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**Presentation to the Joint Committee on Public Service Oversight and Petitions**

**14 January 2015**

**Introduction**

I’d like to thank the Joint Committee for the invitation to attend here today and speak to you about the role of my Office in the context of Ombudsman’s offices in general. Oifig an Choimisinéara Teanga has been established for over 10 years now and in accordance with the Official Languages Act the Oireachtas has assigned four primary responsibilities to me in my role as Coimisinéir Teanga.

They are;

* Dealing with complaints from members of the public regarding a lack of services through Irish from public bodies
* Monitoring how public bodies are fulfilling their duties under the Act
* Advising the public regarding their language rights
* Advising public bodies regarding their obligations under the Act

In the 10 year period up to the end of 2013 the Office received 6,000 complaints, initiated 96 official investigations and conducted 213 reviews or audits on the implementation of language schemes, whilst also monitoring other aspects of the Act.

I should say from the outset that my Office is a small Office with a staff of 6 civil servants who are on secondment for the Department of Arts, Heritage and the Gaeltacht. A provision of €567,000 was made available to my Office for the year 2014 and I’d like to welcome the increase to €670,000 that has been allocated to my Office for the year 2015. Even with the extra allocation that has been made available to my Office we are still one of the smallest State offices in the country.

**Role as Ombudsman**

It is very important that an independent office, with powers similar to any other Ombudsman’s Office, exists to deal with language rights. Before the enactment of the Official Languages Act citizens who were affected by the lack of services through Irish from the State had to rely on the courts to address their complaints. This approach of initiating a constitutional challenge was both a costly and a difficult exercise, for the State and for the complainant. Since the language rights of the citizen stemmed from the status afforded to Irish in the constitution the courts were the only protection afforded to those rights.

The Act sets out a framework where the citizen can demand his rights in a manner that is easier from an administrative point of view and more cost effective. The amount of complaints received by my Office demonstrates that the Irish language community, including those in the Gaeltacht, have confidence in our ability to address complaints regarding a lack of services in Irish from the State. I believe that an independent office is required as it has already been demonstrated that this is the only way the public can have confidence that language rights will be fully understood and that appropriate powers will be available to address difficulties as they arise.

Chairman, I have been asked by the Joint Committee to share my views regarding the role, application and effectiveness of the systems under which Ombudsmen operate, and I will do that in the context of my own Office.

**An effective and comprehensive Act**

I’ll begin with the Act itself as this is the foundation that sets out the statutory language rights of the citizen and my powers as Coimisinéir Teanga to protect those rights. The Act was modelled on two systems used in other jurisdictions, the system of Language Commissioner that was established in Canada and the system of language schemes that was in use in Wales. The Act deals with the language rights pertaining to the use of the official languages in the Houses of the Oireachtas, Acts of the Oireachtas, the Courts, with public bodies and the use of official placenames. In the main my Office deals with the way in with public bodies comply with their obligations under the Act. It is worth bearing in mind that only a limited amount of direct obligations apply to all public bodies who come~~s~~ under the remit of the Act.

These obligations relate to the use of the official languages on stationary, signage and recorded oral announcements as well as certain written communication. Public bodies are also obliged to publish a limited amount of documents in both official languages. Any additional obligations placed on a public body is dependent on what has been confirmed by the Minister for Arts, Heritage and the Gaeltacht in a language scheme with the public body. There is no need to set out once more the concerns that I have previously expressed regarding the implementation of the system of language schemes.

As you are aware the heads of bill to amend the Official Languages Act were published some months back. Previous to that my Office published a commentary on the implementation of the Act which outlined proposals on how the language rights of the citizen could be best protected in a more effective way. Any analysis of both documents shows there are significant gaps between them. Those gaps primarily relate to the language rights that should be afforded to communities in areas where Irish is still the most widely spoken language, and the role of language schemes in a language rights framework. Language rights belong to all citizens, rights that are not only protected in legislation but also in the country’s Constitution. In the amended Act it is imperative that an approach is adopted that adequately addresses those rights.

I understand that an examination of the heads of the bill are not the topic for discussion for today’s session and therefore I don’t intend to deal with this matter in depth. That said I would like to make the general point that my ability to protect the language rights of the citizen are dependent not only on the powers that are available to me but also on the legislation that underpins and supports those rights. On that matter it’s interesting that 28% of investigations undertaken so far related to a breach of language rights in legislation other than the Official Languages Act such as the Education Act 1998, the Garda Síochána Act 2005 and the Transport Act 1950 amongst others.

I should also mention that not every public body comes under the remit of the Act. It is only those public bodies that are named under the Act’s schedule that come under the legislation’s remit. It falls to the Minister to update that schedule. This has happened once, in 2006. I welcome therefore the proposal in the heads of bill that public bodies will automatically be brought under the remit of the legislation and it’s important that that happens.

**Independence and resources**

The independence of Oifig an Choimisinéara Teanga is provided for in the Act. I can confirm that the Office operates on that basis. However the allocation of funding and human resources is dependent on the will of the Minister. As I have previously stated my Office is a very small State office and similar to other organisations the effectiveness and influence of our work depends on having sufficient staff to discharge our duties. Although it has not influenced my Office to date it is easy to see how the effectiveness of a body can be influenced when it is dependent on its parent department for funding and staff allocation. I therefore support the view that the model for funding Ombudsmen services should be examined.

**Functions and powers**

In my role as Coimisinéir Teanga I have the power to investigate whether a public body may have breached the provisions of the Act or the provisions of any other enactment concerning the status or use of an official language. I can do this as a result of a complaint, on my own initiative or at the request of the Minister. The vast majority of complaints that I receive are resolved by the system of informal resolution used by my Office. In cases where I make a formal investigation and a report is issued with findings and recommendations, any party or person affected by those findings may appeal my decision to the High Court on a point of law.

Where public bodies do not implement the recommendations made in an investigation report within a reasonable period of time, I may issue a report to both Houses of the Oireachtas on the matter. To date I have submitted 6 reports to the Houses of the Oireachtas.

In the majority of the cases submitted by my Office to the Houses of the Oireachtas the public bodies did not deny the findings made in the investigation reports. They claimed that they did not have sufficient resources to provide services in Irish that were already available in English. In cases such as these, this Committee has an important role in ascertaining why public bodies choose not to implement recommendations made in a statutory report. It is our experience that this provision is effective in influencing public bodies when they are deciding whether to implement statutory recommendations.

If however the public body is of the opinion that the findings were flawed in the first place they have an opportunity to challenge my decision in the courts, where they can obtain a legal interpretation. However I can foresee that public bodies who disagree with decisions made in an investigation, on a point of interpretation, may decide against a legal challenge to those decisions but will opt instead to make their case to an Oireachtas Committee. This may be an attempt to have it both ways.

Although reports submitted to the Houses of the Oireachtas may receive public attention at the time of their publication there is no readily accessible central public register that allows for the naming of public bodies who may be noncompliant with language legislation or indeed other legislation. I see a role for an Oireachtas Committee in adding or removing a public body from such a register, after having reviewed the case. Being named on such a register could be viewed as recognition from an Oireachtas Committee that the breach was significant enough to be registered in this way.

Chairperson and members, the whole premise of the Act is that language rights are available to citizens of this country who wish to use the first official language in their official dealings with the State. It is my role to protect those rights. I wish to thank you for the opportunity to speak with you today and welcome any questions you may have.