> <li>• Raidió Teilifís Éireann</li> <li>• Kerry County Council</li> <li>• Office of Public Works</li> <li>• The Marine Institute</li> </ul>
Date Specified	<ul style="list-style-type: none"> <li>• Donegal County Council (2020)</li> <li>• Galway County Council (2020)</li> <li>• Mayo County Council (2025)</li> <li>• Health Service Executive (Western Region) (2020)</li> <li>• Teagasc (2020)</li> </ul>
Aspirational date “we will endeavour”	<ul style="list-style-type: none"> <li>• The Department of Agriculture, Food and the Marine (2020)</li> </ul>
Date Unspecified	<ul style="list-style-type: none"> <li>• Cork Educational and Training Board (By the end of the Second Scheme)</li> <li>• Galway and Roscommon Education and Training Board (“Commencing during the lifetime of the first language scheme”)</li> <li>• An Garda Síochána (“continuation”)</li> <li>• The Department of Social Protection (“over the lifetime of a number of schemes”)</li> </ul>
No reference to Irish as a working language in Gaeltacht offices	<ul style="list-style-type: none"> <li>• An Post (Gaeltacht Post Offices on contract).</li> </ul>

<sup>6</sup> This does not include of course, public bodies which do not have a language scheme confirmed as yet.

In the first language scheme confirmed in the case of An Garda Síochána, it was specified that the target would be met by the end of the term of the second scheme. In their second confirmed scheme “*continuation*” was given as a target date. As regards the Department of Social Protection “*over the lifetime of a number of schemes*” is mentioned.

When considering the information provided to my Office during the monitoring of Language Schemes, there is a concern that these targets may not be met before the specified date in a great number of cases. The greatest obstacle facing them is the lack of suitable arrangements for recruitment and staff deployment to ensure that staff members having the ability to work through the medium of Irish are deployed in those Gaeltacht offices.

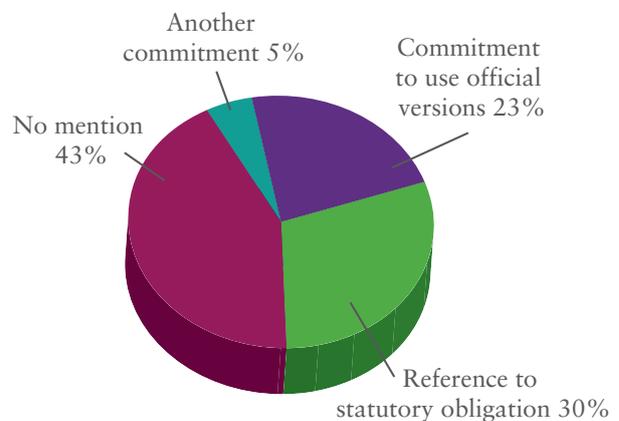
Another question which must be addressed if that target is to be met, concerns support from the central organisation for the Gaeltacht unit which is operating through Irish and the ability of the central organisation to deal with this work which is being done through the medium of Irish in the Gaeltacht.

### Use of Gaeltacht placenames

When the Minister makes a placenames order under Section 32(1) of the Act in relation to a Gaeltacht placename, it is stated in Section 33(2) that the declared Irish version is the only official version of that placename and that “*the English language version of the placename shall no longer have any force and effect...*” There is no total prohibition on the use of the English version with the exception of a limited number of functions (for example, legislation, road signs and certain maps).

It is explained in the statutory Guidelines that public bodies should increase the usage of official Gaeltacht versions by using them as the default in every register and database, and that the scheme should specify the measures to be taken for that purpose and the timescale envisaged.

Figure 11. Language schemes agreed 2015-16: Use of Gaeltacht placenames.



Following the State’s decision made in relation to official versions of Gaeltacht placenames, it stands to reason that the State itself should use the official versions for its official purposes and to assist in normalising their use in society in general. Such a practice boosts the status of the Gaeltacht as a special linguistic area in the public consciousness generally.

Of the schemes agreed during the years 2015-16, there was a specific commitments to use official Gaeltacht placenames for official purposes in less than a quarter. In the case of almost another third, a commitment was given to use them in accordance with the provisions of the Act. I accept that among those who did not refer to Gaeltacht placenames at all are public bodies which would not have occasion to use Gaeltacht placenames frequently (e.g. a local authority or education and training board with no Gaeltacht region within its area of implementation). However it would still be advisable to adhere to that same principle and obligation.

## 7. Online interactive services

When the Department of Public Expenditure and Reform published the Public Service ICT strategy in January 2015, there were, at that time, more than 400 on line services available from public bodies. One of the objectives of this strategy is to increase the number and importance of this method of service delivery.

It must be remembered that section 9(2) of the Act sets out the right of an individual to communicate in writing or by electronic mail with a public body in his/her official language of choice. Insofar as interactive services (and contact pages on websites) predetermine the means by which an individual may communicate in writing with public bodies for certain business purposes, it is necessary to ensure that the individual can exercise that language choice, as otherwise the original objective of Section 9(2), as well as the effect of the right set out in that section, is frustrated.

In the Guidelines to the Official Languages Act, it is set out that:

- a. it is an essential requirement that a scheme should specify a date by which any service, which will enable the public to make an application or obtain benefits on line, will be introduced simultaneously in both languages.
- b. interactive services which are available in English only be upgraded and that an appropriate timeframe should be set out in the scheme.

In order to comply with this guideline, a public body should specify in the draft scheme:

- i. whether interactive services are being provided at the time of preparation of the draft scheme,
- ii. those services available bilingually and available in English only,
- iii. what is proposed in relation to the upgrading of services available in English only to bilingual services,
- iv. the date by which any new interactive service is to be introduced simultaneously in both languages.

From the wording of some of the schemes published in the years 2015-16 as regards interactive services, it was difficult to establish what precisely was being committed to.

This again is evidence of how ineffective the schemes are at indicating clearly to people which services are to be provided bilingually. Insofar as was possible, the undertakings given in these schemes are classified in Figures 12 and 13 below:

*Figure 12. Language schemes agreed 2015-16: Commitments in regard to online interactive services.*

Type of Commitment	Number of Schemes
Definite commitment in relation to both current and new services	9
Commitment in relation to new services only	5
Commitment in relation to new services. Aspirational or vague or qualified commitment in relation to current services	2
Aspirational, vague or qualified commitment in relation to both current and new services	4
Aspirational, vague or qualified commitment in relation to new services. No commitment given as regards current services	2
Commitment in relation to certain services	3
No current service. No commitment given as regards any new service	1
No reference to interactive services	13

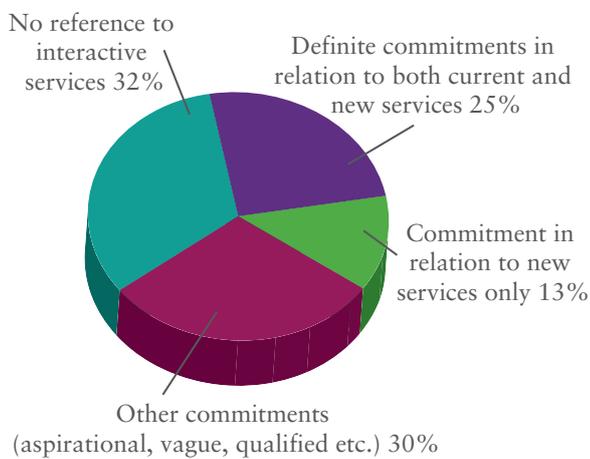
The guidelines were fully complied with in the case of less than a quarter of the schemes.

In the case of the Department of Agriculture, Food and the Marine and Westmeath County Council, commitments given in the first scheme in relation to interactive services were withdrawn in the second scheme.

One of the objectives of the ICT Strategy was that organisations such as the Local Government Management Agency and Education and Training Boards Ireland should develop centralised services

for public bodies in the various sectors. It is indicated in some of the schemes, and it has been found while monitoring the implementation of schemes that an individual public body may often not be in a position to fully implement a language commitment concerning interactive service, where the structure of interactive services is arranged on a centralised basis for various sectors.

**Figure 13. Language schemes agreed 2015-16: Commitments in relation to on line interactive services (40 language schemes).**



## 8. The proactive offer/advertising services available in Irish

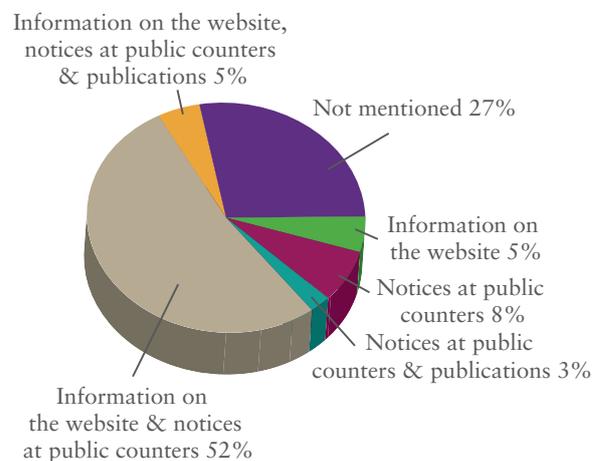
If we are to “increase the number of people who use State services in Irish” it is not sufficient to simply make a service available bilingually; the availability of the service through the medium of Irish must be communicated to people, by advertising, by publicising and by proactively offering the service. It is clear that the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs accepts the importance of this element as it is an item on the template provided to public bodies preparing a language scheme.

When we examined the language schemes agreed during 2015-16 statements such as the following were common:

*“will take every opportunity in its day-to-day interactions with customers to promote and publicise the services it provides through Irish.”*

It is difficult to assess the value of such an undertaking where no specific action is mentioned. In some schemes specific actions are referred to, or are referred to as examples of the activities they might undertake in this area. The two most common steps mentioned were the erection of notices in public offices or at public counters indicating to customers that there was a service available in Irish, and that information about the services available in Irish would be “clearly visible” on the website.<sup>7</sup> The schemes agreed in the years 2015-16 are classified in figure 14 below, according to undertakings given.

**Figure 14. Language schemes agreed 2015-2016: Commitments in relation advertising services available in Irish.**



<sup>7</sup> In the case of four of those bodies, mention was made also of publicising those services in other ways, such as advertisements, publications, etc.

Where there is a commitment that information about the services available in Irish will be clearly visible on the website, I would expect the following:

- That information should be clearly visible on the contact details page (on the English and Irish pages, where they exist) welcoming contacts and enquiries in Irish.
- In the case of a service which is being made available in both languages, that information should be clearly visible on the page relating to the service, indicating that the service is available in Irish.

and/or

- That there should be easy access to the list of services being provided in Irish at the appropriate place on the site.

It didn't appear that this information was accessible on the websites of the public bodies which promised such in their language schemes, apart from one (Department of An Taoiseach). We acknowledge that some of the schemes agreed in 2015 and 2016 are not long in existence, but it is our experience from the monitoring work being carried out by my Office that, on the whole, there is a very low level of compliance with this undertaking.

If the vagueness and evasive wording in the commitments given stem from the lack of confidence of a considerable number of public bodies in their ability to provide services in Irish (especially where interpersonal services are involved), it is possible that the same lack of confidence is responsible for those services not being properly publicised.

In one scheme, there was the following commitment:

*“Staff will be aware of the concept of the proactive agreement - proactively offering services in Irish to the public”*  
(Westmeath County Council).<sup>8</sup>

I see no advantage to the customer, in the staff understanding the concept of the proactive offer in the absence of a commitment to actually offer the service. It is not uncommon to find ineffective commitments of this sort in language schemes. They are not appropriate in a statutory scheme.

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<sup>8</sup> I have seen such an undertaking, which implies that the staff should understand the concept of proactively offering, in other schemes previously, for example in a scheme of the National University of Ireland, Galway (agreed in 2012).

## PART II: RECOMMENDATIONS

In this part of the commentary, I outline eight proposed amendments and measures to tackle the obstacles to the effective working of the Act, as highlighted in the analysis contained in Part I of the document.

It is patently obvious that the shortage of staff with competence in both official languages is a major obstacle to the effective implementation of the Official Languages Act. It is not possible to give assurance about the provision of Irish language services nor to systematically increase service provision, in the absence of staff with appropriate language skills. An effective structure is also needed which recognises the number or percentage of staff required and/or identifies specific posts for which competence in Irish would be necessary, if specified services are to be provided bilingually. Neither is it plausible to rely exclusively on the voluntary cooperation of certain staff members in order to ensure the provision of services through the medium of Irish in the future.

### *Recommendation 1*

In the first instance, I propose that, as a matter of urgency, we bring about a substantial increase in the percentage of staff in the public service who are competent in Irish, if we are to get the process of incremental improvement, envisaged in the Act, up and running again.

### *Recommendation 2*

I propose also that we engage in target-focussed, research-based planning, at national level, for the provision of state services through the medium of Irish, and that this central plan should inform and serve as a performance indicator for any action or measure relating to the provision of services through the medium of Irish, including action under the Official Languages Act.

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<sup>9</sup> “go bhfuil teacht i dtreis fheidhm shóisialta an Bhéarla sa Ghaeltacht ag cur le diláithriú fheidhm shóisialta na Gaeilge sna limistéir is mó Gaeilge”. Ó Giollagáin, C. & Charlton, M. (2015). *Nuashonrú ar an Staidéar Cuimsitheach Teangeolaíochta ar Úsáid na Gaeilge sa Ghaeltacht: 2006–2011*. Údarás na Gaeltachta.

<sup>10</sup> CILAR – Committee on Irish Language Attitudes Research (1975). *Tuarascáil*. Baile Átha Cliath: Oifig an tSoláthair.

### *Recommendation 3*

A considerable amount of research undertaken in recent years has shown the fragility of the function of Irish as a family and community language in the Gaeltacht, that Gaeltacht communities are in chronic linguistic crisis, and “*that the onward march of the social use of English in the Gaeltacht is increasingly displacing the social function of Irish in the areas where Irish is strongest*”<sup>9</sup>

The *Committee on Irish Language Attitudes Research* (CILAR) in 1974 summarized the difficulties with state institutions which deal mainly with the greater English speaking community, in understanding the specific linguistic needs of Gaeltacht communities. They are frequently unaware of the effect on the Gaeltacht of measures and methods of work which are a response to social circumstances outside of the Gaeltacht:

*“In the Gaeltacht these institutions are often localised peripheral parts of larger systems, the total clientele of which are predominantly English-speaking. The agencies operating in the Gaeltacht are staffed largely by English monolinguals, and the use of English is usual in both the activities of personnel in the local setting and the relationships between the local agencies and their central administrations.”*

In the absence of such an understanding and of the goodwill which would inspire positive action supportive of the status of Irish as a family and community language in the Gaeltacht, the institution becomes part of the social pressure which drives language shift, or at the very least, is “*passively acquiescing in existing linguistic trends.*”<sup>10</sup>

I propose therefore, adding a provision to the Act to ensure that public servants working in the Gaeltacht have competence in Irish, and services through the medium of Irish are available from local and regional offices which have Gaeltacht regions in their functional areas.

### *Recommendations 4 & 5*

I also propose, extending the range of services and means of communication which can be subject to regulations under the Act. Under this amended legislation there would be provision for various standards to be laid down, by means of regulations, in relation to the language duties of public bodies. To that end, I propose that public bodies be classified, under different categories. The advantage to this is that it would give greater equality, consistency and certainty in relation to the provision of services through Irish, which the public could expect from the various sectors of the public service. It would give an impetus to the movement toward equality.

### *Recommendations 6, 7 & 8*

I am making three other proposals which will, in my view, improve both the efficiency and the effectiveness of the Act. They concern ensuring that the language schemes agreed fulfil the conditions laid down in the Act, that every public body in the State be brought under the Act, and making clearer provision to ensure that language duties must be fulfilled by other parties engaged in the delivery of state services.

## RECOMMENDATIONS

### **1. Increasing staff numbers in the public service competent in both official languages by means of recruitment**

The small numbers of staff with competence in Irish is the chief difficulty which the public service has to overcome in order to provide citizens with services in the official language of their choice. As a first step, I propose the introduction of a system to significantly increase the number of public servants capable of functioning through the medium of Irish as well as English in the State's public bodies.

There is no doubt that the arrangements introduced in 2013 are not succeeding in recruiting staff with competence in Irish, in sufficient numbers, to the civil service. That system depends on identifying specific posts with an Irish language requirement. Apart from very few instances, these posts are not being identified by public bodies.

Furthermore, the requirement might not necessarily pertain exclusively to specific posts in an organisation. Nevertheless the necessity remains for a certain proportion of the staff of the organisation to be competent in Irish.

I propose at number 2 below, laying out a comprehensive plan for the provision of state services through the medium of Irish, based on accurate information collected through research. Such a plan would inform recruitment in the future.

It is obvious however, even without any additional research, that the recruitment measures being implemented in the various sectors of the state system at present, are not increasing resources in relation to competency in Irish in public bodies. The analysis undertaken in Part I indicates that the process of incrementally improving the level of services through the medium of Irish is at a standstill.

I propose therefore, as soon as possible, the introduction of a system:

- which will ensure that there is a minimum percentage of staff with competence in Irish in all departments of state and in the principal state organisations dealing with the public, in order to bring about a substantial increase in their capacity to function through the medium of Irish,
- in which the assessment of competency would refer to a standard framework based model such as the Common European Framework of Reference for Languages or another similar model, and
- which includes independent monitoring on the implementation and the effectiveness of that system, and annual reporting to the Houses of the Oireachtas.

Such a system could be introduced by a decision of Government, and it could be implemented immediately.

### **2. Plan for public service provision through the medium of Irish**

The language duties of state organisations are, for the most part, laid down in various pieces of legislation, as are arrangements for public service provision through the medium of Irish. There is an absence of a more holistic perspective.

As I mentioned already, the system of language schemes under the Act is not succeeding in achieving equality between the ways the public are served in both official languages. Under the current system, there are language schemes agreed with individual public bodies which do not refer to any central plan nor to any sectoral or service priorities. This means that what is mostly agreed in language schemes is what individual public bodies are prepared to offer, instead of looking at what needs to be done in order to achieve definite service targets.

I believe that we need a holistic approach at national level for the provision of state services through the medium of Irish. We need target-focussed planning which would specify the State's objectives and which would set out

- the services which are a priority for the State as regards provision through the medium of Irish,
- the manner in which it is proposed to provide those services,
- the arrangements necessary in order to provide public services through the medium of Irish in Gaeltacht areas,
- the resources required, including human resources and financial resources,
- the legislative framework which best supports and ensures that the targets are met.

Research and analysis are sometimes perceived as a means of delaying necessary decisions and measures. I believe however that every system benefits from effective planning as well as from research-based, accurate information and analysis. What I am proposing is, that the necessary decisions be taken now, especially in relation to recruitment systems, but also that we put together a comprehensive

plan for the provision of public services through the medium of Irish. This plan needs

- to be prepared by an institution(s) or by a group having the appropriate expertise,
- to be based on research and analysis, and
- to draw on best practices in use in other bilingual jurisdictions.

With the proper approach and cooperation, I feel that this work could be completed within a reasonable period of time.

### 3. The Gaeltacht

I propose a provision is made in the Official Languages Act, to ensure that:

- a. State officials based in the Gaeltacht or working there on a regular basis, should be required to have fluent Irish,
- b. services available through the medium of Irish be easily accessible from local/regional offices which have Gaeltacht regions within their functional area, and
- c. the process is specified which would give effect to that provision over a period of time (for example, by regulation).

As far back as 1926 the Commission for the Gaeltacht recognised the negative effect being exerted on the use of Irish in the Gaeltacht by public servants without Irish and the functioning of public services through the medium of English.

*In order fully to understand it, one has only to visualise a Garda Síochána barracks of English Speaking Gardaí in the centre of an Irish Speaking district; or a Post Office, in which no one speaks Irish, in an Irish Speaking village; or a non-Irish Speaking official of the Department of Agriculture, or of the Land Commission, or of the Customs and Excise, operating amongst an Irish Speaking population. These officials are direct agents in the spreading and establishment of English.<sup>11</sup>*

The Commission at that time attested to the necessity for Irish as the normal default language between the State and its executives and the people of the Gaeltacht, as well as for ensuring that public servants working in the Gaeltacht should be fluent in Irish. More than ninety years later neither those recommendations, nor their equivalent, have been implemented.

### Service through the medium of Irish in the Gaeltacht

Although Irish as a vernacular is stronger in some areas than in others within the official Gaeltacht areas, all of those areas are included in one or other of the Language Planning Areas specified under Section 7(2) of the Gaeltacht Act 2012. The statutory aim of the State in relation to those areas as a whole is “*increased use of the Irish language in the family, educational, public, social, recreational and commercial life*” within them, regardless of the frequency or extent Irish is currently used by the community in any of those areas.

Service through the medium of Irish should be actively offered, and Gaeltacht customers should be made aware that they are welcome to use Irish in their dealings with the public body concerned. It must be remembered that there are strong, long-established English communication norms between Gaeltacht communities and various State organisations. Customers, who feel disadvantaged, lack confidence and who feel obliged to the organisation for whatever necessary assistance they receive, would be unlikely to demand service in their own language of choice if they felt that would inconvenience people. That is not to say that they would not choose to use Irish were that choice available and presented to customers in an effective manner.

The statutory Guidelines comply with the principle I am outlining here; that Irish should be the default language of service for the people of the Gaeltacht, that services offered through the medium of Irish should be to the same standard as services through the medium of English, and positive choice should be encouraged in relation to using Irish for their business with the public body. There is a huge gap

however between this objective and the reluctance one senses in many of the commitments being agreed in language schemes in relation to the Gaeltacht. Based on the progress made until now, it is unlikely that this objective will ever be achieved under the scheme system as it functions at present.

### Local offices in the Gaeltacht or which serve Gaeltacht areas

Offices of public bodies located in Gaeltacht communities play an important role in adding to the domains in which the language can be used as well as illustrating, on a practical level, the State’s commitment to the language planning process. It is clear however that offices situated outside of the Gaeltacht have a more important role than ever, in delivering services to Gaeltacht communities. It is generally accepted that the objective of the provisions in Section 13 is that the Gaeltacht community may use Irish in their contact with public bodies, should they wish to do so. I would insist, therefore, that the most essential and important point, is the ability of local/regional offices to service Gaeltacht communities through the medium of Irish, regardless of whether those offices are located within or outside of official Gaeltacht boundaries.

This context and its importance are statutorily recognised in Section 9 of the Gaeltacht Act 2012, whereby Gaeltacht Service Towns are identified, where public services are provided for the people of the Gaeltacht.

The planning and research proposed at 2 above should inform the preparation of a process by which the proposals I am making for the Gaeltacht would be implemented.

The question of local public service provision on a contract basis (for example, An Post, Department of Social Welfare) would be addressed under recommendation 7 below.

### 4. Classification of public bodies by categories

I propose that public bodies be classified according to categories based on range of functions and contact with the public in general, including Irish-speaking<sup>12</sup>

<sup>11</sup> *Coimisiún na Gaeltachta* (1926).

and Gaeltacht communities. The highest category would be expected to include those government departments and offices having major involvement with the general public, organisations with a specific national remit or involvement with large sectors of the community, as well as public bodies which have Gaeltacht areas within their functional areas. The level of service to be provided by public bodies through the medium of Irish would accord with the current designated category. Regulations (as recommended at 5 below) would be used to set out the levels of service through the medium of Irish corresponding to the categories, in relation to the activities covered under those regulations.

### **5. Regulations in relation to information provision or provision of certain services**

Section 9 of the Act provides that regulations may be made in relation to the use of both official languages in oral announcements, signage, headings of stationery and advertisements. In conjunction with the classification process, I propose a provision be included in the Act to allow for the making of additional regulations regarding the use of Irish in a wider range of means of communication and certain services and regarding the effective promotion of services that are available to the public in Irish.

This would greatly improve the consistency of services and information provided through the medium of Irish and English in various sectors and, in relation to the areas covered, it would clarify what the customer could expect.

The regulations would also address difficulties arising from methods of service delivery not provided exclusively at the level of the individual public body but which are provided on a more central basis. In the *Plan for Reform of the Public Service* there is much emphasis on the development of shared services, on the promotion of cross-departmental systems and on the development of

communications technology to deliver services and provide information. I see no reference to the supply of services through the medium of Irish in that Plan, nor in the Public Service ICT Strategy published by the Department of Public Expenditure in January 2015.

Under the language scheme system public bodies provide individual and different commitments in relation to a range of certain services. When greater emphasis is placed on the provision of certain services on a centralised basis, the individual public body has less control or discretion in relation to the implantation of the relevant commitment in its language scheme. If common statutory standards were introduced for public bodies, it would be necessary to encompass language requirements in the relevant State plans and strategies.

I propose that we provide for regulations which would result in various standards for particular ranges of services and information from the classified categories of public bodies, and that the highest standards of service through the medium of Irish be expected from the public bodies in the highest category, as explained in the proposal at 4 above.

### **6. Confirmation and implementation of language schemes**

At 5 above, I proposed that additional regulations be introduced in connection with particular areas of information provision, methods of communication and other activities. Under the proposal I am making, I still see a role for language schemes, albeit a much more limited one. If a substantial number of services and methods of communication were governed by a regulations system, then the language schemes system could, in the main, deal with those services which depend on interpersonal communication. An advantage to this approach would be that a smaller portion of the public service provision would be dependent on a negotiations process and there would be less administration involved in the preparation and confirmation of

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<sup>12</sup> Including *Irish Language Networks* which are recognised or will be recognised under Section 11 of Gaeltacht Act 2012.

those schemes.

I also propose that a provision be inserted into the Act to ensure that all information specified in the Act (and explained in the Guidelines) should be in the draft scheme before the scheme can be confirmed.

In addition to this proposal, it would be beneficial to outline the various ways the other proposals would contribute to the achievement of the aims of the language schemes:

- i. The recruitment policy and the approach I am proposing, in recommendations 1 and 2 above, would form a basis to ensure sufficient staff numbers with competence in Irish in the public service.
- ii. What has been proposed for the Gaeltacht in recommendation 3 would have to be taken into account when specifying the services which it is planned to provide bilingually, and when ensuring a staffing level with competence in Irish in relation to the Gaeltacht.
- iii. The commitments to be confirmed in a language scheme would have to correspond to the category of public body to which the public body belongs, following the classification system I have proposed at recommendation 4 above.
- iv. The expanded system of regulations which I am proposing in recommendation 5, would greatly support the provision of services in both official languages. In the case of an additional or specific requirement not included in the standards, it would have to be provided for in the draft scheme.
- v. The services which it has been decided to provide through the medium of Irish would have to be announced and publicised in accordance with whatever regulations were made under recommendation 5 above.

## 7. Public bodies coming under the remit of the Act

The public bodies which the Act pertains to are specified in the First Schedule of the Act. The Act allows for a system for amending that schedule and for

new public bodies to be included or public bodies to be removed from the schedule by means of a statutory instrument. Since the Act was passed in 2003 the schedule has been amended only once, in 2006.

The State's public bodies have undergone many changes in the intervening period, particularly as a result of the reform of the public service since 2011. This results in some public bodies having no statutory language responsibilities under the Act, and other public bodies whose status under the Act is doubtful. Among the public bodies not under the Act at present are some which have considerable contact with the general public, such as Irish Water and the Road Safety Authority.

I propose an amendment whereby what constitutes public bodies be defined for the purposes of legislation. Something similar has been done in subsection 2(1) of the Disability Act, 2005. Any state organisation coming under the criteria of the statutory definition in the Act, would be a public body for the purposes of the Act.

This arrangement would have the advantage that every public body would come under the remit of the legislation as regards language duties in the Act itself and in the regulations under the Act.

## 8. Outsourcing of services

Under the *Plan for Reform of the Public Service*, there is some emphasis on outsourcing of services and on “*cooperation with private enterprises, with voluntary organisations and with community groups.*” This has major implications for the number and range of services provided by the State (directly and indirectly) to the public which come under the remit of the Official Languages Act, and for the duties and language rights emanating from it. Some parking management, refuse, cultural and recreational services are outsourced by local authorities for example, and other services are provided by subsidiary companies such as ESB Networks or Gas Networks Ireland.

It is not unusual for complaints to be made to my

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Office in relation to state services which are delivered on contract or indeed by independent subsidiary companies created by public bodies. The design and distribution of the Eircode postcode resulted in the single greatest level of complaints ever received by my Office in relation to a State activity. That activity was engaged in through the granting of a contract to a private company.

Statutory responsibilities need to be clarified (and who is responsible) when a public body authorises a private company or agency of some other sort to provide a service to the public on its behalf or to function on its behalf when dealing with the public.