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Annual Report 2007

Significant breaches of legislation aimed at promoting the Irish language were detected during the past year by the Office of An Coimisinéir Teanga, according to its annual report published today.

Formal investigations during 2007 by An Coimisinéir Teanga found that provisions of legislation aimed at protecting or promoting Irish in public affairs were breached by Government departments and other state bodies, including the Department of Education and Science, the Department of Social and Family Affairs, An Garda Síochána, the Health Service Executive, the State Examinations Commission, the National Disability Authority, Bus Éireann, and Fingal County Council.

A formal complaint by eight members of the Oireachtas that the non-publication of Irish versions of bills during the enactment process of legislation in the Houses of the Oireachtas was a breach of a provision of the Official Languages Act was not upheld by An Coimisinéir Teanga, Seán Ó Cuirreáin.

A further investigation was discontinued when access to relevant files from the Department of Justice, Equality and Law Reform was refused because they related to decisions and proceedings of the Government.

For the second successive year more than 600 new complaints were made to An Coimisinéir Teanga, Seán Ó Cuirreáin, by members of the public concerning difficulties in accessing state services through Irish during 2007, bringing to nearly 2,000 the total number of complaints made since the establishment of the Office in 2004.

One third of complaints last year came from Co. Dublin (32%) while 42% came from the following 3 counties – Galway (24%), Kerry (12%), and Donegal (6%).

Forty percent came from Gaeltacht areas with the remainder coming from areas outside the Gaeltacht (60%).

Speaking at the launch of the report An Coimisinéir Teanga, Seán Ó Cuirreáin, said that the current recruitment and training regime in the

state sector appeared to be insufficient to ensure that an adequate number of staff were competent in the Irish language so as to be able to provide services through Irish as well as English.

“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,” he said.

He suggested that a “rebalancing” action may be 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 in the state sector of those 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,” he said.

While recognising that some progress had been made in many state organisations in relation to the provision of services through Irish, he said that there were other cases where the threshold for the supply of services through Irish was very low and the role of the language in the provision of such services to customers was perceived as being marginal and provided reluctantly.

“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 in general, and particularly in the state sector,” he said.

(ENDS)

Further Information – Damhnait Uí Mhaoldúin 091-504006 or 087-2197946

See also – Investigations 2007.

INVESTIGATIONS 2007

Department of Education and Science

An investigation by An Coimisinéir Teanga found that the Department of Education and Science had failed to comply with a statutory 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 administration and management of schools, including Gaeltacht and all-Irish schools.

The complaint was made by the principal of a recognised post-primary school providing teaching through Irish who argued that the syllabuses, as well as rules and programmes for secondary schools, were readily available in English as a support service to schools operating through the medium of that language.

The Department initially argued that the vast majority of syllabuses were, in fact, available in Irish but further probing revealed that there was no Irish version of syllabuses available in print form for 27 subjects on the Junior and Leaving Certificate courses. Although English versions of most syllabuses were available on the Department’s website, there were 42 subjects for which no syllabuses in Irish were available on the same website.

Many of the Irish version of syllabuses had been published in the 1991 edition of “Rules and Programmes for Secondary Schools” which was no longer in print. The Department, however, suggested that schools could request photocopies. The “Rules and Programmes for Secondary Schools” had been updated and published regularly in English and six separate editions had been published in that language since the introduction of the Education Act in 1998 without any editions having been provided in Irish since 1991.

The Department also argued that the Education Act did not require the provision of Irish versions of syllabuses, and that the legislation allowed the Minister discretion in relation to the provision of services in accordance with resources.

The Department also quoted from a High Court judgement which suggested that although the Education Act provided for functions of the Minister, it did not impose duties. However, the investigation found arguments to the contrary in a Supreme Court case.

Following a detailed analysis of the factual and legal arguments An Coimisinéir Teanga found the Department of Education to be in breach of statutory obligations contained in the Education Act 1998 and outlined a 10 point programme to ensure compliance.

The investigation report reminded the Department of its right to appeal the decision to the High Court on a point of law within four weeks but no such appeal was made.

Commenting on the investigation, An Coimisinéir Teanga said that he was disappointed at the lack of clarity and transparency in some of the initial information provided to the investigation which, he argued, could have had the potential to result in the investigation being misled.

Investigation launched: 11 July 2007

Report issued: 17 October 2007

An Garda Síochána

An Garda Síochána has moved to develop a bilingual system for dealing with the issuing and processing of Fixed Charge Notices (for penalty points) following the investigation of a complaint by An Coimisinéir Teanga.

The complaint involved An Garda Síochána replying in English to correspondence in Irish from a native Irish speaker in the Gaeltacht in a case relating to a fine and penalty points being imposed for using a mobile phone while driving a car.

Although the breach of legislation involved in issuing the reply in English was unintentional, the case highlighted a more pressing matter, that the newly automated and privatised system of dealing with fixed charge notices on behalf of An Garda Síochána was unable to process material in Irish.

The investigation was told that the contract entered into by the Gardaí for the provision of the newly automated processing system did not require the provision of this service in Irish.

This had resulted in a number of cases where Irish speakers had sought judicial reviews in the High Court which were not contested by the state.

As part of the investigation into the specific complaint An Coimisinéir Teanga met with senior Gardaí, including Assistant Commissioner Rock, who has responsibility for traffic.

Agreement was reached that there were no outstanding legal or policy issues to prevent the issuing of fixed-charge notices in Irish and that An Garda Síochána would move to address specific practical difficulties involved. In the meantime, there would be no effort to compel people to transact this business in English.

Although the investigation found that An Garda Síochána had breached a section of the Official Languages Act in this case, the unintentional nature of the breach was recognised.

The investigation recommended that if the Gardaí were to pursue the case against the complainant it should be by way of an Irish language version of the fixed charge notice. If the Gardaí opted not to pursue the matter, since the complaint had provided the force with the opportunity of dealing with a more pressing issue, then the complainant was asked by An Coimisinéir Teanga to pay a sum of money not more than the fine involved to a voluntary organisation involved with road safety or language rights.

Investigation launched: 2 July 2007

Report issued: 21 August 2007

State Examinations Commission

An investigation by An Coimisinéir Teanga found the State Examinations Commission to be in breach of a provision of the Education Act 1998 where Leaving Certificate examination papers answered in Irish were being marked with reference to “marking schemes” available in English only.

One of two complainants had told An Coimisinéir Teanga that she had been surprised to see examiner’s annotations in English on her daughter’s Leaving Certificate examination scripts which had been written in Irish.

It transpired that it had been the custom and practice of the State Examinations Commission, the body responsible for the development, assessment, accreditation and certification of the second level examinations, to provide marking schemes for examiners in English only.

While marking schemes are essential as a core part of the examination system, they are also used by students in the process of “checking” their scripts and are published on the Commission’s website for use as educational tools.

The Commission argued that it believed that the Education Act did not require it to provide Irish language versions of marking schemes and that it was important that there would be only one definitive document for marking purposes in order to reduce confusion.

The Commission also argued that it would be very difficult to ensure accuracy of translations of marking schemes within the available time, making this a high-risk venture which could have dire consequences for the education sector, for training and recruitment, the candidates and the public in general.

The Commission offered other arguments both of a legal and practical nature.

The investigation considered that if the Education Act required the provision of marking schemes in Irish, then the practical arguments suggested by the Commission would be insufficient to amend or reduce a statutory obligation confirmed in law by the Oireachtas.

Having considered all of the arguments in detail, An Coimisinéir Teanga found that the Education Act did in fact require the provision of Irish versions of Leaving Certificate marking schemes and found the State Examinations Commission to be in breach of that legislation.

In deference to the case made by the State Examinations Commission concerning risks and consequences associated with the provision of marking schemes in Irish and English, An Coimisinéir Teanga

recommended, without prejudice to the overall obligation which existed, that the marking schemes in Irish be introduced on a phased basis over three years.

In a detailed report of the investigation issued in June 2007, the State Examinations Commission was reminded of the right to appeal the findings to the High Court on a point of law within four weeks but no such appeal was made. An Coimisinéir Teanga welcomed confirmation later from the Commission that it had accepted the findings and recommendations and that they were being implemented.

Investigation launched: 2 March 2007

Report issued: 29 June 2007

Department of Social and Family Affairs

An investigation by An Coimisinéir Teanga found that the Department of Social and Family Affairs had failed to comply with its statutory obligations under the Official Languages Act when it published the Green Paper on Pensions in English only when an Irish language version was not available simultaneously.

A member of the public complained that he had been told by the Department of Social and Family Affairs that an Irish version of a recently published document, “Green Paper on Pensions”, could not be provided to him as it had not yet become available. The complainant felt that since the document set out “public policy proposals” it ought to have been published simultaneously in Irish and in English in accordance with a provision of the Official Languages Act.

The Department accepted that the Irish version should have been published on the same day as the English version was launched by the Taoiseach, the Tánaiste and the Minister for Social and Family Affairs.

It argued that it had made strenuous efforts and had spent considerable time and energy to ensure simultaneous publication in both languages but had encountered problems with the commercial translation company it had engaged for the project.

A missed deadline and errors and omissions in the Irish text resulted in an acceptable, final version not being available until more than three weeks after the launch of the English version.

The Department told the investigation that there was never any question of postponing the launch to facilitate the simultaneous publication in both languages, which is a statutory requirement. It suggested that this would have inconvenienced many people and would have been a waste of public funds. Neither the Taoiseach, the Tánaiste nor their departments were informed that the document being launched would be published in breach of legislation.

The investigation considered that notwithstanding the difficulties the Department encountered with a particular translation company, the obligation to ensure compliance with statutory requirements fell to the Department alone. The proximity of the deadline for receiving the translated text to the launch date – at most six days – left little opportunity to rectify problems.

An Coimisinéir Teanga also noted that the Department had not insisted that the translator assigned the task be a member of the accredited panel of translators. He said it was difficult to understand why a government department would consider that it could ignore the wishes of the

Oireachtas and 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 launch knowing that a statutory obligation was being contravened.

The investigation found the Department of Social and Family Affairs to have breached a statutory obligation under the Official Languages Act and made four recommendations, primarily aimed at ensuring compliance in future. The Department did not avail of its right to appeal the decision to the High Court on a point of law within four weeks.

Investigation launched: 24 October 2007

Report issued: 28 December 2007

National Disability Authority

An investigation by An Coimisinéir Teanga found the National Disability Authority to be in breach of a provision of the Official Languages Act in the distribution of a booklet as a mailshot to the public in general.

The NDA is the main state agency on disability issues, providing independent expert advice to Government on policy and practice.

A non-Gaeltacht resident complained that an NDA booklet received by him in the post was in English only while he felt he should have received an Irish or bilingual version as a result of the provisions of the Official Languages Act.

The NDA's position was that its actions were not in breach of the legislation and it offered practical arguments based on experience, practice, public costs and principles of proportionality as well as arguments based on advice and legal interpretations to support its position.

The NDA confirmed to the investigation that it had distributed c.1.7 million copies of the booklet in English through the postal system throughout the country and that 85,000 copies were produced in Irish, approximately 29,000 copies of which were distributed in certain Gaeltacht areas. The organisation said that it had adopted a targeted approach to the distribution. The booklet was also available in both languages on the NDA's website and could be requested also by contacting the organisation.

Shortly before the planned distribution of the mailshot the NDA had sought and received advice, verbally and in writing, from the Office of An Coimisinéir Teanga in relation to its obligations under the Official Languages Act. The organisation received similar advice from a number of other sources which confirmed that public bodies were required to ensure that certain types of information mailshots issued to the public in general, would be in Irish or bilingual.

The organisation had agreements already in place at that stage in relation to the large scale printing of the booklet in English by an Italian company and for its distribution through An Post.

Faced with the option of rearranging the project at the last moment, the NDA sought further advice from the senior management in its parent department, the Department of Justice, Equality and Law Reform.

The NDA told the investigation that the Department had confirmed to it that the matter had been examined by the then Minister for Justice, Equality and Law Reform (Mr Michael McDowell) who 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.”

All of the arguments made by the NDA were carefully examined by the investigation and legal interpretations of the particular provision of the Act were fully considered.

The investigation noted, in passing, that the cost of translation of the booklet to Irish in this case was under €472 in a project with had a total budget of €375,000.

The investigation concluded that the method employed by the NDA to distribute the mailshot, primarily in English, was in breach of the statutory obligation under the Official Languages Act and a number of recommendations were made to ensure that a similar situation would not arise again.

The NDA did not avail of its right to appeal the decision to the High Court on a point of law within four weeks and confirmed later that it had accepted the findings and was implementing the recommendations.

Investigation launched: 10 May 2007

Report issued: 17 August 2007

Other Investigations

Bus Éireann

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

Bus Éireann's case was that the types of "card tickets" referred to in the 1950 legislation were no longer in use and had been replaced by tickets printed on paper. The company argued that its information technology system had difficulties in providing fully bilingual tickets. It also argued that there were problems with the capability of some of the company's drivers, who were foreigners without Irish, to validate tickets unless they contained clear instructions in a language they understood and that there could be serious issues in relation to child safety if there were a danger that a child would be left on the roadside because the school bus driver did not understand the language and validity of the ticket.

The investigation carefully considered all of the legal and practical arguments.

The investigation concluded that the requirement in the Transport Act in relation to language usage was a statutory obligation irrespective of whether the ticket was printed on card or on paper. An understanding of one of the official languages – Irish or English – was sufficient to ensure that a driver could validate a bilingual ticket. The investigation recognised the importance of child safety and the major responsibility this placed on Bus Éireann but did not concede that a bilingual ticket, designed and produced professionally by a public body, could pose any threat to child safety, and in addition, the company could ensure that the bilingual nature of the tickets would be made clear to drivers.

An Coimisinéir Teanga decided that the appropriate provision of the Transport Act was being contravened by Bus Éireann and he made three recommendations to ensure compliance.

A reminder was given of the right to appeal the decision to the High Court on a point of law within four weeks, but no such appeal was made.

Investigation launched: 4 October 2007

Report issued: 13 December 2007

Health Service Executive

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.

Investigation launched: 10 July 2007

Report issued: 29 September 2007

Fingal County Council

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 they had been received.

Investigation launched: 17 October 2007

Report issued: 19 November 2007

Houses of the Oireachtas Commission.

An investigation by An Coimisinéir Teanga found that the practice of not providing Irish language versions of bills during the enactment process of legislation in the Houses of the Oireachtas was not a breach of the Official Languages Act.

Eight members of the Oireachtas – two Senators and six Dáil Deputies – made a formal complaint to An Coimisinéir Teanga that their rights to use Irish in debates and other proceedings of the Houses of the Oireachtas were being undermined by the fact that the vast majority of bills were published in English only.

They argued that they were not being treated fairly in comparison to those Dáil Deputies and Senators who were prepared to use English always, that there might be an infringement of their constitutional rights and that the legal requirement to publish Acts of the Oireachtas simultaneously in both Irish and English under the Official Languages Act was being contravened.

The absence of Irish versions of bills created problems with terminology, they argued, and they were prohibited from proposing amendments in Irish to a bill in English.

They compared the provision of the Official Languages Act concerning the simultaneous publication of Acts, in Irish and English, with a similar provision in Canadian law which was found by the Supreme Court there to require that bills be published in both of that country's official languages, English and French.

In responding to the investigation on behalf on the Houses of the Oireachtas Commission, its chairman, Ceann Comhairle John O'Donoghue, made it clear that he did not accept that the non-provision of Irish versions of bills during the enactment process in the Houses of the Oireachtas was in contravention of the Official Languages Act.

The Commission argued that the obligation to print and publish Acts in Irish and English arose only after the enactment process, since the wording of the provision of the Act clearly specified "after the enactment of any Act of the Oireachtas" the text thereof should be printed and published in each of the official languages simultaneously.

The Commission also suggested that the Canadian comparison was not relevant.

It was not within the remit of the investigation to deal in any way with the constitutional issue raised by the complainants as the Constitution provides that it is a matter for the courts alone to deal with constitutional issues.

In relation to the allegation of non-compliance with a statutory provision of the Official Languages Act the investigation found that the provision could not be interpreted in such a way as to require bills – rather than acts after their enactment – to be provided simultaneously in Irish and in English. The complaints were consequently rejected by An Coimisinéir Teanga and no recommendations were made.

Parties to the investigation were reminded of their right to appeal the decision to the High Court on a point of law within four weeks but no such appeal was made.

Investigation launched: 9 November 2007

Report issued: 13 December 2007

Department of Justice, Equality and Law Reform

Discontinued Investigation

An investigation by An Coimisinéir Teanga was discontinued when access to relevant files from the Department of Justice, Equality and Law Reform was refused because they related to decisions and proceedings of the Government.

The investigation, which had been instigated at the request of Conradh na Gaeilge, concerned compliance with a statutory requirement that a justice assigned to a district which included an area where Irish was in general use (i.e. a Gaeltacht area) “so far as may be practicable having regard to all relevant circumstances” must have sufficient Irish so as not to require an interpreter when hearing evidence in that language.

The provision is included in the Courts of Justice Act 1924.

As part of the investigation, a report dealing with specific questions in relation to the assignment of a district justice to a district which includes a Gaeltacht area, was sought from the Department of Justice, Equality and Law Reform as well as access to the relevant files in the Department for examination by the investigation.

The Official Languages Act allows for the refusal of access to files during an investigation by An Coimisinéir Teanga only in the specific case where a certificate has been issued by the Secretary-General to the Government certifying that the files involved relate to decisions or proceedings of Government.

A valid certificate from the Secretary-General to the Government which covered most of the relevant records on the department’s files was provided in this case to An Coimisinéir Teanga by the then Minister for Justice, Equality and Law Reform, Mr Michael Mc Dowell.

Without access to the full information on file An Coimisinéir Teanga said it would be “unsafe” for him to make findings in relation to whether or not the legislation had been complied with, or to issue recommendations in this case.

He informed Conradh na Gaeilge, who had requested the investigation, of his decision and the reason for it.

Investigation launched: 2 March 2007

Decision to discontinue investigation made: 18 May 2007