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Enactments concerning the Irish language, 1922-2016

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1. Introduction

The Official Languages Act (henceforth OLA) of 2003 gave limited expression to the constitutional status of Irish as first official language by obliging public bodies to provide a restricted number of services in Irish. Although it emerged from campaigns in favour of greater rights for Irish speakers, the OLA in fact grants only very limited rights in the legal sense, none of which are related to the provision of public services. Indeed, apart from a small number of public bodies, there is no requirement for civil servants to be competent in Irish and no legal basis for recruiting bilingual staff except in very restricted cases. Instead, public bodies have certain limited obligations, mostly in the written realm, and an independent Language Commissioner (An Coimisinéir Teanga) has powers to investigate complaints related to failures to fulfil such obligations, as well as other promotional and educational functions (s 21). Section 21(f) outlines another of the Coimisinéir's functions, the power to investigate failures to fulfil obligations created by enactments other than the OLA which are related to the Irish language:

to carry out an investigation, whether on his or her own initiative, on request by the Minister or pursuant to a complaint made to him or her by any person, to ascertain whether any provision of any other enactment relating to the status or use of an official language was not or is not being complied with.

The prominence of the OLA since 2003 has given the impression that the state's obligations in relation to the Irish language are limited to it.¹ In fact, apart from the OLA the Irish language is mentioned in over 150 pieces of legislation enacted since the foundation of the state. The purpose of this paper is to examine these enactments and to assess their significance as a somewhat forgotten aspect of Irish language policy. In so doing, the paper will shed light on an aspect of the historical development of language policy since 1922 and contribute to greater understanding of the legislative framework for the promotion of Irish.

This study can be situated in a broader academic context of language law and language rights, sub-fields with links both to the disciplines of law and sociolinguistics/language policy. Particular attention has been paid to the intersection of language rights and policy in bilingual jurisdictions or entities such as Canada, Wales, the Basque Country and Catalonia.²

¹ For analysis from a language policy perspective, see J Walsh and W McLeod, 'An overcoat wrapped around an invisible man? Language legislation and language revitalisation in Ireland and Scotland'. (2008) 7 *Language Policy* 21; J Walsh and W McLeod, 'The implementation of language legislation in Dublin and Glasgow' in JM Kirk and DP Ó Baoill (eds.), *Sustaining Minority Language Development: Northern Ireland, the Republic of Ireland, and Scotland* (Cló Ollscoil na Banríona 2011) 156-75; J Walsh, 'Language policy and language governance: a case-study of Irish language legislation' (2012) 11 *Language Policy* 323.

² For an overview, see CH Williams (ed), *Language and Governance* (University of Wales Press 2007).

2. Background

Since its establishment in 1922, Ireland has been a bilingual state in an official and constitutional sense. The policy of the newly independent state was two-fold: to maintain Irish as the main language of the Gaeltacht and to revive it as the general language elsewhere (sometimes referred to as ‘Gaelicisation’).³ Article 4 of the 1922 Constitution of the Irish Free State declared Irish to be the ‘national language’ and a co-official language alongside English. Article 8 of the 1937 Constitution maintained the status of Irish as national language and also declared it the ‘first official language’, whereas English was to be merely a ‘second official language’. Despite the apparent enhancement of the status of Irish in 1937, no government has ever come close to achieving a situation where Irish is more widely used than English for official business, a failure which has led to campaigns for greater language rights for Irish speakers over a number of decades, in particular since the 1970s.⁴ These culminated in the enactment in 2003 of the OLA, an Act which, according to its own preamble, sets out to ‘promote the use of the Irish language for official purposes in the state’. Under the OLA, the provision of public services in Irish is covered by a series of limited obligations imposed on public bodies: (1) direct provisions covering certain key publications and communication with the public; (2) obligations based on regulations related to signage and recorded announcements and (3) obligations related to commitments agreed in statutory ‘language schemes’, internal language plans outlining how the public body will enhance its service provision in Irish over time. Sections 6 and 8 of the OLA provide a limited number of direct and unambiguous ‘rights’ to Irish speakers in relation to court proceedings and the use of Irish in the Houses of the Oireachtas. However, the more general provision of public services in Irish is not governed by a rights-based framework as in the case in other bilingual jurisdictions such as Canada. In other words, there is no legally enforceable ‘right’ to public services in Irish in Ireland.

Despite the relative weakness of the OLA by comparison with the constitutional provisions in relation to Irish, the 1922 and 1937 Constitutions, along with the general language policy adopted at independence, have led to a series of enactments which aim to give effect to various aspects of that policy across a range of domains, mostly in the public sphere. Before the adoption of the OLA in 2003, there was no mechanism to investigate the extent to which such enactments were being implemented by public bodies or indeed little public awareness of them. Section 21(f) of the OLA allows the Coimisinéir Teanga to investigate alleged failures to comply with the provisions, thereby casting light on a previously dark corner of Irish language policy.

3. Methodology

Section 2(1) of the OLA defines an enactment as ‘a statute or an instrument made under a power conferred by a statute’. Therefore, as well as primary legislation itself, enactments also cover Statutory Rules, Orders and Regulations up to 1948 and Statutory Instruments thereafter. Circulars made pursuant to primary legislation and statutory language schemes agreed on foot of the OLA are also included. For the purposes of this paper, the acts in the Irish Statute Book (www.irishstatutebook.ie) and the databases www.acts.ie and

³ P Ó Riagáin, *Language Policy and Social Reproduction: Ireland, 1893–1993* (Clarendon 1997).

⁴ For an historical overview of the Irish language and the law, see T Ó Máille, *The Status of the Irish Language: A Legal Perspective/Stádas na Gaeilge: Dearcadh Dílíthiúil* (Bord na Gaeilge 1990).

www.achtanna.ie were searched in Irish and in English for references to the Irish language or to language in general.⁵ Enactments other than Acts such as Statutory Orders and Instruments were excluded to narrow the scope of the research except where significant provisions were known to the author previously, for instance in the case of language requirements in civil service employment (see below). With the exception of the OLA itself, the search yielded 156 Acts in which Irish or language was mentioned, a total of 295 Sections or Schedules. Eight of these were disregarded as the provisions were not apparently linked to Irish.⁶ A further 90 'technical' sections which referred only to the use of the Irish language versions of names of public bodies were also disregarded because they are of no material importance from a language policy point of view.⁷ That left a total of 197 sections or Schedules in which clear reference is made to the promotion or use of the Irish language. These were then divided into eleven thematic categories covering various domains of public life or in very limited cases, of the private sector:

1. General language policy
2. Protection/extent of the Gaeltacht
3. Financial incentive
4. Employment in the public sector
5. Legal profession
6. Corpus planning⁸
7. Educational institution
8. Cultural institution
9. Broadcasting
10. Placenames
11. Private sector

Figure 1 illustrates that a majority of sections, 56 per cent, relate to general language policy and to the Gaeltacht (28 per cent each), followed by broadcasting (10 per cent), education (8 per cent) and civil service employment (7 per cent). The smallest category – one single Act – relates directly to the private sector (insurance companies), although certain private companies could or can also avail of financial incentives if they promoted Irish (5 per cent).

⁵ There is no complete central electronic database of the Irish version of legislation. At the time of writing the website www.achtanna.ie had not been updated for a number of years although many enactments have since been translated.

⁶ Such provisions dealt instead with the use of language in court proceedings or in building regulations or safety legislation, apparent references to languages other than Irish and English due to recent immigration to Ireland.

⁷ Such bilingual titles are, however, in keeping with the strongly symbolic and abstract nature of Irish language policy.

⁸ Corpus planning refers to planning of the language itself, for instance terminology creation.

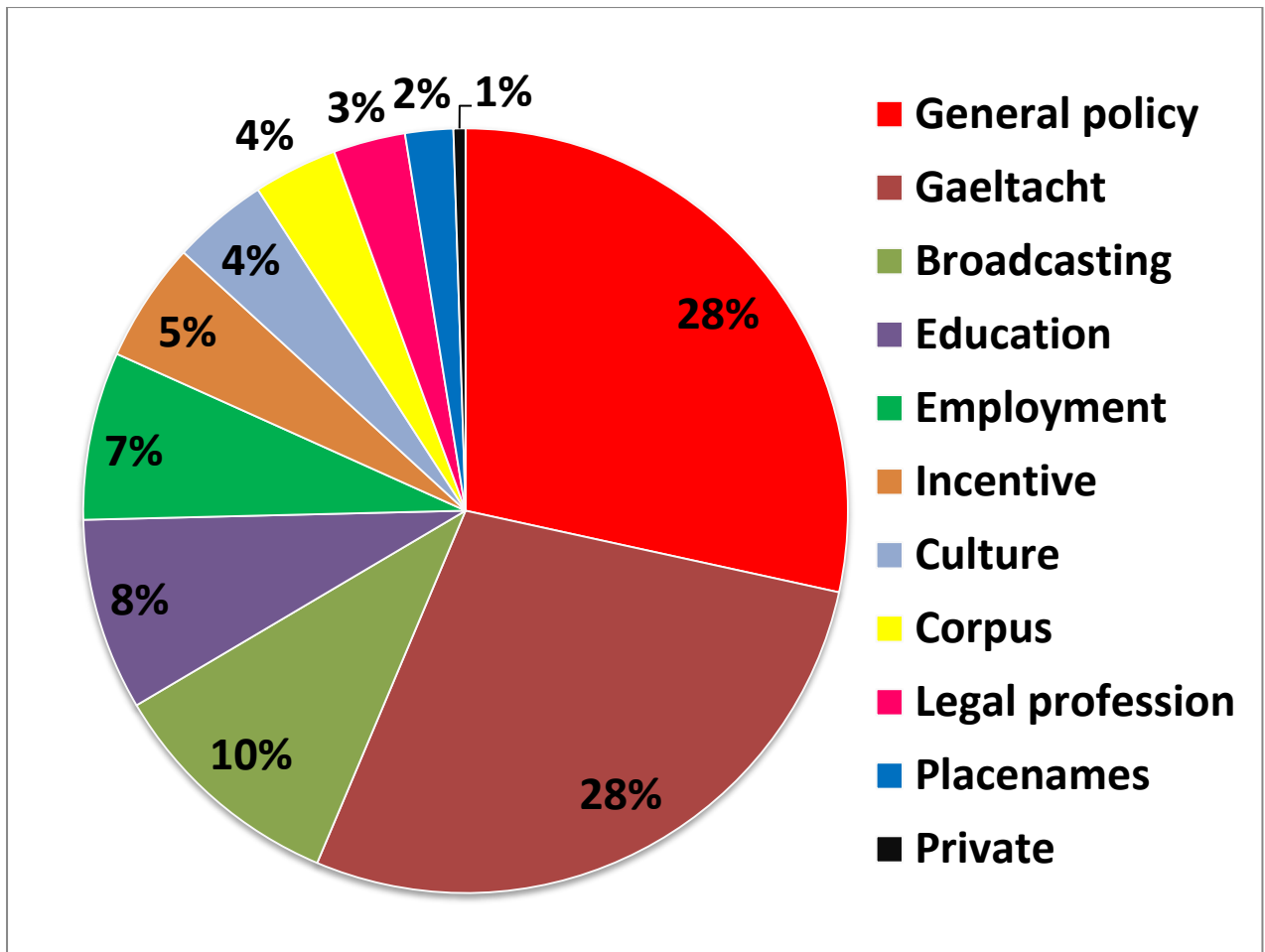


Figure 1: Thematic categorisation of enactments related to Irish language

Following the survey, the enactments were re-categorised according to their importance in terms of language policy:

(a) General provisions about language policy

These refer to general exhortations about the promotion of Irish as part of national heritage or to the promotion of bilingualism. They are plentiful in the Irish Statute Book and are often vague, imprecise and symbolic.

(b) Conditional provisions

These provisions provide or could provide practical support to the Irish language beyond general exhortations but are conditional in some way, for instance they are dependent on adequate resources being available or they are optional.

(c) Substantive provisions

These provisions provide substantive protection to the Irish language in various domains such as education, broadcasting, public service employment or road signage.

(d) Provisions which restrict language policy

These more recent provisions limit the scope of language policy in some way. They include amendments to the OLA following public controversies about aspects of that Act. In the remainder of the paper, a selection of enactments from each of the four categories will be discussed.

4. General provisions about language policy

Many Acts contain vague references to Irish language policy, itself a topic of some ambiguity since 1922. General references to the ‘promotion’ of Irish in the context of the national ‘aims’ about bilingualism do not stand up to rigorous language policy analysis as they do not specify which precise aspect of language is to be promoted and how. The following example is from the Broadcasting Act, 1960, under which the national television service was founded, leading to the establishment of Raidió Teilifís Éireann. Section 17 refers to the functions of the new RTÉ authority:

In performing its functions, the Authority shall bear constantly in mind the national aims of restoring the Irish language and preserving and developing the national culture and shall endeavour to promote the attainment of those aims.

It is not clear what is meant by the RTÉ Authority ‘bearing constantly in mind’ the national aims with regard to Irish nor what precisely those aims comprise. A revised Broadcasting Act 2009 contains several general statements about the duty of RTÉ and other broadcasters to have ‘regard’ to Irish in their programming. The following section relates to the ‘objects’ of RTÉ:

(114, 2, a) ... [RTÉ shall] ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language

Vague provisions about Irish also apply to private broadcasters. These sections of the 2009 Act outline the conditions for awarding licences to independent radio and television stations:

(66, 2) [...] in determining the most suitable applicant to be awarded a broadcasting contract, the Contract Awards Committee shall have regard to— [...]

(d) the quantity, quality, range and type of programmes in the Irish language and the extent of programmes relating to Irish culture [...]

(66, 3) In considering the suitability of any applicant [...] to provide a sound broadcasting service in respect of an area which includes a Gaeltacht area, the Contract Awards Committee shall have particular regard to the continuance and advancement as a spoken language of the Irish language. [...]

(70 (2)) The Authority shall ensure that a television programme service provided by a television programme service contractor under this section shall in its programming—

(a) ... ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special

regard for the elements which distinguish that culture and in particular for the Irish language

Again, it is unclear what precise duties, if any, would flow from 'having regard' to the status of Irish. The more substantive provisions of the Broadcasting Act 2009 are discussed below.

Similarly imprecise aims are included in section 4 of the Higher Education Act 1971, which established the Higher Education Authority in order to regulate the development of third-level education:

In performing its functions, An tÚdarás [the Authority] shall bear constantly in mind the national aims of restoring the Irish language and preserving and developing the national culture and shall endeavour to promote the attainment of those aims.

Twenty years later, the Regional Technical Colleges Act 1992, which aimed to organise and develop third level institutions other than universities, contained a similarly abstract statement in section 7(4) in relation to the functions of the governing bodies:

In performing its functions, a governing body shall have due regard to the preservation, promotion and use of the Irish language and to the preservation and development of the national culture.

Again, it is not clear what is meant by 'due regard' or how it would be assessed. In the same manner, section 12(e) of the Universities Act 1997 contains a general provision on the objects of the university which includes the promotion of Irish:

to promote the official languages of the State, with special regard to the preservation, promotion and use of the Irish language and the preservation and promotion of the distinctive cultures of Ireland.

Various language provisions apply to certain cultural and educational institutions. Some of these are substantive, as will be discussed below, but others are much vaguer such as the following reference to the functions of the board of the National Museum of Ireland in section 11(2)(l) of the National Cultural Institutions Act 1997: 'to foster and promote the Irish language in the course of the performance of its functions'.

The Education Act 1998 is a wide-ranging piece of legislation covering several aspects of the education system and of schooling. It contains a number of references to Irish, some of which are relatively abstract in nature, for instance section 9 which specifies that schools should use their resources to '(f) promote the development of the Irish language and traditions, Irish literature, the arts and other cultural matters'. More substantive provisions of the Education Act are discussed below.

A small number of provisions relate to the promotion and use of Irish by the legal profession. These date from 1929, when legal practitioners were obliged to have competence in Irish. The provisions have since been watered down, particularly with the enactment of the Legal Practitioners (Irish Language) Act 2008. Section 1(2) of this Act contains a general provision related to the legal status of Irish: 'The Council [of the Honourable Society of King's Inns] shall have regard to the status of the Irish language as the first official language'. Section 3(a) also provides for a course in legal terminology for all trainee barristers, but the course will not be examined, thereby undermining its significance compared to other subjects. The

sole purpose of this section appears to be to allow barristers, most of whom will not have competence in Irish, to identify those who can provide such a service:

The Council shall provide a course of instruction in Irish legal terminology and the understanding of legal texts in the Irish language to all persons attending the degree course of barrister-at-law. Such course shall not be subject to examination and shall be undertaken by all such persons [...] with the aim of enabling the identification through the medium of Irish of a legal service that is required and, where appropriate, facilitating the referral to a practitioner who is competent to conduct the case through the Irish language.

This is an insignificant provision in language policy terms and reflects a sense of Irish as a symbolic language of little practical importance within the legal profession. In general, the examples above are so imprecise as to be unenforceable by the Coimisinéir Teanga if he or she conducted an investigation under s 21(f) of the OLA. For example, it is not clear how the Coimisinéir could establish whether or not a governing body of a university had 'due regard' to the 'national aims regarding bilingualism'. The provisions are a reflection of the strongly symbolic but largely abstract status of Irish as a heritage language and suggest that the motivation behind such legislative action was itself symbolic and not aimed at bringing about any real change in language behaviour.

5. Conditional provisions

The enactments also contain a number of conditional provisions related to the promotion and use of Irish. These are potentially substantive but are limited in some way, usually by administrative or practical constraints. In some cases the conditionality of the Section has been clarified by an investigation of the Coimisinéir Teanga, underlining the importance of the power of investigation as a quasi-judicial function. An example of a conditional provision is found in section 44 of the Courts of Justice Act 1924:

So far as may be practicable having regard to all relevant circumstances, the Circuit Judge assigned to any Circuit which includes a district where the Irish language is in general use shall possess such a knowledge of the Irish language as would enable him to dispense with the assistance of an interpreter when evidence is given in that language.⁹

Although potentially an important provision requiring that judges in courts in the Gaeltacht be competent in Irish, this section is limited by its reference to 'so far as may be practicable having regard to all relevant circumstances'. An investigation by the Coimisinéir Teanga into a potential breach of s 71 of this Act was abandoned when it emerged that documentation related to the appointment of judges was a result of decisions of cabinet and therefore confidential.¹⁰ Therefore we do not have the benefit of a clarification by way of an investigation of the conditionality of this provision.

⁹ Other provisions of the same Act require a similar competence in Irish from District Court judges (Section 71) and Peace Commissioners (Section 88).

¹⁰ An Coimisinéir Teanga, 'Department of Justice, Equality and Law Reform – Investigation discontinued' (2007), available at: http://www.coimisineir.ie/downloads/Summary_-_Dept._of_Justice_-_TB.pdf

Another example of a conditional provision is found in section 31(1) of the Universities Act of 1997 which states that a university may have a charter setting out a number of aims which may include '(b) the arrangements it has for the promotion and use of the Irish language and the promotion of Irish cultures'. Under this Section, not only is a charter itself optional for a university, there is no obligation to refer to the Irish language even if a charter is developed as it is simply one of a list of themes which may be included.

The Garda Síochána Act 2005 is an example of legislation which contains a conditional provision in section 33(2) in relation to Irish within the Gardaí but whose conditionality was clarified as a result of an investigation of the Coimisinéir Teanga:

The Garda Commissioner shall, to the extent practicable, ensure that members of the Garda Síochána stationed in a district that includes a Gaeltacht area are sufficiently competent in the Irish language to enable them to use it with facility in carrying out their duties.

Despite the conditionality – 'to the extent practicable' – an investigation of the Coimisinéir Teanga in 2011 found that the Garda Síochána did not comply with its statutory duties in relation to Irish when members of the force without sufficient competence in Irish to deal with the public were stationed in a Gaeltacht area. In his investigation, the Coimisinéir pointed out that section 33(2) of the Garda Síochána Act 2005 was not new because a similar provision had been in place since legislation establishing the Garda Síochána was enacted in 1924. Furthermore, he interpreted 'to the extent practicable' to mean that the Garda Commissioner had made every effort to implement this provision but that it proved impossible. Finding that the Garda Commissioner had not in fact made every effort, he concluded that the Garda Síochána had breached both the relevant section of the 2005 and another, less conditional provision of its language scheme agreed under the OLA.¹¹

Another conditional provision is found in the Legal Practitioners (Irish Language) Act 2008, a generally weak enactment as discussed above. In section 1(2), the relevant association's duty to ensure that an adequate number of barristers are competent in Irish to the extent that they can practice in Irish is restricted by what is deemed 'reasonable' action:

... [The Council of the Honourable Society of King's Inns] in particular, shall in so far as it is reasonable for it to do so, seek to ensure that an adequate number of barristers-at-law are competent in the Irish language so as to be able to practise law through the Irish language as well as through the English language.

This section is weakened further by the failure to define what is meant by 'adequate number'.

6. Substantive provisions

Despite the prevalence of symbolic and conditional provisions related to Irish, there are also a number of substantive Acts which cover domains such as education, broadcasting, the Gaeltacht and institutional support for Irish. These are now discussed in turn.

¹¹ An Coimisinéir Teanga, 'An Garda Síochána' (2011), available at: http://www.coimisineir.ie/downloads/An_Garda_Siochana_English.pdf.

6.1 General institutional support

Although the promotion of Irish was declared a central concern of both Cumann na nGaedheal and Fianna Fáil governments in the decades following independence, no one department or agency had overarching responsibility for policy development in this field. Many early initiatives were led by the Department of Education but it seemed that while Irish was everyone's concern, no-one had overall strategic responsibility for it. Despite calls in the 1920s for a permanent commission to oversee the state's policy on the Gaeltacht,¹² a dedicated government department for Gaeltacht affairs was not set up until 1956 (Acts creating institutional supports for the Gaeltacht are discussed below).

It was not until 1978 that the Bord na Gaeilge Act established a national promotional agency for Irish on a statutory basis.¹³ The British-Irish Agreement Act 1999 endorsed the Good Friday Agreement between the British and Irish governments and established (under Part 6) a cross-border language policy agency, Foras na Gaeilge, which replaced Bord na Gaeilge and adopted a broader range of functions. Section 31 of the Education Act 1998 established a statutory body to provide support services to Irish-medium and Gaeltacht schools, An Chomhairle um Oideachas Gaeltachta agus Gaelscolaíochta.

6.2 Education

The Education Act 1998 is a significant piece of legislation which contains several provisions on Irish. In addition to the symbolic statements discussed above, the Act contains a number of substantive provisions related to the promotion of Irish by schools situated in the Gaeltacht. These provisions have been clarified and strengthened by investigations conducted by the Coimisinéir Teanga pursuant to complaints from the public. Section 6 relates to the protection of Irish as the principal community language in the Gaeltacht and states that every party concerned with the implementation of the Act will have regard to a list of aims, including '(j) to contribute to the maintenance of Irish as the primary community language in Gaeltacht areas'.

Two investigations of the Coimisinéir found that the Minister had breached this section of the Act by obliging a Gaeltacht school to accept the redeployment of a teacher who was not sufficiently competent in Irish¹⁴ and, in the other case, by failing to provide adequate resources for an Irish language stream in a Gaeltacht school.¹⁵ Another provision whose significance has been amplified is section 7(2) which relates to the functions of the Minister for Education. These include: '(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'. Three investigations interpreted syllabi, certain publications and certain websites as 'support services', concluded that the Minister had breached the Act

¹² Coimisiún na Gaeltachta, *Report* (Stationery Office 1926) 56.

¹³ Bord na Gaeilge was established on a non-statutory basis in 1975, probably as a concession to the Irish language sector following the removal of the civil service employment requirements for Irish and the removal of the requirement to pass Irish in order to pass the Leaving Certificate (see below).

¹⁴ An Coimisinéir Teanga, 'Department of Education and Skills (A)' (2013), available at http://www.coimisineir.ie/downloads/2013_DepartmentofEducationandSkills_a.pdf.

¹⁵ An Coimisinéir Teanga, 'Department of Education and Skills (B)' (2013), available at http://www.coimisineir.ie/downloads/2013_DepartmentofEducationandSkills_b.pdf

because such services were not provided in Irish and directed the Minister to rectify the problem.¹⁶

6.3 Employment

The requirement that all applicants to the civil service pass an Irish examination was established by a cabinet decision in 1923¹⁷ and was revoked in 1973.¹⁸ The legal aspects of this requirement and its attenuated successors will be discussed below in the section about the restriction of language policy in recent years. The removal of the language requirement led to a sharp decline in the ability of the civil service to provide services in Irish to extremely low levels by the time the OLA was enacted. An indication of this is found in the statutory language scheme of the Department of Education for the years 2005 to 2008, where the Department admitted that only three per cent of its administrative staff was competent in Irish and English.¹⁹ Five years later, in the course of an investigation into the Department, it emerged that this figure had halved to 1.5 per cent.²⁰

Despite the removal of the general requirement, a small number of state bodies in the fields of the law, education and culture continue to oblige their employees to be competent in Irish as well as in English. One such requirement is found in section 18(1) of the Heritage Act 1995 which established the Heritage Council: 'The Council shall employ its own staff (an adequate number of whom should be competent in the Irish language so as to provide service through Irish as well as English)'. An investigation by the Coimisinéir Teanga found that the Council had breached this provision by failing to ensure that adequate numbers of staff were competent in Irish.²¹

Section 30(1) of the National Cultural Institutions Act 1997 relates to the functions of the National Museum and National Library of Ireland, both of whom are required to employ Irish-speaking staff:

A Board may appoint such and such number of persons to be members of the staff of the Board (an adequate number of whom should be competent in the Irish language so as to provide service through Irish as well as English) as it may determine with the consent of the Minister and the Minister for Finance.

¹⁶ An Coimisinéir Teanga, 'Department of Education and Science' (2007) available at http://www.coimisineir.ie/downloads/Summary_-_Dept._Education_-_TB.pdf; An Coimisinéir Teanga, 'Department of Education and Science' (2008), available at http://www.coimisineir.ie/downloads/Department_of_Education_and_Science_B.pdf; An Coimisinéir Teanga, 'Department of Education and Skills (A)' (2010), available at <http://www.coimisineir.ie/downloads/DepartmentofEducationandSkills2010A.pdf>.

¹⁷ Cabinet minutes, 3rd January 1923, NAI no. C.1/23.

¹⁸ See copy of statement by Minister for Education, Richard Burke in 1973 in S Ó Riain, *Pleanáil Teanga in Éirinn 1918-1985* (Bord na Gaeilge 1994) 196-7. For a study of the context, see H Rowland, 'An choimhlint idé-eolaíochta idir Misneach agus an LFM le linn chomórach 50 bliain an Éirí Amach' (COMHARTaighde 2), available at: <http://www.comhartaighde.com/eagrain/2/rowland/>.

¹⁹ Department of Education and Skills, 'Scheme under Section 11 of the Official Languages Act', available at http://www.coimisineir.ie/downloads/An_Roinn_Oideachais_%28G&B%29.pdf 8.

²⁰ An Coimisinéir Teanga, *Tuarascáil Bhliantúil/Annual Report* (2011) 6.

²¹ 2008

An investigation by the Coimisinéir Teanga found that the National Museum had failed to implement this provision.²² The Coimisinéir reported subsequently that the Museum had not implemented his recommendations and he informed the Houses of the Oireachtas, the ultimate sanction in a case of non-compliance with the recommendations of an investigation.²³

A similar provision applies to the Arts Council which was established by the Arts Act 2004. Section 29(5) of the Act states:

The Council shall ensure that such and such number of members of the staff of the Council are sufficiently fluent in both the Irish language and the English language as will enable the Council to perform its functions through the medium of either such language.

Alongside a vague provision about the promotion of bilingualism, Section 7(2)(d) of the Courts Services Act 1998 also requires that a sufficient number of staff be competent in Irish:

[the service shall] have regard to the Government policy on bilingualism and, in particular, to the need to ensure that an adequate number of staff are competent in the Irish language so as to be able to provide service through Irish as well as English.

Limiting the employment requirement to mostly cultural institutions reflects an ideology that the state views the Irish language as having importance in the cultural realm only and not in other more central areas of its functions such as public health services, local authorities or general public administration.

6.4 Gaeltacht

There are several significant enactments on the Gaeltacht, reflecting its socio-political and cultural status in the rhetoric of successive Irish governments. These include overarching legislation such as the Ministers' and Secretaries' (Amendment) Act 1956 which established the Department of the Gaeltacht and the Gaeltacht Industries Act 1957 which established Gaeltarra Éireann, an industrial development authority for the Gaeltacht. In 1979, the Údarás na Gaeltachta Act replaced Gaeltarra Éireann with an enhanced industrial development agency, Údarás na Gaeltachta. The Gaeltacht Act 2012 widened the scope of Údarás and established a structure for language planning²⁴ in the Gaeltacht and elsewhere. In addition to institutional arrangements, various enactments have also provided support for Gaeltacht residents as a means of encouraging them to remain there and to continue speaking Irish. For instance, the Housing Acts (Gaeltacht) of 1929 to 2001 offered economic assistance for

²² An Coimisinéir Teanga, 'National Museum of Ireland' (2009), available at: <http://www.coimisineir.ie/downloads/2009NationalMuseumofIreland.pdf>

²³ An Coimisinéir Teanga, 'Report under subsection 26(5) of the Official Languages Act 2003 to the Houses of the Oireachtas on the implementation of the recommendations of an investigation conducted under subsection 21(c) of the Official Languages Act 2003 – National Museum of Ireland' (2011), available at http://www.coimisineir.ie/downloads/TuarascailchuiqTitheanOireachtais_ArdMhusaemnahEireann.pdf

²⁴ In this case, 'language planning' refers to interventions by the authorities in favour of Irish (for a discussion of the academic concept, see J Walsh, *Contests and Contexts: The Irish language and Ireland's socioeconomic development* (Peter Lang 2012) 123-130.

improvements to housing and other dwellings in the Gaeltacht, initially during periods of hardship from the 1930s to the 1960s.

More recently, section 10(2) of the Planning and Development Act, 2000 contains a provision which obliges local authorities to state how they will protect Irish in county development plans which cover the Gaeltacht. The objectives of a development plan include: '(m) the protection of the linguistic and cultural heritage of the Gaeltacht including the promotion of Irish as the community language, where there is a Gaeltacht area in the area of the development plan'. Although its implementation has been somewhat uneven, this provision has been interpreted by some local authorities as an obligation to apply 'language conditions' to new housing estates in the Gaeltacht. Under such conditions, a percentage of houses was earmarked for Irish speakers in order to protect the density of Irish speakers in the area.²⁵

6.5 Signage

Signage in Irish is the most public manifestation of the state's language policy and attracts consistent attention from the public, most of it negative. Many of the investigations conducted by the Coimisinéir Teanga into breaches of enactments under s 21(f) relate to the inaccurate use of Irish in signage or to its absence entirely.²⁶ The use of Irish on signage by public bodies is regulated by Regulations made pursuant to the OLA and published in 2008 and therefore is not of concern to this paper. Road signage is covered by the Traffic Signs Manual which is published on foot of section 95 of the Road Traffic Act 1961. The use of Irish on trains and buses and in train and bus stations is covered by section 57(1) of the Transport Act 1950 which states: 'All permanent public notices and signs (including the names of stations) maintained by the Board shall be in the Irish language but may be in both the Irish and English languages'. 12 of the 28 investigations into other enactments conducted by the Coimisinéir Teanga from 2007 to 2014 were based on the Traffic Signs Manual and the Transport Act.

6.6 Broadcasting

Vague symbolic statements on bilingualism and the duties of broadcasters were discussed above. However, as well as establishing the Irish language television channel TG4 as a public service broadcaster separate from RTÉ, section 114(3) of the Broadcasting Act 2009 contains a number of significant provisions in relation to programmes in Irish on RTÉ itself. One obliges RTÉ to ensure that its programme schedules:

- (a) provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities

A 'comprehensive range' of programming in Irish across a range of genres is a far-reaching provision which, if implemented, would have significant implications for RTÉ. Similarly, by including reports in Irish on the Oireachtas and the European Parliament, section 114(3) of

²⁵ Ibid 267-268.

²⁶ See for example An Coimisinéir Teanga, 'Dún Laoghaire-Rathdown County Council' (2011), available at: http://www.coimisineir.ie/downloads/DunLaoghaire_Rathdown_CountyCouncil.pdf.

the 2009 Act also covers a much broader range of news coverage in Irish than that currently broadcast:

(b) provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament.

To date, the Coimisinéir Teanga has not conducted an investigation into the extent to which RTÉ complies with these provisions.

7. Restriction of language policy

The enactment of the OLA in 2003 can be seen as a critical juncture in language policy terms because it provided, for the first time, an administrative framework to give effect, albeit in a very limited sense, to the constitutional provisions related to Irish. The statutory language schemes created under the OLA are enactments in themselves but in general there has been a diminution in the number of references to Irish in primary legislation since 2003. This gives the impression that the state views the OLA as an overarching piece of legislation, thereby obviating the need for other enactments related to Irish. There are exceptions, such as the Gaeltacht Act 2012, but in general there are fewer provisions about Irish than in previous decades.

There is also evidence of an attempt to restrict or dilute previous enactments, for instance in the realm of employment. As stated above, from 1923 until 1973, applicants to posts in the civil service had to pass an entrance examination in Irish. Following the removal of this requirement, the Department of Education issued two Circulars (43/75 and 30/90), pursuant to section 1(c) of the Civil Service Regulation Act 1956 which granted the Minister powers to determine the terms and conditions of service for civil servants, and the conditions for their promotion. These Circulars provided for the award of bonus marks for competence in Irish in internal promotional opportunities for civil servants. Investigations by the Coimisinéir Teanga revealed that this system was not being implemented at all by some government departments and only partially by others. Failure to implement the system by one Department investigated resulted in the Coimisinéir Teanga making a statutory report to the Houses of the Oireachtas.²⁷ The Government's response was to recall the circular in 2013 and to introduce a policy that 6 per cent of places on recruitment panels for positions in the civil service were to be reserved for Irish speakers. This policy has also been shown to be ineffective in increasing the numbers of Irish speakers in the civil service as it has been established that virtually no vacancies with an Irish language requirement have been advertised since 2013. An investigation by an Irish language news service established that of 8,367 posts in the civil service, only 10 were confirmed as having an Irish language requirement.²⁸ Therefore, apart from the limited number of cultural bodies mentioned above,

²⁷ An Coimisinéir Teanga, 'Report under subsection 26(5) of the Official Languages Act 2003 to the Houses of the Oireachtas on the implementation of the recommendations of an investigation conducted under subsection 21(c) of the Official Languages Act 2003 – Department of Social Protection' (2012), available at:

http://www.coimisineir.ie/downloads/ReporttotheHousesoftheOireachtas_TheDepartmentofSocialProtection.pdf

²⁸ ST Ó Gairbhí, '0.1% de 8,367 post sa státseirbhís daingnithe mar phostanna "Gaeilge" *Tuairisc.ie* (8 April 2016), available at: <http://tuairisc.ie/0-001-de-8367-post-sa-statseirbhis-daingnithe-mar-phostanna-gaeilge/>.

there is currently no legal basis for the state's policy on recruitment of Irish speakers to public jobs and the admittedly weak provisions of the Circulars of 1975 and 1990 have been set aside entirely.

Another regressive step from a language policy perspective relates to the translation of legislation itself. The existence of a large body of legal text in Irish since the foundation of the state is significant because it has contributed to the development of legal terminology in Irish, a requirement for those wishing to conduct legal proceedings in Irish and an important element in the corpus planning of any modern language. The existence of Irish versions of laws stems from Article 42 of the Constitution of the Irish Free State which stated that after a law had received the King's assent, two copies of the law would be made:

one being in the Irish language and the other in the English language (one of which copies shall be signed by the Representative of the Crown to be enrolled for record in the office of such officer of the Supreme Court as Dáil Éireann may determine), and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies so deposited, that signed by the Representative of the Crown shall prevail.

As the Representative of the Crown could always be expected to sign the copy in English, that version would have pre-eminence. That situation changed after the enactment of the Constitution of 1937 which declared, in Article 25(6), that 'in case of conflict between the texts of a law enrolled under this section in both the official languages, the text in the national language shall prevail'. The translation of laws was put on a statutory footing by Article 25(4) of the Second Amendment to the Constitution Act, 1941 which required that all legislation be translated into 'the other official language' once it is published by Rannóg an Aistriúcháin, the translation division of the Houses of the Oireachtas: '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'.

For all intents and purposes, that almost exclusively means translating legislation enacted in English into Irish.²⁹ A time period for providing such a translation is not stipulated, however, with the result that not all legislation is available in Irish and a backlog has developed. The 1980s and 1990s are particularly deficient in this regard. As enacted, Section 7 of the OLA provided that every act must be published simultaneously in both official languages. However, following the establishment of the National Asset Management Agency in 2009, a number of provisions were passed which 'disapplied' Section 7 of the OLA so that it would no longer be necessary to publish both Irish and English versions of Acts simultaneously. Section 62 of the Civil Law (Miscellaneous Provisions) Act 2011 cemented this by amending s 7 of the OLA to include a new sub-section (2):

²⁹ After assuming the office of President of the Executive Council in 1932, Éamon de Valera received correspondence from Irish language activists urging him to enact legislation bilingually in keeping with the constitutional provisions on official languages. He investigated the possibility of enacting laws in both Irish and English, and sought advice about other bilingual jurisdictions including Canada and South Africa. As most TDs were not competent in Irish, bilingual enactments were deemed to be impracticable, however, and the new provision of the 1937 Constitution, as reflected in the 1941 act, was essentially a compromise to put the translation of acts on a statutory footing once they had been enacted in English ('Enactment of laws in Irish', NAI S 6394A).

(1) 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.

(2) Subsection (1) shall not operate to prohibit the publication on the internet of an Act of the Oireachtas in one official language only prior to its printing and publication in accordance with that subsection.

It is clear that such an amendment will facilitate the publication of Acts in English only in electronic form, thereby creating a further backlog in the translation of legislation to Irish and additional gaps in the Irish legal corpus.

A further example of the erosion of language policy is provided by sections 48, 49 and 191 of the Environment (Miscellaneous Provisions) Act 2011 which amended section 18 of the Local Government Act 2001 and in so doing weakened a provision of the OLA in relation to placenames in the Gaeltacht. Section 33(2) of the OLA states that the English language version of a placename in the Gaeltacht no longer has force in three cases: (a) on official maps of the Ordnance Survey (b) in legislation and (c) on road or street signs erected by the local authority. Following a controversy in the town of Dingle (An Daingean) in Co. Kerry – itself within the official Gaeltacht but largely English-speaking – in 2011 the government gave in to local pressure and changed the law so that a majority vote of a local authority could propose a change of placename to the people of a given area within its remit, presumably to facilitate the removal of the monolingual Irish version as required by the OLA.

Finally, s 27 of the OLA allows the Minister to make a scheme by which a public body would pay compensation to a person or persons with respect to the body's failure to implement a provision of the act, if such a failure had been specified in a report by the Coimisinéir Teanga pursuant to an investigation. Interestingly, such a compensation scheme applies only to failures to implement the OLA and not any other enactment in relation to Irish. This strengthens the likelihood that the state views the OLA as the pre-eminent Act about Irish and that any other enactment is of lesser importance.

8. Conclusion

This paper illustrates that although Irish has been referred to regularly in the Irish Statute Book since the foundation of the state, many of these references are technical in nature, related only to the names of public bodies in bilingual form. Many other enactments are largely symbolic and contain only vague references to the general principles of promoting Irish or bilingualism. A smaller number of Sections contain more substantive provisions, although these are restricted by applying conditions to the availability of services in Irish. On the other hand, statutory investigations by the Coimisinéir Teanga have provided important clarity in the case of some of these conditions, thereby strengthening the force of the original provisions. There are also a small number of substantive enactments related to education, employment, signage, the Gaeltacht and broadcasting, some with far-reaching implications which may not yet have been tested. With the exception of very limited provisions in the OLA itself, the enactments are silent on the issue of rights for Irish speakers.

This study reveals the fragmented nature of Irish language policy as enacted through legislation since the foundation of the state. The state may view the OLA as an overarching law for the Irish language but almost 100 years after independence, there is still no

comprehensive legal framework obliging the state to serve its Irish-speaking citizens in their own language and to extend enforceable language rights to such people. Similarly, there is no clear legal basis for requiring that civil servants have adequate competence in Irish to provide services in that language. This is a consequence of the nature of the language policy itself which prioritises the symbolic notion of a national heritage language shared by all of the people of Ireland over the concept of Irish as a minority language spoken actively and regularly by a much smaller group.

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