

Department of Culture, Arts and Leisure Northern Ireland

PROPOSED IRISH LANGUAGE LEGISLATION

CONSULTATION RESPONSE

BY

JAMES H ALLISTER QC MEP

Introduction

The publication of the latest consultation and draft legislation by the Department of Culture, Arts and Leisure on the provision of an Irish Language Act for Northern Ireland a mere seven working days after the first consultation exercise ended demonstrated clearly that the direct rule administration was working to a pre-determined agenda and was not willing to listen to the views of the people of Northern Ireland on the subject. The return of devolution now presents an opportunity for this divisive and unnecessary legislation to be abandoned. The undue haste with which the previous consultation exercise was carried out and the draft legislation published, demonstrated clearly that the then Culture Minister, Maria Eagle was working to a politically-biased agenda, one which was aimed merely at satisfying the demands of political nationalism.

It is worth noting at this starting point how previous, seemingly mundane consultation exercises have operated as a means of showing just how flawed the present exercise considering an Irish Language Act has been. Non-controversial legislation such as The Safety at Sports Grounds (NI) Order took in all 20 months to pass through the process of equality screening, equality assessment, public consultation, draft legislation and on to the statute book. Yet in this case the government forced a consultation period of 11 ½ weeks on the Northern Ireland public to consider a deeply controversial idea and seven working days later it publishes the draft legislation. It is our clear contention that the first consultation exercise was a sham intended to provide a veneer of respectability to the granting of a blatantly politically-motivated concession to Irish nationalism in general and Sinn Fein in particular, in-keeping with private undertakings between the British government and Sinn Fein at St. Andrews, of which the other parties were not made aware. The frankly ludicrous conclusions reached in the Equality Impact Assessment published by the Department on 19 January 2007 show the botched nature of the exercise.

In our previous submission to the Department on this issue we demonstrated that the process whereby this second consultation document was arrived at was a deeply flawed one. We further demonstrated, through the use of the provisions of the Freedom of

Information Act that the initial consultation document was produced without a proper element of equality screening or an impact assessment as required under Section 75 of the Northern Ireland Act. The subsequent proposals contained in this second consultation document are therefore corrupted and have not been arrived at through due or adequate process. We have raised this corruption of process with the Equality Commission and hope that they will pursue the government vigorously in order to establish just why the government flouted their own rules so flagrantly: rules which other statutory bodies and public authorities are compelled to abide by. Bearing this in mind we are of the firm view that this consultation should be withdrawn immediately and proper procedures adhered to, which has demonstrably not been the case up until now. Hence our letter of 8 May 2007 to the current Minister (see Annex A). We regret he has not taken the opportunity to extricate himself from a process which is now a trap intended to lead to some form of Irish Language Act.

We have consistently maintained that any legislation - following a proper and legitimate consultation process - should be a matter solely for the elected members of the Northern Ireland Assembly to consider, debate and decide upon. Our consistent view has been that local politicians are best-placed to judge local opinion on this matter and certainly not a direct rule Minister, whose Department has flouted the minimum standard of probity required in the formulation of this controversial legislation. Devolution now having been restored an opportunity presents itself to start again on this issue and ensure that any proposals for change are capable of commanding cross-community support. It is our clear view that none of the three options outlined in the consultation document published during Ms. Eagle's time as DCAL Minister meet that requirement.

The opening paragraph of the Ministerial foreword is misleading. In it Ms. Eagle states "My Department also received 1376 postcards and a petition with 2,500 signatures supporting legislation. In addition POBAL (the Irish language umbrella group) placed an advertisement in the press with 800 signatures supporting legislation", in an attempt to show high levels of support for this proposed legislation. The fact that the Irish Language umbrella group is in favour of an Irish Language Act should hardly be taken as evidence

of a groundswell of support for the introduction of such. Similarly the fact that a number of committed Irish language activists have signed petitions or returned postcards does not reflect the feelings of the public as a whole.

The Minister goes on to state “we recognise that there is a pronounced divergence of views within Northern Ireland with respect to the role of the Irish language in public life”. She then asserts that the draft legislation presented in the document represents a “middle ground” approach because it is not as far reaching as those “who wish to see the strongest possible legislative provision” would have wished. We fundamentally disagree. In our previous submission we demonstrated the inextricable link between the Irish language movement and nationalist/republican politics which goes back more than a century. We showed clearly and honestly that any special treatment or recognition afforded to the Irish language over and above that which already exists, would have the capacity to damage community relations and increase the polarisation of the two main traditions here. The Irish Language and its usage is a deeply divisive political issue. Identity and political affiliation are closely intertwined in this society and there is no getting around that reality. The Department, albeit with great reluctance made an acknowledgement of such in its consultation documents. To then go on and assert that the creation of statutory rights under an Irish Language Act and the establishment of an Irish Language Commissioner, with the power to adjudicate whether or not a statutory agency is implementing its Irish Language scheme, represents a “middle ground” approach is absurd.

Consultation on Irish Language Legislation for Northern Ireland with Indicative Draft Clauses.

In the introduction to the indicative draft clauses, the government details the four approaches which they supposedly examined (given the timescales involved, one wonders how such a feat could have been achieved), to determine what the shape and scope of the legislation should be.

These were:

- a rights-based approach, which would give rights to individuals to use Irish in certain circumstances when dealing with public bodies, for example, a right to correspond in Irish and fill in certain forms in Irish;
- a duty-based approach which would place duties on public bodies to make specified public services available in Irish, for example a duty to provide certain documents in Irish;
- a language scheme approach which would require public bodies to set out in a scheme the extent to which their services are available in Irish; and
- an approach based on some combination of the above.

In outlining these four options and at every stage in the two consultations the government failed to answer the fundamental and obvious question of whether or not Northern Ireland actually requires an Irish Language Act. What evidence is there to suggest that goods and services would be delivered more efficiently by the provision of such legislation? Would placing upon statutory bodies a legal requirement to devise and implement Irish language schemes produce a situation conducive to the public good? Is any individual having their human rights or status within society affected adversely by the existing level of Irish language provision in Northern Ireland?

That the government failed to respond to these fundamental and basic questions in any way and at any point in the two consultation exercises conducted thus far demonstrates that these proposals are the product of political machination between the government and Sinn Fein and have nothing whatsoever to do with good governance or improved service delivery. This rudimentary fact seems to have escaped the government in their headlong rush to draft this legislation with a view to increasing political pressure prior to their political deadlines. While these perverse machinations may have brought us to this point, there is no need to go any further. With the return of devolution, the power now rests in local hands to halt this undemocratic exercise and address in a meaningful fashion the issues which we have outlined above.

Responses to the Consultation.

We have already addressed in the introduction the fallacy of assuming that because a majority of responses received - though not a significant number - were in favour of the legislation being brought forward that this would be reflective of the general population of the Province. It clearly is not. Therefore we find the figure quoted (93%) in favour of the legislation to be entirely irrelevant to the discussion. Similarly highlighting the fact that POBAL placed an advertisement in the press is hardly reflective of a groundswell of support for an Irish Language Act. If POBAL don't come out in support of the principle of legislation, who will?

The document then goes on to assert that the purpose of the consultation "is to seek views on an approach which lies in between the two primary positions demonstrated in the responses to the first consultation". This is an intellectually dishonest approach. We have already demonstrated in previous submissions how the enhancement and elevation of the Irish language to a special position within our society will have an adverse impact on community relations here. It is illogical to claim therefore that because the advancement proposed here is not in line with that requested by the most rampant of Irish language enthusiasts that it represents a middle course. It still represents the elevation and special status of one culture and tradition above others. To claim otherwise is false.

The document then goes on to state "Government hopes (this so-called middle ground approach) may be practical and capable, over time, of gaining acceptance across both main sections of the community". This represents an implicit acknowledgement that the proposals contained in this draft legislation are presently incapable of gaining that acceptance across our society. It is the present which presents the relevant context for testing the acceptability of proposals. The reality is that these proposals are utterly incapable of commanding widespread public support throughout Northern Ireland, now or in the future: they will have an adverse impact on community relations and should be withdrawn.

The Proposed Approach.

The approach outlined on Page 8 of the consultation reads as follows:

“In the attached indicative clauses it is proposed to create a duty on public authorities to prepare a language scheme specifying the measures which they will take on the use of the Irish language in their provision of services to the public. It is also proposed to establish a new oversight body, who will have the function of approving and overseeing language schemes. In addition, it is proposed that a person will be able to use Irish in legal proceedings in courts and tribunals sitting in Northern Ireland subject to the provision of notice and the interests of justice. Finally a draft provision has been included enabling certain statutory forms to be made available in Irish.”

This raises several issues pertaining to the implementation of the proposed approach. The most obvious issues are the costs entailed and the level of public support for such an approach. The key issue of cost has been largely ignored. Will local councils, for example, now be required to create Irish Language Officers posts? How many staff will the Irish Language Commissioner require to fulfil his or her functions? What expenditure will the Northern Ireland Courts Service have to undertake to accommodate the provision of Irish translation services? Will the administration of justice not actually be hindered by court hearings being multi-lingual ? What is the level of public support for such an approach? That these fundamental questions have not been addressed as a result of the consultation process is an indictment of the direct rule government’s thoroughly slipshod approach in formulating and drafting this proposed legislation.

Overview of the indicative clauses

Clause 2 sets out the functions of the Commissioner. The Commissioner's powers are excessively draconian. The overview states: "In exercising the functions relating to Language Schemes, the Commissioner must have regard to "the extent to which Irish is used by persons in relation to whom the functions of public authority are exercisable". The clauses do not indicate how the "extent" mentioned here is to be quantified. What level and quality of usage of Irish will be required in order to formulate and implement language schemes amongst the population? Given that nobody in Northern Ireland uses Irish as their first language (with the exception of a few die-hards in recently created "Gaeltacht" areas of Belfast), where will the line be drawn in terms of quantifying what exactly an Irish speaker is and how much their desire, or aspiration, to communicate in that language must be accommodated by public bodies? The failure to even set out responses to such rudimentary questions indicates the thoughtlessness of the Department's approach. Will levels of demand simply be recorded by the number of people who indicate on a census form that they have some understanding of Irish? How is some understanding of Irish to be defined? Will quantification of demand simply boil down to a sectarian head-count vis-à-vis nationalists/Roman Catholics will want Irish language recognition and Unionists/Protestants won't? If so, it is a clear indication that this legislation has been produced as nothing more than a sop to Sinn Fein at St. Andrews. This is deeply sectarian legislation.

Clause 2, particularly in the role which it gives the Commissioner, raises a fundamental issue of conflict with and restraint of Section 28D of the Northern Ireland Act, 1998, which expressly bestows on the Northern Ireland Executive powers and statutory duties in respect of the enhancement, protection and development of the Irish language. What is proposed in this draft legislation, particularly Clause 2, is incompatible with the Executive's inimitable powers under the said Section 28D.

Clause 3 provides a duty on public authorities to prepare a scheme, but it does not indicate what such a scheme should look like. This raises the issue of what minimum

requirements the Irish Language Commissioner (who by definition will be an Irish Language enthusiast) shall place upon public authorities and bodies. Can we expect the commissioner to produce a minimum set of requirements, which will then be foisted upon public bodies, even in areas where there may be no demand for any special recognition whatsoever for the Irish language. What, for example, would a council such as North Down or Carrickfergus be expected to produce in terms of a scheme for the promotion of the Irish language, when the census indicates that they have virtually no Irish speakers at all within their boundaries?

Clause 6 relates to the approval of schemes or the imposition of a scheme when it has not been approved. The clause clearly indicates that in the event of failure to formulate a scheme or agree one between the public authority and the commissioner, the Secretary of State will have the power to decide on the terms of the scheme. This amounts to power being placed into the hands of the Secretary of State to force terms onto public authorities where there may be no demand whatsoever for the type of Irish language service delivery envisaged in the draft legislation. This is totally unacceptable – public authorities, with cost not even being made a relevant criterion, should not be forced to pander in this way to a politically-motivated agenda, which has nothing to do with the better delivery of services or goods. The original remit of this legislation was to have something which draws on the experiences of Scotland, Wales and the Irish Republic. In Wales language issues are devolved and the Secretary of State has no power to impose language schemes. This should be the case here in Northern Ireland, but it is not. Why is this? In recent days we have seen Irish language enthusiasts bemoaning the fact that this matter is to be dealt with by the Northern Ireland Assembly and not Westminster: bearing this in mind are we witnessing an attempt here to by-pass Stormont in order to satisfy the cravings of Irish Language enthusiasts who will want to see robust schemes imposed throughout Northern Ireland? It is hard to escape that conclusion.

There should be no role whatever for the Secretary of State. Such is utterly incompatible with devolution. Any ministerial role must rest with the DCAL Minister.

Clause 8 details the power of the Commissioner or public authorities to suggest alterations to the language schemes. It sets out that this process is a two way one, with both the authority and the commissioner enabled to suggest alterations. Given that many public authorities will have had their scheme effectively imposed upon them, it is likely that most suggested alterations will come from the commissioner's office (with the exception of nationalist-controlled public authorities, who will no doubt be keen to strengthen their language scheme at every available opportunity). In the event of alterations not being agreed, the Secretary of State will have the power to impose the alterations to the language scheme. Not only is this clause a recipe for gridlock, between the public authorities and the Irish Language Commissioner, it also will empower the Secretary of State to further impose special recognition for the Irish language in places where it is not wanted or required. This is totally unacceptable. Again, on a devolved issue there can be no role for the Secretary of State.

Clause 11 provides that any person may use Irish in court. There are three main issues here. Firstly, any assault on the official language of the courts being English, as prescribed by The Administration of Justice (Language) Act (Ireland), 1737, is utterly unacceptable. Thus the terms of Clause 11(9) are offensive, particularly in so far as it is intended to permit court forms etc (such as specified in Section 1 of the 1737 Act) to be produced in Irish. Secondly, what will the cost be for such special recognition of Irish in courts and secondly, will the provisions of justice really be best served by court proceedings occurring in two different languages, when the person using the second language actually speaks English as their first and may well be using Irish as a deliberate political act? Will this make court proceedings more easy or difficult for those taking part such as jury members? It is clear that the latter is the case. The consultation response from the Northern Ireland Courts Service illuminated clearly the problems that would be faced by them in attempting to accommodate this concession, yet this hasty further consultation document takes no cognisance of such.

Moreover, it is imperative that cost should be made a relevant criterion under draft Clause 11(2).

Conclusion

The Department of Culture, Arts and Leisure comprehensively failed to make anything approaching a convincing case that additional legislation is needed to enhance the status of the Irish language in Northern Ireland. Indeed, the recent report by the Committee of Ministers on the United Kingdom's implementation of the European Charter for Regional or Minority Languages showed that on almost every indicator the United Kingdom had met its requirements or exceeded them in terms of its obligations in regard to the Irish Language. In correspondence with us, the Northern Ireland Human Rights Commission has indicated that legislation should only be required from a Human Rights point-of-view in order to bring the UK into compliance with its obligations under the terms Charter: given that the recent Ministers report showed compliance over and above the terms of the Charter, we are at a loss to understand what the need for this legislation is, other than satisfying an overtly political agenda.

This legislation is incapable of commanding widespread public support in Northern Ireland and is likely to have an adverse impact on community relations as well as placing an additional financial burden on public authorities and creating an unnecessary layer of bureaucracy and red-tape. The consultation exercise was clearly devised to merely give the impression of consulting with stakeholders – similarly the ludicrous assertion in the Equality Impact Assessment that the introduction of an Irish Language Act had the potential to have a positive impact on community relations flies in the face of all available evidence.

This consultation process is clearly tainted by virtue of the fact that the previous DCAL Minister was working to a pre-determined agenda in order to satisfy the terms of a side-deal hatched between the British Government and Sinn Fein at the St. Andrews talks – now that devolution exists it is incumbent upon the new DCAL Minister to ensure that this harmful legislative proposal is withdrawn forthwith.

Annex A

Letter from James H Allister QC MEP to Edwin Poots, Minister for Culture, Arts and Leisure.

Ref: JA/RA/Culture/2613

Cllr Edwin Poots MLA
Minister for Culture Arts and Leisure
DCAL
Interpoint Centre
20-24 York Street
BELFAST
BT15 1AQ

8 May 2007

Dear Minister,

Re: IRISH LANGUAGE ACT

I write to urge you to withdraw the current consultation on the form which legislation advancing the Irish language might take.

I believe the process by which things reached this far has been corrupted by political decisions which rode roughshod over fundamental equality law requirements. I invite you to agree. In consequence, I contend the present consultation process is irretrievably tainted and flawed, being the product of a corrupted process, and thus should be withdrawn. I refer you to my response to the first consultation document for details as to how equality and other procedures were fundamentally breached. The second consultation, being the product of the first, cannot escape the same corrupting consequences.

Moreover, the second consultation lacks credibility in its own right because of its production within 7 working days of the close of the first, thus, making it impossible for it to be the result of serious and genuine consideration.

Furthermore, the fact that it presents indicative clauses for an Irish Language Bill, in circumstances where the fundamental question of whether we even need an Irish Language Act has never been asked, confirms that, within itself, it is deficient and a trap to lead to an Irish Language Act of some form.

I, therefore, implore you to roll back the process and return to a beginning which acknowledges, respects and operates within equality provisions and the processes of good government. You should do that, I suggest, confident in the knowledge that Northern Ireland has been fundamentally compliant with the expectations of the European Charter for Regional or Minority Languages, as confirmed by the recent report by the Committee of Ministers. Certainly, on that basis there is no tenable justification or requirement for an Irish Language Act.

You can, I suggest, easily meet the requirements of Section 28D of the Northern Ireland Act, 1998 without recourse to the divisive folly of an Irish Language Act.

I trust, therefore, you will make it a priority to withdraw the current consultation and announce an end to plans to implement an Irish Language Act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Allister', written in a cursive style.

James H Allister QC MEP