

Chapter 8: Options and Recommendations

8.1 This preliminary report is an important step in the Government's commitment to consider the use of Irish language in courts in the wider context of the use of Irish in public life generally.

8.2 Article 9 (1) of the European Charter for Regional or Minority Languages offers considerable flexibility to Governments regarding the various steps they may take to encourage the use of a regional or minority language. This is reflected in the differing Article 9 (1) commitments which the Government has adopted for the other two languages with Part III status under the Charter, namely Scottish Gaelic and Welsh. Accordingly, the sub-group has examined each provision of Article 9(1) to assess the implications of adopting the various provisions, each of which would create a distinct right to use Irish in legal proceedings in Northern Ireland.

8.3 This report has been prepared in accordance with the sub-group's terms of reference and accordingly we have attempted to contextualise our findings in what appears to be current Government policy towards promotion of the language in public life generally. It falls outside the terms of reference of this sub-group to assess whether future policy towards promotion of the Irish language in public life will be such that the rights, which have been created for communicating with public authorities under Article 10 of the Charter, will be extended to Irish language use in Judicial authorities, Article 9 of the Charter. Future policy towards Irish language use is clearly a matter to be determined by Ministers. This preliminary report assessing the implications of adopting Article 9(1) may usefully inform any such further considerations.

8.4 The sub-group considered a number of ways in which the Government might encourage the use of Irish in the courts. These options are:

- Sign up to all of the provisions in 9 (1) (a), (b), (c) and (d), thereby providing for criminal, civil and administrative proceedings to be conducted in Irish,
- Sign up to some of the provisions, for example, in criminal proceedings to guarantee the accused the right to use Irish and in civil proceedings to allow a party to use Irish,

The considerations informing a decision on the best option at this stage may be summarised as follows:

Demand

8.5 Although there are more people in Wales and the Republic of Ireland who can speak Welsh and Irish, respectively, than there are Irish language speakers in Northern Ireland, a relatively small number of people actually use Welsh and Irish in legal proceedings in Wales and Republic of Ireland. Experience to date of Northern Ireland Government departments is that there is not a high level of demand for services to be provided in the Irish language, where offered. However this may increase in the future and there is some evidence that where a department adopts a proactive approach to promoting use of Irish, this does lead to some increase in demand.

8.6 That said, the group is of the view that it is reasonable to infer, at this stage of the language's development, there is unlikely to be a high level of demand for the Irish language in legal proceedings in Northern Ireland. Indeed the experience of Northern Ireland Government departments suggests that the proportion of the population who might seek to use any right to use Irish in legal proceedings is likely to be less than the 5% who describe themselves as fluent in its use. (The Group's conclusions on demand are detailed at paragraphs 6.47-6.51.)

8.7 An argument could be made that there is insufficient demand to justify adopting any of the provisions of Article 9 (1) and that decisions on this issue should be deferred until further development of the language occurs and until there is more demand for Irish in all areas of public life, including legal proceedings. The alternative argument is that, because demand for Irish in legal proceedings is likely to be low, then provisions of Article 9 (1) of the Charter should be adopted, as the concerns addressed in Chapter 4 of our report can be accommodated. The Group considers that the latter view is consistent with the Government's obligations under the Charter, (as discussed at paragraphs 6.73-6.74).

Practical implications and implications for the administration of justice

8.8 The Group identified a significant number of practical implications and implications for the administration of justice of adopting the provisions of Article 9 (1) in respect of the Irish language, which are detailed in chapter 4 of our report. The Group considered the most important of these to be:

- the quality and accuracy of interpreters and translators,
- the capacity of the translation sector, with the attendant implication of proceedings being delayed,
- cost of translations and interpretations.

The Group also identified a number of steps which could be taken to address these implications and in our work in this area we are indebted to our colleagues in Wales and the Republic of Ireland for their assistance.

8.9 The skills of translators and interpreters for work in legal proceedings must be assured to avoid any negative implications for the administration of justice. The Group notes the level of quality assurance which DCAL has in place for those translators and interpreters approved for work for Northern Ireland Civil Service departments. However, as there is no history of use of Irish in legal proceedings in Northern Ireland, their skills in this area remain untested. To that end, the group recommends the

establishment of an advisory body competent to quality assure the translators and interpreters for work in legal proceedings. The group also recommends that the advisory body be tasked with responsibility to test the various interpretation systems, including whether the simultaneous interpretation systems can be employed in each court jurisdiction. Full details of our recommendation are to be found at paragraphs 5.42-5.44.

- 8.10 The Group found that, in determining which provisions of Article 9 (1) could be adopted, it is necessary to be guided by the capacity of the translation and interpreter sector, to avoid proceedings being delayed. DCAL advise that the present capacity of the Irish language translation sector is a practical constraint on the potential level of provision that can be committed to. Their view is that present capacity could meet certain provisions being adopted, falling short of creating a right for whole proceedings to be conducted in Irish. The Group adopts this advice and recommends that the level of provision adopted reflects the capacity of the sector by reference to demand. The group identified a number of other steps which might eradicate or minimise delay, such as notice requirements (para.5.50) and performance targets for translators (para.5.51).

Cost

- 8.11 There will be costs involved in the initial preparation and start up of introducing a new service of Irish language provision in legal proceedings. Such costs would include the costs of any advisory body, any training required and the purchase or hire of equipment for interpretation. In addition, the resources for future operational costs of Irish being used in courts and tribunals need to be identified. These costs will be determined by two factors; firstly, which provisions of Article 9 (1) are adopted and, secondly, the future take up rate of any rights which are created. As the Group noted (para.4.82) because of the unknown level of demand, costs cannot be accurately predicted. However, it is clear that the costs of creating a right for all criminal, civil and administrative proceedings to be conducted in Irish are likely to be higher than the costs

of adopting other less extensive provisions such as creating a right for a defendant/litigant to present their oral evidence in Irish or creating a right for documents and evidence to be admissible if presented in Irish.

- 8.12 The Group had the benefit of considering the costs of minority language provision in legal proceedings in Wales and the Republic of Ireland. In addition, the Group received a report from DCAL summarising current Government policy towards promotion of the Irish language, including expenditure details. It would appear to the Group that the cost of adopting some provisions of Article 9 (1), falling short of creating a right for all legal proceedings to be conducted in Irish, would be in line with the development of policy on the use of Irish in public life generally, as detailed in paragraph 3.2.

Conclusion

- 8.13 The Group considered that creating a right for all legal proceedings to be conducted in Irish does not appear to be justifiable or feasible at present. The Group notes the limited capacity of the Irish language translation sector. While we anticipate that demand to use Irish language in legal proceedings will be low, DCAL have advised that there may be insufficient capacity among translators and interpreters to meet the level of demand for even a small number of cases if all legal proceedings could be conducted in Irish. In view of the risks of delay insufficient capacity would cause in legal proceedings, with the attendant implications for the administration of justice, our view is that the risks associated with this option are not justified. In addition the costs of creating a right for all legal proceedings to be conducted in Irish may be disproportionate to the level of demand. The Group's full analysis of this option can be found at paragraphs 6.53-6.58.

- 8.14 The Group on balance favoured the introduction of a number of the provisions of Article 9 (1), which would allow Irish to be used in defined circumstances, but falling short of creating a right for all legal

proceedings to be conducted in Irish. (This view is however subject to the issues raised below.) The Group is of the view that, where there is sufficient capacity to meet the level of demand, adopting individual provisions of Article 9 (1) can be accommodated without creating delay in legal proceedings, with the attendant problems for the administration of justice.

8.15 The Group also notes that the cost of adopting individual provisions appears to be in line with current Government policy. In particular, the Group noted in Chapter 6 the appeal of adopting those provisions which permit an accused in criminal proceedings and litigants in civil and administrative proceedings to give their evidence in Irish. It may also be the case that it is feasible to adopt other provisions concerning admissibility of evidence and documents, possibly following advice from the Committee of Experts and the advisory body we recommend being established, (see paragraph 7.24 below). The Group's analysis of the individual provisions which may be adopted can be found at paragraphs 6.59-6.70.

8.16 The Group noted that adopting individual provisions of Article 9 (1), (in line with translation capacity and available resources), which fall short of creating a right for proceedings to be conducted in Irish, is in keeping with our commitments under the Charter, would promote greater consistency of Charter implementation within the United Kingdom, and would satisfy the commitments made in the Belfast Agreement and our response to Recommendation 138 by the Criminal Justice Review Group.

8.17 There are, however, a number of matters which require further consideration to inform any Ministerial consideration or decisions regarding which provisions of Article 9 (1) should be adopted to create a right to use Irish in legal proceedings. The most important of these considerations is whether the 1737 Act is an impediment to any of the Article 9(1) provisions being adopted and, (whether or not it is an

impediment), whether there is a need for primary legislation to create a right to use the Irish language in legal proceedings.

1737 Act

8.18 In the preceding chapter we highlighted the key issues regarding the continued existence of this legislation. Before a final decision is made regarding the extent to which, if any, a right to Irish is introduced into legal proceedings in Northern Ireland, it will be necessary to decide how best to handle the effects of the Act. Namely, whether further advice is now sought from the Attorney General on its compatibility with specific provisions of Article 9 (1), or whether a commitment is now given to repeal or amend the Act as necessary when a final decision can be made regarding which provisions of Article 9 (1) should be adopted for use of Irish in legal proceedings. We recommend that reference be now made to the Attorney General.

8.19 Even in the event that this advice is that the 1737 Act does not pose a legislative impediment to any of the provisions of Article 9 (1) being adopted, it appears that primary legislation may be required to create a right for the Irish language to be used in legal proceedings. In this regard the Group has had the benefit of considering the opinion of senior counsel, helpfully forwarded to us by the Ultach Trust.

8.20 In Chapter 2, we highlighted the current proposals for statutory protection for the use of Irish in the context of a Language Act and/or in the statutory framework for protection of the Irish language, as presently proposed by the Human Rights Commission for inclusion in the Bill of Rights. The ideal circumstances for creating a right to use Irish in legal proceedings would be in the context of such a statutory framework where all public bodies, including the courts, would be required to review the level of services to be provided to Irish speakers.

8.21 However, we cannot assess the likelihood of an Irish Language Act being introduced as a result of steps taken by the Northern Ireland political parties. It may be the case that statutory protection for use of the Irish language may be more readily secured via inclusion in the Bill of Rights recommended by the Human Rights Commission. We cannot gauge at present whether the Bill of Rights, which is eventually recommended to the Secretary of State for Northern Ireland, will include a recommendation for statutory protection for the use of the Irish language in public life, (including legal proceedings), nor can we gauge when this is likely to occur.

8.22 Consequently, we recommend that the progress of the Commissions' work on a Bill of Rights be actively reviewed. If it becomes clear that statutory protection for the use of Irish in public life will be an inevitable consequence of the Bill of Rights, and that the Bill of Rights will become law within a reasonably foreseeable time frame, then it may be that the Bill of Rights would be an efficient mechanism for implementing any future decision to create a right to use Irish in legal proceedings and handling any legislative impediment caused by the 1737 Act. The Group has however noted caution regarding a time limit for such a review, (detailed at paragraph 6.76), as it may be the case that an Irish Language Act or comparable protection for the language via inclusion in a Bill of Rights may be some time off. The Group notes that Ministers are best placed to consider the legislative programme and the appropriate legislative vehicle for implementing any decision to create a right to use Irish in legal proceedings.

Resources

8.23 It will be necessary to identify at this stage the necessary resources, not only for the initial preparation and start-up costs of introducing a right to use Irish, but also for the future operational costs of Irish being used in courts and tribunals. Introducing a right to use Irish in legal proceedings would be a further step in promoting the Irish language under the

Charter. This Group was tasked to consider the introduction of a right to use Irish in legal proceedings as a result of the Criminal Justice Review Recommendations. It will be necessary for officials to liaise further to ensure that the necessary resources are available.

Advisory Body

8.24 The Group was attracted by the possibility of the establishment of an advisory body, competent to quality assure any interpreters or translators engaged for work in legal proceedings and to test interpretation systems within each court jurisdiction in Northern Ireland. The Group's views are detailed at paragraph 5.44. We recommend establishment of the advisory body following the necessary resources being identified.

Other steps

Committee of Experts

8.25 At Chapter 4 of our report we highlighted why reference to the Committee of Experts would be helpful, in particular concerning the provisions regarding documents and evidence. The Group considered it may be beneficial to be able to clearly define the extent and meaning of, for example, which requests, documents and evidence would be admissible if presented in Irish, before any final decision is made regarding the adoption of these provisions. The group noted the advice from DCAL's expert that reference be made to the Committee of Experts and we recommend that consideration be given to their advice being sought before final decisions are made on the admissibility provisions.

8.26 There are two additional steps, which may be helpful before a final decision is made regarding which provisions of Article 9 (1) could be adopted. First, it may be helpful to consider the experiences of comparable countries under the Charter, which have more recently created a right for a minority or regional language to be used in legal proceedings, and where the language is not an official language of the

country. (In this regard we note the different legal status of both Welsh and Irish in Wales and the Republic of Ireland.) Second, it may be helpful to conduct surveys as suggested at 4.84 of this report. Such surveys could gather information regarding the average number of documents used in proceedings and average duration of case hearing times which would better inform an assessment of likely translation and interpretation costs.

Summary

8.27 The Group on balance favour the introduction of a number of the provisions of Article 9 (1), which would allow Irish to be used in defined circumstances, but falling short of creating a right for all legal proceedings to be conducted in Irish. The Group consider that creating a right for all legal proceedings to be conducted in Irish does not appear to be justifiable or practicable at present.

8.28 The Group has however identified a number of issues which require further consideration to inform any decision regarding the adoption of various provisions of Article 9(1) of the European Charter for Regional or Minority Languages to create a right for Irish to be used in legal proceedings. The most important of these are:

- a legislative framework for the use of Irish in legal proceedings,
- ensuring that the necessary resources are in place for the new service,
- quality assurance of the interpreters and translators to be employed for work in legal proceedings and assessment of the interpretation systems, and

- setting the adoption of provisions of Article 9(1) of the Charter in the wider context of the development of policy on the use of Irish in public life generally.

8.29 On further consideration of the above issues, the Group considers that Ministers are best placed to determine which provisions of Article 9 (1) of the Charter should be adopted to facilitate the use of the Irish language in legal proceedings, in line with developing policy towards the use of Irish in public life generally. The Group hopes that its work in this preliminary report in identifying which provisions of Article 9(1) may more readily be accommodated, together with recommendations regarding the accompanying safeguards which should be introduced to ensure the proper administration of justice, proves to be a helpful contribution to this process.