



# 2007

## TUARASCÁIL BHLIANTÚIL ANNUAL REPORT

### Don Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta

De réir Alt 30 d'Acht na dTeangacha Oifigiúla 2003 tá an tuarascáil seo don bhliain 2007 á cur i láthair ag an gCoimisinéir Teanga.

### To the Minister for Community, Rural and Gaeltacht Affairs

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





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## “ Ag cosaint cearta teanga

Seirbhís neamhspleách d'ardchaighdeán a chur ar fáil i gcomhlíonadh ár ndualgas reachtúil le cinntiú go ndéanann an státchóras beart de réir a bhriathair maidir le cearta teanga.

Cothrom na féinne a chinntiú do chách trí ghearáin maidir le deacrachtaí teacht ar sheirbhísí poiblí trí Ghaeilge a láimhseáil ar bhealach atá éifeachtach, gairmiúil agus neamhchlaonta.

Eolas soiléir, cruinn a chur ar fáil:

- don phobal maidir le cearta teanga, agus
- do chomhlachtaí poiblí maidir le dualgais teanga.

## Protecting Language Rights ”

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

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

To provide clear and accurate information:

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

**Don dara bliain as a chéile cuireadh níos mó ná 600 gearán nua i láthair m'Offige le linn 2007 ó bhaill den phobal a chreid go raibh cúis gearáin acu de bharr deacrachta nó faidhbe le seirbhís trí Ghaeilge ón státchóras.**

Fágann sin go bhfuil déileáilte ag an Oifig le beagnach 2,000 gearán ón bpobal ar fad ó bunaíodh í sa bhliain 2004.

Ba ghearáin chasta a bhí deacair a réiteach cuid acu sin a rinneadh le linn 2007 agus bhí sé mar thoradh air sin go raibh ar an Oifig tabhairt faoi imscrúduithe oifigiúla i gcás cuid de na gearáin sin.

Is é atá i gceist le himscrúdú ná fiosrúchán oifigiúil atá seolta ar bhonn foirmiúil, reachtúil de réir na bhforálacha in Acht na dTeangacha Oifigiúla.

Is iondúil nach rachfaí chun cinn le himscrúdú mura mbeadh iarracht gan toradh déanta an gearán a réiteach ar dtús trí chóras neamhfhoirmiúil réitithe gearán na hOifige nó mura mbeadh sé soiléir gur dócha nach réiteofaí an cas go sásúil d'éagmais imscrúdaithe.

Próiseas casta é an córas imscrúdaithe a thógann cuid mhaith ama agus acmhainní ar an gcomhlacht poiblí a bheadh i gceist agus ar m'Offig agus ní hiondúil go rachfaí ina bhun gan cúis mhaith.

As an 12 imscrúdú oifigiúil a seoladh le linn 2007, bhí péire de na himscrúduithe sin nach raibh bailchríoch curtha leo ag deireadh na bliana sin. Tá achoimre ar na 10 gcinn d'imscrúduithe eile de chuid 2007 le fáil sa tuarascáil seo. I gcás ceann amháin acu, bhí orm cinneadh a dhéanamh an t-imscrúdú a scor – gan fionnachtana ná moltaí a dhéanamh – ar chúiseanna atá mínithe san achoimre chuí sa tuarascáil seo.

Léirigh na himscrúduithe, na gearáin agus gníomhaíochtaí eile de chuid na hOifige le linn na bliana nach leor ann féin forálacha a bheith i reachtaíocht le go mbeifí iomlán cinnte go gcloifí le dualgais atá daingnithe sna forálacha sin. Is cosúil go bhféadfadh fírinne ar leith a bheith ag baint leis sin i dtaca le forálacha reachtúla teanga.

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

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

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

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

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

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

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

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



## Cinntí

De thoradh imscrúdaithe, tháinig mé ar an gcinneadh go raibh sárú á dhéanamh ag an Roinn Oideachais agus Eolaíochta ar an Acht Oideachais 1998 nuair nach raibh siollabais reatha trí Ghaeilge, cothrom le dáta, ar fáil mar chóip chrua agus leictreonach do gach ábhar iarbhunskoile. Sárú eile ar an Acht céanna a bhí ann nach raibh treoirleabhair na rialacha agus cláir do mheánscoileanna ar fáil ach i mBéarla amháin, treoirleabhair atá riachtanach do dhea-riaradh agus bainistiú scoileanna, scoileanna Gaeltachta agus scoileanna lán-Ghaeilge, san áireamh.

Shocraigh an Garda Síochána, de thoradh imscrúdaithe, go bhforbrófaí mar chóras dátheangach an córas eisithe d'Fhógraí Muirear Socraithe (pointí pionóis) agus, idir an dá linn, nach leanfaí de nós a bhí tosaithe a leithéid de sheirbhís trí Ghaeilge a dhiúltú do dhaoine a lorg í.

Léirigh imscrúdú eile gur sárú ar fhoráil de chuid Acht na dTeangacha Oifigiúla a bhí ann gur fhoilsigh an Roinn Gnóthaí Sóisialacha agus Teaghlach an páipéar uaine ar phinsin i mBéarla amháin ag tráth nach raibh fáil fós ar an leagan Gaeilge den doiciméad sin, ar thogra beartais phoiblí é.

Ghlac Feidhmeannacht na Seirbhíse Sláinte leithscéal faoina faillí nuair a cruthaíodh in imscrúdú gur sháraigh an eagraíocht a dualgas reachtúil i gcás inar cuireadh seirbhís fiacloireachta, ar sheirbhís pobail í, ar fáil i mBéarla amháin i scoil Ghaeltachta.

Ghlac Coimisiún na Scrúduithe Stáit leis na moltaí i dtuarascáil tar éis imscrúdaithe a léirigh go raibh an tAcht Oideachais 1998 á shárú ag an eagraíocht sin nuair a bhí páipéir scrúdaithe na hArdteistiméireachta, a freagraíodh trí Ghaeilge, á marcáil i gcomhréir le scéimeanna marcála i mBéarla amháin.

Chruthaigh imscrúdú eile gur sháraigh an tÚdarás Náisiúnta Míchumais foráil de chuid Acht na dTeangacha Oifigiúla sa mhodh dáilte a roghnaigh an eagraíocht le leabhrán a scaipeadh mar chor poist ar fud na tíre.

## Decisions

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

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

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

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

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

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

Tháinig mé ar an gcinneadh in imscrúdú eile go raibh foráil de chuid an Achta Iompair 1950 maidir le ticéid a chlóbhualadh go hiomlán i nGaeilge nó go dátheangach á sárú i dtaca le ticéid taistil áirithe faoin scéim iompar scoile ag Bus Éireann.

Ghabh Comhairle Contae Fhine Gall leithscéal nuair a léirigh imscrúdú gur theip uirthi cloí lena dualgas faoi Acht na dTeangacha Oifigiúla maidir le cumarsáid leis an bpost leictreonach i nGaeilge a fhreagairt sa teanga chéanna sin.

I gcás imscrúdú amháin a rinneadh ar iarratas ó ochtar ball den Oireachtas, chinn mé nach sárú a bhí ann ar fhoráil de chuid Acht na dTeangacha Oifigiúla nuair nach raibh fáil ar leaganacha Gaeilge de bhillí le linn an phróisis achtaithe reachtaíochta i dTithe an Oireachtais.

## Scéimeanna Teanga

Lean m'Oifig le linn na bliana le próiseas léimheasa nó iniúchta ar scéimeanna teanga a raibh a gcéad bhliain feidhme críochnaithe acu agus eisíodh tuairiscí de thoradh na hoibre sin chuig 25 comhlacht poiblí sa bhreis ar na 9 gcinn a rinneadh an bhliain roimhe sin. Bhí sé mar aidhm ag an tionscnamh seo aon fhadhb a bhí ag baint le cur i bhfeidhm fhorálacha na scéimeanna sin a aithint agus a chur ar a súile do lucht ceannais na gcomhlachtaí poiblí le go bhféadfaidís na céimeanna cuí a ghlacadh le cinntiú go mbeidís ag cloí lena ndualgais reachtúla.

Daingníodh 31 scéim teanga nua le linn na bliana 2007 a chlúdaigh móriomlán de 60 comhlacht poiblí. D'fhág sin go raibh 74 scéim teanga ar fad i bhfeidhm a chlúdaigh móriomlán de 131 comhlacht poiblí ó achtaíodh an reachtaíocht.

Cuireadh tús freisin leis an bpróiseas le scéimeanna nua teanga a réiteach i gcás comhlachtaí poiblí a raibh a gcéad scéim teanga 3 bliana i ndáil le bheith críochnaithe.

## Ginearálta

Is léir dom go bhfuil feabhas áirithe ag teacht i gcuid mhaith eagraíochtaí stáit ar sholáthar seirbhísí trí Ghaeilge. Molaim na heagraíochtaí sin agus a mbaill foime agus glacaim buíochas leo as a dtacaíocht don teanga agus don reachtaíocht.

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

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

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

## Language Schemes

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

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

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

## General

It is clear to me that some progress is being made in many state organisations in relation to the provision of services through Irish. I applaud those organisations and their staff agus I thank them for their support for the language and the legislation. There are, however, other cases where the



Tá, áfach, cásanna eile ann ina bhfuil an tairseach maidir leis an leibhéal seirbhíse trí Ghaeilge an-íseal ar fad agus gur le drogall a fheictear ról imeallach don teanga i soláthar seirbhísí do chustaiméirí.

Ní féidir a shéanadh gur ísligh cumas an státchórais seirbhísí a sholáthar trí Ghaeilge go tubaisteach nuair a cuireadh deireadh le “Gaeilge éigeantach” breis agus 30 bliain ó shin.

Nílím ag déanamh an cháis ar chor ar bith gur cheart filleadh ar chóras na Gaeilge éigeantaí d’fhostaithe an stáit, ach ní chreidim gur leor ach an oiread “Béarla éigeantach” a bhrú ar an bpobal agus iad ag déileáil le heagraíochtaí stáit.

Creidim go gcaithfear an nasc a shoiléiriú agus a threisiú idir foghlaim na Gaeilge i gcóras oideachais na tíre agus úsáid na teanga ina dhiaidh sin i mbun cumarsáide go ginearálta, go háirithe leis an státchóras.

Ní léir anois gur leor na córais reatha maidir le hearcaíocht agus traenáil foirne le cinntiú go mbeidh líon leordhóthanach foirne le hinniúlacht sa Ghaeilge ar fáil in eagraíochtaí stáit na tíre le seirbhísí a sholáthar trí Ghaeilge chomh maith lena soláthar trí Bhéarla.

Creidim go dteastódh gníomh nó córas athchothromaithe leis an líon leordhóthanach sin d’fhoireann le hinniúlacht sa Ghaeilge a chinntiú sa státseirbhís agus sa tseirbhís phoiblí. Aimsíodh córas le cabhrú le hathchothromaíocht trasphobail a fheabhsú trí idirdhealú dearfach a spreagadh do Sheirbhís Póilíneachta Thuaisceart na hÉireann de thoradh Thuarascáil Patten. Theastódh iarracht den chineál céanna a fheidhmiú anseo ar bhunús teanga, fiú ar feadh tréimhse shealadach, le tionchar dearfach a bheith aige in athchothromú a dhéanamh ar fhoireann le hinniúlacht sa Ghaeilge agus sa Bhéarla sa státchóras anseo.

Níor cheart go mbeadh aon impleachtaí maidir le costais bhreise aige seo; go deimhin ba shaoire don státchóras baill foirne le hinniúlacht sa dá theanga oifigiúla araon, sa Ghaeilge agus sa Bhéarla, a bheith fostaithe ann ná an córas reatha i gcuid mhór eagraíochtaí stáit a chaithfidh dul i muinín seirbhísí seachtracha tráchtála aistriúcháin le déileáil, fiú, leis na litreacha is simplí i nGaeilge.

threshold for the supply of services through Irish is very low and where the role of the language in the provision of such services to customers is perceived as being marginal and provided reluctantly.

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

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

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

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

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

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

**Cheap an tUachtarán mé mar Choimisinéir Teanga go foirmiúil ar an 23 Feabhra 2004 ar chomhairle an Rialtais tar éis do Dháil Éireann agus do Sheanad Éireann rún a rith ag moladh an cheapacháin.**

Cuireadh tús gan mhoill ina dhiaidh sin le bunú na hOifige agus is í seo an 4ú tuarascáil bhliantúil de chuid na hOifige. Tá mionchur síos ar obair na hOifige roimhe seo i dtuarascálacha bliantúla do 2004, 2005 agus 2006 atá ar fáil ón Oifig agus ar shuíomh gréasáin na hOifige agus tá fáil ón bhfoinse chéanna ar chuntais airgeadais na mblianta sin.

Oifig neamhspleách reachtúil í Oifig an Choimisinéara Teanga a bhfuil sé mar chúram uirthi monatóireacht a dhéanamh ar an gcaoi a bhfuil forálacha Acht na dTeangacha Oifigiúla 2003 á gcomhlíonadh ag comhlachtaí poiblí an Stáit, agus le gach beart riachtanach a dhéanamh chun a chinntiú go gcomhlíonfaidh comhlachtaí poiblí a ndualgais faoin Acht.

Fiosraíonn an Oifig gearáin ón bpobal i gcásanna ina gcreidtear go bhfuil teipthe ar chomhlachtaí poiblí a ndualgais a chomhlíonadh faoi Acht na dTeangacha Oifigiúla 2003 nó faoi aon achtachán eile a bhaineann le stádas nó le húsáid na Gaeilge.

Cuireann an Oifig comhairle ar fáil don phobal maidir lena gcearta teanga agus comhairle ar na comhlachtaí poiblí maidir lena ndualgais teanga faoin Acht. Tá sé mar phríomhchuspóir ag Acht na dTeangacha Oifigiúla 2003 a chinntiú go soláthróidh an státseirbhís agus an tseirbhís phoiblí seirbhísí Gaeilge níos líonmhaire agus ar chaighdeán níos airde thar thréimhse ama.

Bheadh súil go mbeadh sé mar thoradh ar fheidhmiú an Achta go gcruthófaí spás nua don Ghaeilge i gcóras riaracháin phoiblí na tíre. Is léiriú é ar chuid amháin d'aidhm teanga an Stáit mar thaca leis na hiarrachtaí eile an teanga a chur chun cinn san oideachas, sa chraoltóireacht, sna healaíona, i saol na Gaeltachta agus i gcúrsaí an tsaoil go ginearálta.

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

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

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

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

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

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

Ar an 14 Iúil 2003 shínigh an tUachtarán Acht na dTeangacha Oifigiúla ina dhlí agus ar an 14 Iúil 2006 tháinig gach foráil den Acht nach raibh tagtha i bhfeidhm le hordú Aire roimhe sin i bhfeidhm go hoifigiúil. Chiallaigh sin go raibh bunús reachtúil ón data sin ar aghaidh le gach foráil de chuid an Achta ach níor chiallaigh sé éifeacht iomlán a bheith leis an reachtaíocht fós.

Tugtar údarás faoin Acht don Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta rialacháin a dhéanamh agus scéimeanna teanga a dhaingniú faoin Acht.

Ag deireadh 2007 ní raibh rialacháin tugtha i bhfeidhm faoi Alt 9(1) den Acht i taca le húsáid na Gaeilge agus an Bhéarla i bhfógraíocht, stáiseanóireacht, fogairtí béil agus comharthaíocht na gcomhlachtaí poiblí, cé go raibh dréachtrialacháin foilsithe agus curtha faoi bhráid Thithe an Oireachtais.

Le linn na bliana freisin dhaingnigh an tAire tuilleadh scéimeanna teanga faoin Acht a d'fhág go raibh 74 scéim a chlúdaigh 131 comhlacht poiblí daingnithe faoi dheireadh 2007. Bhí 42 dréachtscéim eile a chlúdaigh 79 comhlacht poiblí ullmhaithe do dhaingniú ag deireadh 2007.

Tá, áfach, c.650 comhlacht poiblí a thagann faoi scáth na reachtaíochta agus cé nach mbíonn an phráinn chéanna ag baint le scéimeanna a dhaingniú i gcás comhlachtaí poiblí beaga nach bhfuil caidreamh rómhór acu le sciar suntasach den phobal, is léir go bhfuil cuid mhór scéimeanna teanga le comhaontú agus le daingniú fós.

Ní féidir éifeacht iomlán na reachtaíochta a mheas go mbeidh na rialacháin ar fad faoin Acht déanta agus scéimeanna teanga daingnithe i gcás sciar an-suntasach de na comhlachtaí poiblí.

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

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

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

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

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

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



Le linn na bliana 2007 lean m'Óifig le feachtais éagsúla le heolas a scaipeadh faoi Acht na dTeangacha Oifigiúla 2003 agus faoi obair na hOifige féin. San áireamh anseo bhí seimineáir agus ócáidí poiblí eile, feachtais fhógraíochta, agallaimh leis na meáin, taispeántais ag ócáidí Gaelacha, forbairt an tsuimh ghréasáin, agus gníomhaíochtaí eile.

### Seimineáir

Labhair mé ag 12 sheimineár nó ócáid phoiblí eile le linn na bliana in áiteanna éagsúla ar fud na tíre.

### Meáin

Rinne mé 54 agallamh le hiriseoirí as na meáin chumarsáide le linn na bliana le léargas a thabhairt ar obair na hOifige, ar fheidhmiú an Achta agus ar cheisteanna gaolmhara.

Ar na meáin chumarsáide a rinne agallamh liom nó a lorg faisnéis uaim le linn na bliana bhí:

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

Ba mhaith liom buíochas a ghabháil leis na hiriseoirí ar fad a chuir an oiread sin suime in obair na hOifige le linn na bliana agus a chabhraigh le cur chun cinn na hoibre sin trína gcuid tuairisceoireachta i mBéarla agus i nGaeilge.

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

### Seminars

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

### Media

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

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

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

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

## Taispeántais

Bhí seastán eolais ag m'Oifig ag roinnt ócáidí Gaelacha le linn na bliana, san áireamh, bhí **an tOireachtas** (Cathair na Mart, Co. Mhaigh Eo: 1-4 Samhain 2007) agus ag ócáid de chuid **Sheachtain na Gaeilge** (18 Márta 2007, Baile Átha Cliath).

## Fógraíocht

Eagraíodh roinnt feachtais fhógraíochta ar an teilifís, ar raidió agus sna nuachtáin le linn na bliana. Ar sheirbhís teilifíse TG4 a díródh na feachtais fhógraíochta teilifíse den chuid is mó cé go ndearnadh roinnt fógraíochta freisin ar bhealaí teilifíse RTÉ1 agus RTÉ2. Ar sheirbhís RTÉ Raidió 1 agus ar stáisiún tráchtála áitiúla ar fud na tíre a craoladh na fógraí raidió. Sna nuachtáin Ghaeilge Foinse agus Lá Nua agus i dteannta an cholúin "Tuarascáil" san Irish Times a rinneadh an chuid is mó den fhógraíocht nuachtáin.

## Suíomh gréasáin

Leanadh le linn na bliana d'fhorbairt an tsuímh ghréasáin [www.coimisineir.ie](http://www.coimisineir.ie) le cinntiú go mbeadh sé iomlán cruinn agus ceart i gcónaí ó thaobh an eolais is deireanaí i dtaca le gach gné den reachtaíocht agus d'obair na hOifige.

Feidhmíonn an suíomh gréasáin mar ionad ilfhreastail, nó mar ionad lárnach eolais do gach a mbaineann le hAcht na dTeangacha Oifigiúla 2003 agus le hOifig an Choimisinéara Teanga.

Sa tréimhse bliana ó thús Eanáir 2007 go deireadh mhí na Nollag 2007 bhí líon na mbuillí (460,000) ar an suíomh níos airde ná aon bhliain roimhe sin.

Rinne beagnach 8,000 duine íoslódáil ón suíomh ar chóipeanna dátheangacha de thuarascálacha bliantúla na hOifige do 2005 agus 2006 le linn na bliana 2007.

## Exhibitions

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

## Advertising

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

## Website

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

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

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

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



## Bonn Óir

Tá ceangal ag m'Oifig leis an gcúrsa céime MA sa Chleachtas Dátteangach in Fiontar, Ollscoil Chathair Bhaile Átha Cliath, áit a mbronnar Bonn Óir an Choimisinéara Teanga ar an gcéimí a fhaigheann na marcanna is airde sa tráchtas iarchéime.

Ar Mháiréad Nic Ealagóid a bronnadh Bonn Óir na bliana 2007 dá tráchtas ar mheon i leith na Gaeilge éigeantaí, ag ócáid bhronnadh na gcéimeanna in Fiontar, Ollscoil Chathair Bhaile Átha Cliath ar an 6 Samhain 2007.

Tá sé mar aidhm ag an gcúrsa MA sa Chleachtas Dátteangach – a bhfuil Stiúrthóir Fiontar, an Dr. Peadar Ó Flatharta, ina cheannas – oiliúint a chur ar fhoireann a bheadh ag obair sna hearnálacha poiblí agus deonacha le seirbhís ardcháilíochta do chustaiméirí a bhainistiú agus a sholáthar go dátteangach, ag freagairt go háirithe do riachtanais Acht na dTeangacha Oifigiúla.

Tugtar an t-eolas agus an scil is gá dóibhsean atá páirteach lena chinntiú go soláthrófar seirbhís ardcháilíochta dhátteangach don phobal a bheidh ag teacht le caighdeáin idimáisiúnta.

## Gréasán Tacaíochta

Le linn na bliana 2007 lean m'Oifig i mbun eagraithe ar ghréasán tacaíochta do chomhlachtaí poiblí a bhfuil scéimeanna teanga daingnithe acu.

Tá na scéimeanna teanga i gcoilár an Achta agus is sna scéimeanna sin a dhearbhaíonn comhlachtaí poiblí go reachtúil na céimeanna atá le tógáil acu – lasmuigh d'fhorálacha díreacha agus rialacháin an Achta – chun a gcuid seirbhísí trí Ghaeilge a fhorbairt ar bhonn céimnithe thar thréimhse trí bliana.



## Gold Medal

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

The 2007 Gold Medal was presented to Máiréad Nic

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

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

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

## Support Network

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

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



Cuireann m'Oifig seirbhís riartha ar fáil don ghréasán tacaíochta agus chas baill an ghréasáin le chéile faoi dhó le linn na bliana – i mBaile Átha Cliath agus i nGaillimh – le ceisteanna a bhain le feidhmiú a gcuid scéimeanna teanga agus forálacha eile an Achta a phlé.

### Óige

Le linn shamhradh na bliana 2007 thug ionadaithe ó m'Oifig cuairt ar roinnt de choláistí samhraidh na Gaeltachta le bróisiúir eolais ar leith atá dírithe ar dhaoine óga a scaipeadh orthu sin a bhí ag freastal ar chúrsaí Gaeilge ansin. Tá sé mar aidhm ag an tionscnamh seo daoine óga a spreagadh i dtús a saoil leis an nGaeilge a roghnú mar theanga chaidrimh leis an státchóras aon uair nó aon áit is féidir é sin a dhéanamh.

### Comhairle do Chomhlachtaí Poiblí

Ar cheann d'fheidhmeanna na hOifige seo tá comhairle nó cúnamh eile a sholáthar do chomhlachtaí poiblí a thagann faoi scáth na reachtaíochta maidir lena ndualgais faoi Acht na dTeangacha oifigiúla 2003.

Le linn na bliana 2007 rinneadh teagmháil thar ceann comhlachtaí poiblí le m'Oifig ar 161 ócáid éagsúil le ceisteanna sonracha nó le léargas cuimsitheach a fháil ar dhualgais teanga faoin Acht.

Ar ndóigh, dá mhéad comhairle agus eolais shoiléir, chruinn a chuirtear ar fáil do chomhlachtaí poiblí faoina ndualgais faoin Acht is ea is fearr is féidir a chinntiú go gcloifear le forálacha an Achta.

### Painéal Aistritheoirí Creidiúnaithe

Rinne Foras na Gaeilge tuilleadh forbartha le linn na bliana 2007 ar an bpainéal aistritheoirí creidiúnaithe agus faoi dheireadh na bliana bhí 98 duine ar fad tar éis aitheantas a fháil go dtí sin mar aistritheoirí creidiúnaithe. Cinntíonn an painéal oifigiúil seo gur cheart go mbeadh fáil éasca ag comhlachtaí poiblí ar liosta aistritheoirí a bhféadfadh lánmhuinín a bheith acu as a gcumas agus as a gcaighdeán oibre.

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

### Youth

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

### Advice to Public Bodies

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

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

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

### Accredited Panel of Translators

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

## Caidreamh Idirnáisiúnta

Le linn na bliana 2007 lean m'Oifig d'fhorbairt ár gcuid le heagraíochtaí gaolmhara, go háirithe le heagraíochtaí atá ag feidhmiú i réimsí pleanála teanga go hidirnáisiúnta.

Tá ceangal ar leith bunaithe againn le hOifig Choimisinéir na dTeangacha Oifigiúla i gCeanada agus tá comhaontú eadrainn baill foirne a mhalartú le chéile ar feadh tréimhse seachtaine le tuiscint a fháil ar mhodhanna oibre agus le dea-chleachtais oibre a fhorbairt.

I mBealtaine na bliana 2007 chaith Damhnait Uí Mhaoldúin, Bainisteoir m'Oifige, seachtain ag obair le hOifig Choimisinéir na dTeangacha Oifigiúla in Ottawa mar mhalairt ar sheachtain a chaith an tUasal Gilbert Langlier ag obair i m'Oifig sa Spidéal, Co. na Gaillimhe an bhliain roimhe sin. Ghlac Oifig Choimisinéir na dTeangacha Oifigiúla i gCeanada le cuireadh uainn in 2007 ball foirne eile dá cuid a chur ag obair linn ar feadh seachtaine le linn na bliana 2008.

Le linn 2007 choinnigh m'Oifig a comhbhallraíocht chorparáideach i gCumann Ombudsman na Breataine agus na hÉireann – cumann a fheidhmíonn le caidreamh agus comhthuiscint a fheabhsú ina measc siúd atá gafa le gnóthaí ombudsman sna críocha seo agus tugadh ballraíocht dom san Acadamh Idirnáisiúnta ar Dhlí Teangacha atá comhdhéanta de dhaoine as gach cearn den domhan atá gafa le cearta reachtúla teanga.

## Cúrsaí Foirne

Críochnaíodh an idirbheartaíocht faoin bhforbairt a theastaigh ar chúrsaí foirne na hOifige go luath sa bhliain 2007 agus ceadaíodh ceapacháin nua ar ghráid shinsearach. Níor tionóladh agallaimh do líonadh na bhfolúntas sin go deireadh na bliana 2007, áfach, agus chríochnaigh an bhliain leis an líon céanna foirne lenar bunaíodh an Oifig in 2004, cé go rabhthas ar tí tairiscintí a dhéanamh le cuid de na poist nua a líonadh.

## International Cooperation

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

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

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

During 2007 my Office continued with our associate corporate membership of the British and Irish Ombudsman Association – an association focused on improving relationships and understanding amongst those engaged with ombudsman services in these jurisdictions. I was awarded membership during 2007 of the International Academy of Linguistic Law, which is composed of individuals throughout the world who are involved with issues of statutory linguistic rights.

## Staff Matters

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

## AN GHAELIGE I DTITHE AN OIREACHTAIS IRISH IN THE HOUSES OF THE OIREACHTAS



Le linn na bliana 2007 tionóladh olltoghchán don 30ú Dáil ar an 24 Bealtaine. Agus, cé gur tháinig an Dáil nua sin le chéile seacht n-uaire i Meitheamh agus Iúil, ba léir gur tar éis shaoire an tsamhraidh, ar an 26 Meán Fómhair, a dhíreofaí dáiríre ar obair an tseisiúin nua. I Meán Fómhair freisin a tháinig baill an 23ú Seanad, idir thofa agus ainmnithe, le chéile den chéad uair.

Bheartaigh mé go mbeadh sé tráthúil, mar sin, i Meán Fómhair 2007 teagmháil a dhéanamh i scríbhinn le gach duine den 226 ball de Thithe an Oireachtais le meabhrú dóibh go raibh cearta ar leith daingnithe sa dlí faoi Alt 6 d'Acht na dTeangacha Oifigiúla 2003 maidir le húsáid na Gaeilge in obair an Oireachtais.

Tá sé de cheart reachtúil ag comhalta de cheachtar Teach den Oireachtas Gaeilge nó Béarla a úsáid in aon díospóireachtaí nó in aon imeachtaí eile sa Teach sin nó de chuid coiste de cheachtar Teach, comhchoiste den dá Theach nó fochoiste de choiste nó de chomhchoiste den sórt

During the year 2007, the general election for the 30th Dáil was held on 24 May. Although the new Dáil met on seven occasions in June and July it was clear that the serious work of the new session would commence after the summer break on 26 September. In September also, the members of the 23rd Seanad, both elected and nominated, met for the first time.

I considered therefore that it would be timely in September 2007 to contact all 226 members of the Houses of the Oireachtas in writing to remind them of the specific rights which were confirmed in law under section 6 of the Official Languages Act 2003 in relation to the use of Irish in the work of the Oireachtas.

Members of either House of the Oireachtas have the right to use Irish or English in any debate or other proceedings in that House or of a committee of either house, a joint committee of both houses or a sub-committee of such a committee or joint committee. This right was already recognised in

## AN GHAEILGE I DTITHE AN OIREACHTAIS

### IRISH IN THE HOUSES OF THE OIREACHTAS

sin. Bhí an ceart seo aitheanta in orduithe seasta Thithe an Oireachtais roimhe seo, ach tugadh stádas dlíthiúil don cheart sin nuair a tugadh an t-alt sin den Acht i bhfeidhm ar an 19 Eanáir 2004. Ba iad seo anois an chéad Dáil agus Seanad nua ó thosach feidhme an stádais sin.

Mheabhraigh mé do bhaill an Oireachtais go raibh córas aistriúcháin chomhuainigh ar fáil i dTithe an Oireachtais le cinntiú nach mbeadh an té nach raibh Gaeilge aige faoi mhíbhuntáiste de bharr an tsocráithe seo: bíonn aistriúchán i mBéarla ar fáil i gcluasáin den mhéid a deirtear trí Ghaeilge. Dúirt mé an méid seo freisin:

*"Is léir nach ndéantar ach céatadán an-bheag d'obair an Oireachtais trí Ghaeilge i dTithe an Oireachtais faoi láthair. Tá sé soiléir, áfach, óna bpáirtíocht i ndíospóireachtaí ar na meáin Ghaeilge, idir raidió agus theilifís, go bhfuil líon suntasacha Teachtaí Dála agus Seanadóirí a bhfuil cumas díospóireachta trí Ghaeilge iontu, ach ar chúis amháin nó ar chúis eile, is trí Bhéarla amháin a bhíonn formhór mór an phlé san Oireachtas.*

*Tá sé mar aidhm agam sa mheabhrúchán seo ar chearta reachtúla maidir le húsáid na Gaeilge go spreagfaí baill den Dáil agus den Seanad rogha a dhéanamh níos mó Gaeilge a úsáid i dTithe an Oireachtais. Ní féidir luach a chur ar an tábhacht a bheadh le háit agus spás breise don teanga a fhorbairt i ngnóthaí parlaiminteacha. Thabharfadh sin spreagadh suntasach do dhaoine eile i réimsí eile den saol poiblí agus chinnteofaí nach mbeadh imeallú á dhéanamh ar an teanga sna hinstiúidí is tábhachtaí i saol na tíre.*

*Aithnítear an Ghaeilge, mar is eol duit, sa bhunreacht mar phríomhtheanga oifigiúil ós í an teanga náisiúnta í. Tá sí á labhairt anseo le 2,000 bliain agus áirítear í ar an teanga scríofa is sine san Eoraip a mhaireann fós mar theanga bheo. Baineann sí leis an tír seo amháin agus tá tábhacht ollmhór léi d'fhéiniúlacht na tíre agus don oidhreacht dhomhanda."*

the Standing Orders of the Houses of the Oireachtas, but was given legal status by the commencement of this section of the Act on 19 January 2004. This was the first new Dáil and Seanad to hold office since the commencement of that new status.

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

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

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

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



## AN GHAEILGE I DTITHE AN OIREACHTAIS

### IRISH IN THE HOUSES OF THE OIREACHTAS

Thug mé eolas sa chumarsáid chéanna dóibh siúd gan Ghaeilge, nó a raibh meirg ar a gcumas sa teanga, agus ar mhian leo cúnamh a fháil go raibh sin á thairiscint i dTeach Laighean ag an eagraíocht Gaeleagras faoi scáth na Roinne Airgeadais.

Rinne baill den Oireachtas teagmháil liom ina dhiaidh sin ag rá go raibh rún acu tuilleadh úsáide a bhaint as a gcuid Gaeilge in obair na Dála agus an tSeanad ach b'ábhar sásamh ar leith dom a chloisteáil ó Ghaelegras go raibh 33 duine, idir theachtaí agus sheanadóirí, tar éis clárú leo le cúrsaí Gaeilge a dhéanamh.

Nuair a chuirtear an líon sin i dteannta na ndaoine sin san Oireachtas a bhfuil cumas díospóireachta trí Ghaeilge acu cheana féin, níl aon cheist ann ach go bhféadfaí cur go mór le húsáid na Gaeilge in obair Thithe an Oireachtais.

Níos deireanaí sa bhliain, i Mí na Samhna, rinne grúpa d'ochtair ball den Oireachtas – beirt Seanadóirí agus seisear Teachtaí Dála – gearán liom go raibh constaic mhór rompu maidir le feidhm a bhaint as a gcearta faoi Alt 6 d'Acht na dTeangacha Oifigiúla 2003 chun an Ghaeilge a úsáid i ndíospóireachtaí agus in imeachtaí eile de chuid Thithe an Oireachtais agus i gcoistí agus fochoistí de chuid Thithe an Oireachtais mar gur i mBéarla amháin a fhoilsítear billí formhór mór an ama.

Mhaígh na baill Oireachtais sin nach raibh cothrom na féinne á fháil acu i gcomparáid le Teachtaí Dála agus Seanadóirí a bhí sásta an Béarla a úsáid i gcónaí, go bhféadfadh a gcearta bunreachtúla a bheith á sárú agus go raibh, dar leo, sárú á dhéanamh ar Alt 7 d'Acht na dTeangacha Oifigiúla 2003 a bhaineann le hAchtanna de chuid an Oireachtais a bheith á bhfoilsiú go comhuaineach i ngach ceann de na teangacha oifigiúla.

Rinne mé imscrúdú ar an ngearán agus d'eisigh mé tuarascáil ina leith chuig na páirtithe cuí an 13 Nollaig 2007. Tá achoimre ar an imscrúdú sin le fáil sa chaibidil sin den tuarascáil bhliantúil seo a bhaineann le himscrúduithe.

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

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

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

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

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

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



Ba í 2007 an chéad bhliain iomlán a raibh bunús reachtúil leis an dualgas ar chomhlachtaí poiblí a chinntiú go mbeadh cora poist áirithe a d'eisigh siad, i gcásanna ar leith, i nGaeilge nó dátheangach (Gaeilge agus Béarla). Níl aon amhras ar bith ann ach, dá thoradh sin, gur tháinig méadú suntasach ar líon na gcora poist dátheangacha a d'eisigh comhlachtaí poiblí le linn 2007.

Tháinig an dualgas nua seo faoi Alt 9(3) d'Acht na dTeangacha Oifigiúla 2003 i bhfeidhm den chéad uair ar an 14 Iúil 2006.

Tá méadú as cuimse tagtha in imeacht na mblianta ar an úsáid a bhaintear go ginearálta as cora poist – bileoga, bróisiúir, leabhráin agus eile – chun faisnéis a dháileadh ar an bpobal i gcoitinne.

Le hAlt 9(3) d'Acht na dTeangacha Oifigiúla 2003 ní cheadaítear a thuilleadh do chomhlachtaí poiblí, i gcásanna ar leith, cora poist aonteangacha Béarla amháin a dháileadh, gníomh a bhí ina nós coitianta roimhe seo.

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

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

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

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



Mar seo a leanas atá an fhoráil in Alt 9(3):

*"I gcás ina ndéanfaidh comhlacht poiblí cumarsáid i scríbhinn nó leis an bpost leictreonach leis an bpobal i gcoitinne nó le haicme den phobal i gcoitinne chun faisnéis a thabhairt don phobal nó don aicme, cinnteoidh an comhlacht gur i nGaeilge, nó i mBéarla agus i nGaeilge, a bheidh an chumarsáid."*

Is léir go mbaineann an dualgas san alt seo le cineál ar leith cumarsáide:

- Is gá gur comhlacht poiblí a bheadh i mbun na cumarsáide;
- Is gá go mbeadh an chumarsáid á déanamh i scríbhinn nó leis an bpost leictreonach;
- Is gá gur leis an bpobal i gcoitinne nó le haicme den phobal i gcoitinne a bheadh an chumarsáid;
- Agus is gá gur chun críche faisnéis a thabhairt don phobal nó don aicme a bheadh an chumarsáid seo á déanamh.

Ba léir ó chuid mhaith cora poist a scrúdaigh m'Oifig le linn na bliana 2007 – a bhfuil domán beag samplaí dóibh le feiceáil anseo – go raibh méadú an-mhór ar líon na gcor poist dátheangach a d'eisigh comhlachtaí poiblí.

Thug m'Oifig suntas freisin do roinnt cora poist aonteangacha Béarla a eisíodh ó chomhlachtaí poiblí agus i bhformhór gach cás acu ba de bharr botúin, míthuisceana nó bearna san eolas ag an gcomhlacht poiblí a tharla an cliseadh. Sna cásanna sin d'aontaíomar céimeanna cuí leis na comhlachtaí poiblí a bhí i gceist agus fuair eamhar dearbhuithe nach dtarlódh an teip chéanna arís.

Sheas comhlacht poiblí amháin le linn na bliana 2007 le léimhíniú ar leith ar an bhforáil in Alt 9(2) den Acht a bhí ag teacht salach ar dhearcadh m'Oifigse. Réitíodh an cás sin le himscrúdú agus tá tuairisc ar an imscrúdú sin sa chaibidil sin den tuarascáil bhliantúil seo a bhaineann le himscrúduithe.

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

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

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

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

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

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

One public body during 2007 interpreted the provision in Section 9(2) of the Act in a way that was at odds with my Office's interpretation. The issue was resolved following an investigation and a report on that investigation is included in the chapter of this annual report concerning investigations.

# SCÉIMEANNA TEANGA FAOIN ACHT LANGUAGE SCHEMES UNDER THE ACT



Lean m'Oifig le linn na bliana le próiseas léirmheasa nó iniúchta ar scéimeanna teanga a raibh a gcéad bhliain feidhme críochnaithe acu agus eisíodh tuairiscí de thoradh na hoibre sin chuig 25 comhlacht poiblí sa bhreis ar na 9 gcinn a rinneadh an bhliain roimhe sin. Bhí sé mar aidhm ag an tionscnamh seo aon fhadhb a bhí ag baint le cur i bhfeidhm fhorálacha na scéimeanna sin a aithint agus a chur ar a súile do lucht ceannais na gcomhlachtaí poiblí le go bhféadfaidís na céimeanna cuí a ghlacadh le cinntiú go mbeidís ag cloí lena ndualgais reachtúla.

Daingníodh 31 scéim teanga nua le linn na bliana 2007 a chlúdaigh móriomlán de 60 comhlacht poiblí. D'fhág sin go raibh 74 scéim teanga ar fad i bhfeidhm a chlúdaigh móriomlán de 131 comhlacht poiblí ó achtaíodh an reachtaíocht.

Sa bhreis air sin, bhí 42 dréachtscéim eile ó chomhlachtaí poiblí éagsúla, a thug móriomlán de 79 comhlachtaí poiblí i gceist, a raibh an próiseas comhaontaithe agus daingnithe fós le críochnú ina leith ag deireadh 2007.

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

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

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

## SCÉIMEANNA TEANGA FAOIN ACHT

### LANGUAGE SCHEMES UNDER THE ACT

Cuireadh tús freisin leis an bpróiseas le scéimeanna nua teanga a réiteach i gcás comhlachtaí poiblí a raibh a gcéad scéim teanga 3 bliana i ndáil le bheith críochnaithe.

Tá feidhmiú na scéimeanna teanga mar chroílár ag Acht na dTeangacha Oifigiúla 2003 mar go dtugtar deis sna scéimeanna teanga do chomhlachtaí poiblí na tosaíochtaí a bheadh acu maidir le feabhas a chur ar a gcuid seirbhísí trí Ghaeilge a aithint agus a eagrú. Pleananna reachtúla teanga atá sna scéimeanna faoin Acht a mhéadóidh ar líon agus ar chaighdeán na seirbhísí a chuirfear ar fáil trí Ghaeilge, ar bhealach eagraithe, tomhaiste thar thréimhse ama.

Don dara bliain as a chéile ba í an easpa cumarsáide, a d'fhág ó am go ham cuid d'fhoireann na gcomhlachtaí poiblí gan a bheith ar an eolas faoi na dualgais shainiúla teanga a bhí comhaontaithe ina gcuid scéimeanna, nó a d'fhág nach raibh an pobal ar an eolas faoi na seirbhísí trí Ghaeilge a bhí dlíte dóibh, an t-easnamh ba shuntasáí a tugadh faoi deara i bhfeidhmiú cuid de na scéimeanna reatha.

Anuas air seo bhí deacrachtaí ag cuid de na comhlachtaí poiblí cloí leis na spriocdhátaí a bhí aontaithe acu féin mar chuid dá scéimeanna agus ní raibh sé soiléir i gcónaí gur thuig siad an tábhacht reachtúil a bhí leis na spriocdhátaí sin. Tá ar intinn ag m'Oifig súil ghéar a choinnéail ar fheidhmiú na scéimeanna sin agus fillimid orthu i dtaobh na spriocdhátaí.

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

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

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

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

# SCÉIMEANNA TEANGA FAOIN ACHT

## LANGUAGE SCHEMES UNDER THE ACT

### Daingnithe faoi dheireadh 2007 / Confirmed by the end of 2007

Ainm an Chomhlachta	Name of Public Body	Dáta scéim i bhfeidhm	Commencement Date of the scheme
An Roinn Gnóthaí Pobail, Tuaithe agus Gaeltachta	Department of Community, Rural and Gaeltacht Affairs	22/09/2004	
Oifig an Uachtaráin	Office of the President	28/04/2005	
Oifig an Choimisiúin um Cheapacháin Seirbhíse Poiblí	Office of the Commission for Public Service Appointments	30/05/2005	
Oifig an Ombudsman agus Oifig an Choimisinéara Faisnéise	Office of the Ombudsman and Office of the Information Commissioner	01/07/2005	
An Roinn Ealaíon, Spóirt agus Turasóireachta	Department of Arts, Sports and Tourism	01/07/2005	
An Chomhairle Ealaíon	The Arts Council	01/07/2005	
Coiste Gairmoideachais Chontae Dhún na nGall	County Donegal Vocational Education Committee	01/07/2005	
Oifig an Stiúrthóra Ionchúiseamh Poiblí	Office of the Director of Public Prosecutions	01/07/2005	
Údarás Áitiúla Chiarraí	Kerry Local Authorities	26/07/2005	
An tSeirbhís Chúirteanna	The Courts Service	31/07/2005	
Údarás Áitiúla Phort Láirge	Waterford County Local Authorities	01/08/2005	
An Roinn Comhshaoil, Oidhreacht agus Rialtais Áitiúil	Department of Environment, Heritage and Local Government	15/08/2005	
Údarás Áitiúla Chontae na Gaillimhe	County Galway Local Authorities	23/08/2005	
Roinn an Taoisigh	Department of the Taoiseach	01/09/2005	
Feidhmeannacht na Seirbhíse Sláinte, Limistéar an Iarthair	Health Service Executive, Western Area	01/09/2005	
Ollscoil na hÉireann, Má Nuad	National University of Ireland, Maynooth	19/09/2005	
Institiúid Teicneolaíochta na Gaillimhe-Maigh Eo	Galway-Mayo Institute of Technology	28/09/2005	
Oifig na gCoimisinéirí Ioncaim	Office of the Revenue Commissioners	01/10/2005	
Ollscoil na hÉireann, Gaillimh	National University of Ireland, Galway	01/10/2005	
Údarás Áitiúla Dhún na nGall	Donegal Local Authorities	01/10/2005	
An tSeirbhís um Cheapacháin Phoiblí	The Public Appointments Service	03/10/2005	
An Coimisiún Reifrinn	The Referendum Commission	ón dáta a bhunófar an chéad Choimisiún eile / from the date on which the next Commission is established	
An Roinn Oideachais agus Eolaíochta	Department of Education and Science	01/12/2005	
An Roinn Airgeadais	Department of Finance	01/02/2006	
Ollscoil Chathair Bhaile Átha Cliath	Dublin City University	03/04/2006	
Seirbhís Oideachais Chontae Chiarraí	Kerry Education Services	15/05/2006	
Ollscoil Luimnigh	University of Limerick	01/06/2006	
An Roinn Talmhaíochta agus Bia	Department of Agriculture and Food	01/06/2006	
An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí	Department of Justice, Equality and Law Reform	30/06/2006	
Comhairle Cathrach Bhaile Átha Cliath	Dublin City Council	13/07/2006	
Coiste Gairmoideachais Chontae na Gaillimhe	County Galway Vocational Education Committee	01/08/2006	
Údarás Áitiúla na Mí	Meath Local Authorities	01/09/2006	
Comhairle Cathrach na Gaillimhe	Galway City Council	01/09/2006	
Óglaigh na hÉireann	The Defence Forces	01/09/2006	
An Roinn Cumarsáide, Fuinnimh agus Acmhainní Náúúrtha	Department of Communications, Energy and Natural Resources	02/09/2006	

# SCÉIMEANNA TEANGA FAOIN ACHT

## LANGUAGE SCHEMES UNDER THE ACT

Ainm an Chomhlachta	Name of Public Body	Dáta scéim i bhfeidhm	Commencement Date of the scheme
Údarás Áitiúla Fhine Gall	Fingal Local Authorities	01/10/2006	
Banc Ceannais & Údarás Seirbhísí Airgeadais na hÉireann	Central Bank and Financial Services Authority of Ireland	01/12/2006	
Coláiste na hOllscoile Corcaigh	University College, Cork	01/12/2006	
An Roinn Gnóthaí Eachtracha	Department of Foreign Affairs	01/12/2006	
Comhairle Contae Átha Cliath Theas	South Dublin County Council	20/12/2006	
Údarás Áitiúla Mhaigh Eo	Mayo Local Authorities	22/12/2006	
Comhairle Contae Liatroma	Leitrim County Council	01/01/2007	
Bord Seirbhísí Ríomhaireachta Rialtais Áitiúil	Local Government Computer Services Board	02/01/2007	
An Roinn Cosanta	Department of Defence	26/02/2007	
An Coimisinéir Cosanta Sonraí	Office of the Data Protection Commissioner	01/04/2007	
An tÚdarás Clárúcháin Maoine	Property Registration Authority	02/04/2007	
Coimisiún Forbartha an Iarthair	Western Development Commission	10/04/2007	
Coiste Gairmoideachais Chathair Chorcaí	Cork City Vocational Education Committee	30/04/2007	
An Foras Riaracháin	Institute of Public Administration	10/04/2007	
Bord Seirbhísí Bainistíochta an Rialtais Áitiúil	Local Government Management Services Board	23/04/2007	
An Roinn Iompair	Department of Transport	30/04/2007	
An Roinn Gnóthaí Sóisialacha & Teaghlaigh	Department of Social and Family Affairs	01/06/2007	
Oifig na nOibreacha Poiblí	The Commissioners of Public Works	08/05/2007	
Coiste Gairmoideachais Chathair na Gaillimhe	Galway City Vocational Education Committee	01/06/2007	
An Bord um Chúnamh Dlíthiúil	Legal Aid Board	28/05/2007	
Údarás Áitiúla Thiobraid Árann Thuaidh agus Comhchoiste Leabharlann Chontae Thiobraid Árann	North Tipperary Local Authorities and County Tipperary Joint Libraries Committee	01/06/2007	
Oifig an Ard-Aighne; Oifig na nDréachtóirí Parlaiminte don Rialtais; Oifig an Phríomh-Aturmae	Office of the Attorney General; Office of the Parliamentary Counsel to the Government; Chief State Solicitor's Office	20/06/2007	
Comhairle Contae Dhún Laoghaire-Ráth an Dúin	Dún Laoghaire-Rathdown County Council	01/07/2007	
Údarás Áitiúla an Chláir	Clare Local Authorities	20/08/2007	
An Bord Pleanála	An Bord Pleanála	01/09/2007	
Údarás Áitiúla Ros Comáin	Roscommon Local Authorities	01/10/2007	
Institiúid Teicneolaíochta Leitir Ceanainn	Letterkenny Institute of Technology	26/09/2007	
Comhairle Cathrach Luimnigh	Limerick City Council	01/10/2007	
Údarás Áitiúla Chorcaí	Cork Local Authorities	01/10/2007	
Coiste Gairmoideachais Chathair Bhaile Átha Cliath	City of Dublin Vocational Education Committee	01/10/2007	
Údarás Áitiúla na hIarmhí	Westmeath Local Authorities	01/10/2007	
Coláiste Oideachais Eaglais na hÉireann	Church of Ireland College of Education	01/11/2007	
An Phríomh-Oifig Staidrimh	Central Statistics Office	05/11/2007	
Comhairle Cathrach Chorcaí	Cork City Council	31/10/2007	
Údarás Áitiúla Lú	Louth Local Authorities	20/11/2007	
Teagasc	Teagasc	01/01/2008	
Comhairle Contae Luimnigh	Limerick County Council	01/02/2008	
An Crannchur Náisiúnta	The National Lottery	02/01/2008	
An Foras Áiseanna Saothair (FÁS)	The Training and Employment Authority (FÁS)	02/01/2008	

# SCÉIMEANNA TEANGA FAOIN ACHT

## LANGUAGE SCHEMES UNDER THE ACT

### Dréachtscéimeanna le hullmhú – Dara Scéim

Thug an tAire Gnóthaí Pobail, Tuaithe agus Gaeltachta treoir ar an 14 Samhain 2007 do na comhlachtaí poiblí seo a leanas athbhreithniú a dhéanamh ar a gcuid scéimeanna teanga agus dréachtscéimeanna nua a ullmhú agus a sheoladh chuige laistigh de 6 mhí:

- Oifig an Uachtaráin
- Oifig an Choimisiúin um Cheapacháin Serbhise Poiblí
- Oifig an Ombudsman agus Oifig an Choimisinéara Faisnéise
- Coiste Gairmoideachais Chontae Dhún na nGall
- Oifig an Stiúrthóra Ionchúiseamh Poiblí
- An Chomhairle Ealaíon
- An Roinn Ealaíon, Spóirt agus Turasóireachta

Tá scéim teanga nua don Roinn Gnóthaí Pobail, Tuaithe agus Gaeltachta féin á hullmhú freisin ag an Roinn sin.

Thug an tAire Gnóthaí Pobail, Tuaithe agus Gaeltachta treoir ar an 20 Nollaig 2007 do na comhlachtaí poiblí seo a leanas athbhreithniú a dhéanamh ar a gcuid scéimeanna teanga agus dréachtscéimeanna nua a ullmhú agus a sheoladh chuige laistigh de 6 mhí:

- An Roinn Comhshaoil, Oidhreacht agus Rialtais Áitiúil
- Údarás Áitiúla Chiarraí
- An tSeirbhís um Cheapacháin Phoiblí
- An tSeirbhís Chúirteanna
- Údarás Áitiúla Dhún na nGall
- Institiúid Teicneolaíochta na Gaillimhe-Maigh Eo
- Údarás Áitiúla Phort Láirge
- Oifig na gCoimisinéirí Ioncaim
- Roinn an Taoisigh
- Ollscoil na hÉireann, Má Nuad
- Ollscoil na hÉireann, Gaillimh
- Údarás Áitiúla Chontae na Gaillimhe

### Draft Schemes to be prepared – Second Scheme

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

- Office of the President
- Office of the Commission for Public Service Appointments
- Office of the Ombudsman and Office of the Information Commissioner
- County Donegal Vocational Education Committee
- Office of the Director of Public Prosecutions
- The Arts Council
- Department of Arts, Sports and Tourism

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

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

- Department of the Environment, Heritage and Local Government
- Kerry Local Authorities
- The Public Appointments Service
- The Courts Service
- Donegal Local Authorities
- Galway-Mayo Institute of Technology
- Waterford Local Authorities
- Office of the Revenue Commissioners
- Department of the Taoiseach
- National University of Ireland, Maynooth
- National University of Ireland, Galway
- County Galway Local Authorities



# SCÉIMEANNA TEANGA FAOIN ACHT

## LANGUAGE SCHEMES UNDER THE ACT

### Dréachtscéim le hullmhú in 2008

Bhí dréachtscéim le cur ar fáil lena daingniú ag an Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta le linn na bliana 2008 ag:

- Bord Soláthair an Leictreachais

### Dréachtscéimeanna le hullmhú roimh dheireadh 2007

Bhí dréachtscéimeanna le cur ar fáil lena ndaingniú ag an Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta ag comhlachtaí poiblí eile le linn nó faoi dheireadh na bliana 2007, mar seo a leanas:

- Comhairle
- Bord Scannán na hÉireann
- Coiste Gairmoideachais Chontae Bhaile Átha Cliath
- Feidhmeannacht na Seirbhíse Sláinte
- Oifig an Stiúrthóir Gnóthaí Tomhaltóirí
- Foras na Mara
- Údarás Áitiúla Laoise
- Údarás Áitiúla Uíbh Fhailí
- Údarás Áitiúla Mhuineacháin
- Údarás Áitiúla Chill Mhantáin
- Údarás Áitiúla Loch Garman
- Údarás Áitiúla Chill Dara
- Údarás Áitiúla Longfoirt
- Comhairle Cathrach Phort Láirge
- Údarás Áitiúla Chill Chainnigh
- Údarás Áitiúla an Chabháin
- Údarás Áitiúla Cheatharlach
- An Garda Síochána

### Dréachtscéimeanna le hullmhú roimh dheireadh 2006

Bhí dréachtscéimeanna le cur ar fáil lena ndaingniú ag an Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta ag comhlachtaí poiblí eile le linn nó faoi dheireadh na bliana 2006, mar seo a leanas:

- An Roinn Sláinte agus Leanaí
- Leabharlann Náisiúnta na hÉireann
- Suirbhéireacht Ordanáis Éireann

### Draft scheme to be prepared in 2008

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

- Electricity Supply Board

### Draft schemes to be prepared by the end of 2007

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

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

### Draft schemes to be prepared by the end of 2006

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

- Department of Health and Children
- National Library of Ireland
- Ordnance Survey Ireland

## SCÉIMEANNA TEANGA FAOIN ACHT

### LANGUAGE SCHEMES UNDER THE ACT

- Údaráis Áitiúla Shligigh
- Ard-Mhúsaem na hÉireann
- Leabharlann Chester Beatty
- An Chomhairle Oidhreachta
- An tÚdarás Comhionannais
- An Binse Comhionannais
- An Oifig um Chlárú Cuideachtaí
- Oifig Chláraitheoir na gCara-Chumann
- Oifig an Stiúrthóra um Fhorfheidhmiú Corparáideach
- An Coimisiún um Scrúduithe Stáit
- Oifig an Ard-Reachtair Cuntas agus Ciste
- Coiste Gairmoideachais Chontae Chorcaí
- Institiúid Teicneolaíochta Thamhlachta
- Institiúid Teicneolaíochta Trá Lí
- An Ceoláras Náisiúnta
- Dánlann Náisiúnta na hÉireann
- Amharclann na Mainistreach  
(An Chuideachta Amharclann Náisiúnta Teo.)
- An tÚdarás um Ard-Oideachas
- Údaráis Áitiúla Thiobraid Árann Theas
- Coiste Gairmoideachais Chontae an Chláir

#### **Léirmheas déanta agus Tuairiscí eisithe 2007**

- Oifig an Stiúrthóra Ionchúiseamh Poiblí
- An tSeirbhís Chúirteanna
- Údaráis Áitiúla Phort Láirge
- An Roinn Comhshaoil, Oidhreachta agus Rialtais Áitiúil
- Údaráis Áitiúla Chontae na Gaillimhe
- Roinn an Taoisigh
- Feidhmeannacht na Seirbhíse Sláinte, Limistéar an Iarthair
- Ollscoil na hÉireann, Má Nuad
- Institiúid Teicneolaíochta na Gaillimhe-Maigh Eo
- Oifig na gCoimisinéirí Ioncaim
- Ollscoil na hÉireann, Gaillimh
- An tSeirbhís um Cheapacháin Phoiblí
- An Roinn Oideachais agus Eolaíochta
- An Roinn Airgeadais

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

#### **Reviews completed and reports issued 2007**

- Office of the Director of Public Prosecutions
- The Courts Service
- Waterford Local Authorities
- Department of Environment, Heritage and Local Government
- County Galway Local Authorities
- Department of the Taoiseach
- Health Services Executive, Western Area
- National University of Ireland, Maynooth
- Galway-Mayo Institute of Technology
- Office of the Revenue Commissioners
- National University of Ireland, Galway
- Public Appointments Service
- Department of Education and Science
- Department of Finance

# SCÉIMEANNA TEANGA FAOIN ACHT

## LANGUAGE SCHEMES UNDER THE ACT

- Ollscoil Chathair Bhaile Átha Cliath
- Seirbhís Oideachais Chontae Chiarraí
- Ollscoil Luimnigh
- An Roinn Talmhaíochta agus Bia
- An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí
- Comhairle Cathrach Bhaile Átha Cliath
- Coiste Gairmoideachais Chontae na Gaillimhe
- Comhairle Cathrach na Gaillimhe
- Óglaigh na hÉireann
- An Roinn Cumarsáide, Fuinnimh agus Acmhainní Nádurtha
- Údarás Áitiúla Fhine Gall

- Dublin City University
- Kerry Education Services
- Limerick University
- Department of Agriculture and Food
- Department of Justice, Equality and Law Reform
- Dublin City Council
- County Galway Vocational Education Committee
- Galway City Council
- The Defence Forces
- Department of Communications, Energy and Natural Resources
- Fingal Local Authorities

### Staitisticí – Scéimeanna

Bliain	Scéimeanna	Comhlachtaí Poiblí san Áireamh
2004	1	1
2005	21	34
2006	21	36
2007	30	60
<b>Iomlán</b>	<b>74</b>	<b>131</b>

### Statistics – Schemes

Year	Schemes	Public Bodies Included
2004	1	1
2005	21	34
2006	21	36
2007	30	60
<b>Total</b>	<b>74</b>	<b>131</b>

### Staitisticí – Dréachtscéimeanna

Bliain	Dréachtscéimeanna	Comhlachtaí Poiblí san Áireamh
2005	16	25
2006	71	129
2007	42	79

### Statistics – Draft Schemes

Year	Dréachtscéimeanna	Public Bodies Included
2005	16	25
2006	71	129
2007	42	79

### Staitisticí – Dara Scém

Bliain	Dréachtscéimeanna	Comhlachtaí Poiblí san Áireamh
2007	20	33

### Statistics – Second Scheme

Year	Dréachtscéimeanna	Public Bodies Included
2007	20	33

### Staitisticí – Léirmheas

Bliain	Scéimeanna	Comhlachtaí Poiblí san Áireamh
2006	09	16
2007	25	43
<b>Iomlán</b>	<b>34</b>	<b>59</b>

### Statistics – Review

Year	Scéimeanna	Public Bodies Included
2006	09	16
2007	25	43
<b>Total</b>	<b>34</b>	<b>59</b>

# GEARÁIN: DEACRACHTAÍ AGUS FADHBANNA – STATISTICÍ

## COMPLAINTS: DIFFICULTIES AND PROBLEMS – STATISTICS

### 622 Gearán Nua in 2007

Le linn 2007 cuireadh 622 cás nua i mo láthair inar chreid baill den phobal go raibh cúis gearáin acu de bharr deacrachta nó faidhbe le seirbhís trí Ghaeilge ón státhóras. Ba í seo an dara bliain as a chéile a raibh an líon gearán os cionn 600.

Cuireadh comhairle ar leith ar fáil don ghearánach maidir le 282 cás acu sin agus maidir le 400 cás eile (lena n-áirítear 60 cás ón mbliain 2006) tógadh céimeanna le hiarrachtaí a dhéanamh cúis an ghearáin a réiteach – uaireanta de réir “spiorad na reachtaíochta” seachas de bharr dualgais de réir fhorálacha an Ahta. Tugadh 378 de na 400 cás sin chun críche le linn na bliana, agus tugadh 22 acu chun cinn go dtí an bhliain 2008.

Ar na gearáin ba choitianta bhí: foirmeacha i mBéarla amháin (13%), easpa Gaeilge ar chomharthaí bóthair (13%), fadhb le hainm agus/nó seoladh i nGaeilge (10%), bileoga nó clórláin i mBéarla amháin (10%), easpa Gaeilge i gcomharthaíocht/i bhfógraíocht (9%), freagraí i mBéarla ar chumarsáid i nGaeilge (8%), easpa Gaeilge ar shuímh ghréasáin (5%), cúrsaí toghcháin (4%), foilseacháin i mBéarla amháin (3%), cártaí aitheantais oifigiúla i mBéarla amháin (3%) agus forálacha de scéimeanna teanga (2%).

As Co. Bhaile Átha Cliath a tháinig beagnach an tríú cuid de na gearáin (32%) agus tháinig 55% eile de na gearáin as ocht gcontae le chéile – Gaillimh (24%), Ciarraí (12%), Dún na nGall (6%), Liatroim (5%), Corcaigh, Cill Mhantáin, an Clár agus an Mhí (2%).

Ón nGaeltacht a tháinig 40% de na gearáin agus as ceantair lasmuigh den Ghaeltacht an chuid eile (60%).

Is ceart a rá nár bhain na gearáin ar fad chun na hOifige le linn na bliana 2007 le sárú ar dhualgais reachtúla faoi Acht na dTeangacha Oifigiúla 2003 agus gur bhain tuilleadh le deacrachtaí agus fadhbanna níos ginearálta gnó a dhéanamh trí Ghaeilge le heagraíochtaí stáit. Bhí sé mar straitéis eatramhach ag an Oifig, go dtí go dtiocfadh éifeacht iomlán na reachtaíochta i bhfeidhm, déileáil leis na fadhbanna agus gearáin seo de réir “spiorad” na reachtaíochta le hoiread cabhrach agus ab fhéidir a sholáthar don chuid sin den phobal a mheas go raibh cúis gearáin acu.

Ní bheidh aon bhrí ná bunús leanúint leis an modh oibre eatramhach sin nuair a bheidh éifeacht iomlán leis an reachtaíocht – na rialacháin déanta faoin Acht i dtaca le húsáid na Gaeilge i bhfógraíocht, comharthaíocht, stáiseanáireacht agus fógairtí béil agus céatadán níos mó de scéimeanna teanga daingnithe faoin Acht.

### 622 New Complaints in 2007

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

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

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

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

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

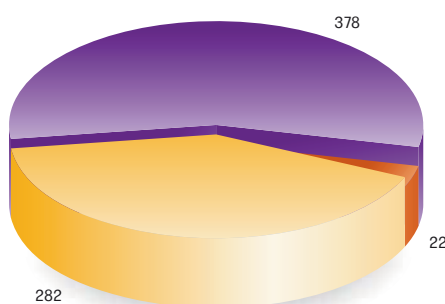
There would be little sense in continuing with this strategy in future when the Act is fully in force – when the regulations are made under the Act in respect of the use of Irish in advertising, signage, stationery and oral announcements and when a greater percentage of language schemes are confirmed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

# GEARÁIN: DEACRACHTAÍ AGUS FADHBANNA – STATISTICÍ COMPLAINTS: DIFFICULTIES AND PROBLEMS – STATISTICS

## Gearáin le linn 2007 / Complaints in 2007

Gearáin nua 2007 / New complaints 2007	622
Gearáin tugtha ar aghaidh ó 2006 / Complaints brought forward from 2006	60
<b>Móiriomlán gearán – fadhbanna agus deacrachtaí / Total complaints – problems and difficulties</b>	<b>682</b>

	2005	2006	2007
Comhairle tugtha maidir le gearáin / Advice provided in relation to complaints	176	285	282
Gearáin fiosraithe agus réitithe / Complaints examined and resolved	246	294	378
Gearáin tugtha ar aghaidh / Complaints brought forward	28	60	22
<b>IOMLÁN / TOTAL</b>	<b>450</b>	<b>639</b>	<b>682</b>

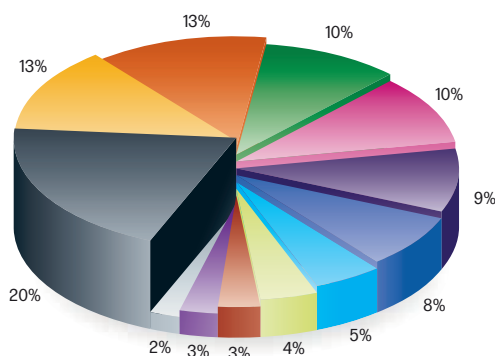


Tá anailís ar na cásanna éagsúla sna staitisticí agus sna léaráidí seo a leanas:

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

## Céatadán Gearán de réir Cineáil / Percentage of Complaints by Type

	2005	2006	2007
Foirmeacha i mBéarla amháin / Forms in English only	21%	19%	13%
Easpa Gaeilge ar chomharthaí bóthair / Lack of Irish on road signs	13%	16%	13%
Fadhb le hainm agus/nó seoladh i nGaeilge / Problem with use of name and/or address in Irish	14%	16%	10%
Bileoga nó ciorcláin i mBéarla amháin / Leaflets or circulars in English only	4%	5%	10%
Easpa Gaeilge i gcomharthaíocht/i bhfógraíocht / Lack of Irish on signage/advertisements	6%	6%	9%
Freagraí i mBéarla ar chumarsáid i nGaeilge / Replies in English to correspondence in Irish	10%	14%	8%
Easpa Gaeilge ar shuímh ghréasáin / Lack of Irish on websites	4%	3%	5%
Cúrsaí Toghcháin / Election issues	-	-	4%
Foilseacháin i mBéarla amháin / Publications in English only	4%	3%	3%
Cártaí aitheantais oifigiúla i mBéarla amháin / Official identity cards in English only	3%	1%	3%
Foráil de scéim teanga / Provision of language scheme	-	-	2%
Eile (cúiseanna aonair) / Other (individual issues)	21%	17%	20%
<b>IOMLÁN / TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

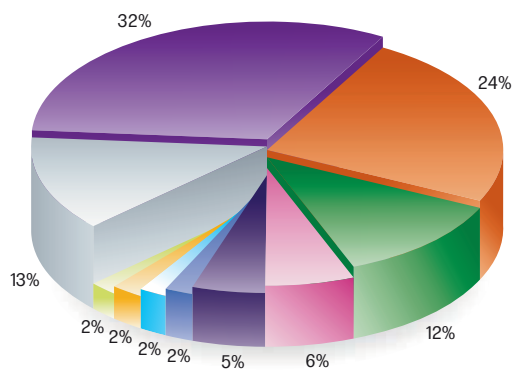




# GEARÁIN: DEACRACHTAÍ AGUS FADHBANNA – STATISTICÍ COMPLAINTS: DIFFICULTIES AND PROBLEMS – STATISTICS

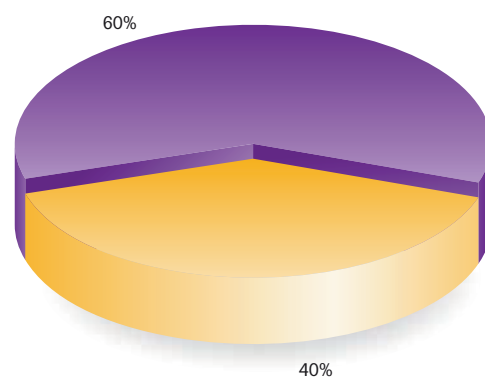
## Gearáin de réir Contae Complaints by County

	2005	2006	2007
Baile Átha Cliath / Dublin	36%	38%	32%
Gaillimh / Galway	17%	17%	24%
Ciarraí / Kerry	9%	4%	12%
Dún na nGall / Donegal	4%	7%	6%
Liatroim / Leitrim	-	3%	5%
Corcaigh / Cork	6%	3%	2%
Cill Mhantáin / Wicklow	-	4%	2%
An Clár / Clare	2%	1%	2%
An Mhí / Meath	3%	2%	2%
Eile / Others	23%	21%	13%
<b>IOMLÁN / TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>



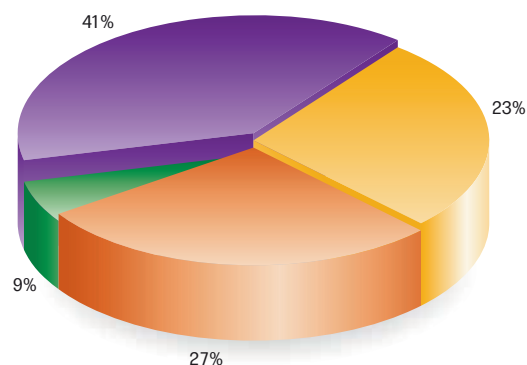
## Gearáin: An Ghaeltacht agus Lasmuigh den Ghaeltacht Complaints: Gaeltacht and Non-Gaeltacht

	2005	2006	2007
An Ghaeltacht	34%	30%	40%
Lasmuigh den Ghaeltacht / Non-Gaeltacht	66%	70%	60%
<b>IOMLÁN / TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>



## Gearáin de réir Cineál Comhlachta Phoiblí Complaints by Type of Public Body

	2005	2006	2007
Ranna Rialtais / Government Departments	30%	27%	23%
Údaráis Áitiúla / Local Authorities	20%	28%	27%
Údaráis Sláinte / Health Authorities	7%	6%	9%
Eagraíochtaí eile Stáit / Other State Organisations	43%	39%	41%
<b>IOMLÁN / TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>





Tá údarás agus cumhachtaí tugtha dom mar Choimisinéir Teanga de réir forálacha de chuid Acht na dTeangacha Oifigiúla imscrúduithe a dhéanamh i gcásanna inar dóigh liom gur féidir gur theip ar chomhlachtaí poiblí a ndualgaí reachtúla a chomhlíonadh faoin Acht nó faoi aon achtachán eile a bhaineann le stádas nó le húsáid na Gaeilge.

Is é atá i gceist le himscrúdú ná fiosrúchán oifigiúil atá seolta ar bhonn foirmiúil, reachtúil de réir na bhforálacha san Acht.

Is féidir imscrúdú a dhéanamh bunaithe ar ghearán ó aon duine, ar iarratas ón Aire Gnóthaí Pobail, Tuaithe agus Gaeltachta nó ar mo thionscnamh féin.

Is iondúil nach rachfaí chun cinn le himscrúdú mura mbeadh iarracht gan toradh déanta an gearán a réiteach ar dtús trí chóras neamhfhoirmiúil réitithe gearán na hOifige nó mura mbeadh sé soiléir gur dócha nach réiteofaí an cas go sásúil d'éagmais imscrúdaithe.

Próiseas casta é an córas imscrúdaithe a thógann cuid mhaith ama agus acmhainní ar an gcomhlacht poiblí a bheadh i gceist agus ar m'Oifige agus ní hiondúil go rachfaí ina bhun gan cúis mhaith.

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

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

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

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

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

Tá dualgas reachtúil ar chomhlachtaí poiblí le linn imscrúdaithe faisnéis nó taifid dá gcuid a bhaineann le hábhar an imscrúdaithe a thabhairt dom. Is iondúil go n-iarfaí ar chomhlacht poiblí aon eolas a bheadh ar chomhaid na heagraíochta faoin ábhar a sholáthar dom chomh maith le tuairisc i scríbhinn a thabhairt ar an ábhar a bheadh á imscrúdú.

Tá dualgas reachtúil freisin ar aon duine ar leith ón gcomhlacht poiblí teacht i mo láthair le faisnéis ó bhéal a thabhairt, má iarraim sin. Tá duine a bheadh ag soláthar faisnéise d'imscrúdú i dteideal na ndíolúintí agus na bpríbhleáidí céanna le finné os comhair na hArd-Chúirte.

Forálann an tAcht d'fhéadail nach mó ná €2,000 agus/nó príosúnacht ar feadh téarma nach faide ná 6 mhí a ghearradh ar dhuine a chiontófaí i gcúirt as diúltú nó teip comhoibriú le himscrúdú nó a chuirfeadh bac ar a leithéid.

Is féidir go mbainfeadh imscrúdú le teip comhlachta poiblí a dhualgas reachtúil a chomhlíonadh i dtaca le forálacha díreacha an Achta, rialacháin déanta faoin Acht (dá mba ann dóibh), nó scéim teanga a bheadh daingnithe faoin Acht.

Sa bhreis air sin, is féidir go mbainfeadh imscrúdú le teip comhlachta poiblí a dhualgas a chomhlíonadh maidir le haon fhoráil d'aon achtachán eile a bhaineann le stádas nó le húsáid na Gaeilge. Ó tharla go gciallaíonn "achtachán" reacht nó ionstraim arna déanamh faoi chumhacht a thugtar le reacht, is léir go bhfuil réimse leathan go maith reachtaíochta lena leithéid d'fhorálacha ar chlár reachtanna na tíre.

Is iondúil go gcríochnaíonn imscrúdú le tuarascáil a chuirtear ar fáil do na páirtithe cuí (an comhlacht poiblí lena mbaineann, an gearánach agus an tAire Gnóthaí Pobail, Tuaithe agus Gaeltachta). Bheadh mo chinneadh i leith an ghearáin agus moltaí cuí sa tuarascáil sin. Is féidir achomhairc a dhéanamh chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh laistigh de 4 seachtaine.

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

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

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

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

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

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

Le linn na bliana 2007 rinne m'Oifig forbairt ar ár gcóras imscrúdaithe agus seoladh 12 imscrúdú oifigiúla faoi réir fhorálacha an Achta. Bhí péire de na himscrúduithe sin nach raibh bailchríoch curtha leo ag deireadh na bliana. Tá achoimre ar na 10 gcinn d'imscrúduithe eile de chuid na bliana 2007 le fáil anseo. I gcás ceann amháin acu, bhí orm cinneadh a dhéanamh an t-imscrúdú a scor – gan fionnachtana ná moltaí a dhéanamh – ar chúiseanna atá mínithe san achoimre féin.

Is ceart a thuiscint go soiléir nach bhfuil sna hachoirí seo ar na himscrúduithe ach cuntais ghairide ar chásanna a bhí in amanna casta agus teicniúil agus a bhí bunaithe go minic ar argóintí dlíthiúla agus praiticiúla. Achoirí atá iontu ar na tuarascálacha oifigiúla a eisíodh i nGaeilge faoi réir Alt 26 den Acht chuig na páirtithe cuí de thoradh na n-imscrúduithe.

Is sna tuarascálacha oifigiúla sin, agus iontu sin amháin, atá na tuairiscí údarásacha ar gach imscrúdú ar leith. Is féidir iarratas a dhéanamh ar chóip d'aon tuarascáil oifigiúil ar leith trí theagmháil a dhéanamh le m'Oifig.

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

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

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

## ACHOIMRÍ AR IMSCRÚDUI THE 2007

### SUMMARIES OF INVESTIGATIONS 2007

Níl sna hachóimrí seo ar na himscrúduithe ach cuntais ghairide ar chásanna a bhí in amanna casta agus teicniúil agus a bhí bunaithe go minic ar argóintí dlíthiúla agus praiticiúla. Achoimrí atá iontu ar na tuarascálacha oifigiúla a eisíodh i nGaeilge faoi réir Alt 26 den Acht chuig na páirtithe cuí de thoradh na n-imscrúduithe. Is sna tuarascálacha oifigiúla sin, agus iontu sin amháin, atá na tuairiscí údarásacha ar gach imscrúdú ar leith.

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



# AN ROINN OIDEACHAIS AGUS EOLAÍOCHTA

## DEPARTMENT OF EDUCATION AND SCIENCE

### Ábhar an Imscrúdaithe

An amhlaidh go bhfuil nó nach bhfuil an fhoráil in Alt 7(2)(d) den Acht Oideachais 1998 – ar foráil í a bhaineann le stádas nó le húsáid teanga oifigiúla – á comhlíonadh i dtaca le soláthar foilseachán áirithe de chuid na Roinne Oideachais agus Eolaíochta do scoileanna aitheanta a chuireann teagasc trí Ghaeilge ar fáil?

### Subject of Investigation

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

### Gearán

Rinne príomhoide iar-bhunscoile – ar scoil aitheanta í a chuireann teagasc trí Ghaeilge ar fáil – gearán oifigiúil liom ar an 26 Meitheamh 2007 nach raibh fáil ar leaganacha Gaeilge d'fhoilseacháin áirithe de chuid na Roinne Oideachais agus Eolaíochta. Bhí na foilseacháin seo ar fáil go saoráideach trí Bhéarla mar sheirbhís taca do scoileanna a fheidhmíonn trí mheán na teanga sin.

Bhí an príomhoide den bharúil, toisc nach raibh fáil ar leagan reatha i nGaeilge den treoirleabhar “Rules and Programmes for Secondary Schools” agus cóipeanna (crua agus leictreonacha) i nGaeilge de shiollabais na n-ábhar éagsúil, go raibh múinteoirí agus daltaí i scoileanna a chuireann teagasc trí Ghaeilge ar fáil faoi mhíbhuntáiste de bharr an easnaimh sin.

### An Reachtaíocht

Ba léir dom nár chuir aon cheann d'fhorálacha díreacha Acht na dTeangacha Oifigiúla 2003 ná aon rialacháin déanta faoin Acht sin dualgas ar an Roinn Oideachais agus Eolaíochta eagrán reatha i nGaeilge de “Rules and Programmes for Secondary Schools” a sholáthar ná a chinntiú go mbeadh cóipeanna cruu agus leictreonacha ar fáil i nGaeilge de gach siollabas cuí do scoileanna a chuir teagasc trí Ghaeilge ar fáil.

Tá scéim teanga faoi Ailt 11-19 d'Acht na dTeangacha Oifigiúla 2003 i bhfeidhm i gcás na Roinne Oideachais agus Eolaíochta ón 1 Nollaig 2005 ach arís ba léir dom nár éiligh aon fhoráil de chuid na scéime sin go mbeadh na foilseacháin ab ábhar don ghearán seo á soláthar trí Ghaeilge.

### Complaint

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

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

### Legislation

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

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

## AN ROINN OIDEACHAIS AGUS EOLAÍOCHTA DEPARTMENT OF EDUCATION AND SCIENCE

Tá foráil ar leith san Acht Oideachais 1998 ar foráil í a bhaineann le stádas nó le húsáid na Gaeilge, mar atá Alt 7(2)(d):

**Alt 7(2)** *"Gan dochar do ghinearáltacht fho-alt (1), is feidhm de chuid an Aire gach ceann díobh seo a leanas:*

*(d) seirbhísí taca trí Ghaeilge a sholáthar do scoileanna aitheanta a chuireann teagasc trí Ghaeilge ar fáil agus d'aon scoil aitheanta eile a iarrann soláthar den sórt sin;"*

San alt léiriúcháin, Alt 2 den Acht sin, deimhnítear go bhfolaíonn "feidhmeanna" cumhachtaí agus dualgais.

San alt léiriúcháin céanna, mínítear "seirbhísí taca" mar a leanas: *"ciallaíonn 'seirbhísí taca' na seirbhísí a chuireann an tAire ar fáil do mhic léinn nó dá dtuismitheoirí, do scoileanna nó do lárionaid oideachais de réir Alt 7 agus folóidh sé aon cheann nó gach ceann de na nithe seo a leanas:...*

*(m) seirbhísí taca curaclaim..."*

Sa sainmhíniú in Alt 30 den Acht céanna áirítear ar a bhfuil i gceist le "curaclam"

*"(b) siollabas gach ábhair".*

### An tImscrúdú

Bheartaigh mé imscrúdú a sheoladh.

Ba iad seo a leanas na foilseacháin a bhí mar fhócas ag an imscrúdú:

- Leagan Gaeilge de "Rules and Programmes for Secondary Schools" (eagrán reatha);
- Leagan Gaeilge den siollabas reatha mar chóip chrua (cothrom le dáta) do gach ábhar iar-bhunscoile;
- Leagan Gaeilge den siollabas reatha (cothrom le dáta) do gach ábhar iar-bhunscoile i bhfoirm leictreonach ar shuíomh gréasáin na Roinne Oideachais agus Eolaíochta.

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

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

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

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

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

*(m) curriculum support services..."*

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

*"(b) the syllabus of each subject."*

### Investigation

I decided to investigate the matter.

The following publications were the subject of the investigation:

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

# AN ROINN OIDEACHAIS AGUS EOLAÍOCHTA

## DEPARTMENT OF EDUCATION AND SCIENCE

### Freagraí na Roinne Oideachais agus Eolaíochta

Níor leor an t-eolas a chuir an Roinn Oideachais agus Eolaíochta ar fáil sa chéad fhreagra uathu ar an 7 Lúnasa 2007 don imscrúdú agus bhí amhras orm faoi chuid den eolas sin. Mar shampla, thug an Roinn le tuiscint go raibh formhór na siollabas i gcló i nGaeilge. Chomh maith leis sin d'fhéadfaí an tuiscint a bhaint as an méid a dúradh go raibh fáil ar an leagan Gaeilge de "Rules and Programmes for Secondary Schools".

Ba léir dom nach raibh an Roinn tar éis díriú go sonrach ar fhreagraí a sholáthar ar chuid de na ceisteanna a bhí curtha agam agus a bhí mar chroílár ag an imscrúdú seo.

D'iarr mé tuilleadh eolais mar fhreagra ar shraith de cheisteanna uaim.

Thug an dara freagra ón Roinn ar an 3 Méan Fomhair 2007 léargas únuia ar chúrsaí atá mar bhonn dá bhfuil thíos.

### Rialacha agus Clár le haghaidh Meánscoileanna

Níor cuireadh leagan Gaeilge den fhoilseachán seo ar fáil ó 1991 cé gur foilsíodh an leagan Béarla ba dhéanaí in 2004. Bhí eagráin nuashonraithe den leagan Béarla á bhfoilsiú go rialta le linn an ama sin agus, go deimhin, ó tháinig an tAcht Oideachais i bhfeidhm sa bhliain 1998, foilsíodh 6 eagrán ar leith i mBéarla de "Rules and Programmes for Secondary Schools" (1998, 1999, 2000, 2001, 2002 agus 2004) agus gan aon eagrán i nGaeilge ón mbliain 1991.

Bhí eagrán na bliana 1991 de "Rialacha agus Clár le haghaidh Meánscoileanna", a bhí ar an aon fhoinse amháin do leaganacha Gaeilge na siollabas do 15 cinn de na hábhair ar chlár na scrúduithe stáit, **as cló** agus ní raibh fáil air le ceannach.

Dúirt an Roinn go raibh an foilseachán sin á thabhairt cothrom go dáta faoi láthair agus go ndéanfaidh sí socruithe chun go gcuirfí leagan Gaeilge den doiciméad leasaithe chuig na scoileanna dara leibhéal lenar bhain sé.

### Replies of the Department of Education and Science

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

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

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

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

### Rules and Programmes for Secondary Schools

An Irish version of this publication had not been made available since 1991 although the latest English version had been published in 2004. Up to date editions of the English version had been published regularly during that period and, indeed, since the Education Act came into force in 1998, 6 separate editions in English of "Rules and Programmes for Secondary Schools" had been published (1998, 1999, 2000, 2001, 2002 and 2004) without any edition in Irish since 1991.

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

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

# AN ROINN OIDEACHAIS AGUS EOLAÍOCHTA

## DEPARTMENT OF EDUCATION AND SCIENCE

### Siollabais

Ba é seo a leanas an fíorphictiúr i dtaca le fáil a bheith ar **chóipeanna crua** de na siollabais éagsúla ag tráth an imscrúdaithe seo:

- As na 32 ábhar a raibh siollabais trí Bhéarla ar fáil dóibh don Ardeistiméireacht (na hábhair scrúdaithe Béarla agus Gaeilge féin as an áireamh) bhí 19 acu sin nach raibh leaganacha Gaeilge dóibh ar fáil – i ngnáthchiall na bhfocal sin;
- As na 26 ábhar a raibh siollabais trí Bhéarla ar fáil dóibh don Teastas Sóisearach (na hábhair scrúdaithe Béarla agus Gaeilge féin as an áireamh) bhí 8 gcinn nach raibh leaganacha Gaeilge dóibh ar fáil – i ngnáthchiall na bhfocal sin.

D'fhág sin, as na 58 ábhar cuí ar fad idir an Ardeistiméireacht agus an Teastas Sóisearach, go raibh 27 acu nach raibh **cóipeanna crua de leaganacha Gaeilge** den siollabas dóibh ar fáil – i ngnáthchiall na bhfocal – ag tráth an imscrúdaithe seo.

Seo a leanas líon na n-ábhar don Ardeistiméireacht agus don Teastas Sóisearach nach raibh **siollabas trí Ghaeilge** ar fáil dóibh – i ngnáthchiall na bhfocal – ag tráth an imscrúdaithe seo:

- Cóipeanna Crua 27 ábhar
- Cóipeanna Leictreonacha 42 ábhar

Ba é líon na n-ábhar don Ardeistiméireacht agus don Teastas Sóisearach nach raibh **siollabas ar bith trí Ghaeilge (cóip chrua ná cóip leictreonach)** ar fáil dóibh – i ngnáthchiall na bhfocal – ná 27 ábhar ag tráth an imscrúdaithe seo.

### Discreíd agus Acmhainní

Sa chás is nach raibh na foilseacháin éagsúla a bhí mar fhócas ag an imscrúdú seo ar fáil trí Ghaeilge sna formáidí éagsúla mar sheirbhís taca do scoileanna aitheanta a chuir teagasc trí Ghaeilge ar fáil agus d'aon scoileanna eile a d'iarr soláthar den sórt sin, theastaigh uaim a chur ó amhras ar shárú a bheadh ansin ar fhorálacha áirithe de chuid an Achta Oideachais 1998.

### Syllabuses

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

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

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

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

- Print Copies 27 subjects
- Electronic Copies 42 subjects

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

### Discretion and Resources

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

## AN ROINN OIDEACHAIS AGUS EOLAÍOCHTA DEPARTMENT OF EDUCATION AND SCIENCE

Dúirt an Roinn Oideachais agus Eolaíochta:

*"Tá an Roinn meabhrach gur gá seirbhísí tacaíochta a sholáthar trí Ghaeilge de réir na bhforálacha ábhartha san Acht Oideachais ag féachaint dá cumas agus dá hacmhainní agus tá an-dul chun cinn déanta aici sa mhéid seo."*

*"Ní ghlacann an Roinn gur gá don Aire gach seirbhís taca a sholáthar trí Ghaeilge faoi Airteagal 7(4) den Acht Oideachais 1998. Tá discríd réasúnach ag an Aire agus í ag comhlíonadh a feidhmeanna agus ag déanamh breithiúnais maidir le soláthrú ar aon seirbhís taca ó thaobh fairsinge de. Téann tosca áirithe i gcion ar an ndiscríd seo, le hinfhaighteacht acmhainne curtha san áireamh."*

Dúirt an Roinn freisin nár shárú ar an Acht Oideachais a bhí ann gan cóipeanna leictreonacha i nGaeilge de gach siollabas a bheith ar fáil ar shuíomh gréasáin na Roinne.

### Seirbhísí Taca agus Feidhmeanna Reachtúla

Ní féidir aon amhras a bheith ann ach gur mar sheirbhís taca faoin Acht Oideachais 1998 a sholáthraítear "Rialacha agus Clár le haghaidh Meánscoileanna" (cóip chrua) agus siollabais na n-ábhar éagsúil (cóip chrua agus cóip leictreonach).

Is croí-fhoilseacháin iad a bhfuil bunús reachtúil leo agus ní fhéadfadh an córas oideachais feidhmiú dá n-uireasa.

Ba cheart a thabhairt san áireamh nach ndearna an Roinn Oideachais agus Eolaíochta aon chás san imscrúdú seo a bhréagnódh é sin.

Tá sainmhíniú tugtha san alt léiriúcháin, Alt 2 den Acht Oideachais 1998, ar "seirbhísí taca" mar a leanas:

*"Ciallaíonn 'seirbhísí taca' na seirbhísí a chuireann an tAire ar fáil do mhic léinn nó dá dtuismitheoirí, do scoileanna nó do lárionaid oideachais de réir Alt 7 agus folóidh sé aon cheann nó gach ceann de na nithe seo a leanas:...*

*(m) seirbhísí taca curaclaim..."*

The Department of Education and Science stated: (translation)

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

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

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

### Support Services and Statutory Functions

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

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

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

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

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

*(m) curriculum support services..."*



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Sa sainmhíniú in Alt 30 den Acht céanna áirítear ar a bhfuil i gceist le “curaclam” mar

*“(b) siollabas gach ábhair,”*

San alt léiriúcháin, Alt 2 den Acht sin, deimhnítear go bhfolaíonn “feidhmeanna” cumhachtaí agus dualgais agus foráiltear mar seo a leanas in Alt 2(3): “Aon tagairt san Acht seo do chomhlíonadh feidhmeanna, folaíonn sí, i leith cumhachtaí agus dualgas, tagairt d’fheidhmiú cumhachtaí agus do chomhall dualgas.”

In Alt 7 den Acht a leagtar amach feidhmeanna an Aire faoin reachtaíocht ar a n-áirítear:

*“(c) pleanáil agus comheagrú a dhéanamh –*

*(ii) ar sheirbhísí taca.”*

Déantar tagairt ar leith in Alt 7(2)(a) d’fheidhm an Aire maidir le seirbhísí taca a chur ar fáil agus in Alt 7(2)(d) d’fheidhm an Aire maidir le seirbhísí taca trí Ghaeilge a sholáthar:

Alt 7(2) “Gan dochar do ghinearálacht fho-alt (1), is feidhm de chuid an Aire gach ceann díobh seo a leanas:

*(a) maoiniú a chur ar fáil do gach scoil aitheanta agus do gach lárionad oideachais agus seirbhísí taca a chur ar fáil do scoileanna aitheanta, do lárionaid oideachais, do mhic léinn, lena n-áirítear mic léinn atá faoi mhíchumas nó a bhfuil riachtanais speisialta eile oideachais acu, agus dá dtuismitheoirí, de réir mar is cuí leis an Aire agus de réir an Achta seo;*

*(d) seirbhísí taca trí Ghaeilge a sholáthar do scoileanna aitheanta a chuireann teagasc trí Ghaeilge ar fáil agus d’aon scoil aitheanta eile a iarrann soláthar den sórt sin.”*

Tá forléiriú ar na cuspóirí dá mbun a achtaíodh an tAcht in Alt 6 agus tá gach ceann acu ábhartha don imscrúdú seo, san áireamh, Alt 6(c), (i), (j), (k):

Alt 6 “Gach duine a mbeidh baint aige nó aici leis an Acht seo a chur i ngníomh, beidh aird aige nó aici ar na cuspóirí seo a leanas ar dá mbun a d’achtaigh an tOireachtas an tAcht seo:

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

*“(b) the syllabus of each subject”*

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

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

*“(c) to plan and co-ordinate –*

*(ii) support services.”*

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

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

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

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

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

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

## AN ROINN OIDEACHAIS AGUS EOLAÍOCHTA DEPARTMENT OF EDUCATION AND SCIENCE

(c) comhionannas rochtana ar an oideachas agus comhionannas rannpháirtíochta san oideachas a chur chun cinn agus chun na bealaí ina bhféadfaidh mic léinn tairbhe a bhaint as an oideachas a chur chun cinn;

(i) cuidiú le réadú beartas agus cuspóirí náisiúnta i ndáil le leathadh an dátheangachais i sochaí na hÉireann agus go háirithe go mbainfí úsáid níos mó as an nGaeilge ar scoil agus sa phobal;

(j) cuidiú leis an nGaeilge a choinneáil mar phríomhtheanga an phobail i limistéir Ghaeltachta;

(k) riachtanais teanga agus chultúrtha mac léinn a chur chun cinn ag féachaint do roghanna a dtuismitheoirí;"

Agus feidhmeanna an Aire faoin Acht á gcomhlíonadh is gá don Aire aird a thabhairt ar na hacmhainní atá ar fáil agus an gá atá ann éagsúlacht a léiriú sna seirbhísí oideachais a chuirtear ar fáil:

Alt 7(4) "Le linn don Aire a fheidhmeanna nó a feidhmeanna a chomhail –

(a) beidh aird aige nó aici ar na nithe seo a leanas –

(i) na hacmhainní atá ar fáil...

(iii) an gá atá ann éagsúlacht na seirbhísí oideachais a chuirtear ar fáil sa Stát a léiriú..."

Sa bhreis air sin, tugtar an léargas seo ar an Acht Oideachais 1998 i dteideal fada an achta sin gur acht é "Do dhéanamh socrú ar mhaithe le leas an phobail maidir le hoideachas **gach duine sa stát...**" Agus mar acht "go n-urramaíonn sé an éagsúlacht luachanna, creidimh, **teangacha** agus traidisiún i sochaí na hÉireann..." [béim curtha leis]

Ba chosúil gurbh é croí na hargóna ag an Roinn Oideachais agus Eolaíochta san imscrúdú seo nár ghá don Aire **gach** seirbhís taca a sholáthar trí Ghaeilge faoi Alt 7(4) den Acht Oideachais 1998.

Rinne an Roinn tuilleadh forbartha ar an seasamh seo le linn dóibh a bheith ag scrúdú dréachta de thuarascáil ar an imscrúdú.

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

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

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

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

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

Section 7(4) "In carrying out his or her functions, the Minister –

(a) shall have regard to –

(i) to the resources available...

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

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

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

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

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Dúirt an Roinn:

*"Go hachomair, is é seasamh na Roinne gurb í feidhm (rud nach ionann agus dualgas) an Aire seirbhísí tacaíochta a sholáthar. Maidir leis sin tá sé dosheachanta go mbeadh éilimh iomaíocha os comhair an Aire. Is é ról an Aire, agus an Aire amháin, na héilimh iomaíocha seo a réiteach agus cinneadh a dhéanamh cad iad na seirbhísí oideachais agus tacaíochta a sholáthrófar. Chuige sin, ní mór don Aire cinneadh atá faoina rogha féin amháin a dhéanamh. Ní fhéadfaí a rá go raibh an tAire ag gníomhú go neamhdhleathach agus (uaidh sin) ag sárú an ailt ach amháin dá mbeadh feidhmiú an rogha sin aondeonach, meonúil nó neamhréasúnach.*

*Tugann na forálacha reachtúla don Aire rogha agus oibleagáid chomhfhreagrach roinnt tosca a bhreithniú lena n-áirítear na hacmhainní atá ar fáil."*

Rinne an Roinn tagairt do chás cúirte Carolan v an Roinn Oideachais agus Eolaíochta inar luadh an difríocht idir feidhmeanna agus dualgaí.

#### Osradharc ar an Imscrúdú

Mar réamhrá ar an osradharc seo ba cheart dom a chur ar an taifead go raibh difríochtaí suntasacha idir an fíorphictiúr a bhí le fáil i gcomhfhreagras an 3 Meán Fómhair 2007 ón Roinn Oideachais agus Eolaíochta agus an léargas a tugadh i gcomhfhreagras tosaigh na Roinne ar an 7 Lúnasa 2007.

Ba chúis díomá dom, go háirithe i bhfianaise an bhunúis reachtúil a bhí leis an imscrúdú, go raibh soiléireacht agus trédhearcacht in easnamh i gcuid den chur chuige a bhain leis an soláthar eolais agus freagraí i dtús ama.

#### Croí na hArgóna de chuid na Roinne Oideachais agus Eolaíochta

Ní raibh aon amhras faoi chroí na hargóna a chuir an Roinn Oideachais agus Eolaíochta san imscrúdú seo: nár ghá don Aire **gach** seirbhís taca a sholáthar trí Ghaeilge faoi Alt 7(4) den Acht Oideachais 1998 mar go raibh discríd réasúnach ag an Aire sa ghnó seo agus go gcaithfí tosca áirithe, infhaighteacht acmhainne ina measc, a thabhairt san áireamh.

The Department stated: (translation)

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

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

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

#### Overview of the Investigation

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

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

#### Core Argument of the Department of Education and Science

There was no doubt about the core argument made by the Department of Education and Science in this investigation: that the Minister was not required to provide **every** support service through Irish under Section 7(4) of the Education Act 1998 as the Minister had discretion in this matter and that certain circumstances, including the availability of resources, had to be taken into account.

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### Frithargóintí

D'fhéadfaí an cás a dhéanamh go raibh discréd ag an Aire Oideachais agus Eolaíochta maidir le soláthar seirbhísí taca go ginearálta faoi Alt 7(1)(a) agus Alt 7(2)(a) agus de réir na n-acmhainní a bhí ar fáil (Alt 7(4)(a)(i)). Dá gcinneadh an tAire seirbhísí taca áirithe a sholáthar faoi na hait seo, an raibh an discréd ag an Aire **gan** na seirbhísí taca céanna sin a sholáthar trí Ghaeilge faoi Alt 7(2)(d)?

D'fhéadfaí an cás a dhéanamh go raibh cothú an chomhionannais, cur chun cinn an dátheangachais, méadú ar úsáid na Gaeilge sa scoil agus sa phobal, agus tacú leis an teanga sa Ghaeltacht i gcóilár intinn an Oireachtais in achtú na reachtaíochta seo agus go gcaithfí feidhm an Aire i leith soláthar seirbhísí taca trí Ghaeilge a mheá sa chomhthéacs sin.

Na foilseacháin sin i bhformáidí éagsúla, tá siad á soláthar i mBéarla gan cheist do scoileanna a chuireann teagasc trí Bhéarla ar fáil. Ach tá na foilseacháin chéanna sin **trí Bhéarla**, go príomhúil, á gcur ar fáil freisin do scoileanna aitheanta a chuireann teagasc trí Ghaeilge ar fáil.

Ba í tuairim na Roinne gurbh fhéidir idirdhealú a dhéanamh idir "feidhm" agus "dualgas" de chuid an Aire faoin Acht. Maidir leis an tuairim seo deimhnítear san alt léiriúcháin, Alt 2 den Acht, go bhfolaíonn "feidhmeanna" cumhachtaí agus dualgais.

Thagair an Roinn do bhreithiúnas cúirte ar maíodh ina leith gur thacaigh sé leis an tuairim sin.

Breithiúnas Ard-Chúirte **O'Carolan v Minister for Education**

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

Ach d'fhéadfaí giota eile as an mbreithiúnas céanna a chur i láthair a d'fhéadfadh a mhalairt a thabhairt le tuiscint. Seo a leanas an tagairt iomchuí:

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

### Counter Arguments

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

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

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

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

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

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

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

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

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

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Is ceart breithiúnais de chuid na Cúirte Uachtaraí a thabhairt san áireamh freisin. I **Sinnott v Minister for Education** [2001] IESC 63 rinne an Príomh-Bhreitheamh Keane, C.J., an tagairt seo a leanas do na cosantóirí (An Roinn Oideachais):

*"They acknowledge that, by virtue of s. 7(1) of the 1998 Act, the Minister is obliged*

*to ensure, subject to the provisions of this Act, that there is made available to each person resident in the State, including a person with a disability or who has other special educational needs, support services and a level and quality of education appropriate to meeting the needs and abilities of that person..." [Béim curtha leis].*

Sa chás céanna, **Sinnott v Minister for Education** [2001] IESC 63, tagraíonn Hardiman, J., do roinnt alt éagsúil de chuid an Achtá Oideachais 1998, ina measc Alt 7(1)(a) agus deir sé: *"It appears that these provisions, together with those of the Equal Status Act, 2000 and the Education (Welfare) Act, 2000 impose duties on public authorities which may be relevant to a person in the position of..."* [Béim curtha leis].

Ach fiú dá mba "feidhm" seachas "dualgas" a bhí i gceist le hAlt 7(2)(d) agus dá mbeadh soláthar seirbhísí taca trí Ghaeilge faoi dhiscréid iomlán an Aire agus coinníollach ar acmhainní a bheith ar fáil, an raibh cás dáiríre ann nárbh acmhainn na foilseacháin seo a sholáthar trí Ghaeilge?

Ba chosúil ó Mheastacháin Athbhreithnithe na Roinne Oideachais agus Eolaíochta don bhliain 2007 go mbeadh buiséad iomlán de €8,385,331,000 ag an Roinn don bhliain sin. Ba bheag den acmhainn airgeadais sin nó d'acmhainn na mblianta roimhe sin ó 1991 ar aghaidh a theastódh do sholáthar leagan Gaeilge de chroí-fhoilseacháin a bhí ar fáil trí Bhéarla mar sheirbhís taca.

Thug an Roinn le fios gur tugadh scóip ar leith don Aire maidir lena feidhmeanna a sheoladh sna tagairtí san Acht ar nós *"de réir mar is cúí leis an Aire"* agus *"i cibé modh is cúí leis an Aire"*, chomh maith le *"a mhéid is indéanta agus ag féachaint do na hacmhainní atá ar fáil"*, agus mar sin de.

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

*"They acknowledge that, by virtue of s. 7(1) of the 1998 Act, the Minister is obliged*

*to ensure, subject to the provisions of this Act, that there is made available to each person resident in the State, including a person with a disability or who has other special educational needs, support services and a level and quality of education appropriate to meeting the needs and abilities of that person..." [Emphasis added].*

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

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

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

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



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Mar thaca leis an seasamh sin dúirt an Roinn an méid seo: *"Is faoin Aire atá sé dá réir sin a chinneadh cad atá cuí ag féachaint do thosca éagsúla (a bhíonn in iomaíocht lena chéile go minic). Ceann de na tosca a gcaithfidh an tAire féachaint di ná ceist na n-acmhainní. Má fheidhmíonn an tAire a rogha go réasúnach tá sí ag gníomhú go dleathach agus laistigh de théarmaí alt 7"*

Mar fhrithargóint, d'fhéadfaí an cheist a chur an raibh an tAire ag feidhmiú go "réasúnach" más leaganacha Béarla amháin de "Rules and Programmes for Secondary Schools" a bhí ar fáil do scoileanna a chuir teagasc trí Ghaeilge ar fáil? An raibh sé "réasúnach", inter alia, nach bhfoilseofaí leagan Gaeilge den doiciméad sin ar feadh 16 bliana cé go raibh eagráin nua á bhfoilsiú go rialta i mBéarla, go ndéarfaí go dtairgeoí fótachóip den fhoilseachán i nGaeilge a bhí as cló do scoileanna a bheadh á lorg agus, maidir le soláthar shiollabais éagsúla an churaclaim trí Ghaeilge, go ndéanfaidh múinteoirí agus scoileanna a gcuid leaganacha féin a aistriú, gach ceann acu, ina gceann agus ina gceann?

Ní fhacthas dom go raibh aon débhríocht ag baint leis an bhforáil a bhí in Alt 7(2)(d) den Acht Oideachais 1998. Ag féachaint do ghnáthbhrí na bhfocal, ba chuma an mbainfí brí litriúil nó brí chuspóireach as na forálacha seo, ba é mo thuairim láidir go raibh an oibleagáid a cuireadh ar an Aire Oideachais agus Eolaíochta ríshoiléir.

Sa chás, áfach, is go raibh débhríocht ag baint léi – rud nach ngéillim dó – agus go raibh soláthar seirbhísí taca trí Ghaeilge go hiomlán coinníollach ar dhiscréid an Aire agus ar infhaighteacht acmhainní amháin, ní fhacthas dom go raibh aon chás réalaíoch ar bith curtha i láthair an imscrúdaithe seo nárbh acmhainn do chórais airgeadais agus oideachais na tíre seo soláthar a dhéanamh don riachtanas seo.

#### Fionnachtain an Imscrúdaithe

Ba é seo a leanas fionnachtain an imscrúdaithe:

- go raibh agus go bhfuil an foráil in Alt 7(2)(d) den Acht Oideachais 1998 – ar foráil í a bhaineann le stádas nó le húsáid teanga oifigiúla – á sárú i dtaca le soláthar na bhfoilseachán sin de chuid na Roinne Oideachais agus Eolaíochta a bhí i gceist san imscrúdú seo, do scoileanna aitheanta a chuireann teagasc trí Ghaeilge ar fáil.

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

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

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

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

#### Finding of the Investigation

The following was the finding of the investigation:

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

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### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

1. Go gcinnteodh an Roinn Oideachais agus Eolaíochta go gcloífeadh sí feasta lena feidhmeanna reachtúla faoi Alt 7(2)(d) den Acht Oideachais 1998.
2. Go gcinnteodh an Roinn Oideachais agus Eolaíochta go gcuirfí leagan Gaeilge cothrom le dáta de "Rules and Programmes for Secondary Schools" ar fáil go comhuaineach leis an gcéad leagan Béarla eile den fhoilseachán sin a chuirfí ar fáil tar éis dháta na tuarascála seo.
3. Go gcinnteodh an Roinn Oideachais agus Eolaíochta, mar chúiteamh ar fhaillí na mblianta, go ndáilfí saor in aisce chuig gach scoil aitheanta a chuireann teagasc trí Ghaeilge ar fáil, líon cuí de na leaganacha Gaeilge cothrom le dáta de "Rules and Programmes for Secondary Schools" – ag an am céanna a mbeadh fáil ar an leagan Béarla – le go mbeadh teacht go furasta ag príomhoidí, múinteoirí agus baill de bhoird bhainistíochta ar an bhfoilseachán seo.
4. Go gcinnteodh an Roinn Oideachais agus Eolaíochta gach uair a dhéanfaí nuashonrú nó leasuithe nó athfhoilsiú ar leaganacha nua de "Rules and Programmes for Secondary Schools" trí Bhéarla go ndéanfaí amhlaidh ag an am céanna le leaganacha trí Ghaeilge.
5. Sa chás is go gcuirfí "Rules and Programmes for Secondary Schools" trí Bhéarla ar fáil go leictreonach ar shuíomh gréasáin na Roinne Oideachais agus Eolaíochta, nó ar aon suíomh gréasáin eile faoi scáth nó faoi stiúir na Roinne sin, nó go gcuirfí an foilseachán ar fáil i bhformáid eile (mar shampla CD Rom), go ndéanfaí amhlaidh leis an leagan Gaeilge ag an am céanna.
6. Go gcinnteodh an Roinn Oideachais agus Eolaíochta go gcuirfí ar fáil mar chóipeanna crua leaganacha Gaeilge cothrom le dáta de shiollabas gach ábhair a bheadh á theagasc trí Ghaeilge.

### Recommendations of the Investigation

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

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

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7. Go gcinnteodh an Roinn Oideachais agus Eolaíochta go gcuirfí ar fáil leaganacha Gaeilge cothrom le dáta de shiollabas gach ábhair a bheadh á theagasc trí Ghaeilge mar chóipeanna leictreonacha ar shuíomh gréasáin na Roinne agus ar aon suíomh gréasáin eile faoi scáth nó faoi stiúir na Roinne ar a mbeadh leaganacha Béarla de na siollabais chuí.
8. Gan dochar don dualgas iomlán a mheas mé a bheith i gceist, go gcinnteodh an Roinn Oideachais agus Eolaíochta go gcuirfí ar fáil go cuí na leaganacha Gaeilge de na siollabais atá i Moladh 6 agus 7 (thuas) mar chóipeanna crua agus leictreonacha roimh an **17 Márta 2008**.
9. Go gcinnteodh an Roinn Oideachais agus Eolaíochta gach uair a dhéanfaí nuashonrú ar shiollabais nó leasuithe nó athfhoilsiú orthu i mBéarla, go ndéanfaí amhlaidh ag an am céanna le leaganacha trí Ghaeilge.
10. Go gcinnteodh an Roinn Oideachais agus Eolaíochta nach n-úsáidfí aon ní i bhfionnachtain ná i moltaí an imscrúdaithe seo le laghdú ná moill a chur ar aon fhorbairt ar sheirbhísí trí Ghaeilge a raibh tagairtí déanta dóibh sa chomhfhreagras a sheol an Roinn chugam ar an 7 Lúnasa 2007 agus ar an 3 Meán Fómhair 2007.

### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

- **Imscrúdú seolta:** 11 Iúil 2007
- **Tuarascáil eisithe:** 17 Deireadh Fómhair 2007

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

### Appeals to the High Court

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

- **Investigation launched:** 11 July 2007
- **Report issued:** 17 October 2007

## AN GARDA SÍOCHÁNA

### Ábhar an Imscrúdaithe

Ar sháraigh an Garda Síochána an dualgas reachtúil teanga atá daingnithe in Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003 nuair a tugadh freagra i scríbhinn i mBéarla ar chumarsáid i scríbhinn i nGaeilge ó dhuine i gCo. na Gaillimhe ar an 19 Meitheamh 2007?

### Subject of Investigation

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

### Réamhrá

Rinne fear Gaeltachta (a bhfuil Gaeilge ó dhúchas aige mar chéad teanga agus ar mhian leis an oiread agus is féidir dá ghnóthaí oifigiúla a dhéanamh sa teanga sin leis an státhóras) gearán le m'Oifig gur sáraíodh a chearta faoi Alt 9(2) d'Acht na dTeangacha Oifigiúla nuair a sheol an Garda Síochána cumarsáid i scríbhinn i mBéarla chuige mar fhreagra ar chumarsáid i scríbhinn i nGaeilge uaidh féin. Deirtear in Alt 9 (2) den Acht:

*"I gcás ina ndéanfaidh duine cumarsáid i dteanga oifigiúil le comhlacht poiblí, i scríbhinn nó leis an bpost leictreonach, freagróidh an comhlacht poiblí sa teanga chéanna."*

### Substaint an Ghearáin

Scríobh an gearánach litir i nGaeilge chuig an nGarda Síochána maidir le cás a bhain le fineáil agus pointí pionóis a bheith á ngearradh air de bharr gur úsáid sé fón póca le linn dó a bheith ag tiomáint gluaisteáin.

Bhí leagan i mBéarla den cháipéis ar a dtugann an Garda Síochána "Fógra Muirear Socraithe" (nó "Fógra Muirear Seasta" / "Fixed Charge Notice") seolta chuig an ngearánach agus bhí dualgas curtha air an fhoirm sin a chomhlánú agus fineáil €60 a íoc laistigh de 28 lá ó dháta an fhógra féin.

Chuir sé litir i nGaeilge chuig an nGarda Síochána ar an 14 Meitheamh 2007 ag míniú gur mhaith leis a chuid gnó a dhéanamh trí nGaeilge agus sheol sé seic €60 i dteannta na litreach agus an fhoirm Bhéarla (nach raibh sínithe aige). Trí bhotún daonna chuir sé an dáta míchuinn, 14/07/2007 (seachas 14/06/2007), ar an seic agus ar an litir.

### Foreword

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

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

### Substance of the Complaint

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

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

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

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Mar fhreagra ar an gcumarsáid sin fuair sé freagra i scríbhinn i mBéarla dar dáta an 19 Meitheamh 2007 thar ceann Cigire de chuid an Gharda Síochána ag míniú dó nach bhféadfaí próiseáil a dhéanamh ar an íocaíocht uaidh de bharr nach raibh an Fógra Muirear Socraithe (i mBéarla) sínithe aige.

Seoladh ar ais chuige arís an Fógra Muirear Socraithe céanna i mBéarla, an seic ar €60 agus an bhunlitir i nGaeilge uaidh féin chuig an nGarda Síochána.

Bhí an méid seo a leanas ráite sa litir i mBéarla a seoladh chuige:

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

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

Bheartaigh mé imscrúdú a sheoladh.

### Freagra an Gharda Síochána

Maidir leis an ngearán d'uradh mar chonclúid thar ceann Choimisinéir an Gharda Síochána:

*"I ngeall ar an méid atá luaite, ní mheastar gur sháraigh An Garda Síochána a dhualgas reachtúil faoi Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003 i dtaca leis an gcás seo."*

Is féidir argóintí Choimisinéir an Gharda Síochána i leith an ábhair seo a roinnt faoi cheannteidil éagsúla:

- Córas uathoibríoch d'eisiúint agus próiseáil Fógraí Muirear Socraithe i mBéarla amháin;
- Litir ón ngearánach lena iarratas ar sheirbhís trí Ghaeilge a bheith freagartha i mBéarla;
- Forbairt ar sheirbhís trí Ghaeilge an Gharda Síochána beartaithe i ndrúachtscéim teanga faoin Acht.

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

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

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

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

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

I decided to undertake an investigation.

### Answer from An Garda Síochána

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

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

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

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



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### Córas Uathoibríoch

Dheimhnigh Coimisinéir an Gharda Síochána go mbíodh Fógraí Muirear Socraithe á n-eisiúint i nGaeilge ar iarratas ó bhaill den phobal nuair nach raibh ach dhá chion (taisteal ar luas agus criosanna sábhála) i gceist agus ag an tráth sin gur i stáisiún Ghardaí féin a bhí próiseáil á déanamh ar eisiúint na bhfógraí agus ar na híocaíochtaí.

Tugadh thart ar 30 cion eile faoi scáth an chórais seo ó mhí Aibreáin 2006 agus rinneadh “príobháidiú” ar eisiúint na bhFógraí Muirear Socraithe agus ar riaradh na n-íocaíochtaí. Trí chóras uathoibríoch leictreonach a dhéanann TiCo agus An Post (na comhlachtaí a fuair na conarthaí don obair seo) riaradh trí Bhéarla amháin ar an ngnó seo anois thar ceann an Gharda Síochána. Níl aon bhaint ag stáisiún na nGardaí leis an gcuid sin den obair feasta.

Léirigh Coimisinéir an Gharda Síochána imní faoin gcostas mór breise a bheadh i gceist le próisis nua soláthair nó le hathruithe ar na conarthaí ag TiCo agus An Post le go ndéileálfai le hábhar trí Ghaeilge sa bhreis ar an mBéarla.

### Frithargóint

*Áirítear i measc na bhfrithargóintí is féidir a dhéanamh nach leor príobháidiú a bheith déanta ar riaradh na seirbhíse seo agus athrú a bheith déanta ar chóras uathoibríoch, leictreonach le deireadh a chur leis an nós agus cleachtas a bhí ann go bhféadfaí Fógraí Muirear Socraithe a eisiúint i nGaeilge. Is ceart a thabhairt san áireamh go raibh an tseirbhís seo ar fáil trí Ghaeilge nuair a achtaíodh Acht na dTeangacha Oifigiúla 2003 mar “Acht chun úsáid na Gaeilge a chur chun cinn chun críoch oifigiúil sa Stát...”.*

*Ba laghdú seirbhíse trí Ghaeilge seachas “úsáid na Gaeilge a chur chun cinn” a bheadh i gceist dá nglacfaí leis gur i mBéarla amháin a bheadh an tseirbhís seo feasta.*

### Automatic System

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

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

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

### Counter Argument

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

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

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### Litir Freagartha i mBéarla?

Dheimhnigh Coimisinéir an Gharda Síochána gur eisíodh an litir chaighdeánach ón gcóras uathoibríoch ar an 19 Meitheamh 2007 (i mBéarla) chuig an nGearánach. Dúradh freisin nach raibh aon léargas ag an nGarda Síochána gur scríobh an gearánach i nGaeilge ag lorg seirbhíse trí Ghaeilge.

#### Frithargóint

*Is féidir an fhrithargóint a dhéanamh go bhfuil sé go hiomlán le ciall nach raibh “aon taifid d’aon chomhfhreagras eile” ag an nGarda Síochána sa chás seo ó tharla gur dheimhnigh an gearánach gur seoladh ar ais chuige gach cuid den chumarsáid a sheol sé chuig an nGarda Síochána, an bhunlitir i nGaeilge uaidh féin san áireamh.*

### Dréachtscéim Teanga faoin Acht

Mheabhraigh Coimisinéir an Gharda Síochána gur cheadaigh córas na scéimeanna teanga (bhí dréachtscéim á hullmhú ag an nGarda Síochána ag an tráth sin) tréimhse ama do chomhlachtaí poiblí córais teicneolaíocht faisnéise a fhorbairt le seirbhísí trí Ghaeilge a sholáthar.

#### Frithargóint

*Is féidir an fhrithargóint a dhéanamh nach gá gur seirbhís trí chóras teicneolaíocht faisnéise a bheadh anseo mar go raibh an tseirbhís ar fáil de láimh trí Ghaeilge go dtí sin.*

### Cruinniú leis an nGarda Síochána

Ar iarratas ó Choimisinéir an Gharda Síochána socraíodh cruinniú mar chuid den imscrúdú idir Ceannasaíocht an Gharda Síochána agus m’Oifige leis “na saincheisteanna tábhachtacha”, mar a thug Coimisinéir an Gharda Síochána orthu, a bhí tagtha chun solais de bharr an ghearáin seo, agus roinnt cásanna eile ina raibh Fógraí Muirear Seasta eisithe i mBéarla amháin, a phlé.

### Letter Answered in English?

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

#### Counter Argument

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

### Draft Language Scheme under the Act

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

#### Counter Argument

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

### Meeting with an Garda Síochána

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

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Pléadh an cheist i gcomhthéacs na nithe seo a leanas: cearta teanga faoin mbunreacht agus faoin dlí, nós agus cleachtas seanbhunaithe na nGardaí i leith na Gaeilge, gealltanais Choimisinéir an Gharda Síochána agus na nAírlí Dlí agus Cirt in imeacht na mblianta maidir le cearta ar sheirbhís trí Ghaeilge ón bhfórsa, na fadhbanna praiticiúla a bheadh le réiteach le cinntiú go bhféadfaí an tseirbhís seo a sholáthar trí Ghaeilge, an costas suntasach don Stát i gcásanna athbhreithnithe breithiúnacha chun na hArd-Chúirte nár thriail an Stát a chosaint sa réimse seo, an baol go mbeadh méadú suntasach ar iarratais ar athbhreithnithe breithiúnacha sa réimse seo agus an t-ardphriacal agus an ard-iarmhairt a bhí i gceist do chóras na Muirear Socraithe go ginearálta ag na "saincheisteanna tábhachtacha" a bhí dúisithe de thoradh an imscrúdaithe seo.

Comhaontaíodh an méid seo a leanas ag an gcruinniú:

- Nach raibh aon fhadhb dhlíthiúil nó pholasaí mar chonstaic ar eisiúint Fógraí Muirear Socraithe trí Ghaeilge.
- Go raibh fadhbanna praiticiúla maidir le soláthar agus próiseáil Fógraí Muirear Socraithe go huathoibríoch agus go leictreonach trí Ghaeilge i bhfianaise na gconarthaí a bhí aontaithe ag an nGarda Síochána ach go rachadh an Garda Síochána i mbun oibre láithreach ar réiteach na bhfadhbanna sin.
- Go dtógfadh an Garda Síochána na céimeanna cuí láithreach le cinntiú go mbeadh socruithe déanta nach ndiúltófaí do dhaoine ar mhian leo an chuid seo dá ngnó a dhéanamh trí Ghaeilge leis an nGarda Síochána.
- Go raibh sé mar mhian ag an nGarda Síochána gur go dátheangach a d'eiseofaí gach Fógra Muirear Socraithe agus go n-oibreofaí chuige sin i gcomhar le lucht teicneolaíocht faisnéise agus i gcomhréir leis na socruithe a bheadh i scéim teanga an Gharda Síochána (a bhí á dréachtú ag an tráth sin).

The matter was discussed in the context of the following: language rights under the constitution and in legislation, long-established custom and practice of An Garda Síochána in relation to Irish, assurances over the years of the Commissioner of An Garda Síochána and Ministers for Justice on rights to service through Irish from the force, the practical difficulties requiring to be solved to ensure that this service could be provided through Irish, the appreciable cost to the State of judicial reviews to the High Court that the State had not attempted to defend in this area, the danger of an appreciable increase in applications for judicial reviews in this area and the high risk and dire consequence for the Fixed Charge system in general of the "important issues" raised by this investigation.

The following was agreed at the meeting:

- No legal or policy difficulty prevented the issuing of Fixed Charge Notices through Irish.
- There were practical difficulties in providing and processing Fixed Charge Notices automatically and electronically through Irish in view of the contracts agreed by An Garda Síochána but An Garda Síochána would start work immediately to resolve those difficulties.
- An Garda Síochána would take the appropriate steps immediately to ensure that arrangements would be made so that people wishing to do this part of their business through Irish with An Garda Síochána would not be denied that opportunity.
- That An Garda Síochána desired to issue all Fixed Charge Notices bilingually and that they would work to that end in conjunction with information technology personnel and in accordance with the arrangements that would be in the Garda Síochána language scheme (being drafted at that stage).

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- Go dtí go mbeadh na socruithe teicneolaíochta déanta do láimhseáil na hoibre seo go huathoibríoch agus go leictreonach nó eile, go bhfeidhmeofaí córas eatramhach láithreach leis an tseirbhís trí Ghaeilge seo a sholáthar.
- Go dtabharfaí na tréimhsí cuí ama (28 agus 56 lá) ó dháta eisithe an Fhógra Muirear Socraithe i nGaeilge (seachas ó dháta an leagain Bhéarla) do dhaoine leis na fineálacha cuí a íoc sa chás is gurradhadh an gnó seo a dhéanamh trí Ghaeilge.

### Osradharc Ginearálta ar an Imscrúdú

Léirigh an próiseas imscrúdaithe dhá ghné ar leith i gcás an ghearáin – ceist na litreach i nGaeilge ón ngearánach agus an cheist níos ginearálta faoi eisiúint Fógraí Muirear Socraithe i mBéarla amháin.

### An Litir

De thoradh na fianaise a chuir an gearánach i mo láthair ghlac mé leis nach raibh aon amhras ann ach gur sheol sé litir i nGaeilge chuig an nGarda Síochána agus gur le litir i mBéarla a freagraíodh é.

Thug an gearán deis dom imscrúdú a dhéanamh ar ábhar níos leithne a bhfuil tábhacht mhór leis do ghrúpa fairsing daoine sa phobal agus d'fhórsa an Gharda Síochána, is é sin, soláthar Fógraí Muirear Socraithe i mBéarla amháin.

### Fógraí Muirear Socraithe i mBéarla Amháin

Ní threoraíonn aon fhoráil d'Acht na dTeangacha Oifigiúla go gcaithfí Fógraí Muirear Socraithe a bheith á n-eisiúint agus á bpróiseáil i nGaeilge ó tharla gan aon scéim teanga a bheith daingnithe i gcás an Gharda Síochána ag an tráth sin.

Ba chosúil go ndéanadh faillí nuair nár cuireadh riachtanas na Gaeilge san áireamh nuair a rinneadh príobháidiú ar chóras na Muirear Socraithe.

- Until the technological arrangements had been made for handling this work automatically and electronically or otherwise, an interim system would be implemented immediately to provide this service through Irish.
- The appropriate time periods (28 days and 56 days) would be given to people from the date of the issue of the Fixed Charge Notice in Irish (rather than from the date of the version in English) to pay the appropriate fines where a request was made to do this business through Irish.

### General Overview of the Investigation

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

### Letter

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

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

### Fixed Charge Notices in English only

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

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

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### Fionnachtain an Imscrúdaithe

Ba í seo a leanas fionnachtain an imscrúdaithe:

1. Gur sháraigh an Garda Síochána an dualgas reachtúil teanga atá daingnithe in Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003 nuair a tugadh freagra i scríbhinn i mBéarla ar chumarsáid i scríbhinn i nGaeilge ar an 19 Meitheamh 2007.

### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

- Ó tharla gur cosúil gur de thoradh botúin dhaonna seachas d'aon turas nó le haon mhailís a tharla an sárú reachtúil seo, go meabhródh an Garda Síochána arís dóibh siúd a bheadh ag feidhmiú thar a gceann i ndéileáil le Fógraí Muirear Socraithe an ceart reachtúil atá ag daoine freagraí i nGaeilge a fháil ar chumarsáid i scríbhinn i nGaeilge.
- Go rachadh an Garda Síochána chun cinn láithreach le feidhmiú na socruithe a comhaontaíodh i ndáil le heisiúint Fógraí Muirear Socraithe trí Ghaeilge ag cruinniú liom. (Féach faoi "Cruinniú leis an nGarda Síochána" thuas.)
- Go ndéanfadh an Garda Síochána athmhachnamh, dá mba chúig, ar cheart anois dul chun cinn le próiseáil an cháis i gcoinne an ghearánaigh ó tharla gur thug an t-imscrúdú deis don Gharda Síochána déileáil le "saincheistanna tábhachtacha" a mbeadh tionchar fadtéarmach acu agus mar aitheantas ar an gcabhair a thug an gearánach sa ghnó sin.
- Sa chás, áfach, is go mbeartódh an Garda Síochána dul chun cinn leis an gcás i gcoinne an ghearánaigh gur cheart leithscéal a ghabháil leis faoin gcéad fhreagra cumarsáide i mBéarla a fuair sé (litir an 19 Meitheamh 2007) agus gur le leagan Gaeilge d'Fhógra Muirear Socraithe a rachfaí chun cinn leis an gcás agus go dtabharfaí na tréimhsí ama cuí (28 lá agus 56 lá) dó ó dháta eisithe an leagain Ghaeilge sin anois leis an bhfineáil a íoc.

### Finding of the Investigation

The following was the finding of the investigation:

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

### Recommendations of the Investigation

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

- As it appeared that this statutory contravention was as a result of human error rather than done on purpose or with malice, An Garda Síochána should remind those acting on its behalf in dealing with Fixed Charge Notices of people's statutory right to get replies in Irish to a communication in writing in Irish.
- An Garda Síochána should proceed immediately to implement the arrangements agreed at a meeting with me in relation to the issuing of Fixed Charge Notices through Irish. (See under "Meeting with An Garda Síochána" above.)
- An Garda Síochána should reconsider, if appropriate, whether the case against the complainant should be proceeded with as the investigation gave an opportunity to An Garda Síochána to deal with "important issues" of long term implication and in recognition of the assistance the complainant gave in that matter.
- However, if An Garda Síochána were to decide to proceed with the case against the complainant, an apology should be made to him for the initial reply in English which he received (letter of 19 June 2007) and the case should be progressed by way of an Irish language version of the Fixed Charge Notice and the appropriate time periods (28 days and 56 days) should be given to him from the date of issue of the version in Irish to pay the fine.



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- Dá mbeartódh an Garda Síochána gur chuí gan dul chun cinn leis an gcás ina choinne, go ndéanfaidh an gearánach machnamh faoinar cheart dó suim airgid nár mhó ná an fhíneáil sa chás seo a íoc as a stuaim féin le heagraíocht dheonach a bhainfeadh le sábháilteacht ar bhóithre nó le cearta teanga.

### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

- **Imscrúdú seolta:** 2 Iúil 2007
- **Tuarascáil eisithe:** 21 Lúnasa 2007

- If An Garda Síochána were to decide that it was appropriate not to proceed with the case against him, the complainant should reflect on whether he should of his own volition pay a sum of money not more than the fine in this case to a voluntary organisation involved with road safety or language rights.

### Appeals to the High Court

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

- **Investigation launched:** 2 July 2007
- **Report issued:** 21 August 2007

## AN ROINN GNÓTHAÍ SÓISIALACHA AGUS TEAGHLAIGH DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

### Ábhar an Imscrúdaithe

Ar sháraigh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh an dualgas reachtúil teanga atá daingnithe in Alt 10(a) d'Acht na dTeangacha Oifigiúla 2003 i bhfoilsiú trí Bhéarla amháin a dhéanamh ar an doiciméad ar a dtugtar "Green Paper on Pensions", ar doiciméad é inar leagadh amach tograí beartais phoiblí, ag tráth nach raibh leagan Gaeilge ar fáil go comhuaineach?

### Cúlra

Rinne ball den phobal gearán liom ar an 23 Deireadh Fómhair 2007 nach raibh aon fháil ar leagan Gaeilge den doiciméad ar a dtugtar "Green Paper on Pensions" a bhí foilsithe an tseachtain roimhe sin ag an Roinn Gnóthaí Sóisialacha agus Teaghlaigh.

De réir Alt 10(a) d'Acht na dTeangacha Oifigiúla 2003, tá dualgas ar chomhlachtaí poiblí, an Roinn Gnóthaí Sóisialacha agus Teaghlaigh san áireamh, a chinntiú go bhfoilseofar aon doiciméad ina leagtar amach "tograí beartais phoiblí" go comhuaineach i ngach ceann de na teangacha oifigiúla, is é sin i nGaeilge agus i mBéarla.

Tuigeadh dom gur faoi scáth na Roinne Gnóthaí Sóisialacha agus Teaghlaigh a ullmháíodh an "Green Paper on Pensions" agus gur foilsíodh i mBéarla amháin an doiciméad iomlán sin ar an 17 Deireadh Fómhair 2007, cé gur ullmháíodh achoimre fheidhmiúcháin i mBéarla agus i nGaeilge agus gur foilsíodh iadsan go comhuaineach sa dá theanga sin.

An leagan iomlán i nGaeilge seachas achoimre fheidhmiúcháin a bhí á lorg ag an ngearánach sa chás seo.

### An tImscrúdú

Tar éis fíorúchán a dhéanamh ar bhunús an ghearáin bheartaigh mé ar imscrúdú a sheoladh ar an 26 Deireadh Fómhair 2007.

Theastaigh uaim a chur ó amhras gur sháraigh nó nár sháraigh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh an dualgas reachtúil a bhí daingnithe in Alt 10(a) d'Acht na dTeangacha Oifigiúla 2003 nuair nár foilsíodh an doiciméad ar a dtugtar "Green Paper on Pensions" go comhuaineach i ngach ceann de na teangacha oifigiúla, Gaeilge agus Béarla.

### Subject of Investigation

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

### Background

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

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

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

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

### The Investigation

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

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

# AN ROINN GNÓTHAÍ SÓISIALACHA AGUS TEAGHLAIGH

## DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

### An Chéad Fhreagra ón Roinn

Ba léir ó chéad fhreagra na Roinne go raibh glactha aici leis gur cheart *“an leagan Gaeilge den Pháipéar Uaine ar Phinsin a fhoilsiú ar an lá céanna gur seoladh an leagan Béarla (17ú Deireadh Fómhair 2007), de réir mar a iarrann Alt 10(a) d’Acht na dTeangacha Oifigiúla 2003.”*

Thug an Roinn le fios go raibh dianiarrachtaí déanta aici agus mórán ama agus fuinnimh caite aici leis an mian sin a bhaint amach.

Thug an Roinn le tuiscint freisin gur de bharr fadhbanna leis an gcuideachta thráchtála aistriúcháin a bhí i mbun na hoibre di a tháinig an deacracht chun cinn:

*“Ba é an 11ú Deireadh Fómhair a bhí socraithe againn leis an soláthraí mar spriocdháta d’aistriúchán an Pháipéir Uaine. Thug sé seo dóthain ama dúinn chun é a fhoilsiú go comhuaineach ar lá an tseolta, is é sin, an 17ú Deireadh Fómhair 2007. Bhí an chuideachta aistriúcháin ar an eolas faoin tábhacht a bhí leis an spriocdháta seo mar bhí sé faofa ag an Rialtas. Bhí an Taoiseach, an Tánaiste agus an tAire Gnóthaí Sóisialacha agus Teaghlaigh chun an cháipéis a sheoladh le chéile ar an dáta sin, agus is mar sin atá a gcuid gealltanais dialainne go bhfuil sé thar a bheith deacair a sceideal ócáidí a atheagrú.*

*“D’ainneoin sin bhí a lán earráidí agus easnamh sa leagan den cháipéis a tugadh don Roinn go déanach ar an 12ú Deireadh Fómhair. Leis an fhírinne a insint, bhí an téacs ceartaithe fós á sheachadadh ar an 17ú Deireadh Fómhair, lá an tseolta. Anuas air seo fuair amach ina dhiaidh sin nach raibh aon léamh-profaí déanta ar an leagan seo agus go dtógfadh an obair sin coicís eile. Thug an chuideachta aistriúcháin an leagan ar a raibh léamh profaí déanta dúinn ar an 5 Samhain 2007. Tar éis scrúdú a dhéanamh air seo thángthas ar thuilleadh earráidí sa cháipéis agus cuireadh iad sin ar aghaidh chuig na haistritheoirí. Dá thoradh sin ní raibh an leagan deireanach ar fáil go dtí an 8 Samhain...”*

### First Reply from the Department

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

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

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

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

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

# AN ROINN GNÓTHAÍ SÓISIALACHA AGUS TEAGHLAIGH

## DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

### Tuilleadh Eolais Lorgtha

Cé gur thug an chéad fhaisnéis ón Roinn léargas áirithe ar an gcás, mheas mé nár leor í don phróiseas imscrúdaithe agus d'iarr mé tuilleadh eolais.

### Dara Freagra na Roinne

Mhínigh an Roinn gur shocraigh an Rialtas ar an 2 Deireadh Fómhair 2007 an Páipéar Uaine ar Phinsin a fhoilsiú agus a sheoladh ar an 17 Deireadh Fómhair 2007.

Thug an Roinn le fios gur tháinig sé chun solais “go luath roimh an ócáid” nach mbeadh an leagan Gaeilge iomlán den doiciméad ullamh. Maidir leis seo dúradh thar ceann na Roinne:

*“Tá díomá orm gur tharla sé seo agus tuigim go maith go raibh cúis ghearáin ag ball den phobal...”*

Deimhníodh nach ndeamadh aon mheastóireacht ar an ócáid a chur ar athló go sealadach go dtí go mbeifí ábalta an dualgas reachtúil faoi Alt 10(a) d'Acht na dTeangacha Oifigiúla 2003 a chomhlíonadh:

*“Ní raibh sé i gceist aon uair an ócáid a chur ar atráth chun an mhoill a bhí ar an leagan Gaeilge a éascú. Chuirfí as do go leor daoine agus chuirfí airgead poiblí amú mar thoradh air sin.”*

Bhí an Taoiseach, an Tánaiste agus an tAire Gnóthaí Sóisialacha agus Teaghlaigh páirteach in ócáid seolta an Pháipéir Uaine ar Phinsin. Dheimhnigh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh don imscrúdú nár tugadh aon eolas don Taoiseach, do Roinn an Taoisigh, don Tánaiste ná don Roinn Airgeadais nach mbeadh leagan Gaeilge iomlán den Pháipéar Uaine ar fáil don seoladh nuair a tháinig sin chun solais ná go mbeadh sárú ar dhualgas reachtúil faoi Acht na dTeangacha Oifigiúla 2003 i gceist.

Bhí an 11 Deireadh Fómhair 2007 aontaithe mar spriocdháta do sholáthar an aistriúcháin trí Ghaeilge ón gcuideachta aistriúcháin. Cé nach raibh ach sé lá, ar a mhéad, idir é sin agus dáta seolta an Pháipéir Uaine bhí an Roinn cinnte gur leor an tréimhse ama sin le dearadh, leagan amach, clódóireacht agus ceangal a dhéanamh ar dhoiciméad ina raibh breis agus 360 leathanach.

### Additional Information Sought

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

### Second Reply from the Department

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

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

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

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

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

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

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

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### DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

Mar fhreagra ar cheist faoin gcúis nár fágadh tréimhse ama níos faide idir an spriocdháta don aistriúchán agus an ócáid seolta bhí an méid seo le rá ag an Roinn:

*"...seoladh caibidlí aonair chuig na haistritheoirí de réir mar a aontaíodh orthu idir Ranna Rialtais. Fuair na haistritheoirí an chaibidil dheireanach ar 27 Meán Fómhair, agus dheimhnigh siad ina dhiaidh go bhfillfí an leagan deireanach ar an Roinn ar 11 Deireadh Fómhair."*

Ba é seasamh na Roinne ná nach mbeadh aon cheist ann ach go gcloíff leis an spriocdháta do sholáthar an aistriúcháin, go raibh dearbhú chun na críche sin faighte ón gcuideachta aistriúcháin agus go mbeadh dóthain ama ann an leagan iomlán Gaeilge a bheith ullamh don ócáid seolta.

Dheimhnigh an Roinn nár iarradh gur aistritheoir ón bpainéal d'aistritheoirí creidiúnaithe a dhéanfaidh an obair seo nuair a bhí tairiscintí á lorg don tseirbhís aistriúcháin.

#### Osradharc Ginearálta ar an Imscrúdú

I measc na ndoiciméad a bhfuil dualgas reachtúil i gceist maidir lena bhfoilsíú go comhuaineach i nGaeilge agus i mBéarla faoi Alt 10 d'Acht na dTeangacha Oifigiúla 2003 tá "aon doiciméad ina leagtar amach tograí beartais phoiblí."

Níl aon amhras ar bith ann ach gur doiciméad ina leagtar amach tograí beartais phoiblí é páipéar uaine a d'eiseodh roinn rialtais.

Ní dhearna an Roinn Gnóthaí Sóisialacha agus Teaghlaigh aon chás nach raibh dualgas reachtúil i leith an fhoilsithe chomhuainigh, i nGaeilge agus i mBéarla, uirthi i gcás an doiciméid seo.

Ba léir gur theip ar an Roinn, áfach, an dualgas reachtúil sin a chomhlíonadh agus tugadh mar mhíniú air sin go raibh deacrachtaí agus moill maidir leis an téacs aistrithe a fháil go cuí ón gcuideachta thráchtála a raibh an obair seo bronnta uirthi de thoradh próiseas tairisceana.

Gnó don Roinn, agus don Roinn amháin, é a caidreamh le haon chuideachta thráchtála a bhainistiú ina rogha bealach ach i ndeireadh an lae is ar an Roinn amháin atá sé a chinntiú go gcloínn sí lena dualgais reachtúla.

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

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

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

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

#### General Overview of the Investigation

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

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

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

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

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



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Níor leor mar leithscéal fadhbanna, fiú más fadhbanna iad nach raibh faoi smacht iomlán na Roinne féin, le cealú, laghdú nó leasú a dhéanamh ar dhualgas reachtúil atá daingnithe i ndlí ag an Oireachtas.

Ba bheag de dheis a thug an sceideal docht idir an spriocdháta do sholáthar an aistriúcháin agus dáta foilsithe an Pháipéir Uaine le fadhbanna gan choinne a réiteach.

Níor chosúil go raibh leagan críochnúil den doiciméad ar fáil i nGaeilge go dtí an 8 Samhain 2007, breis agus trí seachtaine tar éis sheoladh oifigiúil an leagain Bhéarla ar an 17 Deireadh Fómhair 2007.

Ba léir nach raibh tuiscint iomlán, shoiléir idir an chuideachta aistriúcháin agus an Roinn i dtaobh gnéithe áirithe den socrú a bhí déanta eatarthu, san áireamh ceisteanna faoi fhíorúchán nó profáil an doiciméid, an fhormaid ina soláthrófaí an doiciméad críochnúil (ina chaibidilí aonair nó i ndoiciméad amháin) agus mar sin de.

Is ríléir go mbeadh sé inmholta ag comhlachtaí poiblí a mbíonn seirbhísí aistriúcháin seachtracha á lorg acu aitheantas a thabhairt do thábhacht an phainéil d'aistritheoirí creidiúnaithe.

Dheimhnigh an Roinn freisin nach ndearnadh aon mhachnamh ar ócáid seolta an Pháipéir Uaine a chur ar athló go sealadach go dtí go mbeifí ábalta an dualgas reachtúil faoi Alt 10(a) d'Acht na dTeangacha Oifigiúla 2003 a chomhlíonadh.

Ba dheacair an chúis a cheapadh roinn rialtais go bhféadfadh sí droim láimhe a thabhairt do mhianta an Oireachtais, go raibh sé de cheart aici dul chun cinn le hócáid seolta a bhain le doiciméad aonteangach agus airgead poiblí a chaitheamh ar an ócáid sin agus í ar an eolas go raibh sárú á dhéanamh ar dhualgas reachtúil, a thuiscint.

Bíonn an Roinn Gnóthaí Sóisialacha agus Teaghlaigh ag súil go gcloifidh an chuid sin den phobal lena mbíonn sí i dteagmháil go cuí agus go cruinn le rialacháin agus teoracha na Roinne i dtaca le scéimeanna éagsúla atá á riaradh ag an roinn sin. Ar an mbealach céanna, tá dualgas ar an Roinn freisin na rialacháin agus teoracha cuí a leanúint freisin, go háirithe iad siúd atá daingnithe i ndlí ag an Oireachtas.

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

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

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

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

It would be advisable for a public company outsourcing translation services to note that there is a panel of accredited translators.

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

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

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

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### DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

#### Fionnachtain

Ba í seo a leanas fionnachtain an imscrúdaithe:

- Gur sháraigh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh an dualgas reachtúil teanga atá daingnithe in Alt 10(a) d'Acht na dTeangacha Oifigiúla 2003 i bhfoilsíú trí Bhéarla amháin a dhéanamh ar an 17 Deireadh Fómhair 2007 ar an doiciméad ar a dtugtar "Green Paper on Pensions" – ar doiciméad é ina leagtar amach tograí beartais phoiblí – ag tráth nach raibh leagan Gaeilge ar fáil go comhuaineach.

#### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

1. Go gcinnteodh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh go gcloífeadh sí feasta lena dualgais reachtúla faoi Acht na dTeangacha Oifigiúla 2003.
2. Go gcinnteodh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh sa chás is go mbeadh aon doiciméad ina leagfaí amach tograí beartais phoiblí á fhoilsiú aici nó faoina húdarás feasta go bhfoilseofaí a leithéid go comhuaineach i ngach ceann de na teangacha oifigiúla, mar atá daingnithe in Alt 10(a) d'Acht na dTeangacha Oifigiúla, agus nach rachfaí chun cinn ar chúis ar bith le foilsiú doiciméid den chineál atá i gceist anseo murarbh fhéidir a bheith lánchinnte go mbeadh an dualgas seo á chomhlíonadh go cuí.
3. Go seolfadh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh meamram eolais (i scríbhinn nó leis an bpost leictreonach) laistigh de 6 seachtaine ó dháta na tuarascála seo chuig baill foirme sin na Roinne a d'fhéadfadh a bheith freagrach feasta as doiciméid ina leagfaí amach tograí beartais phoiblí a ullmhú le foilsiú ina ndeimhneofaí an méid seo:

#### Finding

The finding of the investigation was as follows:

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

#### Recommendations of the Investigation

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

1. That the Department of Social and Family Affairs would ensure that it would adhere henceforth to its obligations under the Official Languages Act 2003.
2. That the Department of Social and Family Affairs would ensure that, where any document was being published by it, or under its authority, from then on setting out public policy proposals, such a document would be published simultaneously in each of the official languages, as provided for in Section 10(a) of the Official Languages Act 2003, and that the publication of such a document would not proceed for any reason unless it was certain that this obligation would be properly complied with.
3. That the Department of Social and Family Affairs would send an information memorandum (in writing or by electronic mail) within 6 weeks of the date of this report to those members of the Department's staff who could henceforth be responsible for preparing documents setting out public policy proposals for publication, stating that:

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- Go raibh fionnachtain déanta ag an imscrúdú seo gur sháraigh an Roinn a dualgas reachtúil faoi Alt 10(a) d'Acht na dTeangacha Oifigiúla 2003 sa chás seo;
  - Agus go raibh sé mar dhualgas ar an Roinn a chinntiú nach ligfí dá leithéid de shárú tarlú arís.
4. Go gcuirfeadh an Roinn Gnóthaí Sóisialacha agus Teaghlaigh ar an eolas go cuí agus go cruinn, i scríbhinn nó leis an bpost leictreonach, Roinn an Taoisigh agus an Roinn Airgeadais – ó tharla iad a bheith páirteach i seoladh an Pháipéir Uaine – faoi fhionnachtain agus moltaí an imscrúdaithe seo a luaite agus ab fhéidir ach tráth nár dhéanaí ná 6 seachtaine ó dháta na tuarascála seo.

#### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

- **Imscrúdú seolta:** 24 Deireadh Fómhair 2007
- **Tuarascáil eisithe:** 28 Nollaig 2007

- This investigation had found that the Department had in this case contravened its statutory obligation under Section 10(a) of the Official Languages Act 2003; and
  - The Department had a duty to ensure that this would not be permitted to happen again.
4. The Department of Social and Family Affairs would, as soon as possible but not later than 6 weeks from the date of this report, appropriately and accurately, in writing or by electronic mail, inform the Department of the Taoiseach and the Department of Finance – as participants in the launch of the Green Paper – of the finding and recommendations of this investigation.

#### Appeals to the High Court

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

- **Investigation launched:** 24 October 2007
- **Report issued:** 28 December 2007

## FEIDHMEANNACHT NA SEIRBHÍSE SLÁINTE

### HEALTH SERVICE EXECUTIVE

#### Ábhar an Imscrúdaithe

An raibh Feidhmeannacht na Seirbhíse Sláinte ag cloí lena dualgas reachtúil teanga faoi mhír 4.15 de Scéim Teanga Fheidhmeannacht na Seirbhíse Sláinte (Limistéar an Iarthair), scéim atá daingnithe faoi Acht na dTeangacha Oifigiúla 2003, i gcás ina líomhnaítear gur cuireadh seirbhísí pobail ar fáil i mBéarla amháin sa Ghaeltacht?

Rinne tuismitheoir páiste as scoil náisiúnta i nGhaeltacht na Gaillimhe gearán le m'Oifig i ndeireadh mhí Aibreáin 2007 go raibh fiaclóir de chuid Fheidhmeannacht na Seirbhíse Sláinte i mbun oibre sa scoil sin ar an 24 Aibreán agus gur i mBéarla a dhéileáil an duine sin lena páiste.

Mheas an tuismitheoir gur cheart go mbeadh seirbhís ar nós na seirbhíse fiaclóireachta scoile á soláthar trí Ghaeilge ag Feidhmeannacht na Seirbhíse Sláinte do pháistí a bhí á dtógáil le Gaeilge sa Ghaeltacht.

Rinne m'Oifig iarracht déileáil leis an ngearán seo i dtús aimsire go neamhfhoirmiúil le Feidhmeannacht na Seirbhíse Sláinte (Limistéar an Iarthair) ach níor éirigh leis an iarracht sin réiteach a fháil ar an gcás.

Ba léir dom i ndeireadh báire nach raibh de rogha agam ach imscrúdú reachtúil a sheoladh de réir na bhforálacha in Acht na dTeangacha Oifigiúla 2003 i dtaca leis an méid a líomhnaíodh sa gearán.

#### Cúlra Reachtúil

Chomhaontaigh an tAire Gnóthaí Pobail, Tuaithe agus Gaeltachta scéim teanga reachtúil le Feidhmeannacht na Seirbhíse Sláinte (Limistéar an Iarthair) agus dhaingnigh sé í le teacht i bhfeidhm ar an 1 Meán Fómhair 2005. Tá dualgas reachtúil ar Fheidhmeannacht na Seirbhíse Sláinte (Alt 18(1) d'Acht na dTeangacha Oifigiúla 2003), an scéim teanga sin a chur i gcrích.

Tá an fhoráil seo a leanas daingnithe i Mír 4.15 de Scéim Teanga Fheidhmeannacht na Seirbhíse Sláinte (Limistéar an Iarthair):

Mír 4.15 "Bunófar córais le cinntiú go mbeidh clanna atá ag tógáil le ngasúr le Gaeilge in ann teacht ar scrúduithe agus tástálacha éagsúla trí Ghaeilge in 2007."

#### Subject of Investigation

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

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

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

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

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

#### Statutory Background

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

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

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

## FEIDHMEANNACHT NA SEIRBHÍSE SLÁINTE

### HEALTH SERVICE EXECUTIVE

#### An Chéad Fhreagra ó Fheidhmeannacht na Seirbhíse Sláinte

Níor mheas mé gur thug litir a fuarthas ó Fheidhmeannacht na Seirbhíse Sláinte maidir leis an imscrúdú freagra soiléir ar an ngearán agus, go deimhin, shíl mé go raibh ceisteanna breise tagtha chun cinn dá bharr. Bhí an chosúlacht ann go raibh mír eile fós de Scéim Teanga Fheidhmeannacht na Seirbhíse Sláinte (Limistéar an Iarthair) sáraithe freisin: Mír 4.2 maidir le *“polasaí agus cleachtais earcaíochta do chuile fhóilúntas i nGaeltacht Mhaigh Eo agus na Gaillimhe (i bhfeidhm ó Mheán Fómhair 2004).”*

Seo mar a leanas atá ráite i Mír 4.2 den scéim:

*“Fógrófar gach fóilúntas i nGaeilge ar na páipéir nuachta Ghaeilge agus/nó go dátheangach ar pháipéir nuachta eile. Luafar go sonrach ar gach fógra go bhfuil líofacht sa Ghaeilge ina cáilíocht riachtanach don phost. Beidh na foirmeacha iarratais i nGaeilge agus i mBéarla. Reáchtálfar na hagallaimh do na fóilúntais Ghaeltachta i nGaeilge agus/nó i nGaeilge agus i mBéarla.”*

Bhí sé le tuiscint ón litir dá dtagraítear di thuas go raibh máinlia fíaclóireachta ceaptha ag Feidhmeannacht na Seirbhíse Sláinte don cheantar Gaeltachta a bhí i gceist i Márta 2007 agus *“nach riachtanas ar leith í an Ghaeilge don phost”* cé go raibh sé curtha in iúl ag an máinlia agus ag an altra fíaclóireachta go raibh siad ábalta seirbhísí trí Ghaeilge a chur ar fáil dá n-othair.

Lorg mé soiléiriú ar an ábhar seo.

#### Admháil

D'admhaigh Feidhmeannacht na Seirbhíse Sláinte ansin go raibh sárú déanta acu ar a ndualgaís reachtúla faoin scéim teanga agus faoi Acht na dTeangacha Oifigiúla 2003.

Dhearbhaigh an Fheidhmeannacht go raibh céimeanna tógtha le cinntiú nach dtarlódh aon sárú arís ar an scéim teanga maidir le hearcaíocht foime don Ghaeltacht.

#### First Reply from the Health Service Executive

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

The following is stated in Paragraph 4.2 of the scheme:

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

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

I sought clarification on this matter.

#### Admission

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

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



## FEIDHMEANNACHT NA SEIRBHÍSE SLÁINTE

### HEALTH SERVICE EXECUTIVE

Dheimhnigh an Fheidhmeannacht chomh maith go raibh na soláthairtí sláinte a bhí i gceist lena gcuid seirbhísí fiacloireachta á dtairiscint anois don phobal i nGaeilge sa Ghaeltacht mar chéadrogha.

Ghabh an Fheidhmeannacht leithscéal freisin leis na daoine sin a ndearnadh éagóir orthu nuair a chlis ar an bhFeidhmeannacht freastal a dhéanamh orthu ina rogha teanga.

#### Osradharc ar an Imscrúdú

Ba chosúil nár leor an chumarsáid a bhí déanta ag Feidhmeannacht na Seirbhíse Sláinte ar fhorálacha na scéime teanga le go mbeadh baill foime cuí na heagraíochta ar an eolas faoina ndualgais reachtúla.

#### Fionnachtain an Imscrúdaithe

Ba í seo a leanas fionnachtain an imscrúdaithe:

- Gur sháraigh Feidhmeannacht na Seirbhíse Sláinte Alt 18 d'Acht na dTeangacha Oifigiúla 2003 nuair nár chuir sí i gcrích forálacha ar leith dá scéim teanga a bhí daingnithe i gcás Feidhmeannacht na Seirbhíse Sláinte (Limistéar an Iarthair).

#### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú is iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

1. Go gcinnteodh Feidhmeannacht na Seirbhíse Sláinte go gcloífe feasta lena ndualgais reachtúla faoi Acht na dTeangacha Oifigiúla 2003 agus faoi Scéim Teanga Feidhmeannacht na Seirbhíse Sláinte (Limistéar an Iarthair).
2. Go seolfadh Feidhmeannacht na Seirbhíse Sláinte meamram eolais laistigh de 6 seachtaine ó dháta na tuarascála seo chuig gach duine san eagraíocht a raibh cúram earcaíocht foime a bhí le lonnú i nGaeilge sa Ghaeltacht na Gaillimhe agus/nó Mhaigh Eo air/uirthi ina ndeimhneofaí an méid seo:

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

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

#### Overview of the Investigation

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

#### Investigation's Finding

The finding of the investigation was as follows:

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

#### Investigation's Recommendations

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

1. That the Health Service Executive should ensure adherence from now on to its statutory obligations under the Official Languages Act 2003 and the Health Service Executive (Western Region) Language Scheme.
2. That the Health Service Executive should send an information memorandum within 6 weeks of the date of this report to every person in the organisation with responsibility for the recruitment of staff to be based in the Galway and/or Mayo Gaeltachtaí in which the following would be affirmed:

## FEIDHMEANNACHT NA SEIRBHÍSE SLÁINTE

### HEALTH SERVICE EXECUTIVE

- Go raibh fionnachtana déanta ag an imscrúdú seo gur sháraigh Feidhmeannacht na Seirbhíse Sláinte dualgais reachtúla faoi Acht na dTeangacha Oifigúla 2003;
  - Go raibh leithscéal gafa ag an eagraíocht de bharr an tsáraithe sin;
  - Agus go raibh sé mar dhualgas ar an eagraíocht a chinntiú nach ligfí dá leithéid de shárú tarlú arís.
3. Go seolfaí cóip den mheamram eolais atá i gceist i Moladh 2 thuas chugam mar Choimisinéir Teanga laistigh de 6 seachtaine ó dháta eisithe na tuarascála ar an imscrúdú seo.
  4. Go gcinnteodh Feidhmeannacht na Seirbhíse Sláinte go gcloíff leis an ngealltanais a tugadh i dtaca le seirbhísí fiacloireachta a thairiscint don phobal i nGaeilge sa Ghaeltacht mar chéadrogha.

#### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phoinc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

#### Deimhniú ó Fheidhmeannacht na Seirbhíse Sláinte

Dheimhnigh Feidhmeannacht na Seirbhíse Sláinte gur ghlac siad le fionnachtana agus moltaí an imscrúdaithe.

- **Imscrúdú seolta:** 10 Iúil 2007
- **Tuarascáil eisithe:** 29 Meán Fómhair 2007

- That this investigation had found that the Health Service Executive had contravened statutory obligations under the Official Languages Act 2003;
  - That the organisation had apologised for that contravention;
  - And that the organisation had an obligation to ensure that such a contravention would not occur again.
3. That a copy of the information memorandum in question in Recommendation 2 above should be sent to me as Coimisinéir Teanga within 6 weeks of the date of issue of the report on this investigation.
  4. That the Health Service Executive should ensure adherence to the commitment given regarding offering dental services in Irish as a first choice to the community in the Gaeltacht.

#### Appeals to the High Court

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

#### Confirmation from the Health Service Executive

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

- **Investigation launched:** 10 July 2007
- **Report issued:** 29 September 2007

# COIMISIÚN NA SCRÚDUITHE STÁIT

## STATE EXAMINATIONS COMMISSION

### Ábhar an Imscrúdaithe

An bhfuil dualgas reachtúil faoin Acht Oideachais 1998, nó faoi aon achtachán eile, leaganacha Gaeilge de scéimeanna marcála a sholáthar i gcás scrúduithe na hArdteistiméireachta?

Mura bhfuil leaganacha Gaeilge de scéimeanna marcála á soláthar i gcás scrúduithe na hArdteistiméireachta, an bhfuil sárú á dhéanamh ar aon fhoráil den Acht Oideachais 1998 nó d'aon achtachán eile a bhaineann le stádas nó le húsáid na Gaeilge?

### Subject of the Investigation

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

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

### Cúlra

Rinneadh gearán foirmiúil le m'Oifig nach raibh fáil ar leaganacha Gaeilge de na scéimeanna marcála do scrúduithe na hArdteistiméireachta. Rinneadh an cas dá mbeadh páipéar scrúdaithe á fhreagairt trí Ghaeilge agus an scéim mharcála ar fáil don scrúdaitheoir i mBéarla amháin go bhféadfadh go mbeadh na mic léinn le Gaeilge thíos leis.

Rinne duine den bheirt ghearánach fiosruithe faoin scéal leis an Aire Oideachais agus Eolaíochta agus le Coimisiún na Scrúduithe Stáit. Deimhníodh di gur i mBéarla amháin a soláthraíodh scéimeanna marcála i gcás scrúduithe na hArdteistiméireachta.<sup>1</sup> Chuir na gearánaigh an cheist an raibh an córas seo ag teacht salach ar Acht na dTeangacha Oifigiúla nó ar reachtaíocht ar bith eile.

### Acht na dTeangacha Oifigiúla 2003

Ba léir dom nár chuir aon fhoráil ná aon rialachán faoin Acht sin an dualgas díreach ar Choimisiún na Scrúduithe Stáit leaganacha Gaeilge de scéimeanna marcála a sholáthar.

### Background

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

One of the two complainants made enquiries about the matter with the Minister for Education and Science and with the State Examinations Commission. It was affirmed to her that marking schemes for the Leaving Certificate examinations were provided in English only.<sup>1</sup> The complainants questioned if this system contravened the Official Languages Act or any other legislation.

### Official Languages Act 2003

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

<sup>1</sup> Maidir le Gaeilge na hArdteistiméireachta, foilsítear an scéim mharcála chinntitheach i nGaeilge amháin. I mBéarla, le roinnt mhaith tagairtí sa teanga ábhartha, a bhíonn na scéimeanna marcála i gcás na dteangacha Eorpacha agus eile.

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

# COIMISIÚN NA SCRÚDUITHE STÁIT

## STATE EXAMINATIONS COMMISSION

Sa bhreis air sin, ní raibh aon scéim teanga daingnithe i gcás an Choimisiúin faoi Ailt 11-19 d'Acht na dTeangacha Oifigiúla 2003 inar leagadh amach na seirbhísí a bheadh á soláthar trí Ghaeilge amháin, trí Bhéarla amháin agus go dátheangach agus na bearta a ghlacfaí le seirbhís nach raibh ar fáil trí Ghaeilge a sholáthar.

Dá bhrí sin, chonacthas dom nach raibh aon dualgas reachtúil ar an gCoimisiún faoi Acht na dTeangacha Oifigiúla ag an bpointe seo scéimeanna marcála a sholáthar i nGaeilge.

Tar éis dom féachaint ar an Acht Oideachais 1998 (Alt 7(2)(d) agus Alt 2(1)) mheas mé go bhféadfadh go raibh an fhéidearthacht ann go mbeadh dualgais reachtúla i leith a leithéid de sheirbhís (i. scéimeanna marcála) a sholáthar trí Ghaeilge i bhforálacha an Achta sin.

Chinn mé imscrúdú a dhéanamh ar an gceist.

### Dearcadh an Choimisiúin

#### An Scéim Mharcála

Is caipéis í an scéim mharcála atá dírithe go príomha ar scrúdaitheoirí, cé go mbaineann iarrthóirí agus oidí úsáid as na scéimeanna marcála nuair a bhíonn an mharcáil thart.

#### Béarla nó Gaeilge

Maidir le soláthar na scéimeanna marcála i mBéarla amháin, dúirt an Coimisiún go raibh sé tábhachtach go mbeadh aon chaipéis chinntitheach amháin ann le go laghdófaí an mearbhall a bhainfeadh le dhá scéim mharcála (ceann i mBéarla agus ceann i nGaeilge) a bheith á soláthar le linn thréimhsí an chomhairliúcháin agus na marcála. Dúirt an Coimisiún:

*"Is é is dóichí, dá ndéanfaí iarracht ar a leithéid a dhéanamh i.e. dá bhféadfaí sin a dhéanamh, nach mbeadh an dá leagan ag teacht le chéile ó thaobh brí de. Ní hamháin go gcuirfeadh sé sin scrúdaitheoirí amú maidir le cruinnfheidhmiú na scéime, ach bheadh contúirt mhór ann go ndéanfaí dochar do mhuinín an phobail as ionracas agus as caighdeán na seirbhíse scrúdaithe i gcoitinne arb é misean Choimisiúin na Scrúduithe Stáit é a chur ar fáil don phobal."*

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

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

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

I decided to investigate the matter.

### Commission's Viewpoint

#### Marking Scheme

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

#### English or Irish

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

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

## COIMISIÚN NA SCRÚDUITHE STÁIT

## STATE EXAMINATIONS COMMISSION

Dúirt an Coimisiún chomh maith: “Dá mbeadh locht ar bith ar an scéim mharcála i nGaeilge a d’fhoilseofaí – mar shampla difríocht ó thaobh brí de a bheith idir é agus an scéim mharcála i mBéarla – ní bheadh aon dul ar an bhfabht sin a leigheas.”

“Nach dtarlódh go mbeadh iarrthóirí ag iarraidh buntáiste a bhaint as earráid den chineál sin agus ag éileamh go mbronnfaí marcanna orthu de réir na scéime marcála i nGaeilge? Is é is dóichí go gcinneadh cúirt go gcaithfí géilleadh d’éileamh dá leithéid.”

Maidir le freastal a dhéanamh ar scoileanna Gaeltachta agus lán-Ghaeilge trí scéimeanna i nGaeilge (i. aistriúcháin) de na scéimeanna marcála a bheith ar fáil dóibh, dúirt an Coimisiún freisin gurbh í an scéim mharcála i mBéarla ab oiriúnaí agus ab údarásaí ó thaobh ghnó na marcála de.

### Seasamh an Choimisiúin

Mar sin, ba é seasamh an Choimisiúin, tar éis dianmhachnamh agus iniúchadh a dhéanamh ar cheist na scéimeanna marcála trí Ghaeilge agus comhairle dlí a fháil, nach mbeadh sé réasúnta ná comhréireach, sna cúinsí ar fad, scéimeanna marcála i nGaeilge den chineál atá i gceist a chur ar fáil. Dúirt an Coimisiún:

- gur chuid rithabhachtach den phróiseas a bhain leis na scrúduithe stáit iad na scéimeanna marcála;
- go mbainfeadh mórdheacracht le scéimeanna marcála i nGaeilge a bheadh iomlán cruinn agus dílis don leagan Béarla a chur ar fáil;
- go mbainfeadh ardphriacal leis an bhfiontar sin tráth nach raibh seirbhís aistriúcháin an Choimisiúin tugtha chun foirfeachta agus nuair nach raibh fáil san earnáil phríobháideach ar sheirbhís aistriúcháin a bhféadfaí brath uirthi go hiomlán;

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

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

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

### Commission’s Position

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

- that the marking schemes were a very important part of the process relating to state examinations;
- that it would be very difficult to provide marking schemes in Irish that would be completely accurate and faithful to the English version;
- that such a venture would be high risk at a time that the Commission’s translation service had not been perfected and when a private sector translation service that could be relied on totally was not available;



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- go mbainfeadh ard-iarmhairt leis an bpríacal sin i gcás chóras na scrúduithe agus na seirbhíse a sholáthair an Coimisiún, i gcás an chórais oideachais (agus an t-oideachas tríú leibhéal san áireamh), i gcás cúrsaí oiliúna agus earcaíochta agus i gcás na n-iarrthóirí agus an phobail i gcoitinne; agus
- nach raibh sé cinnte go raibh dualgas faoin dlí ar an gCoimisiún scéimeanna marcála i nGaeilge a chur ar fáil.

### Scagadh ar Phríomhargóintí an Choimisiúin

Is féidir achoimre a dhéanamh ar phríomhargóintí an Choimisiúin i dtaca le soláthar scéimeanna marcála trí Ghaeilge in dhá chuid:

- neamhchinnteacht reachtúil;
- fadhbanna praiticiúla.

Sa chás is nach raibh dualgais reachtúla ar an gCoimisiún scéimeanna marcála a sholáthar trí Ghaeilge, níor ghá grinnanailís ar bith a dhéanamh ar na fadhbanna praiticiúla mar gan an dualgas reachtúil sin a bheith sainithe sa dlí ní fhéadfadh aon údarás tabhairt ar an gCoimisiún feidhmiú lasmuigh dá dhlinse reachtúil.

Ar an láimh eile, má bhí dualgais reachtúla ar an gCoimisiún scéimeanna marcála a sholáthar trí Ghaeilge, níor leor iontu féin aon fhadhbanna praiticiúla a bheadh i gceist le laghdú, maolú nó teorannú a dhéanamh ar dhualgais reachtúla a bheadh sainithe i ndlí ag an Oireachtas.

Ba é seasamh an Choimisiúin ina leith seo nach bhféadfaí deighilt a dhéanamh idir an méid a dúirt siad faoi ghné na reachtaíochta agus faoin ardphríacal agus faoin ard-iarmhairt a bhainfeadh le dhá leagan de na scéimeanna marcála a sholáthar.

- that the consequence of that risk would be dire for the examination system and the service provided by the Commission, for the educational system, (third-level education included), training courses and recruitment and the candidates and public in general; and
- that it was not certain that the Commission was obliged by law to provide marking schemes in Irish.

### Examination of the Commission's Main Arguments

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

- legislative uncertainty;
- practical problems.

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

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

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

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### Neamhchinnteacht Reachtúil – Cás an Choimisiúin agus na Frithargóintí

#### ARGÓINT 1

##### Alt 7(2), d'alt 2(1) agus de Chuid VIII den Acht Oideachais 1998

–

##### Dearcadh an Choimisiúin:

Mheas an Coimisiún nár fholáigh “páipéar scrúdaithe”, a dtugtar sainmhíniú air i gcuid VIII den Acht, scéimeanna marcála.

*“Is é an tátal a bhain an Coimisiún as an iniúchadh a rinne sé ar a ndeirtear san Acht faoi scrúduithe ná nach bhfoláionn ‘páipéar scrúdaithe’... scéimeanna marcála.”*

##### Alt 7 (2), d'alt 2(1) agus de Chuid VIII den Acht Oideachais 1998 – Frithargóint

Cuirtear mar dhualgas ar an Aire Oideachais agus Eolaíochta in Alt 7(2)(d) “seirbhísí taca trí Ghaeilge a sholáthar do scoileanna aitheanta a chuireann teagasc trí Ghaeilge ar fáil agus d’aon scoil aitheanta eile a iarrann soláthar den sórt sin.”

Sa léiriú in Alt 2(1) den Acht céanna tugtar sainmhíniú mar a leanas ar sheirbhísí taca “ciallaíonn ‘seirbhísí taca’ na seirbhísí a chuireann an tAire ar fáil do mhic léinn nó dá dtuismitheoirí, do scoileanna nó do lárionaid oideachais de réir alt 7 agus folóidh sé aon cheann nó gach ceann de na nithe seo a leanas:

(l) scrúduithe dá bhforáiltear i gCuid VIII.”

Ba léir nárbh ionann “scrúdú” agus “páipéar scrúdaithe” agus tá dhá shainmhíniú an-difriúil tugtha orthu san Acht.

D’fhéadfaí an cás a dhéanamh gurbh é an scrúdú “a bhaineann le hiar-bhunoideachas... a sheolfar ó am go ham de réir nósanna imeachta a chinnfidh an tAire nó a chinnfidh comhlacht daoine ama bhunú ag an Aire...” a bhí i gceist a sholáthar mar “sheirbhís taca trí Ghaeilge” faoi Ailt 7(2)(d) agus 2(1)(l) seachas an “páipéar scrúdaithe” amháin.

### Legislative Uncertainty – The Commission’s Case and Counter Arguments

#### ARGUMENT 1

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

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

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

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

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

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

(l) examinations provided for in Part VIII.”

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

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

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### ARGÓINT 2

#### Comhairle Dlí – Dearcadh an Choimisiúin

Dúirt an Coimisiún gur tuigeadh riamh dó nár chuir an tAcht Oideachais 1998 mar dhualgas air scéimeanna marcála i nGaeilge a chur ar fáil. Tar éis don imscrúdú seo a bheith seolta, d'iarr Coimisiún na Scrúduithe Stáit comhairle dlí. De réir na comhairle a fuarthas, bhí an Coimisiún den tuairim go bhféadfaí an tuiscint a bhaint as Alt 7(2)(d) gurbh fhéidir dualgas a bheith air scéimeanna marcála i nGaeilge a chur ar fáil.

Dúirt an Coimisiún, áfach, i gcomhthéacs na comhairle thuasluaite, cé go bhféadfaí an tuiscint a bhaint as Alt 7(2)(d) gurbh fhéidir dualgas a bheith air scéimeanna marcála i nGaeilge a chur ar fáil, nach raibh sé “cinnte in aon chor go bhfuil a leithéid de dhualgas curtha orainn.”

Dúirt an Coimisiún freisin:

*“Is den tábhacht é go dtuigfeadh an Coimisinéir Teanga go soiléir nach ngéilleann Coimisiún na Scrúduithe Stáit go bhfuil dualgas faoin dlí air scéimeanna marcála i nGaeilge a chur ar fáil. De réir na comhairle dlí a cuireadh ar an gCoimisiún tharlódh go **bhféadfaí** an tuiscint a bhaint as Alt 7(2)(d) go gcuireann an t-alt sin dualgas ar an gCoimisiún scéimeanna marcála i nGaeilge a chur ar fáil. Ba é comhairle a cuireadh ar an gCoimisiún, áfach, nárbh fhéidir freagra cinnte a thabhairt ar an gceist ‘an bhfuil dualgas dá leithéid ar an gCoimisiún?’*

*“Ná bíodh amhras ar bith ina thaobh, ní ghlacann Coimisiún na Scrúduithe Stáit leis go gcuireann Alt 7(2)(d) dualgas air scéimeanna marcála i nGaeilge a chur ar fáil. Glacann sé leis gurbh fhéidir go mbeadh dualgas reachtúil i gceist **de réir forléiríthe** amháin a d'fhéadfaí a dhéanamh ar an bhforáil reachtúil sin. Ní hé sin an t-aon fhorléiriú amháin is féidir a dhéanamh.”*

### ARGUMENT 2

#### Legal Advice – Commission's Viewpoint

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

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

The Commission stated also (translation):

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

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

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### Comhairle Dlí – Frithargóint

Tá “pribhléid dhlíthiúil” ag baint leis an gcomhairle dlí a fuair an Coimisiún agus ní raibh an chomhairle sin feicthe agam ach ba léir ón eolas thuas gur admhaíodh go bhféadfaí an tuiscint a bhaint as Alt 7(2)(d) gurbh fhéidir dualgas a bheith air scéimeanna marcála i nGaeilge a chur ar fáil. Níor chosúil ón gcomhairle dlí sin go raibh aon argóint láidir á déanamh nach bhféadfaí a leithéid de thuiscint a bhaint as Alt 7(2)(d).

### ARGÓINT 3

#### Intinn an Oireachtais – Dearcadh an Choimisiúin

Mar thaca lena sheasamh nach bhféadfadh sé go mbeadh an fhéidearthacht in intinn an dréachtóra ná an Oireachtais nuair a bhí an tAcht Oideachais 1998 á dhréachtú ná á achtú go gcaithfí leagan Gaeilge de na scéimeanna marcála a ullmhú, thug an Coimisiún chun suntais nach gcuirfí scéimeanna marcála ar fáil d'iarrthóirí ná dá gcuid oidí (ach amháin do scrúdaitheoirí) ag an am sin.

Dúirt an Coimisiún “*Ba dheacair a shamhlú go ndéanadh baill an Oireachtais neamhshuim den ard-iarmhairt thubaisteach a bhainfeadh lena leithéid de bheart do chóras na scrúduithe, don chóras oideachais trí chéile, d'eamálacha na hoiliúna agus na hearcaíochta, d'iarrthóirí agus dá muintir.*”

#### Intinn an Oireachtais – Frithargóint

D'fhéadfaí an cás a dhéanamh gur theastaigh ón Oireachtas i ndréachtú na reachtaíochta seo cothromaíocht áirithe a chinntiú do scoileanna aitheanta a chuirfeadh teagasc trí Ghaeilge ar fáil agus d'aon scoil aitheanta eile a d'iarfadh soláthar den sórt trí sheirbhís taca áirithe a chur ar fáil trí Ghaeilge dóibh, ina measc an córas scrúduithe stáit.

### Legal Advice – Counter Argument

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

### ARGUMENT 3

#### Intention of the Oireachtas – the Commission's Viewpoint

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

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

#### Intention of the Oireachtas – Counter Argument

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

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Níor léir aon fhoráil a bheith sa reachtaíocht a dúirt gur leor na scéimeanna marcála a chur ar fáil trí Bhéarla amháin do scrúdaitheoirí agus ní dheamadh aon mheá in aon fhóram reachtúil go dtí seo ar an gcás gur leor scéimeanna marcála trí Bhéarla do scrúdaitheoirí a bheadh ag ceartú páipéar i nGaeilge leis an gcothromaíocht a bhí in intinn an Oireachtas a chinntiú i dtaca le “seirbhísí taca” trí Ghaeilge.

Bhí na scéimeanna marcála trí Bhéarla á gcur ar fáil d'iarrthóirí, dá gcuid oidí agus don saol mór go poiblí mar sheirbhís taca fiú mura raibh sin ar intinn ag an Oireachtas. Nár chiallaigh sin go gcaithfí an tseirbhís taca chéanna a sholáthar trí Ghaeilge?

### Tairiscint ón gCoimisiún

Rinne an Coimisiún an tairiscint seo a leanas i dtaca le soláthar scéimeanna marcála trí Ghaeilge i litir ar an 25 Aibreán 2007 chugam a bhí i dteannta leis na leasuithe a moladh ar dhréacht den tuarascáil seo a bhí curtha faoina mbráid:

*“Mar chuid den bheartas ar mhaithe le seirbhísí an Choimisiúin trí Ghaeilge a chur chun cinn d'fhéadfadh an Coimisiún scéim mharcála cinntitheach i mBéarla a chur ar fáil go poiblí .i. an scéim mharcála a bheadh in úsáid ag na scrúdaitheoirí le linn na marcála. D'fhéadfaí ansin aistriúchán Gaeilge a chur ar fáil go poiblí. Níor mhór go dtuigfí, ámh, gur aistriúchán a bheadh ann; gur dréacht a bheadh ann agus gurbh fhéidir é a cheartú am ar bith dá dtabharfaí faoi deara difríocht de chineál ar bith a bheith i gceist idir an t-aistriúchán Gaeilge agus an scéim mharcála chinntitheach i mBéarla. Ba den riachtanas é nach mbeadh difríocht idir an t-aistriúchán Gaeilge agus an scéim mharcála chinntitheach ina hábhar spairne ó thaobh dlí de .i. rud a mbainfeadh ard-iarmhairt leis faoi mar atá mínithe againn sa fhreagra againn. Bheadh sé i gceist againn tagairt shonrach a dhéanamh do na gnéithe sin uilig sa cháipéis i nGaeilge. Chuirfí in iúl go soiléir ar an scéim mharcála i mBéarla gurb í sin an scéim chinntitheach.”*

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

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

### Proposal from the Commission

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

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



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### Osradharc Ginearálta ar an Imscrúdú

Ní fhacthas dom go raibh aon débhríocht ag baint leis an bhforáil a bhí in Alt 7(2)(d) den Acht Oideachais 1998 ná san fhoráil a bhí in Alt 2(1)(l) den Acht céanna. Ag féachaint do ghnáthbhrí na bhfocal, ba chuma an brí litriúil nó brí chuspóiriúil a baineadh as na forálacha seo, ba é mo thuairim láidir go raibh an dualgas reachtúil a cuireadh ar an gCoimisiún ríshoiléir.

Bhí inní an Choimisiúin faoin ardphriacal agus faoin ard-iarmhairt a bhainfeadh le soláthar scéimeanna marcála i nGaeilge agus i mBéarla ceangailte go dlúth lena dhearcadh nach mbeadh an dá leagan ag teacht le chéile ó thaobh brí de. Tugadh le tuiscint go mbeadh sé dodhéanta, nó ar a laghad fíordheacair, aistriúchán cruinn a sholáthar in dhá theanga oifigiúla an Stáit laistigh de na scálaí ama a bheadh i gceist.

Níorbh fhéidir liom géilleadh don seasamh sin. Dá nglacfaí leis an seasamh sin b'ionann é agus géilleadh don tuairim nárbh fhéidir leis an Stát feidhmiú go héifeachtúil agus go héifeachtach ach ar bhonn aonteangach amháin.

Tá cáipéisí oifigiúla de gach cineál á dtairiscint sa dá theanga oifigiúla ar bhonn rialta, cruinn-aistriúcháin ar Achtanna an Oireachtais san áireamh. Tá institiúid an Aontais Eorpaigh ag freastal go cuí agus go cothrom ar iliomad teangacha éagsúla ar bhonn laethúil gan cheist.

D'fhill mé ar an mbrí shoiléir a bhí le baint as forálacha an Achta Oideachais 1998 agus mian an Oireachtais a dheimhniú go mbeadh seirbhísí taca áirithe á soláthar trí Ghaeilge agus an tagairt shonrach do scrúduithe an stáit i measc na seirbhísí taca sin.

Tugtar an deis do dhaltáí na scrúduithe stáit a dhéanamh trí Ghaeilge agus sa bhreis air sin tugtar marcanna bónais do dhaltáí a fhreagraíonn na páipéir scrúdaithe trí Ghaeilge.

Bhí neamhréiteach an-soiléir idir an leagan amach sin agus an socrú go bhfuil an uirlis a úsáideann scrúdaitheoirí le saothar trí Ghaeilge na ndaltáí a mheas gan a bheith ar fáil ach i mBéarla amháin. Faoin gcóras reatha tá saothar na ndaltáí atá á sholáthar i nGaeilge amháin á mheas le huirlis nó le slat tomhais i dteanga eile.

### Overview of the Investigation

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

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

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

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

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

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

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

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### Fionnachtana an Imscrúdaithe

Ba iad seo a leanas fionnachtana an imscrúdaithe:

- 1 Go bhfuil dualgas ar an Aire Oideachais agus Eolaíochta de réir Alt 7(2)(d) den Acht Oideachais 1998 *"seirbhísí taca trí Ghaeilge a sholáthar do scoileanna aitheanta a chuireann teagasc trí Ghaeilge ar fáil agus d'aon scoil aitheanta eile a iarrann soláthar den sórt sin."*  
Sa léiriú in Alt 2(1) den Acht céanna tugtar sainmhíniú mar a leanas ar sheirbhísí taca: *"ciallaíonn 'seirbhísí taca' na seirbhísí a chuireann an tAire ar fáil do mhic léinn nó dá dtuismitheoirí, do scoileanna nó do lárionaid oideachais de réir alt 7 agus folóidh sé aon cheann nó gach ceann de na nithe seo a leanas:*  
(i) scrúduithe dá bhforáiltear i gCuid VIII."
- 2 Gur bunaíodh Coimisiún na Scrúduithe Stáit le hordú bunaithe IR 373 de 2003 faoi Alt 54 den Acht Oideachais mar chomhlacht *"chun feidhmeanna i dtaca le seirbhísí taca a sholáthar, nó i ndáil leis an soláthar sin, a chomhlíonadh faoi réir fho-alt (2)..."*
- 3 Go bhfuil Coimisiún na Scrúduithe Stáit freagrach i bhforbairt, i measúnú, i gcreidiúnú agus i ndeimhniú na scrúduithe dara leibhéal stáit agus go bhfuil na dualgais reachtúla i dtaca le soláthar seirbhísí taca trí Ghaeilge a bhaineann le scrúduithe stáit dá bhforáiltear i gCuid VIII den Acht Oideachais 1998 ar an gCoimisiún.
- 4 Gur cuid rithabhachtach den phróiseas a bhaineann leis na scrúduithe stáit iad na scéimeanna marcála agus nárbh fhéidir córas na scrúduithe a fheidhmiú gan scéimeanna marcála a bheith ar fáil do na scrúdaitheoirí agus sa bhreis air sin, go bhfuil ról lárnach ag na scéimeanna marcála tar éis an phróisis scrúdaithe féin, i gcás achomhairc, mar áis do mhúinteoirí, do mhic léinn, dá dtuismitheoirí agus do scoileanna nó do lárionaid oideachais.

### Findings of the Investigation

The following were the findings of the investigation:

1. That the Minister for Education is obliged in accordance with Section 7(2)(d) of the Education Act 1998 *"to provide support services through Irish to recognised schools which provide teaching through Irish and to any other recognised school which requests such provision."*  
In the interpretation in Section 2(1) of the same Act the following definition is given of support services:  
*"'support services' means the services which the Minister provides to students or their parents, schools or centres of education in accordance with section 7 and shall include any or all of the following:*  
(i) examinations provided for in Part VIII."
2. That the State Examinations Commission was established with establishment order SI 373 of 2003 under Section 54 of the Education Act as a body *"to it perform, subject to subsection (2) functions in or in relation to the provision of support services..."*
3. That the State Examinations Commission is responsible for developing, assessing, accrediting and certifying the state second level examinations and that the Commission has the statutory obligations in relation to the provision of support services through Irish relating to state examinations provided for in Part VIII of the Education Act 1998.
4. That the marking schemes are a very important part of the process relating to the state examinations and that the examinations' system could not operate without marking schemes being available to the examiners and, in addition, that the marking schemes have a central role after the examination process itself, in the case of an appeal, as an aid for teachers, students, their parents and schools or centres of education.

# COIMISIÚN NA SCRÚDUITHE STÁIT

## STATE EXAMINATIONS COMMISSION

5. Go bhfuil dualgas reachtúil faoin Acht Oideachais 1998 ar Choimisiún na Scrúduithe Stáit leaganacha Gaeilge de scéimeanna marcála a sholáthar do scrúdaitheoirí atá i mbun ceartúcháin ar scrúduithe de chuid na hArdteistiméireachta a freagraíodh trí Ghaeilge.
6. Mura bhfuil leaganacha Gaeilge de scéimeanna marcála á soláthar i gcás scrúduithe na hArdteistiméireachta go bhfuil sárú á dhéanamh ar fhorálacha den Acht Oideachais 1998 a bhaineann le stádas nó le húsáid na Gaeilge.

### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

1. Go gcinntódh Coimisiún na Scrúduithe Stáit go gcoiffidís lena ndualgais reachtúla trí chruinnleagan Gaeilge de gach scéim mharcála a sholáthar do scrúdaitheoirí i gcás gach ábhair a d'fhreagrófaí trí Ghaeilge i scrúduithe na hArdteistiméireachta.
2. Gur "tiontú oifigiúil" a bheadh sa leagan Gaeilge de gach scéim mharcála i gcás is nárbh í an leagan Gaeilge an bunleagan agus go leagfadh Coimisiún na Scrúduithe Stáit amach prótacal le deacrachtaí a sheachaint sa chás eisceachtúil is go mbeadh neamhréiteach idir dhá leagan.
3. Go socródh Coimisiún na Scrúduithe Stáit córas le go mbeadh na leaganacha Gaeilge de scéimeanna marcála curtha ar fáil go comhuaineach agus leagtha amach ar chomhchaighdeán leis na scéimeanna marcála i mBéarla.
4. Go gcuirfeadh Coimisiún na Scrúduithe Stáit na leaganacha Gaeilge de scéimeanna marcála ar fáil ar chomhchéim agus go comhuaineach leis na cinn i mBéarla d'iarthóirí a bheadh ag breathnú ar a gcuid scrípteanna trí Ghaeilge mar chuid den phróiseas achomhairc agus go gcuirfí ar fáil go poiblí iad ar shuíomh gréasáin Choimisiún na Scrúduithe Stáit ag an tráth céanna leis na cinn i mBéarla.

5. That the State Examinations Commission has a statutory obligation under the Education Act 1998 to provide examiners engaged in correcting Leaving Certificate examinations answered through Irish with Irish versions of marking schemes.
6. Unless Irish versions of marking schemes are provided for Leaving Certificate examinations, provisions of the Education Act 1998 relating to the status or use of Irish are being infringed.

### Recommendations of the Investigation

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

1. That the State Examinations Commission should ensure that they comply with their statutory obligations by providing examiners with an accurate version in Irish of every marking scheme for every subject answered through Irish in the Leaving Certificate examinations.
2. That, where the Irish version is not the original version, the Irish version of every marking scheme should be an "official translation" and that the State Examinations Commission should set out a protocol to avoid difficulties in the exceptional case of there being a discrepancy between the two versions.
3. That the State Examinations Commission should establish a system so that the Irish versions of marking schemes are provided simultaneously and set out to the same standard as the marking schemes in English.
4. That the State Examinations Commission should provide the Irish versions of marking schemes on an equal basis and simultaneously with those in English to candidates examining their scripts through Irish as part of the appeal process and that they should be made available on the State Examinations Commission's website at the same time as those in English.

# COIMISIÚN NA SCRÚDUITHE STÁIT

## STATE EXAMINATIONS COMMISSION

5. Go nglacadh Coimisiún na Scrúduithe Stáit leis nach raibh aon ní i moltaí an imscrúdaithe seo a d'éileodh go n-aistreofaí go Gaeilge aon tagairtí nó sleachta i dteangacha ábhartha eile i scéimeanna marcála na scrúduithe do Theangacha Eorpacha agus eile ar chlár na hArdteistiméireachta a bheadh á bhfreagairt trí Ghaeilge.

Mar aitheantas ar an gcás a rinne Coimisiún na Scrúduithe Stáit i dtaca le fadhbanna praiticiúla agus, dar leis an gCoimisiún, le hardphriacal agus ard-iarmhairt a bheith ag baint le soláthar scéimeanna marcála trí Ghaeilge ag tráth nach raibh seirbhís aistriúcháin an Choimisiúin tugtha chun foirfeachta agus ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga gan dochar don dualgas iomlán a mheas mé a bheith i gceist (mar atá léirithe thuas) i dtaca le scála ama do sholáthar scéimeanna marcála trí Ghaeilge:

- go mbeadh na scéimeanna marcála trí Ghaeilge mar atá sonraithe thuas ar fáil i gcás ar a laghad an tríú cuid de na hábhair is coitianta a fhreagraítear trí Ghaeilge i gcás scrúduithe Ardteistiméireachta na bliana 2008;
- go mbeadh na scéimeanna marcála trí Ghaeilge mar atá sonraithe thuas ar fáil i gcás ar a laghad dhá thrian de na hábhair is coitianta a fhreagraítear trí Ghaeilge i gcás scrúduithe Ardteistiméireachta na bliana 2009; agus
- go mbeadh na scéimeanna marcála trí Ghaeilge mar atá sonraithe thuas ar fáil i gcás gach ábhair a fhreagraítear trí Ghaeilge i gcás scrúduithe Ardteistiméireachta na bliana 2010 agus do gach bliain ina dhiaidh sin

### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheanadh a leithéid d'achomharc.

Dheimhnigh Coimisiún na Scrúduithe Stáit gur ghlac sé le fionnachtana agus moltaí an imscrúdaithe.

- **Imscrúdú seolta:** 2 Márta 2007
- **Tuarascáil eisithe:** 29 Meitheamh 2007

5. That the State Examinations Commission should accept that nothing in this investigation's recommendations requires that any references or extracts in other relevant languages in marking schemes for examinations for European or other Languages on the Leaving Certificate programme answered through Irish be translated into Irish.

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

- that the marking schemes through Irish as specified above should be available for at least one-third of the subjects most generally answered through Irish for the 2008 Leaving Certificate examinations;
- that the marking schemes through Irish as specified above should be available for at least two-thirds of the subjects most generally answered through Irish for the 2009 Leaving Certificate examinations;
- that the marking schemes through Irish as specified above should be available for all subjects answered through Irish for the 2010 Leaving Certificate examinations and for every year thereafter.

### Appeals to the High Court

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

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

- **Investigation launched:** 2 March 2007
- **Report issued:** 29 May 2007

# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

### Ábhar an Imscrúdaithe

Ar sháraigh an tÚdarás Náisiúnta Míchumais an dualgas reachtúil teanga atá daingnithe in Alt 9(3) d'Acht na dTeangacha Oifigiúla 2003 i gcás cumarsáid i scríbhinn a dhéanamh leis an bpobal i gcoitinne le linn sheachadadh na leabhrán "New Disability Plans"/"Pleananna Nua Míchumais"?

### Subject of Investigation

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

### Cúlra

Rinne duine a bhfuil cónaí air i gceantar lasmuigh den Gaeltacht gearán liom gur cóip i mBéarla amháin den leabhrán "New Disability Plans" a sheol an tÚdarás Náisiúnta Míchumais tríd an gcóras poist chuige i mí na Bealtaine 2007.

Bhí an gearánach den bharúil gur cheart go mbeadh cóip i nGaeilge nó cóip dháttheangach seolta chuige de réir fhorálacha Acht na dTeangacha Oifigiúla 2003.

### Background

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

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

### Cúlra Reachtúil

Leagann Alt 9(3) d'Acht na dTeangacha Oifigiúla 2003 dualgas ar chomhlachtaí poiblí a chinntiú gur i nGaeilge nó i mBéarla agus i nGaeilge a dhéanfar an chumarsáid i scríbhinn nó leis an bpost leictreonach leis an bpobal i gcoitinne nó le haicme den phobal más chun faisnéis a thabhairt don phobal nó don aicme atá an chumarsáid sin.

### Statutory Background

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

### Tuiscint

Tuigeadh dom gur ullmhaigh an tÚdarás Náisiúnta Míchumais leaganacha Béarla agus Gaeilge de "New Disability Plans"/"Pleananna Nua Míchumais" agus go raibh fáil ag an bpobal ar a rogha leagain ar shuíomh gréasáin na heagraíochta.

### Understanding

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

Thuig mé freisin gur seachadadh cóipeanna clóite i nGaeilge den leabhrán chuig tithe i gceantair áirithe Gaeltachta ach gurbh iad na cóipeanna i mBéarla amháin a seachadadh chuig tithe eile ar fud na tíre ar fad. D'fhéadfadh daoine cóipeanna clóite den leabhrán i nGaeilge a fháil ach iad a iarraidh ar an Údarás Náisiúnta Míchumais. Rinneadh fógraíocht ina leith seo i meáin chumarsáide éagsúla.

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



# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

Ó tharla gur léirigh an tÚdarás Náisiúnta Míchumais do m'Oifig gur tuigeadh dó gur shásaigh na céimeanna a bhí glactha i ndáileadh an leabhráin na dualgais reachtúla faoi Alt 9(3) den Acht, bheartaigh mé imscrúdú a dhéanamh ar an ngearán de réir fhorálacha na reachtaíochta lena fháil amach an raibh nó nach raibh teipthe ar an Údarás Náisiúnta Míchumais an fhoráil in Alt 9(3) den Acht a chomhlíonadh.

### Réamhphlé

I gcomhthéacs dháileadh an leabhráin "New Disability Plans"/"Pleananna Nua Míchumais" ar an bpobal i gcoitinne, thug m'Oifig comhairle ó bhéal agus i scríbhinn don Údarás Náisiúnta Míchumais i dtús aimsire, ar iarratas uathu, i dtaca le dualgas i leith na Gaeilge a bheith nó gan a bheith i gceist faoi Alt 9(3) den Acht. (Féach faoi na ceannteidil "Dearcadh an Údaráis Náisiúnta Míchumais – Scagadh ar an Eolas" agus "Osradharc Ginearálta ar an Imscrúdú" san achoimre seo i dtaca leis an iarratas sin.) Moladh don Údarás, freisin, i gcás go raibh amhras orthu fós maidir lena ndualgas i leith na Gaeilge i dtaca le dáileadh an leabhráin, an cheist a tharraingt anuas lena gcomhairleoirí dlí féin neamhspleách ar m'Oifig agus, i bhfianaise na comhairle sin, go bhféadfaí ansin tuairim bhreise a lorg ó m'Oifig.

### Dearcadh an Údaráis Náisiúnta Míchumais

#### Scagadh ar an Eolas

Léirigh an t-eolas ón Údarás Náisiúnta Míchumais roinnt bunfhríicí, ina measc:

- Gur bheartaigh an tÚdarás Náisiúnta Míchumais cur le feasacht daoine faoi mhíchumas maidir le gnéithe éagsúla den straitéis náisiúnta míchumais trí leabhrán faisnéise a dháileadh ar an bpobal i gcoitinne tríd an gcóras poist.
- Gur ullmhaíodh téacs i mBéarla don leabhrán i gcomhar le Ranna Rialtais éagsúla agus le heagraíochtaí stáit eile.

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

### Prior Discussion

In the context of the distribution of the booklet "New Disability Plans"/"Pleananna Nua Míchumais" to the general public, my Office provided the National Disability Authority with initial advice orally and in writing, at their request, in relation to there being or not being an obligation in respect of the Irish language under Section 9(3) of the Act. (See under the headings "National Disability Authority's Viewpoint – Sifting the Information" and "General Overview of the Investigation" in this summary in relation to that request.) The Authority was advised also, in the event that it was in doubt still about its Irish language obligation in relation to the distribution of the booklet, to consult its own legal advisors independently of my Office and that, having regard to that advice, it could seek a further opinion from my Office then.

### National Disability Authority's Viewpoint

#### Sifting the Information

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

- That the National Disability Authority decided to raise awareness among people with disabilities in relation to various elements of the national disability strategy by distributing an information booklet to the general public through the postal system.
- That an English language text of the booklet was prepared in conjunction with various Government Departments and other state organisations.

# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

- Go raibh próiseas tairisceana de réir riachtanais an Aontais Eorpaigh críochnaithe do chlódóireacht os cionn 1.7 milliún cóip den leabhrán i mBéarla amháin sular thug an tÚdarás Náisiúnta Míchumais suntas d'aon riachtanas ar leith teanga i dtaca le dualgais faoi Acht na dTeangacha Oifigiúla 2003.
- Gur clóbhuailleadh agus gur scaipeadh tríd an gcóras poist c.1.7 milliún cóip den leabhrán i mBéarla, gur clóbhuailleadh 85,000 cóip i nGaeilge agus gur dáileadh c.29,000 cóip díobh sin tríd an gcóras poist i gceantair áirithe Ghaeltachta.
- Gur cuireadh leaganacha i nGaeilge agus i mBéarla den leabhrán ar fáil ar shuíomh gréasáin an Údaráis Náisiúnta Míchumais.
- Go mbeadh costas breise i gceist le clóbhuailleadh eagrán dátheangach den leabhrán nó dá gclóbhuailfí an líon céanna cóipeanna i nGaeilge agus i mBéarla seachas mar a bheadh le clóbhuailleadh leagain i mBéarla amháin.
- Nach mbeadh aon chostas breise ar dháileadh leabhrán dátheangach seachas mar a bheadh le leagan aonteangach, (ach gur ghá sin a dhéanamh thar thréimhse coicíse in áit seachtaine) ach go mbeadh costas breise ar dháileadh dhá eagrán ar leith den leabhrán (ceann i nGaeilge agus ceann i mBéarla).

### Argóintí an Údaráis Náisiúnta Míchumais

Ba léir go raibh an tÚdarás Náisiúnta Míchumais lánchinnte den seasamh a tógadh sa chás seo.

*"Is é an dearcadh atá ag an Údarás Náisiúnta Míchumais nár sháraigh sé aon dualgas reachtúil faoi Alt 9(3) d'Acht na dTeangacha Oifigiúla 2003."*

Is féidir, mar achoimre, argóintí an Údaráis Náisiúnta Míchumais i leith na ceiste a roinnt in dhá chuid:

- argóintí praiticiúla bunaithe ar thaithí, cleachtas, costais phoiblí agus ar phrionsabail na comhréire;
- argóintí bunaithe ar chomhairle agus ar fhorléiriú dlíthiúil.

- That a tendering process in accordance with European Union requirements had been completed for printing over 1.7 million copies of the booklet in English before the National Disability Authority took notice of any language requirement regarding obligations under the Official Languages Act 2003.
- That c.1.7 million copies of the booklet in English were printed and distributed through the postal system, that 85,000 copies in Irish were printed and that c.29,000 copies of these were distributed through the postal system in certain Gaeltacht areas.
- That Irish and English versions of the booklet were made available on the National Disability Authority's website.
- That printing a bilingual edition of the booklet or the same number of copies in Irish and English would cost more than printing an English version only.
- That distributing a bilingual booklet rather than a version in one language would not cost more (except that that would need to be done over two weeks instead of one week) but that distributing two separate editions of the booklet (one in Irish and one in English) would cost more.

### National Disability Authority's Arguments

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

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

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

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

# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

### Argóintí Praiteiciúla

Dúirt an tÚdarás Náisiúnta Míchumais gur próiseas casta é cumarsáid a dhéanamh le daoine faoi mhíchumas mar nár ghrúpa ná aicme de dhaoine aonchineálacha iad.

Chuir sin shocraigh an tÚdarás ar mhodh dáileacháin spriocdhírthe trí leabhráin i bhformáidí éagsúla (leagan caighdeánach i mBéarla simplí, leagan Gaeilge, leagan Éasca le Léamh, leagan i gcomhair trealamh éisteachta, leagan Braille agus leagan i gCló Mór) a dhíriú ar na spriocphobail éagsúla.

I measc na gcúiseanna eile a beartaíodh gan an leabhrán a fhoilsiú go dátheangach bhí taithí na heagraíochta i ndéileáil le daoine faoi mhíchumas.

Mheabhraigh an tÚdarás Náisiúnta Míchumais an méid seo freisin:

*"Chuir an tÚdarás Náisiúnta Míchumais leaganacha Gaeilge agus Béarla araon den leabhrán ar fáil ag an am céanna; dháil an tÚdarás Náisiúnta Míchumais cóipeanna den dá leagan ar bhealach spriocdhírthe; sular dháil an tÚdarás Náisiúnta Míchumais an leabhrán chuir sé fógraí ar raidió náisiúnta agus réigiúnach chun daoine a chur ar an eolas go raibh a leithéidí le fáil agus cuireadh fógra in Foinse chomh maith; bhí córas i bhfeidhm ag an Údarás Náisiúnta Míchumais chun leaganacha Béarla agus Gaeilge araon a dháileadh ar aon duine sa phobal a bhféadfadh iarratas a bheith déanta aige nó aici ar leagan Béarla nó Gaeilge ar ríomhphost, i scríbhinn nó ar an bhfón trí úsáid a bhaint as an uimhir thiomnaithe theileafóin Lóghlao a socraíodh suas don tionscnamh seo; agus chuir an tÚdarás Náisiúnta Míchumais leaganacha Béarla agus Gaeilge ar shuíomh gréasáin an Údarais Náisiúnta Míchumais."*

Ba léir freisin gur chreid an tÚdarás Náisiúnta Míchumais go dtiocfadh impleachtaí maidir le cúrsaí airgeadais agus scálaí ama i gceist dá ngníomhófaí de réir na comhairle a bhí faighte i dtús aimsire ón nGníomhaireacht Seirbhísí Rialtais agus ó m'Oifig. Chomhairligh an Gníomhaireacht Seirbhísí Rialtais gur ghá an leabhrán a chur i dtoll a chéile i bhfoirm dhátheangach.

### Practical Arguments

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

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

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

The National Disability Authority stressed the following also:

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

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

## AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

### NATIONAL DISABILITY AUTHORITY

Léirigh na taifid i gcomhaid na heagraíochta gur chomhairligh Stiúrthóir an Údaráis Náisiúnta Míchumais do Chathaoirleach na heagraíochta i ríomhphost ar an 13 Márta 2007 nach raibh aon rogha acu ach foilseachán dátheangach a dhéanamh den leabhrán:

*"We discovered this week that we are legally obliged to ensure that the mailshot on National Disability is produced as bilingual publication which means it has to have 32 pages instead of 16 pages to include the full Irish translation. This has major implications for costs and timing but we have checked with Commission and the DJELR and seems to be no way out of this."*

[Is cosúil gur tagairt d'Oifig an Choimisinéara Teanga atá sa "Commission" thuas agus don Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí atá i "DJELR" thuas.]

#### Argóintí Bunaithe ar Chomhairle agus ar Fhorléiriú Dlíthiúil

Mar chuid den chomhairle a thug m'Oifig don Údarás Náisiúnta Míchumais rinneadh tagairt do chomhairle dlí a lorg go neamhspleách sa chás is go raibh amhras ann faoi dhualgas reachtúil tar éis an cás a mheá de réir slata tomhais ar leith a bhí tugtha.

Níor ghlac an tÚdarás Náisiúnta Míchumais leis an gcomhairle seo agus deimhníodh nach bhfuarthas "comhairle dlí ó chomhairleoírí dlí ar conradh."

Lorg an tÚdarás Náisiúnta Míchumais comhairle bhreise ar cheannasaíocht na Roinne Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí faoi na himpleachtaí a bhain leis an gcomhairle a bhí faighte go dtí sin (féach an sliocht i mBéarla i ríomhphost an Stiúrthóra thuas, mar shampla) agus faoi na gníomhartha a bhí á moladh acu, i.e. leaganacha Béarla a dháileadh go náisiúnta ar an bpobal i gcoitinne agus leaganacha Gaeilge a dháileadh i roinnt ceantair Ghaeltachta chomh maith leis an leagan Gaeilge a bheith ar fáil ar iarratas agus ar an suíomh gréasáin.

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

*"We discovered this week that we are legally obliged to ensure that the mailshot on National Disability is produced as bilingual publication which means it has to have 32 pages instead of 16 pages to include the full Irish translation. This has major implications for costs and timing but we have checked with Commission and the DJELR and seems to be no way out of this."*

[It appears that "Commission" above refers to the Office of An Coimisinéir Teanga and "DJELR" above to the Department of Justice, Equality and Law Reform.]

#### Arguments Based on Advice and Legal Interpretation

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

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

The National Disability Authority sought additional advice from the senior management of the Department of Justice, Equality and Law Reform regarding the implications of the advice received up to then (see the extract from Director's e-mail quoted above, for example) and the actions being recommended by them, i.e. to distribute English versions nationally to the general public and Irish versions in some Gaeltacht areas and the Irish version to be available on application and on the website.

# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

Deimhníodh don Údarás Náisiúnta Míchumais “gur bhreithnigh an tAire gur chomhlíon gníomhartha molta an Údaráis Náisiúnta Míchumais ceanglais an Achta trína chinntiú go raibh leagan Gaeilge agus leagan Béarla araon ar fáil ag an am céanna agus gur léiríodh sa dá theanga go raibh teacht orthu. Breithníodh é sin faoi threoir prionsabail dhlíthiúla chomh maith le saincheist an chostais phoiblí agus le prionsabal na comhréireachta.”

Cinneadh leanúint ar aghaidh le clóbhualadh agus le dáileadh na leaganacha Béarla agus Gaeilge mar a bhí socraithe sa bhunphlean ó thús aimsire sular thosaigh aon díospóireacht nó plé faoi dhualgais reachtúla teanga ar chor ar bith san Údarás Náisiúnta Míchumais.

### Osradharc Ginearálta ar an Imscrúdú

An fhoráil in Alt 9(3) d'Acht na dTeangacha Oifigiúla a bhí i gceist san imscrúdú i gcás an Údaráis Náisiúnta Míchumais:

*“I gcás ina ndéanfaidh comhlacht poiblí cumarsáid i scríbhinn nó leis an bpost leictreonach leis an bpobal i gcoitinne nó le haicme den phobal i gcoitinne chun faisnéis a thabhairt don phobal nó don aicme, cinnteoidh an comhlacht gur i nGaeilge, nó i mBéarla agus i nGaeilge, a bheidh an chumarsáid.”*

Rinne mé meá ar gach aon fhorléiriú a d'fhéadfaí a dhéanamh ar an bhforáil thuas. Ní fhacthas dom go raibh aon débhríocht ag baint leis an bhforáil sin. Ag féachaint do ghnáthbhrí na bhfocal, ba chuma an mbainfí brí litriúil nó brí chuspóiriúil as an bhforáil, ba é mo thuairim láidir go raibh an dualgas reachtúil a cuireadh ar chomhlachtaí poiblí, an tÚdarás Náisiúnta Míchumais san áireamh, ríshoiléir.

It was confirmed to the National Disability Authority that “the Minister considered that the National Disability Authority’s proposed actions fulfilled the requirements of the Act by ensuring that both an Irish version and an English version were available at the same time and that availability was promoted in both languages. This had been considered by reference to legal principles in addition to the public expense issue and the principle of proportionality.”

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

### General Overview of the Investigation

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

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

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



# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

### Alt 9(3)

Baineann dualgas teanga de réir Alt 9(3) le cineál ar leith cumarsáide:

- Is gá gur comhlacht poiblí a bheadh i mbun na cumarsáide;
- Is gá go mbeadh an chumarsáid á déanamh i scríbhinn nó leis an bpost leictreonach;
- Is gá gur leis an bpobal i gcoitinne nó le haicme den phobal i gcoitinne a bheadh an chumarsáid;
- Agus is gá gur chun críche faisnéis a thabhairt don phobal nó don aicme a bheadh an chumarsáid seo á déanamh.

Sa chás áirithe seo d'fhéadfaí an méid seo a leanas a dheimhniú go cinnte:

- Gur comhlacht poiblí a bhí i mbun na cumarsáide – tá an tÚdarás Náisiúnta Míchumais liostáilte mar chomhlacht poiblí sa Chéad Sceideal den Acht;
- Go raibh an chumarsáid á déanamh i scríbhinn – leabhrán clóbhuailte a bhí á scaipeadh trí an gcóras poist;
- Gur leis an bpobal i gcoitinne a bhí an chumarsáid á déanamh – bhí os cionn 1.7 milliún cóip á ndáileadh ar gach áitreabh sa Stát;
- Gur chun críche faisnéis a thabhairt don phobal a bhí an chumarsáid sin á déanamh – tá sin ríshoiléir ó théacs an leabhráin agus deimhnithe ag an Údarás Náisiúnta Míchumais féin.

Dá bhrí sin, bhí dualgas ar an Údarás Náisiúnta Míchumais a chinntiú go mbeadh an chumarsáid seo i scríbhinn le faisnéis a sholáthar don phobal i gcoitinne i nGaeilge, nó i mBéarla agus i nGaeilge.

### Section 9(3)

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

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

In this particular case the following could be affirmed definitely:

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

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

# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

### Dáileadh an Leabhráin

Bhí an chumarsáid ghníomhach leis an bpobal i gcoitinne i mbreis agus 1.7 milliún áitreabh á déanamh trí Bhéarla amháin, seachas i mBéarla agus i nGaeilge. Is ionann sin agus breis agus 98% den mhórpobal lena rabhthas i mbun cumarsáide. Trí Ghaeilge amháin a bhí an chumarsáid i gcás níos lú ná 2% den phobal. Sna cúinsí ar leith a bhí i gceist, seachas an chumarsáid a dhéanamh leis an bpobal i gcoitinne “i mBéarla agus i nGaeilge,” d’fhéadfaí an argóint a chur chun cinn go ndeamadh an chumarsáid i mBéarla nó i nGaeilge.

Chaithfeadh aon duine de na daoine sin a fuair an chumarsáid seo i mBéarla amháin, dá mba mhian leo gur trí Ghaeilge a dhéanadh an stát a chuid gnóthaí oifigiúla leo, sa chás seo, céimeanna breise a thógáil le teagmháil a dhéanamh leis an Údarás Náisiúnta Míchumais ar thóir leagan Gaeilge den leabhrán.

Is féidir an argóint a dhéanamh gurbh é a mhalairt ghlan d’aídhm a bhí leis an bhforáil in Alt 9(3) den Acht.

### An Pobal

Fiú dá mbeadh sé inghlactha de réir léirmhínte ar leith ar Alt 9(3) den Acht – rud nár ghéill mé dó – go bhféadfaí feidhmiú ar bhonn spriocdhírthe le cumarsáid a dhéanamh le “pobal” na Gaeilge i ngach cuid den Ghaeltacht agus ar fud na tíre ar fad, bheadh sé dodhéanta córas cuí a dhearadh chuige sin gan cuid mhór den spriocghrúpa sin a fhágáil ar leataobh ar fad.

Ní dhéantar aon idirdhealú ar leith idir an Ghaeltacht agus an chuid eile den tír san fhoráil áirithe seo den Acht.

### Costas

Níor chosúil gur lorgáíodh i dtús aimsire aon mheastachán de réir na ngnáthnósanna agus na gcleachtas a bhaineann le próisis tairisceana atá daingnithe i mballstáit an Aontais Eorpaigh ar chostas clódóireachta an leabhráin seo mar leabhrán dátheangach amháin 32 leathanach – nó mar dhá leabhrán ar leith, 16 leathanach an ceann, i nGaeilge agus i mBéarla.

### Distribution of the Booklet

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

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

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

### The Public

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

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

### Cost

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

## AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

### NATIONAL DISABILITY AUTHORITY

Ba chosúil sin a bheith fíor de bharr bearna san eolas a bhí ag an Údarás Náisiúnta Míchumais i dtaca le dualgais reachtúla na heagraíochta faoi Acht na dTeangacha Oifigiúla 2003 ag tús an tionscnaimh seo.

Díol suntais gur faoi bhun €472 a bhí an costas aistriúcháin sa chás seo i dtionscnamh a raibh buiséad iomlán de €375,000 luaite leis.

#### Comhairle

Fuair an tÚdarás Náisiúnta Míchumais comhairle i leith a ndualgais sa chás seo a bhí tríd is tríd ag teacht le chéile, ó fhoinsí éagsúla orthu sin bhí:

- An Gníomhaireacht Seirbhísí Rialtais;
- Oifig an Choimisinéara Teanga;
- Státseirbhíseach de chuid na Roinne Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Ba chosúil gur de bharr amhrais faoi chruinneas na comhairle sin nó de thoradh impleachtaí éagsúla a bhainfeadh le feidhmiú de réir na comhairle sin – costais, moill, míchaoithiúlacht agus eile – a lorgaíodh tuilleadh comhairle fós, an uair seo ag leibhéal ceannais na Roinne Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

Is cosúil nár “comhairle dlí” sa ghnáthchiall a bhí i gceist leis an gcomhairle seo ó bhéal (i nglaoch teileafóin) ach comhairle ó cheannasaíocht máthair-Roinne chuig gníomhaireacht reachtúil, neamhspleách faoina scáth.

Bhí molta roimhe sin ag státseirbhíseach de chuid na Roinne Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí gur cheart “léirmhíniú dlíthiúil” a lorg le hamhras a sheachaint ach ba léir nár lorgaíodh an léirmhíniú dlíthiúil sin ó chomhairleoirí neamhspleácha dlí an Údaráis Náisiúnta Míchumais.

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

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

#### Advice

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

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

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

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

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

# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

### Fionnachtain

Ba í seo a leanas fionnachtain an imscrúdaithe:

- **Gur sháraigh an tÚdarás Náisiúnta Míchumais an dualgas reachtúil atá daingnithe in Alt 9(3) d'Acht na dTeangacha Oifigiúla 2003 i gcás cumarsáide i scríbhinn a dhéanamh leis an bpobal i gcoitinne le linn sheachadadh na leabhrán "New Disability Plans"/ "Pleananna Nua Míchumais."**

### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

- Go gcinnteodh an tÚdarás Náisiúnta Míchumais sa chás go ndéanfaid sé cumarsáid i scríbhinn leis an bpobal i gcoitinne nó le haicme den phobal i gcoitinne feasta chun faisnéis a thabhairt don phobal nó don aicme:
  - go mbeadh an chumarsáid sin, mura mbeadh sí i nGaeilge ar fad, dátheangach (faoi aon chlúdach amháin nó in dhá chuid ar leith, i nGaeilge agus i mBéarla);
  - go mbeadh an chumarsáid sin seachadta ar gach cuid den phobal i gcoitinne nó ar gach cuid den aicme den phobal i gcoitinne go comhuaineach – gan idirdhealú ar bith – dá mba leaganacha ar leith i nGaeilge agus i mBéarla den chumarsáid a bheadh i gceist.
- Go nglacfaidh an tÚdarás Náisiúnta Míchumais leis anois go raibh sé ró-mhall agus nach mbeadh sé chun leas an phobail ná an státhórais ag an tráth seo, ag féachaint do thosca iomlána an cháis, tuilleadh cóipeanna den leagan Gaeilge den leabhrán a chlóbhualadh agus a dháileadh ar an bpobal i gcoitinne ar fud na tíre chun an dochar a rinne an sárú ar dhualgais reachtúla a chealú nó a laghdú.

### Finding

The finding of the investigation was as follows:

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

### Investigation's Recommendations

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

- That where the National Disability Authority communicated in writing with the general public or a class of the general public from then on in order to furnish information to the public or class it would ensure that:
  - that communication, unless it was totally in Irish, would be bilingual (under one cover only or in two separate parts, in Irish and English);
  - that communication would be delivered to all of the general public or all of the class of the general public simultaneously – without discrimination – if separate versions in Irish and English of the communication were involved.
- That the National Disability Authority should accept now that it was too late and not in the public or state interest at this stage, having regard to all the circumstances of the case, to print additional copies of the Irish version of the booklet for distribution to the general public throughout the country to nullify or reduce the harm caused by the contravention of statutory obligations.

# AN tÚDARÁS NÁISIÚNTA MÍCHUMAIS

## NATIONAL DISABILITY AUTHORITY

- Go dtógfadh an tÚdarás Náisiúnta Míchumais gach céim chuí le cinntiú go mbeadh sé ar an eolas faoina dhualgais reachtúla faoi Acht na dTeangacha Oifigiúla 2003 agus go gcomhlíonfadh sé go hiomlán agus go cuí forálacha an Achta.
- Go gcuirfeadh bainistíocht an Údaráis Náisiúnta Míchumais iad seo a leanas ar an eolas i scríbhinn go cuí agus go cruinn faoi fhionnachtain agus moltaí an imscrúdaithe seo a luaithe agus ab fhéidir ach tráth nár dhéanaí ná 6 seachtaine ó dháta na tuarascála seo:
  - Foireann, baill agus cathaoirleach bhord an Údaráis Náisiúnta Míchumais;
  - An Roinn Dlí agus Cirt, Comhionannas agus Athchóirithe Dlí mar mháthair-Roinn na heagraíochta;
  - Gach duine a bhí ina bhall de Ghrúpa na nOifigeach Sinsearach as ranna agus oifigí rialtais éagsúla a bhí bainteach leis an tionscnamh faisnéise seo;

agus go seolfaí cóip den chumarsáid i scríbhinn sin chugamsa go comhuaineach mar Choimisinéir Teanga.

### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

Ghlac an tÚdarás Náisiúnta Míchumais le fionnachtana agus moltaí an imscrúdaithe.

- **Imscrúdú seolta:** 10 Bealtaine 2007
- **Tuarascáil eisithe:** 17 Lúnasa 2007

- That the National Disability Authority would take all appropriate steps to ensure that it was aware of its statutory obligations under the Official Languages Act 2003 and that it would comply fully and appropriately with the provisions of the Act.
- That the management of the National Disability Authority would make the following aware in writing appropriately and accurately of the finding and recommendations of this investigation as soon as possible but not later than 6 weeks from the date of this report:
  - Staff, members and chairperson of the board of the National Disability Authority;
  - Department of Justice, Equality and Law Reform as the organisation's parent Department;
  - Every person who was a member of the Senior Officials' Group from various government departments and offices associated with this information project;

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

### Appeals to the High Court

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

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

- **Investigation launched:** 10 May 2007
- **Report issued:** 17 August 2007

## BUS ÉIREANN

### Ábhar an Imscrúdaithe

An amhlaidh go bhfuil nó nach bhfuil an fhoráil in Alt 57(2) den Acht Iompair 1950 – ar fhoráil í a bhaineann le stádas nó le húsáid teanga oifigiúla – á comhlíonadh i dtaca le ticéid taistil áirithe faoin scéim iompar scoile ag Bus Éireann?

### Cúlra an Ghearáin

Rinne príomhoide gaelscoile gearán liom thar ceann tuismitheora/dalta de chuid na scoile sin nach raibh an úsáid teanga ar thicéad taistil áirithe a bhí eisithe thar ceann Bhus Éireann ag teacht leis an riachtanas reachtúil teanga atá daingnithe in Alt 57(2) den Acht Iompair 1950.

Seo mar atá an t-alt cuí den Acht sin:

*“Ní foláir na cárta-thicéidí paisnéara uile a eiseos an Bord i gcóir turasanna laistigh den Stát a bheith clóbhuailte i nGaeilge ach is cead iad a bheith clóbhuailte i nGaeilge agus i mBéarla.”*

Ba léir gur fhoráil í Alt 57(2) den Acht Iompair 1950 d’achtachán a bhain le stádas nó le húsáid teanga oifigiúla.

Ba léir ó chóip den ticéad taistil cuí a seoladh chugam go raibh cuid mhór de clóbhuailte i nGaeilge agus i mBéarla ach go raibh cuid áirithe de nach raibh clóbhuailte ach i mBéarla amháin.

Rinne m’Oifig iarracht an gearán seo a réiteach go neamhfhoirmiúil le Bus Éireann ach níor éirigh leis an bpróiseas sin teacht ar chomhréiteach sásúil.

Bheartaigh mé ar imscrúdú a dhéanamh le bheith ábalta a rá an raibh nó nach raibh an fhoráil in Alt 57(2) den Acht Iompair 1950 – ar fhoráil í a bhaineann le stádas nó le húsáid teanga oifigiúla – á comhlíonadh i dtaca le ticéid taistil áirithe faoin scéim iompar scoile ag Bus Éireann.

Seoladh an t-imscrúdú ar an 4 Deireadh Fómhair 2007.

### Subject of Investigation

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

### Background to Complaint

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

The following is the appropriate section of that Act:

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

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

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

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

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

The investigation was initiated on 4 October 2007.



## BUS ÉIREANN

### Freagra Bhus Éireann

Thug Bus Éireann argóintí praiticiúla agus dlíthiúla i dtaobh na ceiste a bhí mar ábhar don imscrúdú seo.

### Argóintí Praitiúla

Tugadh le fios:

- go raibh deacrachtaí ríomhaireachta le córas teicneolaíocht faisnéise an chomhlachta maidir le ticéid a bhí go iomlán dátheangach a sholáthar,
- go n-éireadh ceisteanna faoi chumas cuid d'fhoireann tiománaithe bus an chomhlachta, ar eachtrannaigh gan Ghaeilge iad, ticéid a thuiscint mura mbeadh treoracha soiléire orthu i dteanga a thuigfidís, agus
- go bhféadfadh ceisteanna tromchúiseacha faoi shábháilteacht leanaí a bheith i gceist dá mbeadh baol ann go bhfágfaí leanbh ar thaobh an bhóthair de bharr nár thuig tiománaí bus scoile teanga agus bailíocht an ticéid.

### Argóintí Dlíthiúla

Thug Bus Éireann le fios gurbh é seasamh an chomhlachta, tar éis don fhoireann dlí an scéal a bhreithniú, nár ghlac Bus Éireann leis go raibh an eagraíocht faoi cheanglas reachtúil faoi Alt 57(2) den Acht Iompair 1950 gur chóir go mbeadh ticéid phaisinéirí go hiomlán i nGaeilge nó go hiomlán dátheangach i gcoitinne.

Dúirt sé gur bhain an téarma “*cárta-thicéidí Paisnéara*” in Alt 57(2) den Acht Iompair 1950 le cineál ticéid nach raibh in úsáid a thuilleadh.

Mheabhraigh Bus Éireann gurbh é seasamh an chomhlachta nach raibh aon sárú á dhéanamh ag an eagraíocht sa chás seo ar Acht na dTeangacha Oifigiúla ná ar aon achtachán eile a bhain le stádas ná le húsáid teanga oifigiúla.

Mar chonclúid ar a fhreagra ar an imscrúdú bhí an méid seo le rá ag Bus Éireann:

*“Déanfaimid iarracht fiosrú an féidir athruithe oiriúnacha a dhéanamh ar an ticéad mórán mar atá iarrtha, sa gcomhthéacs seo.”*

### Bus Éireann's Reply

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

### Practical Arguments

Bus Éireann suggested that:

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

### Legal Arguments

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

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

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

Concluding its reply to the investigation Bus Éireann stated:

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

## BUS ÉIREANN

### Osradharc ar an Imscrúdú

D'fhéadfaí scagadh a dhéanamh ar phríomhargóintí Bhus Éireann i dtaca le hábhar an imscrúdaithe seo ina dhá chuid:

- Argóintí dlíthiúla
- Ceisteanna praiticiúla

### Argóintí Dlíthiúla

Ba léir nár ghlac Bus Éireann leis gurbh ionann an ticéad taistil d'iompar scoile don Scéim Iompar Scoile agus na "cárta-thicéidí paisnéara" dá dtagraítear in Alt 57(2) den Acht Iompair 1950.

Dúirt Bus Éireann nach raibh na "cárta-thicéidí paisnéara", mar a thagraítear dóibh in Alt 57(2) den Acht Iompair 1950, ann a thuilleadh.

### Frithargóintí Dlíthiúla

Tugadh an t-alt cuí den Acht Iompair, i.e. Alt 57(2), i bhfeidhm beagnach trí scór bliain ó shin agus, cé go ndeamadh leasuithe éagsúla go minic ar fhorálacha eile de chuid an Achta chéanna sin sna blianta ó shin, níor bheartaigh an tOireachtas an fhoráil seo a leasú.

Ba léir gur theastaigh ón Oireachtas in achtú na forála seo gur clóbhuailte i nGaeilge nó go dátheangach (Gaeilge agus Béarla) a bheadh na "cárta-thicéidí" a d'eiseofaí chuig paisinéirí do thuras laistigh den Stát.

Ba chosúil gur thagair an "cárta-thicéad" don ionstraim sin a thugtar do phaisinéir a chruthaíonn go bhfuil cead, ceadúnas, dearbhú nó barántas ag an duine sin a údaraíonn dó nó di taisteal ar aistear áirithe. Is é an cead nó an t-údarás chun taisteal a bhronnann an ionstraim seo ar an duine atá i gcroílár na forála seo seachas an t-ábhar (cárta nó páipéar) ar a bhfuil sé clóbhuailte.

### Overview of the Investigation

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

- Legal arguments
- Practical matters

### Legal Arguments

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

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

### Counter Legal Arguments

The appropriate section of the Transport Act, i.e. Section 57(2), came into force almost sixty years ago and, although often over the years, various amendments were made to other provisions of the same Act, the Oireachtas did not consider amending this provision.

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

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

## BUS ÉIREANN

Sa chás, áfach, is go raibh brí na míre seo doiléir nó débhríoch nó nár léir uaithe intinn shoiléir an Oireachtais – rud nár ghéill mé dó – forálann an tAcht Léiriúcháin 2005 (Alt 5(1)) go dtabharfar don fhoráil “forléiriú ar léir uaidh intinn shoiléir an Oireachtais nó na parlaiminte lena mbaineann, de réir mar a bheidh, i gcás gur féidir an intinn sin a fhionnadh as an Acht ina iomláine” agus ba léir ó Alt 57 ina iomláine go bhforálann sé d’úsáid na Gaeilge in eilimintí d’obair an chomhlachta, mar atá, buanfhógraí agus buanchomharthaí poiblí agus ticéid.

Agus an chás á mheá maidir le hionannas “cárta-thicéad” atá luaite san Acht Iompair agus “ticéad déanta as páipéar” an lae inniu, níor mhór a bhfuil in Alt 6 den Acht Léiriúcháin 2005 a thabhairt san áireamh:

*“Le linn foráil d’aon Acht nó d’aon ionstraim reachtúil a fhorléiriú, féadfaidh cúirt aird a thabhairt ar aon athruithe ar an dlí, ar dhálaí sóisialacha, ar theicneolaíocht, ar bhrí na bhfocal a úsáidtear san Acht sin nó san ionstraim reachtúil sin agus ar nithe eile is iomchuí, a tharla ó dháta rite an Achta sin nó ó dháta déanta na hionstraime reachtúla sin, ach sin a mhéid amháin a cheadaíonn a théacs, a chuspóir agus a chomhthéacs nó a téacs, a cuspóir agus a comhthéacs sin.”*

### Ceisteanna Praiticiúla – Frithargóintí

#### Córais Teicneolaíocht Faisnéise

Níor léir ar chor ar bith gur leor fadhbanna le córais teicneolaíocht faisnéise mar leithscéal le mianta an Oireachtais a bheadh daingnithe i ndlí a leasú nó a mhaolú.

Níor threoraigh Alt 57(2) den Acht gur le córas teicneolaíocht faisnéise a sholáthrófaí na ticéid dhátheangacha.

D’fhéadfaí an fhrithargóint a dhéanamh freisin nárbh í an teanga (an Ghaeilge) a chothaigh fadhb don chóras teicneolaíocht faisnéise ach gur fadhb deartha a bhí i gceist a d’fhéadfaí a leigheas le réiteach comhroghnach dearthaí.

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

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

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

### Practical Matters – Counter Arguments

#### Information Technology Systems

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

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

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

## BUS ÉIREANN

### Tiománaithe Bus ar Eachtrannaigh gan Ghaeilge Iad

Tugann Alt 57(2) de rogha gur i nGaeilge nó go dátheangach (Gaeilge agus Béarla) a bheadh na ticéid clóbhuailte. Sa chás is go mbeadh ticéid go hiomlán dátheangach ní bheadh aon riachtanas ann go mbeadh tuiscint ar Ghaeilge agus ar Bhéarla ag gach tiománaí. Ba leor dóibh tuiscint a bheith acu ar aon cheann amháin de na teangacha oifigiúla sin lena gcúram a chomhlíonadh go cuí.

Bheadh Bus Éireann ábalta freisin – mar chuid den phróiseas ionductaithe agus traenála foime – a chinntiú go mbeadh nádúr dátheangach an ticéid intuigthe do gach tiománaí, idir eachtrannaigh agus Éireannaigh.

### Sábháilteacht Leanaí

D'aithin an t-imscrúdú seo a thábhachtaí is a bhí sábháilteacht leanaí agus an fhreagracht ollmhór a ghabh leis sin do Bhus Éireann.

D'fhéadfaí an fhrithargóint a dhéanamh nach bhféadfadh ticéad dátheangach a bheadh deartha agus soláthraithe go gairmiúil ag comhlacht poiblí baol ar bith a chothú go bhfágfaí leanbh ar thaobh an bhóthair de bharr nár thuig tiománaí bus scoile ar a laghad ceann amháin de na teangacha oifigiúla sin agus, dá réir sin, bailíocht an ticéid.

### Ginearálta

Is léir go n-éilíonn Bus Éireann go ginearálta go gcomhlíonfaidh paisinéirí a ndualgais féin agus iad ag taisteal ar thurais bhus, go háirithe an dualgas chun táille a íoc mar mhalairt ar chearta taistil.

Chaithfeadh Bus Éireann a dhualgais féin a chomhlíonadh, go háirithe iad siúd atá daingnithe sa dlí ag an Oireachtas, agus ina measc Alt 57(2) den Acht Iompair 1950.

### Foreign Bus Drivers Without Irish

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

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

### Child Safety

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

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

### General

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

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

## BUS ÉIREANN

### Fionnachtain an Imscrúdaithe

Ba é seo a leanas fionnachtain an imscrúdaithe:

- **Go bhfuil an fhoráil in Alt 57(2) den Acht Iompair 1950 – ar fhoráil í a bhaineann le stádas nó le húsáid teanga oifigiúla – á sárú i dtaca leis na ticéid taistil ar leith sin a bhí i gceist san imscrúdú seo faoin scéim iompar scoile ag Bus Éireann.**

### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

1. Gan dochar don dualgas iomlán a mheas mé a bheith i gceist, go gcinnteodh Bus Éireann go dtógfadh an comhlacht na céimeanna cuí a luaithe agus ab fhéidir chun go gcloifeadh an comhlacht feasta leis an dualgas reachtúil teanga atá daingnithe in Alt 57(2) den Acht Iompair 1950 trí chinntiú go mbeadh na ticéid paisinéara ab ábhar don imscrúdú seo clóbhuailte go hiomlán i nGaeilge nó go hiomlán dátheangach (i nGaeilge agus i mBéarla) agus go n-ullmhófaí agus go gcuirfí i bhfeidhm plan réalaióch le spriocanna cinnte ama leis seo a bhaint amach.
2. Go gcinnteodh Bus Éireann go mbeadh sé san áireamh sna leasuithe agus forbairtí a bhí beartaithe ar an gcóras teicneolaíocht faisnéise go mbeadh sé de chumas ag an gcóras sin na ticéid a chlóbhuailte go hiomlán dátheangach agus go gcinnteofaí sa tsoiléireacht i ndearadh dátheangach na dticéad nach gcothófaí aon bhaol do shábháilteacht leanaí.
3. Go gcinnteodh Bus Éireann go mbeadh tiománaithe curtha ar an eolas le linn cúrsaí traenála nó inseirbhíse faoi nádúr agus dearadh dátheangach na dticéad.

### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

- **Imscrúdú seolta:** 4 Deireadh Fómhair 2007
- **Tuarascáil eisithe:** 13 Nollaig 2007

### Finding of the Investigation

The following was the finding of the investigation:

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

### Recommendations of the Investigation

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

1. Without prejudice to the full obligation that I considered to be at issue, Bus Éireann would ensure that it would take the appropriate steps as soon as possible to comply from then on with the language obligation affirmed in Section 57(2) of the Transport Act 1950 by ensuring that the passenger tickets which were the subject of this investigation be printed fully in Irish or fully bilingually (in Irish and in English) and a realistic plan would be prepared and implemented with specified time targets to achieve this.
2. Bus Éireann would ensure that the proposed improvement and development of its information technology system would include that system's capability to print tickets fully bilingually and that the clarity of design of the bilingual tickets would be such as to ensure no possibility of any threat to child safety.
3. Bus Éireann would ensure that bus drivers would be made familiar with the bilingual form and design of the tickets during training or in service courses.

### Appeals to the High Court

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

- **Investigation launched:** 4 October 2007
- **Report issued:** 13 December 2007

## COMHAIRLE CONTAE FHINE GALL

### FINGAL COUNTY COUNCIL

#### Ábhar an Imscrúdaithe

An amhlaidh gur sháraigh Comhairle Contae Fhine Gall na dualgaís a bhí ar an gcomhlacht poiblí sin faoi Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003 trí admháil i mBéarla a chur ar chumarsáid i nGaeilge agus ina dhiaidh sin gan an chumarsáid i nGaeilge a fhreagairt thar thréimhse 3 mhí?

#### Subject of Investigation

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

#### Cúlra an Ghearáin

Rinne duine le seoladh i gceantar Mhullach Íde, Co. Bhaile Átha Cliath, gearán liom maidir le hiarracht gan toradh a rinne sí comhfhreagras i scríbhinn a dhéanamh i nGaeilge leis an gcomhairle contae áitiúil, Comhairle Contae Fhine Gall.

Foráiltear mar seo a leanas in Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003:

*"I gcás ina ndéanfaidh duine cumarsáid i dteanga oifigiúil le comhlacht poiblí, i scríbhinn nó leis an bpost leictreonach, freagróidh an comhlacht poiblí sa teanga chéanna."*

Chuir an gearánach ríomhphost i nGaeilge chuig an gComhairle Contae ar an 24 Iúil 2007 ag déanamh gearáin faoin easpa Gaeilge ar na comharthaí ag an ionad athchúrsála agus faoin easpa Gaeilge ar shuíomh gréasáin na Comhairle. Chomh maith leis sin, lorg sí eolas maidir le polasaí Gaeilge na Comhairle.

Fuair an gearánach admháil i mBéarla ar an 1 Lúnasa 2007 inar dúradh *"Your recent email is being translated and a reply will issue shortly."*

Cé go raibh sí i dteagmháil ríomhphoist i nGaeilge faoin gcás faoi dhó arís leis an gComhairle ní bhfuair sí de fhreagra ar na ceisteanna a chuir sí ach nóta ríomhphoist ar an 24 Lúnasa 2007 ag rá *"Go raibh maith agat as teagmháil a dhéanamh linn. Beidh muid i dteagmháil leat go luath."*

Nuair nach raibh freagra faighte aici ar a cumarsáid i nGaeilge ar an 30 Meán Fómhair 2007 rinne sí gearán le m'Oifige.

Rinne m'Oifig iarracht an gearán seo a réiteach go neamhfhoirmiúil le Comhairle Contae Fhine Gall ach níor éirigh leis an bpróiseas sin.

#### Background to the Complaint

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

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

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

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

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

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

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

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



## COMHAIRLE CONTAE FHINE GALL

### FINGAL COUNTY COUNCIL

Mar sin ní raibh aon rogha agam ach imscrúdú foirmiúil a sheoladh faoi réir na bhforálacha in Acht na dTeangacha Oifigiúla 2003 lena fháil amach an raibh nó nach raibh teipthe ar Chomhairle Contae Fhine Gall an fhoráil in Alt 9(2) den Acht a chomhlíonadh.

Seoladh an t-imscrúdú ar an 17 Deireadh Fómhair 2007.

#### Freagra na Comhairle

Ina litir dar dáta an 14 Samhain 2007 chugam dhearbhaigh an Bainisteoir Contae, Comhairle Contae Fhine Gall, gur léir gur tharla sárú ar an Acht sa chás seo. Dúirt sé gur chúis díomá faoi leith dó gur theip ar an gComhairle rudaí a chur ina gceart in ainneoin gur tugadh gach deis don eagraíocht é sin a dhéanamh.

Thug an Bainisteoir Contae an míniú seo a leanas ar an scéal:

*"Roinnt cúinsí a tháinig le chéile ba chúis leis an teip seo, go háirithe go raibh post an Cheannaire Gnóthaí Corparáideacha folamh agus, ar an drochuair, gur buaileadh tinn ar feadh tréimhse sách fada an té a bhí ag gníomhú ina áit.*

*"Bheinn ag súil nach nglacfaí leis go léiríonn an cliseadh seo meon nó polasaí na comhairle ina hiomláine."*

Thug an Bainisteoir Contae le fios go raibh Ceannaire Gnóthaí Corparáideacha nua ar tí dul i mbun oibre agus go raibh iarrtha aige ar an duine sin "a aire pearsanta a dhíriú ar an chaoi ina bhfuil muid ag comhlíonadh ár ndualgais faoin Acht agus ar aon chomhfhreagras ó d'oifig."

Seoladh chugam i dteannta na litreach ón mBainisteoir cóip de litir ón gCeannaire Gnóthaí Corparáideacha nua chuig an ngearánach inar glacadh leithscéal foirmiúil léi faoinar tharla. Dhéileáil an litir chéanna sin le substaint na ceiste a bhí tarraingthe anuas aici agus tugadh cuireadh di, dá mba mhian léi é, cruinniú a bheith aici leis an gCeannaire Gnóthaí Corparáideacha le cúrsaí a phlé.

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

The investigation was initiated on 17 October 2007.

#### The Council's Reply

In his letter to me of 14 November 2007 the County Manager, Fingal County Council, declared that it was clear that the Act had been contravened in this case. He stated that he was particularly disappointed that the Council had failed to rectify the matter despite the organisation being given every opportunity to so do.

The County Manager gave the following explanation: (translation)

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

*"I would hope that this failure would not be taken as reflecting the council's attitude or policy in general."*

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

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

## COMHAIRLE CONTAE FHINE GALL

### FINGAL COUNTY COUNCIL

#### Osradharc ar an Imscrúdú

Ba léir gur theip go hiomlán ar cibé córas a bhí i bhfeidhm, nó a bhí ceaptha a bheith i bhfeidhm, ag Comhairle Contae Fhine Gall le cinntiú go ndéanfaí de réir Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003 a fhorálann go bhfuil sé de cheart ag duine freagra a fháil i nGaeilge ar chumarsáid i scríbhinn nó leis an bpost leictreonach sa teanga chéanna sin.

Ba chosúil ón scrúdú a rinne mé ar thaifead na heagraíochta gur neamhaird iomlán a rinneadh de shubstaint an ábhair sa bhunríomhphost i nGaeilge ón ngearánach go dtí gur seoladh an t-imscrúdú seo.

Níorbh aon ábhar mórtais é don Chomhairle go raibh sí ar an gcéad chomhlacht poiblí sa tír arbh éigean do m'Oifig imscrúdú oifigiúil a dhéanamh air i leith na míre seo den Acht.

#### Fionnachtain an Imscrúdaithe

Ba é seo a leanas fionnachtain an imscrúdaithe:

- Gur sháraigh Comhairle Contae Fhine Gall an fhoráil in Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003 trí admháil i mBéarla a chur ar chumarsáid leis an bpost leictreonach i nGaeilge agus ansin gan an chumarsáid a fhreagairt thar thréimhse 3 mhí.

#### Moltaí an Imscrúdaithe

Ag féachaint don imscrúdú ba iad seo a leanas na moltaí a rinne mé mar Choimisinéir Teanga:

1. Go gcinnteodh Comhairle Contae Fhine Gall go gcloífe feasta lena ndualgaís reachtúla faoi Acht na dTeangacha Oifigiúla 2003.
2. Go seolfadh Comhairle Contae Fhine Gall meamram eolais (i scríbhinn nó leis an bpost leictreonach) laistigh de 6 seachtaine ó dháta na tuarascála seo chuig baill foirne na Comhairle a bheadh ag déileáil le cumarsáid scríofa leis an bpobal i ngach rannóg de chuid na Comhairle ina ndeimhneofaí an méid seo:
  - Go raibh fionnachtain déanta ag an imscrúdú seo gur sháraigh Comhairle Contae Fhine Gall a dualgas reachtúil faoi Alt 9(2) d'Acht na dTeangacha Oifigiúla 2003;

#### Overview of the Investigation

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

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

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

#### Finding of the Investigation

The investigation found as follows:

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

#### Recommendations of the Investigation

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

1. That Fingal County Council would ensure that it henceforth complied with its statutory obligations under the Official Languages Act 2003.
2. That Fingal County Council would send an information memorandum (in writing or by electronic mail) within 6 weeks of the date of the report of the investigation to its staff members in each of the Council's divisions who dealt with written communications from the public, in which the following would be affirmed:
  - That this investigation had found Fingal County Council to be in contravention of its statutory obligation under Section 9(2) of the Official Languages Act 2003;

## COMHAIRLE CONTAE FHINE GALL

### FINGAL COUNTY COUNCIL

- Go raibh leithscéal gafa ag an eagraíocht de bharr an tsáraithe sin;
  - Agus go raibh sé mar dhualgas ar an eagraíocht a chinntiú nach ligfí dá leithéid de shárú tarlú arís.
3. Go leagfaí amach go soiléir sa mheamram eolais a bhfuil tagairt dó i Moladh 2 thuas an córas a bheadh i bhfeidhm anois ag an gComhairle Contae don fhoireann le déileáil go cuí feasta le cumarsáid i scríbhinn nó le ríomhphoist i nGaeilge, go háirithe sa chás is nach mbeadh inniúlacht ar an nGaeilge ag an mball foime a bheadh i gceist.
  4. Go seolfaí cóip den mheamram eolais atá i gceist i Moltaí 2 agus 3 thuas chugam mar Choimisinéir Teanga laistigh de 6 seachtaine ó dháta na tuarascála seo.

#### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

Ghlac Comhairle Contae Fhine Gall le fionnachtain agus moltaí na tuarascála.

- **Imscrúdú seolta:** 17 Deireadh Fómhair 2007
- **Tuarascáil eisithe:** 19 Samhain 2007

- That the organisation had apologised for this contravention;
  - And that the organisation was obliged to ensure that such a contravention would not be allowed happen again.
3. That the system now in place to facilitate staff to deal appropriately from now on with any communication in Irish in writing or by e-mail, particularly where staff members did not have Irish, would be set out clearly in the information memorandum referred to in Recommendation 2 above.
  4. That a copy of the information memorandum referred to in Recommendations 2 and 3 above would be sent to me within 6 weeks of the date of this report.

#### Appeals to the High Court

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

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

- **Investigation launched:** 17 October 2007
- **Report issued:** 19 November 2007

# COIMISIÚN THITHE AN OIREACHTAIS

## HOUSES OF THE OIREACHTAS COMMISSION

### Ábhar an Imscrúdaithe

Ar sárú ar Alt 7 d'Acht na dTeangacha Oifigiúla 2003 é mura gcuirtear ar fáil leaganacha Gaeilge de bhillí le linn an phróisis achtaithe reachtaíochta i dTithe an Oireachtais?

### Subject of Investigation

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

### Réamhrá

Rinne grúpa d'ochtair ball den Oireachtas – beirt Seanadóirí agus seisear Teachtaí Dála – gearán liom go raibh constaic mhór rompu maidir le feidhm a bhaint as a gcearta faoi Alt 6 d'Acht na dTeangacha Oifigiúla 2003 chun an Ghaeilge a úsáid i ndíospóireachtaí agus in imeachtaí eile de chuid Thithe an Oireachtais agus i gcoistí agus fochoistí de chuid Thithe an Oireachtais mar gur i mBéarla amháin a fhoilsítear billí formhór mór an ama.

Mhaígh na baill Oireachtais sin nach raibh cothrom na féinne á fháil acu i gcomparáid le Teachtaí Dála agus Seanadóirí a bhí sásta an Béarla a úsáid i gcónaí, go bhféadfadh a gcearta bunreachtúla a bheith á sárú agus go raibh sárú á dhéanamh ar Alt 7 d'Acht na dTeangacha Oifigiúla 2003.

Baineann Alt 7 d'Acht na dTeangacha Oifigiúla le téacs achtanna de chuid an Oireachtais a chlóg agus a fhoilsiú go comhuaineach i nGaeilge agus i mBéarla. Seo a leanas mar atá ráite san alt sin:

*Alt 7. "A luaithe is féidir tar éis aon Acht den Oireachtas a achtú, déanfar an téacs den chéanna a chlóg agus a fhoilsiú go comhuaineach i ngach ceann de na teangacha oifigiúla."*

D'iarr siad orm an scéal seo a imscrúdú mar gur chreid siad "go bhfuiltear ag sárú alt 7 de Acht na dTeangacha Oifigiúla 2003."

### Substaint an Ghearáin

Thagair gearánaigh do dheacrachtaí maidir le téarmaíocht nuair a fhoilsítear billí i mBéarla amháin:

*"Is minic téarmaíocht ar leith a bheith i mbillí agus téarmaíocht úrnua. Dá réir sin, is rídeacair díospóireacht chearta a dhéanamh as Gaeilge ar bhille atá foilsithe i mBéarla amháin."*

### Foreward

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

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

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

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

The complainants asked me to investigate this issue as they believed that "section 7 of the Official Languages Act 2003 is being contravened." (translation)

### Substance of the Complaint

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

*"There is often specific and brand-new terminology in bills. Accordingly, it is very difficult to debate properly in Irish a bill published in*

# COIMISIÚN THITHE AN OIREACHTAIS

## HOUSES OF THE OIREACHTAS COMMISSION

Níos measa fós, ní ceadmhach agus ní féidir leasuithe a mholadh i nGaeilge ar bhille Béarla.

"Creidimid nach bhfuil cothrom na Féinne le fáil againn i gcomparáid leis na teachtaí Dála agus leis na seanadóirí a bhíonn sásta an Béarla a úsáid i gcónaí. Nuair a fhoilsítear bille i nGaeilge, foilsítear é i mBéarla chomh maith: mar ba chóir. Níl leagan Gaeilge ar fáil dúinn de bhille i mBéarla, fiú nuair a iarraimid é."

Rinne na gearánaigh tagairt freisin dá gcearta bunreachtúla.

### Reachtaíocht Cheanada

Rinne na gearánaigh comparáid idir an fhoráil in Alt 7 d'Acht na dTeangacha Oifigiúla 2003 agus foráil reachtúil i gCeanada a bhí, dar leo, "fíor-chosúil" le chéile.

Bhí siad ag tagairt d'Alt 133 den British North America Act [Constitution Act], 1867:

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

Dhírigh siad aird ar fhorléiriú dlíthiúil ar an bhforáil sin mar thaca lena seasamh:

*"Sa 3ú eagrán de Driedger on the Construction of Statutes, Toronto, 1994, leis an Ollamh Ruth Sullivan deir sí ar lch. 215:-*

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

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

*[Aibhsiú sa bhunleagan]*

"Sheas Cúirt Uachtarach Cheanada leis an leagan amach sin in Re Manitoba Language Rights/Renvoi: Droits Linguistiques Au Manitoba [1985] 1 S.C.R. 721," a dúirt siad.

English only. Worse still, it is not permitted to propose amendments in Irish to a bill in English.

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

The complainants referred to their constitutional rights also.

### Canadian Legislation

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

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

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

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

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

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

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

*(Emphasis in the original version)*

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

## COIMISIÚN THITHE AN OIREACHTAIS

### HOUSES OF THE OIREACHTAS COMMISSION

Rinne na gearánaigh comparáid idir an méid sin agus a bhfuil i gceist le hAlt 7 d'Acht na dTeangacha Oifigiúla 2003 agus dúirt siad:

*"Dá bhrí sin, ní foláir do Thithe an Oireachtais, faoi réir alt 7 de Acht na dTeangacha Oifigiúla, reachtaíocht a achtú sa dá theanga oifigiúla."*

#### An tImscrúdú

Bheartaigh mé imscrúdú a sheoladh ar an 9 Samhain 2007 i leith an ghearáin.

Theastaigh uaim a chur ó amhras ar shárú ar Alt 7 d'Acht na dTeangacha Oifigiúla 2003 é mura gcuirfí ar fáil leaganacha Gaeilge de bhillí le linn an phróisis achtaithe reachtaíochta i dTithe an Oireachtais.

#### Freagra Choimisiún Thithe an Oireachtais

Thug freagra Choimisiún Thithe an Oireachtais le fios go soiléir nach raibh aon ghlacadh ag an eagraíocht leis gur sárú ar Alt 7 d'Acht na dTeangacha Oifigiúla 2003 é gan fáil a bheith ag na gearánaigh ar leaganacha Gaeilge de bhillí le linn an phróisis achtaithe i dTithe an Oireachtais.

Dhírigh an Coimisiún aird ar na focail **"tar éis aon Acht den Oireachtas a achtú"** san fhoráil in Alt 7 le béim a leagan orthu:

*"A luaithe is féidir **tar éis aon Acht den Oireachtas a achtú**, déanfar an téacs den chéanna a chló agus a fhoilsiú go comhuaineach i ngach ceann de na teangacha oifigiúla."*

Ag féachaint don fhoclaíocht atá san fhoráil reachtúil seo, dúirt an Coimisiún go raibh sé rí-shoiléir gur tar éis an phróisis achtaithe a éiríonn an oibleagáid chun Achtanna a chló agus a fhoilsiú.

Dúirt an Coimisiún an méid seo a leanas freisin:

*"Tá an méid seo a leanas leagtha amach in alt 4(2A) de na hAchtanna um Choimisiún Thithe an Oireachtais 2003 agus 2006:*

*'Is feidhm de chuid an Choimisiúin freisin seirbhísí aistriúcháin a sholáthar ó theanga oifigiúil amháin go dtí an teanga oifigiúil eile i leith Achtanna an Oireachtais."*

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

*"Therefore, the Houses of the Oireachtas, in accordance with Section 7 of the Official Languages Act, must enact legislation in both official languages." (translation)*

#### The Investigation

I decided to investigate the complaint on 9 November 2007.

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

#### Reply of Houses of the Oireachtas Commission

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

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

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

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

The Commission also stated the following:

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

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



## COIMISIÚN THITHE AN OIREACHTAIS

### HOUSES OF THE OIREACHTAS COMMISSION

Maidir leis an gconstaic mhór a dúirt na gearánaigh a chuir foilsíú billí i mBéarla amháin rompu maidir lena gcearta chun an Ghaeilge a úsáid i ndíospóireachtaí, dúirt Coimisiún Thithe an Oireachtais go raibh an ceart dlíthiúil chun ceachtar de na teangacha oifigiúla a úsáid i ndíospóireachtaí agus in imeachtaí eile de chuid na dTithe *"ina cheart leithleach agus is ceart é atá inscartha ón oibleagáid atá leagtha amach in alt 7 d'Acht na dTeangacha Oifigiúla 2003."*

Shéan an Coimisiún nach raibh cothrom na féinne le fáil ag na gearánaigh i gcomparáid le Teachtaí Dála agus Seanadóirí a bhí sásta Béarla a úsáid i gcónaí.

Maidir leis an gcomparáid a bhí déanta ag na gearánaigh idir an fhoráil in Alt 7 d'Acht na dTeangacha Oifigiúla 2003 agus an léimhíniú dlíthiúil a bhí déanta ar fhorálacha den chineál céanna i reachtaíocht teanga i gCeanada, bhí an méid seo le rá ag Coimisiún Thithe an Oireachtais:

*"Diúltaíonn an Coimisiún d'ábharthacht an cháis dár teideal AG of Quebec v Blaikie [1979] 2 SCR 1016. Is léir nach ionann léiriú chúirteanna Cheanada ar a gcuid bhforálacha reachtúla féin agus ceangal a chur ar chúirteanna na hÉireann. Is oibleagáid Bhunreachtuil í an oibleagáid chun Achtanna an Oireachtais a aistriú go ceann de theangacha oifigiúla an Stáit. Ní féidir le haon chúirt seachas Cúirteanna na hÉireann Bunreacht na hÉireann a léiriú.*

*"I gcomhthéacs na hÉireann, is féidir an oibleagáid chun Achtanna a aistriú agus chun iad a chló agus a fhoilsiú sa dá theanga a idirdhealú, dá bhrí sin, ó na hoibleagáidí a fhorchuirtear ar pharlaimint Cheanada sa mhéid go ndéantar an pointe ama, i bpróiseas achaithe na nAchtanna, a n-éiríonn an oibleagáid a shainmhíniú go soiléir le forálacha na hÉireann.*

*"Is léir go n-éiríonn sí tar éis an phróisis achaithe de réir an Bhunreacht agus de réir an Reachta. Murab ionann agus foráil Cheanada, dá bhrí sin, is forálacha sonracha, i dtéarmaí ama agus substainte, forálacha na hÉireann.*

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

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

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

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

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

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

# COIMISIÚN THITHE AN OIREACHTAIS

## HOUSES OF THE OIREACHTAS COMMISSION

*"Glacann an Coimisiún leis gur léir go samhlaítear le hAirteagal 25.4.3° go n-achtófar Bille i gceachtar den dá theanga oifigiúla nó sa dá theanga oifigiúla; ach níl aon oibleagáid bhunreachtúil ná aon oibleagáid reachtúil ann aistriú, cló nó foilsiú a dhéanamh sa dá theanga go dtí go n-achtaítear Bille tar éis don Uachtarán é a shíniú ina dhlí."*

### Osradharc ar an Imscrúdú

Maidir leis an tagairt a rinne na gearánaigh dá dtuairim go bhféadfadh a gcearta bunreachtúla a bheith á sárú nuair nach gcuirtear billí ar fáil ach i mBéarla amháin, níor tháinig sé faoi mo dhlínse aon bhreithiúnas de chineál ar bith a dhéanamh ar an bpointe seo mar go bhforálann Bunreacht na hÉireann gur gnó do chóras na gCúirteanna amháin é déileáil le ceisteanna bunreachtúla.

An dualgas a bhí ormsa mar Choimisinéir Teanga sa chás seo ná cinneadh a dhéanamh, an raibh nó nach raibh sárú á dhéanamh ar chomhlíonadh dualgaís faoi Alt 7 d'Acht na dTeangacha Oifigiúla 2003.

Ba léir dom gur chuir Alt 7 den Acht –

**Alt 7.** *"A luaithe is féidir tar éis aon Acht den Oireachtas a achtú, déanfar an téacs den chéanna a chló agus a fhoilsiú go comhuaineach i ngach ceann de na teangacha oifigiúla"*

– bunús reachtúil leis an dualgas bunreachtúil atá daingnithe in Alt 25.4.4° de Bhunreacht na hÉireann:

*"I gcás an tUachtarán do chur a láimhe le téacs Bille i dteanga de na teangacha oifigiúla agus sa teanga sin amháin, ní foláir tiontú oifigiúil a chur amach sa teanga oifigiúil eile."*

Ní fhacthas dom go raibh aon débhríocht ag baint leis an bhforáil sin atá in Alt 7.

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

### Overview of the Investigation

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

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

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

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

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

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

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

## COIMISIÚN THITHE AN OIREACHTAIS

### HOUSES OF THE OIREACHTAS COMMISSION

Chonacthas dom gur leag Alt 7 síos go soiléir an méid seo:

- **Céard atá le déanamh le haon Acht den Oireachtas?**

An téacs a chló agus a fhoilsiú go comhuaineach i nGaeilge agus i mBéarla.

- **Cén uair a dhéanfar an gníomh seo?**

A luaithe agus is féidir tar éis aon Acht den Oireachtas a achtú.

Níl aon tagairt in Alt 7 d'úsáid na dteangacha oifigiúla i mbillí nó le linn an phróisis achtaithe.

Maidir leis an gcomparáid a bhí déanta ag na gearánaigh idir an fhoráil in Alt 7 d'Acht na dTeangacha Oifigiúla 2003 agus an léirmhíniú dlíthiúil a bhí déanta ar fhorálacha den chineál céanna i reachtaíocht teanga i gCeanada, thacóinn leis an dearcadh a nocht Coimisiún Thithe an Oireachtais ina leith. Ní fhacthas dom go bhféadfadh an cás ar tagraíodh dó aon fhasach a chruthú a thabharfadh an bhrí d'Alt 7 d'Acht na dTeangacha Oifigiúla a bhí á mhaíomh ag na gearánaigh.

I ndeireadh na dála, níor chreid mé go gceadódh aon fhorléiriú macánta dlíthiúil dom an bhrí a bhaint as Alt 7 den Acht a d'éileodh go mbeadh billí – seachas achtanna tar éis a n-achtaithe – á soláthar go comhuaineach trí Ghaeilge agus trí Bhéarla.

#### Fionnachtain an Imscrúdaithe

Ba é seo a leanas fionnachtain an imscrúdaithe:

- Ní sárú ar Alt 7 d'Acht na dTeangacha Oifigiúla 2003 é gan leaganacha Gaeilge de bhillí a bheith ar fáil le linn an phróisis achtaithe reachtaíochta i dTithe an Oireachtais.

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

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

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

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

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

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

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

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

#### Finding of the Investigation

The following was the finding of the investigation:

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

## COIMISIÚN THITHE AN OIREACHTAIS

## HOUSES OF THE OIREACHTAS COMMISSION

### Moltaí an Imscrúdaithe

Ag féachaint d'fhionnachtain an imscrúdaithe seo ó tharla nach raibh aon sárú á dhéanamh ar an bhforáil reachtúil in Alt 7 d'Acht na dTeangacha Oifigiúla 2003 ní raibh aon mholtaí á ndéanamh agam sa chás seo.

### Achomhairc chuig an Ard-Chúirt

Mheabhraigh mé sa tuarascáil go raibh sé de cheart reachtúil ag aon pháirtí san imscrúdú achomharc a dhéanamh laistigh de 4 seachtaine chuig an Ard-Chúirt ar phonc dlí i gcoinne an chinnidh ach ní dheamadh a leithéid d'achomharc.

- **Imscrúdú seolta:** 9 Samhain 2007
- **Tuarascáil eisithe:** 13 Nollaig 2007

### Recommendations of the Investigation

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

### Appeals to the High Court

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

- **Investigation launched:** 9 November 2007
- **Report issued:** 13 December 2007

# AN ROINN DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ

## DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

### Imscrúdú Scortha

#### Ábhar an Imscrúdaithe

An amhlaidh go raibh nó nach raibh an fhoráil in Alt 71 den Acht Cúirteanna Breithiúnais, 1924 – ar fhoráil í a bhaineann le stádas nó le húsáid teanga oifigiúil – á comhlíonadh sa phróiseas a bhain le ceapadh breitheamh dúiche do Dhúiche Uimhir 1 (Co. Dhún na nGall) i ndeireadh 2006/tús 2007?

#### Cúlra

Rinne Conradh na Gaeilge gearán liom nach bhféadfaí a bheith cinnte go ndearnadh dóthain iarrachta teacht ar dhuine leis na scileanna teanga a shonraítear in Alt 71 den Acht Cúirteanna Breithiúnais, 1924, chun folúntas mar bhreitheamh i nDúiche Uimhir 1 (Co. Dhún na nGall) a líonadh chun an fhoráil sin den reachtaíocht a shásamh. Seo a leanas mar atá in Alt 71 den Acht sin:

*“Sa mhéid gur féidir é agus gach ní a bhaineann leis an scéal d’áireamh, beidh ag an mBreitheamh den Chúirt Dúithche, a ceapfar do Dhúthaigh ina bhfuil líomatáiste ina bhfuil an Ghaedhilg in úsáid ghenerálta, oiread eolais ar an nGaedhilg agus chuirfadh ar a chumas déanamh in éagmais conganta o fhear teangan agus fianaise á tabhairt sa teangan sin.”*

Ba léir gur fhoráil í seo d’achtachán a bhain le stádas nó le húsáid teanga oifigiúla. Ba léir freisin gur “líomatáiste ina bhfuil an Ghaedhilg in úsáid ghenerálta” a bhí i gceist i nDúiche Uimhir 1 (Co. Dhún na nGall) mar a bhfuil limistéar oifigiúil Gaeltachta.

Chinn mé ar imscrúdú a sheoladh sa chás.

### Discontinued Investigation

#### Subject of Investigation

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

#### Background

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

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

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

I decided to investigate the matter.

# AN ROINN DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ

## DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

### An tImscrúdú

D'iarr mé na taifid éagsúla a bhí i seilbh na Roinne Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí maidir le hábhar an imscrúdaithe chomh maith le tuairisc i scríbhinn ón Roinn sin ina mbeadh freagraí ar na ceistanna a leanas:

- An raibh nó nach raibh oiread eolais ar an nGaeilge ag an mbreitheamh a ceapadh le gairid do Dhúiche Uimhir 1 (Co. Dhún na Gall) agus a chuirfeadh ar a chumas déanamh in éagmais cúnaimh ó ateangaire agus fianaise á tabhairt sa teanga sin?
- Cén córas a úsáideadh le meastóireacht a dhéanamh ar chumas Gaeilge an bhreithimh a bhí i gceist?

D'fhiafraigh mé freisin mura raibh na scileanna teanga a bhí sonraithe in Alt 71 ag an té a ceapadh:

- Céard iad na hiarrachtaí ar leith a rinneadh duine a chuardach go gníomhach don fholúntas leis na scileanna teanga a bhí sonraithe in Alt 71?
- Ar cuireadh san áireamh go mbeadh breitheamh le sainiú do Dhúiche Uimhir 1 (Co. Dhún na nGall) ag a mbeadh scileanna teanga mar a shonraítear in Alt 71 nuair a bhí cinneadh á dhéanamh ar cheapadh triúr breitheamh nua ag deireadh 2006. Má cuireadh, iarradh go dtabharfaí sonraí.
- Ar cuireadh san áireamh go mbeadh duine den triúr breitheamh nua a bhí le ceapadh i ndeireadh 2006 le sainiú do Dhúiche Uimhir 1 (Co. Dhún na nGall) de bharr na forála a bhí i bhfeidhm ag an am sin in Alt 27(2)(b) d'Acht na gCúirteanna agus na nOifigeach Cúirte 2002. Má cuireadh, iarradh go dtabharfaí sonraí.
- An raibh aon duine a bhí cáilithe go cuí i ngach slí eile do cheapachán mar bhreitheamh agus na scileanna teanga a shonraítear in Alt 71 freisin aige nó aici nuair a rinneadh cinneadh ar cheapadh triúr breitheamh nua ag deireadh 2006?

### The Investigation

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

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

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

- What particular efforts had been made to actively seek a person for the vacancy who had the language skills specified in Section 71?
- Had it been taken into account, when a decision was being made to appoint three new justices at the end of 2006, that a justice with the language skills specified in Section 71 should be appointed to District No. 1 (Co. Donegal). If so, details to be given.
- Had it been taken into account that one of the three new justices to be appointed at the end of 2006 would be assigned to District No. 1 (Co. Donegal) under the provision in Section 27(2)(b) of the Courts and Court Officers Act 2002 in force at that time. If so, details to be given.
- Was any person qualified in every other way for appointment as a justice and having the language skills specified in Section 71 also available when a decision was made to appoint three new justices at the end of 2006?



# AN ROINN DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ

## DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

- An raibh roghanna reachtúla eile ar fáil nuair a bhí breitheamh le sannadh do Dhúiche Uimhir 1 (Co. Dhún na nGall), san áireamh, roghanna faoi Alt 2(2) den Séú Sceideal d'Acht na gCúirteanna (Forálacha Forlíonta) 1961?
- Cérbh iad na tosca bhí i gceist a chruthaigh folúntas le líonadh i nDúiche Uimhir 1 (Co. Dhún na nGall) agus cén uair ar léir go mbeadh folúntas le líonadh ansin?
- Ó tharla go bhfuil an dualgas teanga a fhoráiltear in Alt 71 coinníollach ar *"Sa mhéid gur féidir é agus gach ní a bhaineann leis an scéal d'áireamh..."* céard iad na nithe ar fad a bhain leis an scéal a cuireadh san áireamh le cinntiú nach mbeadh an ceapachán ag teacht salach ar riachtanas teanga in Alt 71 agus cén nós imeachta a úsáideadh leis an gcothromaíocht idir riachtanas na scileanna teanga faoi Alt 71 agus "gach ní a bhain leis an scéal" a mheá?
- I gcomhfhreagrás leis an ngearánach luadh "brú mór oibre" mar "ní a bhí le cur san áireamh" i ndáil leis an bhfolúntas i nDúiche Uimhir 1 (Co. Dhún na nGall). Cén fhianaise a bhí ann go raibh an "brú mór oibre" seo difriúil agus neamhghnách ón mbrú oibre i ndúichí eile den mhéid céanna?

### An Chéad Fhreagra thar ceann an Tánaiste agus Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí

Dúradh go raibh fonn ar an Rialtas agus ar an Tánaiste an folúntas a bhí i gceist a líonadh gan mhoill agus, d'éagmais iarratais ó bhreitheamh a bhí ag fónamh ar aistriú chuig an Dúiche, go ndearnadh breitheamh nuacheaptha a bhuanshannadh. Dúradh chomh maith gur bhain na taifid a bhí á dteachtadh ag an Roinn i leith an ábhair seo le himeachtaí de chuid an Rialtais agus nár ghá mar sin, i gcomhréir le hAlt 22(1)(b) d'Acht na dTeangacha Oifigiúla 2003, iad a chur ar fáil dom. Seoladh chugam teastas a bhí sínithe ag Ard-Rúnaí na Roinne ag dearbhú gur bhain na taifid le himeachtaí de chuid an Rialtais.

- Were other statutory alternatives available when a justice was to be assigned to District No. 1 (Co. Donegal), including, alternatives under Section 2(2) of the Sixth Schedule of the Courts (Supplemental Provisions) Act 1961?
- What circumstances caused a vacancy to be filled in District No. 1 (Co. Donegal) and when did it become clear that there would be a vacancy to be filled there?
- As the language obligation provided for in Section 71 is conditional on "so far as is practicable having regard to all the relevant circumstances..." what were all the circumstances relating to the question that were taken into account to ensure that the appointment would not contravene the language requirement in Section 71 and what procedure was used to weigh the balance between the language skills requirement and "all relevant circumstances"?
- In correspondence with the complainant "great pressure of work" was mentioned as "a matter that had to be taken into account" in relation to the vacancy in District No. 1 (Co. Donegal). What evidence was there that this "great pressure of work" was different and unusual from pressure of work in other districts of the same size?

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

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

## AN ROINN DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ

### DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

Ba léir dom nach bhféadfainn glacadh leis an teastas sin mar go bhforálann Alt 22 (1)(b) d'Acht na dTeangacha Oifigiúla 2003 do dheimhniú a thabharfadh Ard-Rúnaí an Rialtais amháin. Dá bhrí sin d'éiligh mé athuair ar an Tánaiste agus Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí na taifid chuí a sholáthar dom.

#### Eolas agus Taifid a Iarradh Arís

Mar thoradh ar an eolas a luaitear thuas a iarraidh arís chuir an Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí sceideal ar fáil dom a liostaigh na taifid a bhí ar fáil sa Roinn sin a bhain le breitheamh a cheapadh agus a shannadh ina dhiaidh sin do Dhúiche Chúirte Uimh. 1 mar aon le deimhniú bailí ó Ard-Rúnaí an Rialtais i gcás fhormhór na dtaifead sa chás sin. Cuireadh cóipeanna de na doiciméid eile sa sceideal ar fáil dom. Níor bhain na doiciméid sin le hábhar an imscrúdaithe go sonrach.

Faoi Alt 22(1)(b) d'Acht na dTeangacha Oifigiúla 2003 ní gá dualgas chun faisnéis nó taifid a chur ar fáil dom a chomhlíonadh má thugann Ard-Rúnaí an Rialtais deimhniú go bhfuil an fhaisnéis nó na taifid atá i gceist bainteach le cinntí agus le himeachtaí de chuid an Rialtais.

#### Tuarascáil ar Scor d'Imscrúdú

Ar an 18 Bealtaine 2007 rinne mé cinneadh scor den imscrúdú mar nár cuireadh ar fáil dom formhór na dtaifead de chuid na Roinne Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí a bhí lorgtha agam mar chuid den phróiseas imscrúdaithe mar gur bhain siad le himeachtaí de chuid an Rialtais. In éagmais na dtaifead ábhartha a bheith ar fáil dom, chinn mé nach mbeadh sé slán agam fionnachtain a dhéanamh agus moltaí a eisiúint.

Chuir mé an cinneadh sin agus an t-údar dó in iúl do Chonradh na Gaeilge, a rinne an bunghearán liom sa chás seo.

- **Imscrúdú seolta:** 2 Márta 2007
- **Cinneadh an t-imscrúdú a scor:** 18 Bealtaine 2007

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

#### Information and Records Sought Again

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

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

#### Report on Discontinuance of Investigation

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

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

- **Investigation launched:** 2 March 2007
- **Decision to discontinue investigation made:** 18 May 2007

## CÚRSAÍ AIRGEADAIS FINANCIAL MATTERS

**Bhí buiséad €842,000 curtha ar fáil don Oifig don bhliain 2007. Tá cuntais na hOifige curtha faoi bhráid an Ard-Reachtaire Cuntas agus Ciste lena n-íniúchadh de réir Alt 8(2) den Dara Sceideal d'Acht na dTeangacha Oifigiúla 2003.**

A luaithe agus is féidir tar éis an iniúchta, déanfaidh an Coimisinéir Teanga cóip de na cuntais sin, nó de cibé sleachta as na cuntais sin a shonróidh an tAire Gnóthaí Pobail, Tuaithe agus Gaeltachta, mar aon le tuarascáil an Ard-Reachtaire Cuntas agus Ciste maidir leis na cuntais, a chur i láthair an Aire. Beidh cóipeanna de na doiciméid sin á leagan faoi bhráid gach ceann de Thithe an Oireachtais. Foilseofar freisin iad ar shuíomh gréasáin na hOifige.

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







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

## FOIREANN AGUS SONRAÍ TEAGMHÁLA

### STAFF AND CONTACT DETAILS

#### Foireann

#### Staff

 <p><b>Seán Ó Cuirreáin</b></p> <p>An Coimisinéir Teanga</p>	 <p><b>Damhnait Uí Mhaoldúin</b></p> <p>Bainisteoir Oifige / Office Manager</p>	 <p><b>Órla de Búrca</b></p> <p>Ardoifigeach Feidhmiúcháin / Higher Executive Officer</p>
 <p><b>Cáit Uí Mhaoilríain</b></p> <p>Oifigeach Feidhmiúcháin / Executive Officer</p>	 <p><b>Laura Pathe</b></p> <p>Oifigeach Cléireachais / Clerical Officer</p>	 <p><b>Edel O'Connor</b></p> <p>Oifigeach Cléireachais (sealadach) / Clerical Officer (temporary)</p>

#### Teagmháil

Is féidir teagmháil a dhéanamh leis an Oifig tríd an bpost, ar facs, le ríomhphost nó ar an teiléafón ar chostas Glao Áitiúil, mar seo a leanas:

#### Contact Details

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

**POST:**     **An Coimisinéir Teanga**  
An Spidéal  
Co. na Gaillimhe  
Éire

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

FÓN.....	<b>091-504 006</b>	PHONE
GLAO ÁITIÚIL.....	<b>1890-504 006</b>	Lo-Call
FACS.....	<b>091-504 036</b>	FAX
RÍOMHPHOST.....	<b>eolas@coimisineir.ie</b>	EMAIL
SUÍOMH GRÉASÁIN.....	<b>www.coimisineir.ie</b>	WEBSITE







Dearadh/Design: [www.jdkdesign.net](http://www.jdkdesign.net) Teil/Tel: 071 9120905



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