

Supporting and Promoting the Welsh Language – An inquiry into the legislative, policy and wider context.

An International Perspective – legislation in Ireland to protect and promote the Irish language (submission by the Office of the Language Commissioner, Ireland)

I welcome the invitation from the Committee to make a submission in respect of the inquiry into the legislative, policy and wider context aspects of supporting and promoting the Welsh Language. Ireland and Wales share many of the same experiences as to the status and use of our national languages. In both our jurisdictions our national languages are now lesser used languages but yet form an important part of our sense of identity in an ever more globalised world.

In my submission to the Committee I intend to concentrate primarily on my own sphere of responsibility; the implementation of the Official Languages Act. I appreciate that this must be contextualised by a fuller understanding of the language environment that we currently operate in and the measures in place to support the everyday use of the Irish language. My submission will therefore deal with the following areas:

- Government policy measures to support the language
- Language legislation and the role of my Office
- Our experience to date
- Conclusions

Article 8 of Bunreacht na hÉireann (The Irish Constitution) recognises the Irish language as our national language and our first official language. English is recognised as a second official language. Over the years precedents have been set by constitutional cases taken by citizens wishing to exercise their rights to the provision of a greater degree of public services in the Irish language.

The official status of the language is at variance with its level of usage by the general population and the dominant position of the English language in society as a whole. Irish remains a language of tuition at both the primary and the secondary levels of the education system, one of the more obvious official supports provided by the State. There are seven geographical areas in the country recognised as Gaeltacht districts where Irish was or is the predominant spoken language. The largest Gaeltacht regions are situated along the western seaboard.

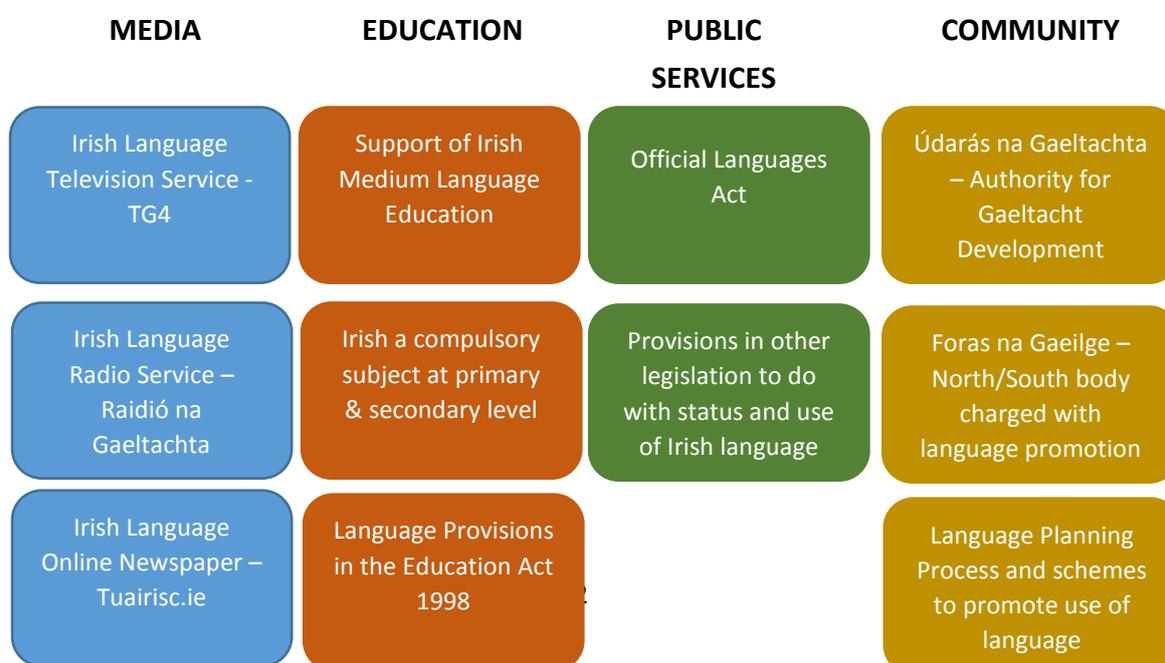
The use of the Irish language both outside and within the Gaeltacht is best illustrated by the census data as outlined below:

Census Statistics	2016	2011	% Change
Total Population	4,761,865	4,588,252	3.8%
Ability to speak Irish	1,761,420	1,774,737	-0.8%
Never speak Irish	418,420	438,782	-4.6%
Speak Irish within the education system only	558,608	519,181	7.6%
Speak Irish weekly outside the education system	111,473	110,642	0.8%
Speak Irish daily outside the education system	73,803	77,185	-4.4%
Gaeltacht areas: Speak Irish daily outside the education system	20,586	23,175	-11.2%

The census results clearly demonstrates a disconnect between people’s ability to speak the Irish language and the frequency of usage. A more worrying trend between 2011 and 2016 is the falloff in the numbers that speak Irish on a daily basis outside the education system. This statistic is widely regarded as the best indicator of the number of active speakers and has shown an overall decrease of 3,382. Of greater significance is the 11% decrease in the number of active speakers located in Gaeltacht areas. In those five years the overall number of people with the ability to speak Irish has remained relatively static. This highlights the need to increase the opportunities available to people to speak the language including opportunities in accessing public services.

1. Government policy measures to support the language

Since the foundation of the State various policy initiatives, legislation and other supports have been provided to cater for the provision of services in the Irish language and to stimulate its use. Outlined below is a summary of some of the key services and supports that are currently provided by the State.



The Department of Culture, Heritage and the Gaeltacht has overall responsibility for the promotion of the Irish language and the primary policy framework for the promotion and support of the language are stated below.

i. Statement on the Irish Language

The Government has introduced a number of measures in the last few years in relation to the language. One example is the Statement on the Irish Language, issued in 2006. This is a statement of policy affirming the Government's support for the development and preservation of the Irish Language and the Gaeltacht. It was to form a basis on which a series of actions to benefit the Irish Language and the Gaeltacht would be developed. The Statement contained 13 policy objectives:

1. To uphold the constitutional position of the language and its special status in legislation such as the Official Languages Act 2003, the Education Act 1998 and the Planning and Development Act 2000.
2. To fully implement the Official Languages Act.
3. To give encouragement to the Irish language community inside and outside the Gaeltacht to transmit the language to the next generation.
4. To support the Gaeltacht as an Irish Speaking area.
5. To teach Irish as an obligatory subject from Primary to Leaving Certificate level
6. To provide a high standard of all-Irish education to school students whose parents so wish.
7. To continue to support pre-school education through Irish and to further develop third-level education through Irish.
8. To continue to support Foras na Gaeilge in the context of the British-Irish Agreement 1999.
9. To ensure high quality broadcast services through the medium of Irish, especially through the continuous development of RTÉ, Raidió na Gaeltachta and TG4.
10. To provide every assistance and support to the EU in implementing the decision to make Irish a working and official language in the EU from 2007.
11. To reinforce the work being done by the Department of Community, Equality and Gaeltacht Affairs and by agencies and bodies under its aegis.
12. To continue and develop the use of Irish in An Garda Síochána and the Defence Forces.
13. To continue to support the vital role of the Irish language voluntary sector.

ii. 20 Year Strategy for the Irish Language

A twenty year strategy was developed based on the objectives set out in the Statement, and was published in 2008. The strategy set out the aims of Government policy in respect of the Irish language, mainly to increase on an incremental basis the use and knowledge of Irish as a community language, and specifically to ensure that as many citizens as possible are bilingual in Irish and English. The Strategy sets out 9 areas for action, including Education; The Gaeltacht; Family Transmission; Administration, Services and Community; Media and Technology; Dictionaries; Legislation and Status; Economic Life and Cross Cutting Initiatives.

The headline goals of the Strategy are to increase over 20 years (1) the number of people with a knowledge of Irish from 1.66m to 2m and (2) the current number of daily speakers from approximately 83,000 to 250,000. It also aims to increase the number of speakers who speak Irish on a daily basis in the Gaeltacht by 25% in overall terms and to increase the number of people that use State services through the Irish language and can access television, radio and print media through the language.

iii. 5 Year Action Plan

The Government published a 5 year Action Plan 2018-2022 earlier this year detailing the main priorities towards delivering on the objectives of the 20 Year Strategy. The main objectives of this plan are:

- (1) To provide a more cohesive and coherent framework in support of the Strategy's implementation which focuses on specific, measurable, achievable, realistic and time-specific actions;
- (2) To ensure more efficient and effective engagement at Departmental, NGO and community level;
- (3) To further develop co-ownership, co-responsibility and accountability across Government and at agency and NGO level;

The plan sets out a suite of agreed actions to be implemented over the period 2018-2022 and also outlines a revised approach in monitoring progress in order to provide for greater accountability.

iv. Language Planning

The Gaeltacht Act 2012 made provision for language planning in both Gaeltacht and non-Gaeltacht areas. This process requires communities to prepare language plans for their local areas to be implemented over a seven year period. Although not without merit this approach has received some criticism for placing an inordinate language planning burden on local communities without sufficient State supports. It should be recognised that the process is in its infancy and it remains to be seen how effective it will be.

2. Language legislation and the role of my Office

i. The Official Languages Act 2003

Irish language protection/promotion measures have been included in a number of pieces of legislation over the years. Over one hundred Acts of the Oireachtas include some specific provisions in respect of the status or use of the language, not least of which are the Education Act 1998 and the Planning and Development Act 2000 mentioned above, the Transport Act 1950 and the Garda Síochána Act 2005.

The enactment of the Official Languages Act 2003 marked an important legislative milestone towards the provision of public services in both official languages. It also established an independent statutory body charged with monitoring the implementation of the Act and

provided a mechanism that provided citizens with an opportunity to make complaints when those services fell short of what was required. The Commissioner has the power to investigate possible breaches of the provisions of the Official Languages Act and any other enactments that contain provisions to do with the use or status of an official language.

The purpose of the Act is to promote the use of the Irish language for official purposes in the State and to provide for the use of both official languages of the State in Parliamentary proceedings, in Acts of the Oireachtas, in the administration of Justice, in communicating with or providing services to the public and in carrying out the work of public bodies. It is divided into two main parts – direct provisions and language schemes.

(1) Direct provisions.

The direct provisions of the Act encompass the use of the Irish language in the Houses of the Oireachtas, in Acts of the Oireachtas and in the courts (sections 6-8). They also cover the use of the Irish language in communications with the public – in stationery, signage and recorded oral announcements (for which regulations have been made under Section 9 of the Act), in responses to written communications from the public and in providing information to the public in general and certain official publications - annual reports, audited accounts and public policy proposals (sections 9 &10).

(2) Schemes.

The second element of the Act provides for the drawing up of language schemes or plans by public bodies, and their confirmation by the Minister (sections 11-18). The schemes would encompass matters such as forms and leaflets, telephone services, counter services, websites and publications other than those under section 10 of the Act.

ii. Importance of Independence of Language Commissioner Role

The role of Language Commissioner in Ireland is that of an independent ombudsman, and the Office has been very mindful of that independence since its foundation.

The importance of this independent stance was highlighted in the submission made by the International Association of Language Commissioners, of which the Office is a member and current chair, to the Welsh Government last year, in response to the request for submissions in respect of the proposals for a Welsh Language Bill. In short, the IALC felt that the removal of a Commissioner could only be viewed as a retrograde step, as the promotion of a minority language and protection of the rights of its speakers is not always politically expedient from the perspective of whoever the government of the day may be. The appointment of an independent champion of the language is required in order to ensure the ongoing day-to-day protection of those rights, regardless of the government of the day. As

was pointed out by the IALC in its submission, it may be necessary to comment adversely at times on the action (or inaction) of government. The credibility of the linguistic regime in the eyes of stakeholders, parliamentarians, language rights advocates, scholars, the media and the general public lies in the knowledge that there is an independent office holder with the freedom to hold government to account.

3. Our experience to date

As I mentioned above, the Office was founded in February 2004, and we now, therefore, have over 14 years' experience in monitoring the implementation of the Act and dealing with complaints from the public with regard to perceived failures of public bodies to comply with its provisions. The organisation is small, with a total of 8 staff supporting An Coimisinéir Teanga. It is essentially divided into 3 main sections – **Complaints and Investigations**, the section that deals with complaints from the public in respect of alleged breaches, and also provides advice on language rights to members of the public; **Compliance Section**, which monitors the implementation of the Act and of language schemes by public bodies; and **Communications Section**, which provides advice to public bodies, promotes the work of the Office and provides seminars for networks of officers from public bodies or local language planning groups/ community organisations.

The Office has found that in general, services provided in the Irish language have increased and improved especially those governed by the direct provisions of the Official Languages Act. Although a constitutional obligation existed prior to the Act's implementation, as the only recourse was to the courts, members of the public frequently put their language rights to one side in favour of receiving the required service. The establishment of a statutory obligation, and the provision of an independent monitoring and complaints system have ensured that individuals can now pursue their language rights without recourse to a slow and expensive legal procedure. This affords them the opportunity to request services in their preferred language and seek recourse where they are not available. The corollary can also be true however, where people become accustomed to services that are available in English only and thus do not seek services in Irish though this may be their preferred language of communication.

In addition to the Annual Report, which the Office publishes each year, giving a breakdown of statistics for complaints and a report on the investigations, audits and other work of the office during the year, the Office has produced two separate commentaries on the working of the Official Languages Act.

The first of these reports, published in 2011, was a commentary on the practical application and operation of the provisions of the Act. The report highlighted

- the elements of the Act that were working effectively,
- the gaps that needed to be addressed
- the provision of services in Gaeltacht areas

- the shortcomings in the State's recruitment policy and
- the need to properly implement language schemes.

In November 2011, the Department of Culture, Heritage and the Gaeltacht initiated a review of the Act, which incorporated a public consultation, with a view to revising the legislation. The results of the public consultation echoed the recommendations made by the Office in its commentary. Heads of Bill were published in April 2014 which were in variance with the views of the majority of respondents to the consultation process and were subsequently withdrawn. Amended Heads of Bill that were more in line with the consultation findings were published in June 2017, and were debated by the Parliamentary Committee on the Irish Language, the Gaeltacht and the Islands, which issued its findings in a report in June 2018.

I issued a second commentary in 2017 in respect of the language scheme system to highlight my serious concerns at how the system was being operated. The report found that the schemes system has not proved to be as effective a mechanism for delivery of services as was envisioned when the Act was first enacted. Having undertaken analysis of the schemes which had been confirmed by the Minister in 2015 and 2016, it was established by the Office that:

- Commitments that were the subject of an investigation were reduced or set aside in 64% of the following language schemes agreed
- There was an inordinate delay in agreeing language schemes and close to 50% of schemes had expired without a new scheme being agreed
- Follow on schemes contained very few additional services and regression in commitments could be detected in 52% of such schemes agreed in 2015 and 2016.
- Less than 20% of schemes agreed in 2015/2016 had specified post designated with an Irish language requirement
- The provisions made in relation to services in Gaeltacht regions were inadequate

In essence the operation of the language scheme system had stalled, regressed and was no longer an effective mechanism to deliver public services in both official languages.

i. Proposed Legislation

Almost seven years have passed since the review of the Official Languages Act was initiated. That process has not been without controversy. The original proposal to merge the Office with that of the Ombudsman's was abandoned when no obvious synergies, cost savings, policy or operational benefits could be detected. The pathway towards a more fit for purpose legislation with the necessary policy initiatives has been fraught with difficulties and have not yet reached a successful conclusion.

The Heads of Bill published in 2017 provide a better foundation for the delivery of public services in the Irish language as it seeks to address key policy deficiencies and shortcomings in the operation of the legislation.

A number of recommendations were made in my Commentary on the Act, aimed at improving the provision of services through Irish to those who require them. At the core of these recommendations was a realisation that the delivery of services required sufficient capacity and an appropriate legislative system. The recruitment of staff competent in the Irish language and a revision of the schemes system were key requirements. I also highlighted the need to formulate a national plan for the provision of public services in the Irish language which would guide the setting of national, sectoral or organisation specific standards. Such a plan would assess the current capacity of the public sector to deliver services in the Irish language and set out a roadmap, highlighting areas of priority, towards the delivery of an improved level of service. The necessity to independently monitor and assess the implementation of the plan would be a prerequisite to engender confidence in the process.

The Minister accepted the findings of the report and has included a number of the recommendations in the Heads of Bill for the revised Language Act which issued in June 2017. Our understanding is that the revised Bill is to be published in early autumn, with a view to being put before parliament in the late autumn or spring.

4. Conclusions

Since its introduction in 2003 the effect of the Official Languages Act has been, in general, a positive one. The Act has provided citizens with an official mechanism that can deal with their complaints regarding the provision of public services in Irish without the need to seek redress in the Courts. It has also created a culture where public bodies are more cognisant of their duties to provide additional services in the Irish language and the requirement to provide those services to the same standard as they are provided in English.

The lack of capacity of functional bilinguals within the Irish public sector has been the single greatest challenge to the delivery of quality public services in the Irish language. The failure to address this matter by way of an effective recruitment policy has hindered the impact of the legislation and this has manifested itself in a weak language scheme system that is now discredited. The inability to clearly plan for the delivery of a bilingual public service has resulted in a piecemeal type approach that concentrates on the individual public body rather than working towards a national strategy or plan. Achieving an identifiable end-goal is something that must be addressed through a legislative based public-service plan for the Irish language as part of a revised Official Languages Act.

The appointment of a Commissioner with powers similar to that of an Ombudsman has copper fastened the status and the authority of this Office. It has also assisted with establishing the identity, independence, transparency and accountability of the Commissioner in a fashion similar to other language commissioner's offices throughout the

world. The importance of having a single Commissioner cannot be overstated in ensuring the efficient and smooth operation of an office. A single voice speaks with authority and assurance and provides confidence and continuity.

I believe that language-effective legislation is a key component in any Government strategy to support the use and status of an official language. Legislation that not only protects language rights but also provides for the delivery of public services is a prerequisite if a lesser used language is to have equal status. This presupposes that a sufficient number of language speakers exist that wish to avail of those services in the lesser used language. To deny speakers of a lesser used language the opportunity to access public services in their own language lessens the importance and status of their language and results in a vicious circle that can only result in an ever decreasing number of speakers. Without the necessary legislative protection it is hard to imagine how speakers of a lesser used language or of a minority language can have confidence that necessary and essential services will be available to them in their language of choice.