

Official Languages (Amendment) Bill 2017

GENERAL SCHEME AND DRAFT HEADS OF BILL

The text prepared by the parliamentary draughtsperson in the stamped Official Languages (Amendment) Bill 2015 will be provided beneath the explanatory note where it is deemed to adequately cover the changes required.

Excerpts from the Report of the Joint Committee of the General Scheme of the Official Languages (Amendment) Bill 2014 are included, where appropriate.

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Part 1

Preliminary and General

Head 1 Short title and commencement

Provide that:

- This Bill may be cited as the Official Languages (Amendment) Bill 2017; and
- The provisions contained herein may be commenced on a date or dates to be prescribed by the Minister.

Explanatory note

These are standard provisions.

Head 2 Interpretation

Provide for:

In this Bill:-

“Minister” means the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs, unless otherwise specified;

“Public body” shall be construed in accordance with the First Schedule as amended in head 14;

“Scheme” has the meaning it has in the Principal Act;

“Standard” means an approved minimum level of performance in the making of public policy or in the delivery of a public service;

“Principal Act” means the Official Languages Act 2003;

Explanatory note

This head is a standard provision containing definitions of the key terms of the Bill. The proposed list of terms is not intended to be exhaustive.

As provided for in Head 10, a comprehensive suite of standards will be published in secondary legislation and will be reviewed and updated from time to time. The standards, focussing on service delivery and policy making will assist public bodies to deliver more services to Irish speakers.

Part 2

Amendment of Official Languages Act 2003

Head 3 Amendment of section 2 of Principal Act

Provide for:

- (1) The insertion of definitions for ‘Gaeltacht Language Planning Area’ and ‘Gaeltacht Service Town’ as per the Gaeltacht Act 2012;
- (2) The substitution of a new definition for ‘Gaeltacht area’ as per the Gaeltacht Act 2012; and
- (3) The amendment of section 2 of the Principal Act which provides for the definition of “head of a public body” in order to align the definition of the head of a public body with that contained in the Public Service Management Act 1997 (No.27 of 1997).
- (4) The insertion of a definition for ‘Irish Language Network’ as per the Gaeltacht Act 2012.

Explanatory note

The effect of this amendment will be to align the definition of the head of a public body with that contained in the Public Service Management Act 1997, which is considered to be the more appropriate definition. In addition, the definitions of terms introduced in the Gaeltacht Act 2012 will now be included in the Official Languages (Amendment) Bill 2017.

Suggested text

The relevant text from the stamped Official Languages (Amendment) Bill 2015 is as follows:

Amendment of section 2(1) of Principal Act

2. Section 2(1) of the Principal Act is amended by -

- (a) the substitution of the following definition for “Gaeltacht area”:

“ ‘Gaeltacht area’ has the meaning it has in Part 2 of the Gaeltacht Act 2012;”,

- (b) the insertion of the following definitions:

“ ‘Gaeltacht Language Planning Area’ and ‘Gaeltacht Service Town’ have the respective meanings they have in Part 2 of the Gaeltacht Act 2012;”,

- (c) the substitution of the following definition for the definition of “head of a public body”:

“ ‘head of a public body’ means the person appointed as the principal officer of the public body or, where no such person has been appointed, the person designated by order of the Government made under section 4A to be the head of the public body for the purposes of this Act;”, and

- (d) the insertion of the following definition:

“ ‘Irish Language Network’ has the meaning it has in Part 2 of the Gaeltacht Act 2012;”.

Head 4 Appointment of head of public body

Provide for:

Where the position of head of a public body is vacant, a person within the public body may be appointed as head of a public body for the purposes of the Act.

Explanatory note

This provision will ensure that the obligations which fall to public bodies under the ambit of the Bill will continue to be fulfilled even when the position of head of a public body may be temporarily vacant.

Suggested text

The relevant text from the stamped Official Languages (Amendment) Bill 2015 is as follows:

Appointment of head of public body

3. The Principal Act is amended by the insertion of the following section after section 4:

“4A. Where for the time being no person stands appointed as the principal officer of a public body, the Government may by order designate a person to be head of the public body for the purposes of this Act.”.

Head 5

Amendment of section 8 of Principal Act

Provide for:

- The amendment of section 8 of the Act to include new provisions to hold at least one sitting per year of the District Court in the Irish language in each of the districts serving Gaeltacht areas.
- Where a Circuit Court Circuit contains a Gaeltacht area situated in County Cork, County Donegal, County Galway, County Kerry, County Meath, County Mayo or County Waterford, at least one sitting of that court shall be conducted in that area annually and shall be conducted in the Irish language without prejudice to the rights of parties which are not public bodies and all witnesses to use English or another language.

Explanatory note

Section 8 of the Principal Act deals with the rights of Irish speakers in terms of the administration of justice. The existing provisions focus on the operations of the court proceedings, e.g. court documentation or simultaneous interpretation. The new provisions focus on the location of these court proceedings to be held through Irish in the various District and Circuit Courts.

Essentially, the first and second amendments will ensure that Irish will be a working language in the courts in the Gaeltacht. The inclusion of this head is supported by recommendation 14 of the Report of the Joint Committee of the General Scheme of the Official Languages (Amendment) Bill 2014 – see copy below for reference.

Recommendation 14:

All public bodies, including the Courts Service should be obliged to commit to providing all their services through Irish in all areas in Ireland including and especially in Gaeltacht areas...The service provided in Irish should be of the same standard as the service provided in English.

Head 6 Amendment of section 9 of the Principal Act.

Provide for:

- All new public bodies to bear Irish language names except where the public body operates, in the main, outside the State. In this instance, the body will bear both an Irish and an English version of its name.
- All new public bodies to bear bilingual logos. All public bodies which renew, change or otherwise amend their logo will ensure that the logo is bilingual.
- The Minister, by Regulation, to be able to specify the design of official forms either in the Irish language or in both official languages.

Explanatory note:

These provisions will ensure that public bodies will have a corporate identity which reflects their status as public bodies which fall within the ambit of the Official Languages Act 2003.

The following paragraphs outline the detail of the measures intended:

Names of Public bodies

The name of any public body founded after the introduction of this Act shall be in the Irish language only except in the case of any Department of State or any public body which carries out its functions for the most part outside the State which shall have names in both the Irish language and the English language and both version shall have equal standing and equal prominence on that public body's logo and stationery.

Logos

Any logo of a public body shall be in the Irish language or in the Irish and English languages notwithstanding any other enactment. In the case a logo in both the Irish and the English languages:

- the text in the Irish language shall appear first,
- the text in the Irish language shall not be less prominent, visible, or legible than the text in the English language, and shall appear in the same font, appearance and style and on the same side of the page concerned,
- the lettering of the text in the Irish language shall not be smaller in size than the lettering of the text in the English language,
- the text in the Irish language shall communicate the same information as is communicated by the text in the English language,
- a word in the text in the Irish language shall not be abbreviated unless the word in the text in the English language, of which it is the translation, is also abbreviated,

Forms

Regulations relating to official forms could potentially include the following:

Any official form produced by, or on behalf of, a public body to be filled out by, or on behalf of, a person shall be in the Irish language or in the Irish and English languages. In the case of official forms in both the Irish and the English languages:

- the text in the Irish language shall appear first;
- the text in the Irish language shall not be less prominent, visible, or legible than the text in the English language, and shall appear in the same font, appearance and style and on the same side of the page concerned;
- the lettering of the text in the Irish language shall not be smaller in size than the lettering of the text in the English language;
- the text in the Irish language shall communicate the same information as is communicated by the text in the English language;
- a word in the text in the Irish language shall not be abbreviated unless the word in the text in the English language, of which it is the translation, is also abbreviated.

Head 7 Deletion of Sections 11-18 of the Principal Act

Provide for:

The deletion of sections 11, 12, 13, 14, 15, 16, 17 and 18 of the Official Languages Act 2003.

Explanatory note

This provision deletes sections from the Principal Act which oblige public bodies to prepare and implement Language Schemes. Language Schemes will be replaced by language standards – Head 10 refers. However, existing Schemes will remain in force until replaced by new standards.

Head 8 New section: Duty of public bodies regarding names, addresses and official forms in the Irish language

Provide for:

- All public bodies to facilitate the use by persons of the Irish language or English language version, whichever they so wish, of their names and addresses when communicating with public bodies.
- The use of titles before an individual's name to be optional. This provision covers printed and electronic interactions with a public body.
- The inclusion of an optional line to cater for individuals who have a 'local name' which distinguishes them from other individuals bearing the same name in the locality.

Explanatory note

The first two provisions will ensure that public bodies will facilitate the use of names and addresses in both official languages, including facilitating the use of the *síneadh fada*, longer surnames and removing any obligation for an individual to use a title before their name in printed or electronic interactions. The third provision will allow for the inclusion of a line, whose completion is optional, to record a local name.

'Local names' are intended to distinguish between individuals bearing the same name and who belong to different families or to distinguish between different generations within one family, e.g. John Conneely – Johnny Joe Shéamuis. In many of the Gaeltacht regions this traditional naming system follows the male line (patronymics) or less frequently, the female line (matronymics). This provision is important as it provides recognition of the cultural value of the traditional local naming system. In addition, given that the use of Eircodes is not mandatory at present, its use could provide another identifier to Government Departments and public bodies when addressing correspondence to individuals, particularly in the Gaeltacht regions. The recognition of a local name does not confer official status on the name itself as an individual's official name is registered on their birth certificate – it is an inclusive measure intended to support communities in the Gaeltacht region. The risk of failure to acknowledge, support and facilitate the use of local names is that the traditional system will fall into disuse and be lost for future generations.

The use of local names is supported by precedent within the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs where, in the past, a line was included for a 'local name' in the application form for *Scéim na mBóithre Áise*.

The inclusion of these provisions has potential practical implications in areas such as IT and other business systems used in the public sector and may, therefore, require a lead-in time prior to its implementation in order to allow public bodies to amend their systems. As a result, it is proposed to enable the Minister to implement this provision on a phased basis on a date or dates to be prescribed by regulation. The aim of this approach is to allow the Minister

to add to the list of bodies to which this provision applies as their business systems are adjusted to accommodate it. On a practical level, public bodies will be informed of these new requirements under the Act on an administrative basis and asked to provide a timescale within which they agree to make appropriate adjustments to their systems.

Suggested text

The relevant text from the stamped Official Languages (Amendment) Bill 2015 refers to subsection (1) above and is as follows:

Duty of public bodies regarding names and addresses in Irish language

4. The Principal Act is amended by the insertion of the following section after section 9:

- “9A. (1) For the purpose of ensuring the correct recording and use by a public body of a person’s name or address or both in the Irish language, the Minister may, after consultation with such (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of the public body, prescribe the body for the purposes of this section.
- (2) The Minister may, in prescribing a public body under subsection (1), specify the services offered or provided by the body in respect of which it is so prescribed.
- (3) A public body that is prescribed under subsection (1) shall ensure that the information and communications systems, and any other systems (whether electronic or otherwise), that are used by the body in its communications with the general public, or a class of the general public, as may be appropriate, are configured in a manner that permits a person’s name or address or both in the Irish language to be correctly recorded and used by such systems in relation to the services in respect of which the body is so prescribed.”

This provision is in keeping with recommendation 28 of the Report of the Joint Committee of the General Scheme of the Official Languages (Amendment) Bill 2014.

Recommendation 28:

All public bodies, including the Courts Service, should be obliged to ensure that in their communications and interactions with third parties, they take equal care with regards to accuracy with people and organisations that use the Irish version of their names and addresses as they do with those who use the English version of their names and addresses. Public bodies should be obliged to ensure that their electronic and hardcopy systems have the necessary technical specifications and information systems to meet this requirement. All public bodies should be required to address this issue in their strategy statements and annual reports. Public bodies should outline a specific timescale, up to a maximum of 3 years, for meeting this requirement and the specific steps they intend to take to meet it.

Head 9 New section: Recruitment in the public sector

With the overall objectives of 20% of new recruits to the public service being Irish speakers, of all public offices situated in Gaeltacht areas operating through the medium of Irish and of increasing the capacity of public bodies to provide public services through Irish, provide for:

- A separate competition for Irish language speakers to be run for each public service recruitment drive for general service grades administered by the Public Appointments Service.
- In respect of other grades within the public service the Minister may, following consultation with the Minister for Public Expenditure and Reform and any other Minister or Head of a public body as the Minister deems necessary, direct the Public Appointments Service to establish separate competitions for Irish language speakers.
- The Minister may establish an advisory group to include representatives of the Department of Public Expenditure and Reform, the Public Appointments Service, the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs and any other public body, as appropriate, to advise the Public Appointments Service in respect of the recruitment competitions and the objective to increase the number of functioning bilingual Irish speakers within the public service, and to ensure the supply of Irish speakers in offices situated in or serving Gaeltacht areas.
- The Minister to specify by Regulation the manner in which Irish language speakers who are successful in PAS recruitment competitions are allocated to public bodies.

Explanatory note

These provisions reflect the Minister's goal to increase the proportion of Irish speakers recruited to the public service to 20% in the long-term, thus increasing the capacity of public bodies to provide services in Irish to Irish speakers and Gaeltacht communities.

Head 10 New section: Introduction of Standards

Provide for:

- The introduction following consultation with relevant government departments and public bodies, by Regulation, of language standards for different sectors of the public service in place of the current language scheme regime.
- All existing language schemes to remain in place until such time as new standards have been assigned to replace them.

Explanatory note

The regime of language schemes established under the Principal Act is deemed unfit for purpose by key stakeholders, including the Language Commissioner. The Commissioner, Rónán Ó Domhnaill, outlined many of the weaknesses in the language scheme format in the document ‘A Commentary on the Language Scheme System’ published in April 2017. In it, he notes that public bodies are regressing in commitments in ‘52% of the second or third language schemes agreed in 2015 and 2016.’ This dilution of the language schemes demonstrates that they are no longer effective. It was also noted that it takes 3½ years to agree a language scheme, on average. The Commissioner has previously recommended the introduction of language standards akin to the Welsh model.

The purpose of this head is to impose obligations on public bodies to introduce and implement standards in respect of the Irish language as the Minister may prescribe. The introduction of standards will allow public bodies greater clarity in terms of their responsibilities under the Act. It will also ensure a more coherent approach is taken to the provision of services in the Irish language.

The new system will be comprehensive yet easily understood to ensure the highest level of compliance. It will support the organisations to embed the Irish language within their corporate identity and ensure it is at the core of their corporate framework in a very structured and practical way. It should also be noted that the obligations will be graduated to reflect that some public bodies:

- have greater resources available to them;
- have greater interaction with Irish speakers;
- are located within or adjacent to a Gaeltacht area.

Included in the standards will be classes of documents which will be required to be made available in both official languages. The various standards, including service delivery standards and policy-making standards, will be stratified. Therefore, organisations with an office in the Gaeltacht or with a greater interface with Irish speakers will have a greater onus to provide services in that official language. The standards model is more flexible, pragmatic and user-friendly and will allow public bodies to better cater to the needs of their service users. In addition, the advances in technology should go a long way to reducing the timeframe to implement the assigned standards.

Transitional measures are introduced to ensure that public bodies continue to provide services in the Irish language to Irish speakers during this period.

An example of a standard which could be included is the ‘Active Offer’. The active offer is a way of greeting the public which informs them that they are welcome to communicate in either English or Irish when seeking information or a service. An active offer can be a sign, a personal greeting or a recorded message. Everyone involved in serving the public has a role to play in the active offer.

If the officer is not capable of providing services in Irish, their role is to make the “offer”, to ensure individuals feel comfortable requesting service in Irish, and to facilitate access to someone who will be able to provide the information or service they need in Irish.

Of course, for an officer to do this, it is important that they are aware of the resources available in their organisation for Irish-speaking clients and how Irish requests should be referred. Staff should:

- know the name and contact information of their organisation’s Irish Language Officer (where applicable)
- know the names and contact information of designated bilingual staff and how they will get back to the client.
- familiarise themselves with their organisation’s commitments and range of services provided through Irish.

This provision is in keeping with recommendation 20 of the Report of the Joint Committee of the General Scheme of the Official Languages (Amendment) Bill 2014.

Recommendation 20:

Although it is outside the remit of the General Scheme of the Official Languages (Amendment) Bill 2014, the Minister should, in the near future, address the issue of whether it is feasible to replace the current system of schemes with a new system of standards supported by legislation.

Head 11 New section: Non-compliance with the Regulations

Provide for:

- Breaches of the Act to be reported by the Language Commissioner to the Houses of the Oireachtas
- The introduction by way of regulation of fines to be imposed on public bodies for non-compliance, and also for persistent and systematic breaches of the Act.

Explanatory note

Failure by a public body to implement the standards assigned to them will be determined by the Language Commissioner. The first provision is contained within Section 17 of the Principal Act. However, this important accountability measure will fall with the deletion sections 11-18 of the Principal Act. This subhead provides for the reinstatement of this accountability measure.

It is necessary to create new enforcement powers for the Language Commissioner in relation to the imposition of fines in respect of non-compliance and for persistent and systematic breaches by public bodies of the terms of the Act. This will be achieved by the introduction of secondary legislation. A system of checks and balances will be included in the regulations and any sanctions will be proportionate to the breach/non-compliance. The fines will be reviewed from time to time.

Head 12 Amendment of section 31 of Principal Act

Provide for:

The deletion of the reference to the Placenames Commission.

Explanatory note

This amendment is necessary in light of the Government's decision to abolish the Placenames Commission in October 2012, as part of its *Public Service Reform Plan*. The Placenames Commission has been replaced with an expert committee which has been appointed on an administrative basis by the Minister.

Suggested text

The relevant text from the stamped Official Languages (Amendment) Bill 2015 is as follows:

Amendment of section 31 of Principal Act

Section 31 of the Principal Act is amended by the deletion of the definition of “the
Commission”.

Head 13 Amendment of section 32 of Principal Act

Provide for:

Consultation by the Minister, with such persons as the Minister considers appropriate, prior to the exercise by the Minister of the functions referred to in subsections 32(1)(a) and 32(1)(b).

Explanatory note

This amendment is a consequence of the preceding amendment in head 14. It provides for a consultation process prior to the Minister making, amending or revoking a Placenames Order.

Suggested text

The relevant text from the stamped Official Languages (Amendment) Bill 2015 is as follows:

Amendment of section 32(1) of Principal Act

Section 32(1) of the Principal Act is amended by the substitution of “the Minister, having consulted with such persons who have either experience of, or expertise in, matters relating to placenames, or both, as he or she considers appropriate” for “the Minister, having received and considered advice from the Commission”.

Head 14 Amendment of First Schedule to Principal Act

Provide for:

- The Minister to update the list of public bodies included in the First Schedule to the Act by way of regulation at least on a biennial basis or more frequently, if deemed necessary.
- The amendment of paragraph 1(5) (d) of Schedule 1 of the Official Languages Act 2003 to take account of court judgments, advice on which has been received from the Attorney General's Office.

Explanatory note

The First Schedule of the Act lists more than 600 public bodies that are covered by the Act. Regulations are required to update this Schedule when the status of public bodies changes. This is the preferred approach to ensure that the named public body is covered by the Act. While this may be deemed a time-consuming and inefficient means of ensuring that all public bodies come within the ambit of the Act, it is based on sound legal advice. This head also provides for the deletion of subparagraph (4) and the amendment of subparagraph (5).

It is also proposed to amend paragraph 1(5) (d) of Schedule 1 of the Official Languages Act 2003 (the 2003 Act).

The paragraph in its current form was the subject of negative comment in the High and Supreme Court in *Central Applications Office v Minister for Community, Rural and Gaeltacht Affairs* [2010] IESC 32 and [2008] IEHC 309. The Department wishes to amend the paragraph to take account of the court judgments. Advice on the matter was received from the Attorney General's Office while preparing the stamped Official Languages (Amendment) Bill 2015.

Suggested text

In relation to the amendment of paragraph 1(5) (d) of the First Schedule, the relevant text from the stamped Official Languages (Amendment) Bill 2015 is as follows:

Amendment of First Schedule to Principal Act

12. The First Schedule to the Principal Act is amended -

- (a) in paragraph 1 -
 - (i) by the substitution of the subparagraphs in the *Schedule* for subparagraphs (1) and (2),
 - (ii) by the deletion of subparagraph (4), and

(iii) in subparagraph (5), by the substitution of the following clause for clause (d):

- “(d) any other body, organisation or group -
- (i) on which functions which relate to the general public or a class of the general public stand conferred by any enactment, or
 - (ii) which is permitted or required by any licence or authority granted or given under any enactment to perform functions under that or any other enactment which relate to the general public or a class of the general public.”,

(b) in paragraph 2, by the substitution of “clause (d) of paragraph 1(5)” for “clause (b) of paragraph 1(5)”, and

(c) by the insertion of the following paragraph after paragraph 3:

“3A. In making regulations in respect of a body, organisation or group in accordance with this Schedule, the Minister shall have regard to the purposes of this Act and, in so doing, shall take the following into account:

- (a) the level of communication, whether in writing or by electronic mail, by telephone or in person, between the body, organisation or group concerned and the general public or a class of the general public;
- (b) the level of communication, whether in writing or by electronic mail, by telephone or in person, between the body, organisation or

group concerned and the general public or a class of the general public living in a Gaeltacht Area, a Gaeltacht Language Planning Area or a Gaeltacht Service Town or a community designated as an Irish Language Network.”.