



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

The Attorney General's Human Rights Guidance (The Use of the Irish Language) Order (Northern Ireland) 2019  
An tOrdú um an Treoir ón Phríomh-Atúrnae ar Chearta an Duine (Úsáid na Gaeilge) (Tuaisceart Éireann) 2019

30 January 2020



and Police Service of Northern Ireland (PSNI) first". It was remarkable, given the level of political debate about the use of the Irish language, that there was no pushback of any material kind from the PPS or the PSNI. They were not bound to do it but, in any event, they very often delivered the core of what is here.

When I have discussed this, I have made it clear that it poses no fixed burden. You can see the structure of the guidance in terms of the considerations that could be taken into account and the various obligations that can be drawn down. Insofar as there is ever a choice between investigating a burglary or doing something in this guidance, I have made it clear that nothing in this guidance ever requires that the burglary gets ignored in pursuit of an element in this guidance.

Chair, I was struck by something that your party colleague, Minister Poots, said on a radio programme. He indicated that he was walking in Newcastle and sought a public convenience. There was one; it had dual language signage but was closed. He expressed the view that many people would rather that the place was open. I am in entire agreement with that broad public policy observation: let us deliver services, and, if there is ever a choice between delivering the service and not, let us prioritise the service. The guidance puts it to the respective organisations to do that. In many ways, the most important part of the guidance is the first paragraph:

*"The Irish language is an expression of the cultural wealth of Northern Ireland."*

I am entirely happy that that is given legislative expression. It is also the first time that Irish has been used in the title of a statutory text. Members with an interest in philology will forgive me if I point out that the word *Phríomh-Aturnae* is not the word which is used for this office in *Bunreacht na hÉireann*. There are two very important reasons for that. One is that that phrase is used in earlier legislation of the Irish Free State, as it was in the 1920s. The 1937 Constitution creates a new office which is not a successor to the old office and, therefore, a different word is used.

**Mr Dunne:** Have you any thoughts on how this might fit in with the work of the proposed Irish language commissioner?

**Mr Larkin QC:** This was produced at a time when the Irish language commissioner seemed quite some distance away, so we need to see what is actually in the text of the new Bills. This sits entirely separately from that. It is produced pursuant to an entirely different statutory responsibility at section 8 of the 2004 Act. The language commissioner, when he or she comes, will do his or her own thing in relation to the framework that then exists, but this is quite a separate piece of work. It is interesting that, relatively early on — and I emphasise that there has been no pushback from the two organisations — it has also been welcomed by *Conradh na Gaeilge*.

**Mr Dunne:** Yes. As it stands, it becomes, obviously, a legal document, as such.

**Mr Larkin QC:** Yes, it does.

**The Chairperson (Mr Givan):** It has been operational from October 2019.

**Mr Dunne:** I see that, yes, and that is not very long. Will there be a legal obligation on the organisations?

**Mr Larkin QC:** The obligation is to "have regard" to this.

**Mr Dunne:** To "have regard"?

**Mr Larkin QC:** Even though it is phrased in terms in some detail, the obligation under section 8 is to "have regard" to the legislation. No one breaches the law by deciding, "Well, I consider what is here, but I am not doing it". That is even in respect of an obligation which, when they go through the process that the guidance contemplates they then do not do it, as long as they "have regard" to it. That is why no police officer, at whatever rank, will ever have to decide, "Oh, my goodness, I cannot investigate that burglary because I have to do something in the guidance". It poses no operational clog.

Again, there are two schools of thought in relation to human rights. One sees human rights as a tripwire or a minefield, and the unwary public official walks through at the risk of detonating a mine. The other view is that it is the hand on the shoulder and that competent professionals who are living

up to the very highest standards of their discipline will, in very many cases, be entirely human-rights compliant. This is designed to be the hand on the shoulder rather than — I do not know what the technical term is — the sowing of a field with mines [*Laughter.*] I defer to Captain Beattie [*Laughter.*] That is the point. It is very much a matter for them. It is instructive, I think, that there was no pushback from the two organisations and that, in many ways, they are doing this already. They are not producing a vocabulary, as this text suggests, but if someone wrote, even before this, to the PPS as Gaeilge, there was a fair chance that they would get a reply.

**Mr Dunne:** Thank you.

**The Chairperson (Mr Givan):** You have clarified that, Gordon. There is guidance, and we are going to have to deal with the legislation that comes through the Assembly in terms of what a language commissioner will do and standards and so on. The process for that has been clearly outlined. Ultimately, however, this is guidance that has to be given regard to.

**Mr Larkin QC:** Yes, that is right.

**The Chairperson (Mr Givan):** You are not in a position to say, "You must; this is now the law".

**Mr Larkin QC:** No.

**The Chairperson (Mr Givan):** It is guidance, and they will give regard to it. There are aspects of it that I do not have an issue with, but I know that there are other aspects that I would take issue with. However, because it is not the law, and it has to be given regard to, I am content to let it go at that. We have clarified that point anyway, and I knew that that would be the case.

**Mr Beattie:** It is guidance, and it takes a fair degree of looking at and trying to see it with an objective eye. There is one thing that jumps out at me, though, and it concerns me an awful lot:

*"Each organisation shall develop its Irish language capacity by offering training, including incentivised training".*

"Incentivised" could mean so much. Does "incentivised" mean that you cannot progress to the next rank unless you have completed this training? That concerns me slightly. Would it be in conflict with something else?

**Mr Larkin QC:** It almost certainly would because, obviously, nothing in this changes the law. Regard has to be paid to it, but it does not change the law. I would imagine that the highly regulated structure of police rank and progression within rank would provide for what is relevant and, by implication, what is not. That is unthinkable in my view.

Depending on one's view, incentivisation, in general, could be as much or as little as a couple of extra leave days to go on a course, but the key thing is that the organisation has to decide. It does not have to decide to do that and, even if it does decide to do it, it does not breach the law if it does not do it in any particular case.

**Mr Beattie:** OK.

**The Chairperson (Mr Givan):** OK. OK members, I will formally put the question that the Committee for Justice considered SR 2019/138 the Attorney General's Human Rights Guidance (The Use of the Irish Language) Order (Northern Ireland) 2019, and, subject to the Examiner of Statutory Rules' report, has no objection to the rule.

*Question put and agreed to.*

**The Chairperson (Mr Givan):** OK.

**Mr McGlone:** Aontaím leis [*Laughter.*] Go raibh maith agat.

**Mr Dunne:** What was that?

**The Chairperson (Mr Givan):** You may be the only one who can read out the proper title.

**Mr McCartney:** I was panicking in case you asked me [*Laughter.*] I have it well rehearsed now.

**Mr McGlone:** You were standing outside the door doing it.

**The Chairperson (Mr Givan):** Attorney General, thank you for coming to the Committee. As always, it has been a pleasure.

**Mr Larkin QC:** Thank you, Chair.

**The Chairperson (Mr Givan):** Thank you.