

The Official Languages Act 2003

By Caren Bohane

Article 8¹ of the Constitution proudly proclaims the Irish language as the national and first official language of the State, recognizing English only as a second official language. However, despite the constitutional primacy accorded the Irish language, there is in reality a major imbalance in the level of services available through Irish when contrasted with those available through English. Service provision is heavily skewed in favour of English, the second official language. Thus, “[a]rticle 8 provides status without substance. It provides a symbolic support that is the natural enemy of realism... there is no doubt but that Irish speakers themselves have found themselves paralysed by the double bind of constitutional rhetoric (you are free to speak the nation’s first, official language) and linguistic reality (you are able only in the most restricted circumstances to speak the nation’s first, official language).”² The Constitutional Review Group “considers that there is an implicit right to conduct official business in either official language and that the implementation of this right is a matter for legislation and/or administrative measures rather than the constitutional provision.”³ The Official Languages Act 2003 “marks the first real attempt to translate constitutional ideals into a workable legislative reality.”⁴ The objective of the Act is “(1) to endeavour to rectify the imbalance that exists in terms of the provision of State services to Irish speakers, and (2) to underpin the policy of Bilingualism in the State and to support the implementation of that policy by imposing on public sector entities the obligation to provide a quality service to those seeking to transact business with the State through either of the official languages.”⁵

Background to the Act.

¹ “ 8(1) The Irish Language as the national language is the first official language.

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

² Michael Cronin, ‘This Side of Paradise pg 265 at 273 of Irelands Evolving Constitution

³ Report of the Constitutional Review Group 1996 pg 15.

⁴ Niamh Nic Shuibhne , ‘Eighty Years A Growing – The Official Languages Equality Bill 2002’, I.L.T. August 2002 Vol. 20 No. 13 at 198.

⁵ As stated by Oifig an Aire Ealaíon, Oidhreacht, Gaeltachta agus Oiléan in Summary of Memorandum for Government, Official Languages Equality Bill, 14 Iúil 2000.

The background to this act is representative of the fact that this legislation is “eighty years a growing”.⁶ Conradh na Gaeilge started working on a Languages Bill in 1976, but it received little attention. Fasach reported in 1986 that ‘it has been almost impossible to obtain even the basic documents necessary to enable a simple commercial transaction to be completed in the first official language’. Bord na Gaeilge prepared Non-Statutory Guidelines in 1993 but these had little practical effect. In 1997 the Minister of State at the Department of Arts, Heritage, Gaeltacht and the Islands, Éamon Ó Cuív, decided to introduce legislation on the Irish language and the rights of Irish speakers. As a result in July 1998 ‘Plé Cháipéis – Towards a Language Act’ was published. The first real sign of progress came in November 1999 when the Government committed themselves to the enactment of a Language Equality Bill. “It will be the responsibility of an Ombudsman’s Office to ensure that Irish speakers will have the legal right and the daily opportunity to conduct their business with the State, with the local authorities and with public agencies through the medium of Irish. The Office will monitor the delivery of services through Irish, so as to ensure that there will be a definitive policy of bilingualism in operation in public affairs.”⁷ In July 2000, the Government added the provision of bi-lingual services as one of the objectives of the Quality Customer Service in the Civil Service programme. Priority drafting approval for a language act was granted, following the O’Beoláin⁸ decision, in which , the Supreme Court was highly critical of the State’s neglect of its constitutional duty to translate legal materials into Irish. Having allowed a twenty year backlog in the Irish translation of Acts of the Oireachtas (a constitutional requirement under article 25.4.4.), it was important that the State was seen to be taking steps to bridge the gap between the constitutional and actual positions.

Foundations of the Bill.

Article 8 of the Constitution is unquestionably the primary source of the provisions of the official languages act. This Article has been interpreted as imposing a duty on the State “to establish and maintain (the Irish language) in its status as the national language and to recognise it for all official purposes as the national

⁶ Niamh Nic Shuibhne *ibid.*

⁷ Extract from Action Programme for the Millenium.

⁸ O’Beoláin V Mary Fahy Breitheamh den Chúirte Dúiche, An Stiúrthoir Ionchúiseamh Poiblí, An Aire Dlí agus Cirt, Comhionannais agus Athchoirithe Dlí, Éire agus an tArd Aighne 2001 2 IR 279.

language.”⁹ Many of the Acts provisions can be traced back to various High Court judgments, which granted rights to Irish speakers based on Article 8.1. Submissions were also accepted from Irish Groups, with Comhdháil Naisiúnta na Gaeilge being particularly vocal.

Provisions of the Act.

The Official Languages Act was originally known as the Official Languages (Equality) Bill 2002 but equality was deleted, as it did not reflect the pre-eminent position of Irish under Article 8(1) of the Constitution. It was felt that “it [wa]s not the function of the legislature to contrive an alternative model which bears little resemblance to the relevant constitutional roots.”¹⁰ “The main provisions of the Act, with regard to the Irish language, can be divided into four categories: (1) specific duties that are provided for in the legislation. (2) Duties that will be specified in Regulations. (3) Duties in relation to ‘Schemes’. (4) Issues concerning Coimisinéir na dTeangacha Oifigiúla.”¹¹

Many rights derive from the statutory obligations placed on Public Bodies. The use of official languages in Houses of the Oireachtas is provided for in section 18¹² (Language) of the Standing Orders of the Dáil 2002. Section 6 of the Official Languages Act places this right in statutory form and extends it to any person, not just members of the Oireachtas. Section 7 codifies Article 25.4.4.¹³ of the Constitution, the duty to issue the Act of the Oireachtas in both official languages. No time-scale for this process is specified in the Constitution so the section goes further in declaring that it must occur ‘simultaneously’, reflecting the dicta of Hardiman J and McGuinness J in O’Beoláin.

Section 8 relates to the administration of justice. The right to use Irish in court proceedings has long been established. In Attorney General V Joyce and Walsh,

⁹ Kennedy CJ in O’Foghludha V McClean, (1934) IR 469 at 482.

¹⁰ Niamh Nic Shuibhne, ‘Eighty Years A’Growing- The Official Languages (Equality) Bill 2002’ I.L.T. August 2002 Vol 20 No. 13 pg 198 at 199..

¹¹ Official Languages Act 2003 Overview, published by the Dept. of Community Rural and Gaeltacht Affairs, pg 2.

¹² “18(1) All proceedings of the Dáil shall be conducted through the medium of the Irish or English language. (2) The Order Paper, the Journal of proceedings of the Dáil and all other appropriate documents shall be issued in the Irish and English languages. (3) The Clerk shall cause to be made an official translation into English of every law enacted by the Oireachtas in Irish, and an official translation into Irish of every law enacted by the Oireachtas.”

¹³ 25.4.4. – “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.”

Kennedy CJ acknowledged a right to give evidence in Irish, “first on general principles of Natural Justice as their vernacular language and secondly, as a matter of a Constitutional right”.¹⁴ *An Stát (Mac Fhearraigh) V Mac Gamhnia*¹⁵ went further in granting a right to cross-examine in Irish also. Language choice has until now been bestowed equally on the State. *An Stát (Mac Fhearraigh) V Neilan*¹⁶ held that a Minister could not be compelled to issue a summons in Irish even where this has been expressly requested. Subsection 4 places a duty on the State or the public body to use the official language chosen by the other party in civil proceedings. For the first time a person will be able to compel a State body to use Irish in court proceedings. An amendment to extend this right to criminal proceedings was refused on the basis of the sudden nature of the cases and because it would require Irish speaking Gardaí, solicitor’s etc. A fear of the abuse of this system in criminal cases was also a relevant factor in the decision. *O’Monacháin V An Taoiseach*¹⁷ held there was no right to compel others to use the Irish language. This principle is provided in statutory form in s8 (5). Section 8(6) provides that a person using their choice of official language cannot be put to any inconvenience or expense over and above that which would have been incurred if he had chosen to use the other official language. This echoes the words of O’Hanlon J in *O’Murchú V Registrar of Companies and the Minister for Industry and Commerce*, “it is clear that State money was spent on providing the English version of the forms and it appears to me that fairness is not being accorded to those members of the public wishing to conduct business through the medium of Irish unless similar facilities are made available to them.”¹⁸ Here the applicant was seeking to incorporate and register an organisation as a company, she had applied to obtain the appropriate forms in Irish and there was a dispute as to the issue of costs. Hardiman J in *O’Beoláin* also states that in order to accord with article 8 and the policy of bilingualism, “the State must facilitate the use of both official languages without discrimination.”¹⁹

Section 9(2) provides that a public body must reply to any written communication or electronic mail in the language in which correspondence was

¹⁴ 1929 IR 526 at 531.

¹⁵ 1980-1998 I.R.S.R. 99

¹⁶ 1980-1998 I.R.S.R. 38

¹⁷ 1980 ILRM 660

¹⁸ 1980-1998 I.R.S.R. 112 at 114.

¹⁹ *O’Beoláin*, 2001 2 I.R. 279 at 343.

initiated. This is unsurprising, bearing in mind that under Article 21²⁰ of the E.U., a person is guaranteed an answer to their correspondence in Irish from Brussels. Clearly, it would be politically embarrassing if Irish public bodies couldn't guarantee the same service from Dublin. Section 9(3) states that any communication providing information to the public in writing or by electronic mail shall be in the Irish language or in the Irish and English languages. Section 10 obliges public bodies to translate (into Irish) documents setting out public policy proposals, annual reports, audited accounts or financial statements and statements of strategy. Specified documents of major public importance, such as Green or White Papers must also be produced in Irish. However, the state is under no general obligation to translate official documents such as application forms, which would probably be of more interest to the public than an audited account.

Part 5 Place names were added towards the end of the legislative process. The Place-Names (Irish Forms) Act 1973 is repealed and its effective sections are restated with amendments in section 32 and 33 of the Act. Under the Place-Names (Irish Forms) Act 1973 the Minister for Finance had the power to declare the Irish language version of a place name to be the equivalent of the English version. The problem was that while the Irish place name has the same force and effect as those in English, in legal terms the place name remained in the English language only. Section 33(1) rectifies this problem by stating that the English and Irish versions have the same 'force and effect' i.e. both are official place names. The position is different in the Gaeltacht. Section 33(2) states that in respect of any declaration made under section 32, the English language has no force and effect from the operative date. Although the Irish version is now the official version no barrier is placed on the continued use of an English language equivalent for any purpose, except in 3 cases; (1) Acts of the Oireachtas and statutory instruments made after the operative date of the relevant order, (2) Ordinance Survey Ireland maps prepared and published after the operative date, (3) Local Authority road signs. The fact that the English language version can continue to be used eliminates any potential legal problems with for example wills,

²⁰ Article 21 (ex Article 8d) – “Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.” – The institutions and bodies under Article 7 are the European Parliament, Council, Commission, Ct of Justice and Ct of Auditors. The languages listed in 314 (ex 248) are Dutch, French, German, Irish, Portugese, Spannish and Sweedish.

conveyances, land registration or place-names in summonses for the purpose of giving courts jurisdiction.

The Minister has the power to make regulations under section 4 and section 9 (1), for the purpose of giving full effect to the provisions of the Act and providing that the Irish language only or Irish and English languages are used on stationery, signage, advertisements and oral announcements. This power is considerably constrained under s4 by requiring the permission of the Minister for Finance prior to the making of any such regulations.

Sections 11-18 relate to the schemes which public bodies have a duty to prepare within 6 months of being requested by the Minister to do so. The schemes set out the services which will be provided (i) through the medium of Irish, (ii) through the medium of English and (iii) through the mediums of both Irish and English, as well as the measures the body will adopt to ensure services not provided in Irish at present will be in the future. Schemes are renewed every 3 years. “The intention is that this renewal process will be used to secure a significant improvement, over time, in the level of public services available through Irish over time, as demand requires.”²¹

Sections 20 to 30 relate to An Coimisinéir Teanga and provides for Oifig Choimisinéir na dTeangacha Oifigiúla, whose function is to monitor the Act and ensure its implementation. All references to the Commissioner or his office in the English language were deleted so that the Irish version must be used. The provisions relating to the Commissioner are similar to that of the Ombudsman. “The role likely to be played by the Commissioner is one of enforcement more by stealth than force, using the powers of publicity and politics as much as anything, and so, the formal powers attributed to the Commissioner are relatively (though not surprisingly) tepid and are largely connected with facilitating the acquisition by him or her of essential information.”²²

Conclusion.

With this legislation the Minister hopes to mirror the success of the Welsh Language Act 1993 and the Official Languages Act (Canada) 1988. However our legislation is

²¹ Official Languages Act 2003 Overview, published by the Dept. of Community, Rural and Gaeltacht Affairs, pg 1.

not quite as far reaching as that of Canada, where the principle is that of ‘active offer’ enabling the citizen to dictate their language choice. The Official Languages Act 2003 restricts a citizen’s language choice to where the public body has decided in their scheme to provide that service bi-lingually. So “the real measure of success and effectiveness here hangs critically on the exact nature of the ‘schemes’ devised by the vast range of public bodies potentially committed to so doing and, more substantively, on their implementation thereafter.”²³ The real criticism of the Act rests with the fact that implementation is primarily based on goodwill. The ultimate sanction provided for is reporting to the Houses of the Oireachtas of a failure or refusal to comply with the scheme. Under section 27 a scheme of compensation is held in reserve, which even if it were introduced would provide only for nominal amounts, aimed at embarrassing the public body. Only time will tell whether these measures will provide for effective implementation. Another contentious issue is the amount of Ministerial Discretion throughout the Act, especially in relation to public bodies’ schemes. A Minister who is committed to achieving the objectives of the Act will be needed for the schemes to be effective and comprehensively operated. This problem should not arise with the present Minister, Eamon Ó Cuiv, who has been working on the Act since 1997 and is obviously keen for it to succeed. Whether future Ministers will share his enthusiasm remains to be seen. Comhdháil Naisiúnta na hÉireann are very critical of the lack of special provisions for the Gaeltacht in the legislation, since they regard this area as integral to the language.

The reality is that this Act is going to be an extra burden on the public bodies concerned. The provision of services through Irish has not been seen as a priority up to now, so it will take time to change this attitude. The act operates on a gradual improvement basis for example the time scale for all road signs to be bilingual, with the Irish version first and at least as prominent as the English version is by 2024. This gradual approach is not reflective of the prominent status of Irish as granted by the Constitution but it is the only realistic way of changing the present system. Aside from its above faults, the Act has to be praised on the basic level of moving in the right direction. A mechanism has been put in place for the provision of Irish services

²² Niamh Nic Shuibhne, ‘Eighty Years A’Growing – The Official Languages (Equality) Bill 2002’, I.L.T. August 2002 Vol. 20 No.13 198 at 202/203.

²³ Niamh Nic Shuibhne, ‘Eighty Years A’Growing – The Official Languages (Equality) Bill 2002’, I.L.T. August 2002 Vol. 20 No.13 198 at 202.

where as up to now “an Irish speaking citizen {had} been forced to take court proceedings to obtain something which he was always certain to get.”²⁴

I would welcome the Official Languages Act as a significant step forward in providing rights to Irish speakers. But the Act is only that, a step to providing rights. A lot more work lies ahead in the bid to reconcile the rights of Irish speakers with those of their English speaking counterparts.

²⁴ Niamh Nic Shuibhne, ‘Re-thinking Irish language Policy: A legal Perspectives’, Contemporary Issues in Irish law and Politics. No. 3 Dublin Round Hall Sweet and Maxwell 2000 PG 36 at 40.