



IRISH MEDIUM EDUCATION

and the 'Statutory Duty'
A rights perspective

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Executive Summary

This research was commissioned in early 2021 by Conradh na Gaeilge and the Committee on the Administration of Justice (CAJ). The terms of reference commissioned a report into the: 'effectiveness of the Department of Education and the Education Authority in relation to the teaching of Irish and in particular delivering on their statutory duty to encourage and facilitate Irish-medium Education in view of the legal framework and applicable international standards'.

The Good Friday Agreement made a key commitment to, 'place a statutory duty on the Department of Education to encourage and facilitate Irish-medium education in line with current provision for integrated education'. Article 89 of the *Education (Northern Ireland) Order 1998* gave effect to this commitment as a new 'statutory duty': 'It shall be the duty of the Department to encourage and facilitate the development of Irish-medium education'.

The analysis situates the status of the Irish language within human rights discourse on language rights including international standards and the domestic NI legal framework. Human rights standards range from banning the suppression of minority languages to more proactive positive duties codified in the *European Charter for Regional or Minority Languages* (ECRML) - the European convention for the protection and promotion of minoritised languages. The UK government commitment to the ECRML was one of the key rights gains of the GFA.

The analysis traces the evolution of state education policy towards the Irish language. Opposition to IME in pre-partition Ireland was followed by an even more aggressive anti-Irish policy after the establishment of Northern Ireland. Since 1970, however, there has been a rapid expansion of IME and the emergence of new generations of Irish speakers. State resistance to IME softened gradually, first under Direct Rule and latterly following the GFA which brought with it the commitment to the 'statutory duty'. This saw the Department of Education (and later EA) take responsibility for IME.

The situation of IME has changed significantly since the statutory duty was introduced. The sector had a very small existing base. Since then, IME has undergone significant growth. It remains the

fastest growing educational sector with a plurality of new schools formed in last 20 years. IME now constitutes an expanding – albeit still relatively small – established sector with schools right across the six counties. Crucially, IME remains profoundly different from existing education sectors. The centrality of *bilingualism* and *immersion* to IME presents a whole set of additional challenges. Alongside this reality, IME has continued to face a level of hostility and political opposition.

The research documents obstacles faced by IME across several key areas: planning and development of new schools; teacher training and capacity; special educational needs; resources; and secondary level IME. The research identifies a widespread sense of fatigue across the sector and reflects a wider sense of dissatisfaction with the implementation of the statutory duty. The conclusion is that the relationship between the statutory education section and the IME sector is not working to *develop* IME.

The analysis suggests that there continues to be a profound gap in understandings of the meaning of statutory duty. For most people in the IME community – and in wider Irish language community – the statutory duty *should* have reset the relationship between the Northern Ireland state and IME. Moreover, the 2011 Treacy judgement made it clear that the duty *should* have 'practical consequences and legislative significance'. The statutory duty was intended to reset the relationship between the Northern Ireland state and IME. It was assumed that the duty would 'normalise' this relationship and that the state would now take a key pro-active role in *developing* IME.

Significant progress *has* been made with the framework of the statutory duty. Moreover, the IME sector also shares many of the wider challenges for the whole education sector, not least insufficient resources and 'Covid recovery'. Nevertheless, the key conclusion of this research is that the reset between state and language community has not happened in the manner envisaged in the GFA. The state is now central to the *provision* of a greatly expanded – and growing – IME sector but a further reset is required to finish the commitment to *develop* IME. This reset may well be framed by a legislative strengthening of the statutory duty. The research concludes that the 'New Brunswick model' provides a useful practical example of how this might be achieved in the context of wider language rights.

Introduction

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effectiveness of the Department of Education and the Education Authority in relation to the teaching of Irish and in particular delivering on their statutory duty to encourage and facilitate Irish-medium Education in view of the legal framework and applicable international standards.¹

The Good Friday Agreement (henceforth GFA) made a key commitment to, 'place a statutory duty on the Department of Education to encourage and facilitate Irish-medium education in line with current provision for integrated education'. Article 89 of *The Education (Northern Ireland) Order 1998* gave specific effect to the commitments as a new 'statutory duty' (in Irish 'an dualgas reachtúil'):

89.—(1) It shall be the duty of the Department to encourage and facilitate the development of Irish-medium education.

This legislative innovation frames our analysis.² From this point onwards, the Northern Ireland state committed to supporting a dual lingual education system. In other words, there was recognition that statutory education provision would now service two language communities, Irish and English. Not least the legislation confirmed the approach to what it regarded as an 'Irish speaking school' and thus 'Irish-medium Education' (henceforth IME).³ This was much more than 'Irish Language Education' – in other words, not simply Irish language lessons all day but rather a full curriculum delivered through Irish.

There were several additional salient points. First, the key comparator was regarded as 'integrated education' which was already supported by a separate statutory duty.⁴

1 This was to include: 1. Education policy towards the Irish language historically; 2. International standards and the domestic NI legal framework; 3. Department of Education and Education Authority and other education bodies policy towards the Irish language; 4. Teaching of Irish in EME; 5. Documenting obstacles faced by IME and 6. Policy and practice recommendations to enhance effective implementation of the statutory duty and provision of Irish in education in NI in general. (See Annex One for full TOR)

2 Article 89.—(1) It shall be the duty of the Department to encourage and facilitate the development of Irish-medium education.

(2) The Department may, subject to such conditions as it thinks fit, pay grants to any body appearing to the Department to have as an objective the encouragement or promotion of Irish-medium education.

(3) The approval of the Department to a proposal under article 14 of the 1986 Order to establish a new Irish speaking voluntary school may be granted upon such terms and conditions as the Department may determine.

(4) In this article "Irish-medium education" means education provided in an Irish speaking school.

3 Thus Article 64 confirmed its correspondence with Article 35(2) of the 1989 Order, 'a school is an Irish speaking school if more than one half of the following subjects, namely—(a)religious education; and (b)the subjects, other than English and Irish, which are compulsory contributory subjects in relation to pupils at the school, are taught (wholly or partly) in Irish, and "school" includes part of a school'.

4 Thus Article 64 of *The Education Reform (Northern Ireland) Order 1989* addressed the 'General functions of Department and boards in relation to integrated education':

(1) It shall be the duty of the Department to encourage and facilitate the development of integrated education, that is to say the education together at school of Protestant and Roman Catholic pupils.

(2) The Department may, subject to such conditions as it thinks fit, pay grants to any body appearing to the Department to have as an objective the encouragement or promotion of integrated education.

(3) It shall be the duty of [the Authority] to provide free of charge to any person seeking it advice and information about—



Credit: Cultúrlann McAdam Ó Fiaich Archives

Second, the duty was clear about a responsibility to 'encourage' and 'facilitate' development – it was a duty to *develop* as well as *provide* IME. Finally, although this was not spelled out in the text, the duty was clearly intended to *re-set* relationships between the Northern Ireland state and IME. As we shall see, there had been a long and difficult history in terms of the teaching of Irish since the advent of the Northern Ireland state. This new measure was intended to *transform* that relationship.

At one level the examination of the education of children from a rights perspective appears a prosaic subject. We might expect to echo obligations placed on governments in international law to provide education for children. This is framed by Article 26 of the Universal Declaration of Human Rights:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.

Elementary education shall be compulsory....
 (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
 (3) Parents have a prior right to choose the kind of education that shall be given to their children

More specifically, the *Convention on the Right of the Child* recognizes 'the right of the child to education'. In combination, then, the right to education for children appears uncontested and incontestable.

With IME in Northern Ireland, however – perhaps more than any other singular subject in the jurisdiction – this immediately places the inquiry in a toxic space.⁵ The relationship of the colonial

(a) the procedures for acquisition by a school of controlled integrated status;

(b) the implications for a school of the acquisition of that status.

5 The statutory definition of an Irish-medium school is provided in Article 3(2) of the 2006 Education Order, 'a school is an Irish speaking school if more than one half of the teaching of (a) Religious Education and (b) the mini-

British state to the Irish language has involved a long, complex, and profoundly negative history. More recently, the relationship of the state to IME was an issue that was central to the peace process and the GFA. Indeed, recognition by the state of the Méanscoil was regarded as a 'litmus test' of the process for many.

More recently still, IME, alongside wider Irish language rights issues, has been central to tensions within – and the collapse of – the post-GFA power-sharing government itself. First, adoption of a de facto English-only policy in the Department of Education followed the change in political leadership at ministerial level in 2016. Later this issue was central to the collapse of the executive in 2017 with the fallout from the 'Líofa decision'. The broader question of rights for Irish speakers became a *sine qua non* of the restoration of the Executive following that collapse. Furthermore, this issue became *the* definitive in the stand-off in the nomination of new First and Deputy First Minister in June 2021.⁶ Given this history, it becomes clear that the status of IME in Northern Ireland is far from being a routine or prosaic issue.

To understand this present situation, we need to trace the genealogy of these tensions and issues. This analysis places a deal of focus on the past in order to understand this present. This history begins to explain how something as prosaic as the everyday education of children becomes a lightning rod for racism and sectarianism. At the heart of this tension, of course, is the reality that the symbolic place of Irish – and IME – matters profoundly on 'both sides' of the political divide in the north.⁷ This reality draws on centuries of British/Irish conflict in which the position of the Irish language was perhaps the most obvious symbol of the status of the Irish people under colonialism. Thus, we find the language in general – and IME in particular – a metonym for nationalist and anti-colonial discourse. For

Pádraig Mac Piarais, father of modern Irish republicanism – and arguably the 26-county state – the British education system in Ireland was a 'murder machine' deliberately destroying Irish culture and children (Pearse 1912). In contrast, for James Craig, architect and first prime minister of Northern Ireland, the language was without value: 'What use is it here in this progressive busy part of the Empire to teach our children the Irish Language?' The classic unionist construction of the relationship between the Irish language and the northern state was provided by MP William Grant: 'The only people interested in this language are the avowed enemies of Northern Ireland'.

This profound schism between colonial and anti-colonial and unionist and nationalist attitudes towards Irish and the teaching of Irish sets the scene for a contemporary context which IME finds itself at the epicentre of British/Irish and unionist/nationalist tensions. Any analysis must acknowledge the continuing significance of this history. This is not, however, to suggest that such tensions cannot be transcended. Indeed, much of the work around Irish and IME in Northern Ireland has emphasized the commonality of shared unionist and nationalist relationships with the language. This research report aims to reinforce this by focusing specifically on the ways in which human rights and equality discourse might remove some of the toxicity from the debate. Equally, however, the depth of anti-Irish discourse must be recognised and understood if this history is ever to be transcended. This means that we must understand some of the dynamics involved – particularly the intimately related phenomena of *Gaelophobia* and *linguicide*.

mum content of the areas of learning other than that called Language and Literacy, is conducted (wholly or partly) in Irish, and "school" includes part of a school.' Interestingly, this definition appears problematic in the context of IME units or streams within EM schools, many of whom don't provide 50% of subjects through Irish particularly at GCSE/A Level stage because the budget does not support appointment of sufficient additional IM teachers.

6 BBC News 2021. 'NI power sharing in crisis over Irish language law' 17.06.21

7 Thus, it is not only that 'one side' cares deeply about recognising Irish language rights, but also equally that the 'other side' cares deeply about not recognising them. See BBC News 2017. 'DUP will never agree to an Irish Language Act, says Foster' 06.02.17



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Gaelophobia and Linguicide

Ambiguous attitudes towards the Irish language are not restricted to the six counties, of course. Indeed, many people have argued that the position of Irish within the 26 counties is far from being supported or secure. While in Britain much attention was focussed on the recent refusal (ultimately rescinded) by the Church of England to allow an Irish woman in Coventry to have an Irish inscription on her tombstone. Her family had wanted their mother's headstone inscription to read: 'In ár gcoíthe go deo' ('In our hearts forever') but a judge in a Church Court said that if this was not translated, it might 'be seen as a political statement'.⁸

There can also be conflicting and negative attitudes towards the Irish language among people who regard themselves unambiguously as Irish. Caoimhín de Barra has developed the notion of *Gaelophobia* in this context. His immediate frame of reference was Irish people in the south of Ireland. But this obviously takes another twist in the context of the north. Here

the celebration of colonial expropriation and emphasis on the virtues of Britishness sometimes leaves little space for any validation of the Irish language. So, there is no question that anxiety associated with the Irish language is real for some unionists. But it also needs to be acknowledged that these language associations are remarkably blinkered and selective. Gaelophobia requires a repudiation of education and learning and knowledge of astounding proportions. In this regard it involves variant of what the writer Isaac Asimov characterised as a 'cult of ignorance' (1980: 19). This notion recognised a 'strain of anti-intellectualism has been a constant thread winding its way through our political and cultural life, nurtured by the false notion that democracy means that "my ignorance is just as good as your knowledge"'. In other words, we reach the point where somebody's refusal to contemplate history or knowledge is regarded as equally as valid as somebody else's knowledge of that same history. It quickly becomes much more defined by *avoiding* rather than acquiring knowledge. This phenomenon obviously has specific resonance

8 BBC News 2021. 'Family wins appeal for Irish headstone inscription' 24.02.21

BBC News 2021. 'Margaret Keane's grave: Bid to halt Irish epitaph 'discriminatory'' 18.06.21



Credit: An Dream Dearg

when it engages with the broad subject of education.

This is, however, also a complex phenomenon. For example, even though Poots is broadly an ‘English’ name and Campbell a ‘Scottish’ name, it would be silly to suggest that Edwin Poots’ attitude towards Irish is connected solely to his roots in Ireland as an English settler and Gregory Campbell’s to his as a Scots settler. But the vehemence of Campbell’s anti-Irishness – most infamously expressed in his ‘Curry my yogurt’ pastiche – does assume Jungian proportions when we realise his *own name* derives from the nickname ‘crooked mouth’ in Gàidhlig.⁹ In other words, northern unionists with a demonstrable historic Gaelic connection appear to be in particularly conflicted space when they disparage Irish.

It also bears emphasis that – just as in the south of Ireland – this kind of Gaelophobia is not confined to unionists or people with English or Scots settler roots. Anyone in Irish language circles in Belfast will be familiar with the ‘Ta me mahogany gaspipe’

variant of the Campbell slur which is common in Catholic and nationalist English-speaking circles. In this sense it is not only Protestants or unionists who live with this ‘unrest of spirt’. To paraphrase James Joyce, nearly all of us in contemporary Ireland, ‘fret in the shadow of our own language’.

The crucial point about Gaelophobia is that it involves more than infantile slurs. The recent response to the opening of Naíscoil na Seolta in East Belfast was only the latest example of just how profound such anti-Irish hostility can be.¹⁰ The broader point is that, over time, negative anti-Irish language sentiments have had profound practical consequences. Most obviously this discourse carries with it the threat of *language death and extinction*. Language death is said to occur when a language loses its last native speaker – someone who has been exposed to the language from birth. *Language extinction* is said to occur when the language is no longer known at all, including by second-language speakers. Where language death occurs because of the acts and omissions of the

9 It was not lost on some of our respondents that the former minister of education was laughing at Campbell’s side as he made this intervention. BBC News 2014. ‘Curry my yoghurt’: Gregory Campbell, DUP, barred from speaking for day’04.11.14

10 BBC News 2021. ‘Braniel Primary: ‘Rumours and Poison’ spread about Irish language school’ 29.07.21

host state, this is often characterised as *linguicide*. This term emphasises the *agency* behind the death. Increasingly, language communities have described themselves as *minoritised* rather than minority languages to reflect this sense of process. The threat of language death remains a disturbingly wide phenomenon around the world. As UNESCO suggests: 'At least 43% of the estimated 6000 languages spoken in the world are endangered. This figure does not include the data-deficient languages, for which no reliable information is available'.

Partly because of the intense efforts at revitalisation in the twentieth century, the Irish language is not usually regarded as 'endangered' in this sense. Nevertheless, it is often argued that the Irish language – despite being the first language of state – is not entirely 'safe' in the 26 counties. (This is context in which language is spoken by all generations and intergenerational transmission is uninterrupted.) While other languages around the world are recognised as being much more threatened and much less protected, the imminent 'death' of the Irish language has been predicted by more than one commentator (see Hindley 1991; Mac Donnacha 2018). In other words, *linguicide* remains a distinct threat even in the south of Ireland. But this process *has* happened in the context of the Northern Ireland state. Between 1920 and 1985 the last remaining native speakers of Irish in the Six Counties died out.

Of course, at one level the rapid expansion of IME since 1970 reverses this trend. We see the emergence of new generations of Irish speakers since 1970 alongside the emergence of new language formations – from the music of Bréag and Kneecap to the writing of Gearóid Mac Lochlainn and the activism of organisations like An Dream Dearg. There has also been a wider all-Ireland dimension to this – the recent accomplishments of Doireann Ní Ghríofa is testament to the continued cultural significance of this phenomenon.¹¹ But none of this changes the reality that at one point each of the six Irish counties that now comprise Northern Ireland was Irish-speaking. Nor

does it mean that the language death of these indigenous rural gaeltachtaí was not an immense – and avoidable – tragedy, ending an unbroken linguistic chain stretching back millennia.¹² Thus, any assessment of contemporary language rights in the north of Ireland takes place within the context of historical Gaelophobia and potential language death.

Situating the Irish language within human rights discourse

Any rights-based reading of language and education must begin with the recognition that no language carries with it any hard-wired political tendency. This should be the starting point for any assessment of the situation of the language in general and Irish in particular. As Dubhghlas de hÍde made clear: 'The Irish language, thank God, is neither Protestant nor Catholic, it is neither a Unionist nor a Separatist'. What some people have done with and to the Irish language has been, of course, highly politicized in range of different and contradictory ways. But the language itself carries no toxic threat to anybody – it is a language not a 'political weapon'.

Despite this ineluctable truth, discussions around the Irish language in general, and IME, remain starkly polarized in Northern Ireland. Traditionally Irish language rights have been seen as a zero-sum game with a need to 'balance' colonialism and anti-colonialism and unionism and nationalism. Later, a community relations approach to Irish excluded any analysis of power from the dynamic and reframed any tensions as 'two traditions'. Indeed, the community relations and TBUC approach viewed the language as a 'single identity issue'. Moreover, these traditions were constructed as ontologically equal. This false symmetry is profoundly significant across the history of the British state and its attitudes towards Irish and IME. Thus, one person's right to speak Irish was to be balanced by another person's right not to speak Irish. (This is the way that recent debates have often been constructed.)

11 Her 'Ghost in the Throat' – Irish Book of the Year in 2020 – offers a remarkable bilingual meditation on the continued relevance of the Irish language in contemporary Ireland.

12 Although contemporary continuities in Tyrone are explored powerfully in the Gael Phobal film 'Guth in Éag? A lost voice?'

This approach is problematic since it is completely asymmetrical in effect. The implication was that Irish speakers – even monoglots - did not have a right *not* to speak English in their relationship with the state. This was manifest in the notorious court cases involving Irish speakers throughout the nineteenth century when monoglot Irish speakers did not understand the charges put to them in English. It was, however, most obviously expressed in the famous ‘trucaílín donn’ case. As the judgement declared, ‘An Englishman ... if knocked down by an Irish cart in any part of the country, whether Connemara or elsewhere, is entitled to have the name and address of the offender in characters that he can read’.¹³ In other words, the reality was that the right to speak and write Irish was understood to be balanced against someone else’s *right to have them not speak and write Irish*. There was a profound asymmetry between the kinds of ‘rights’ that were being invoked.

This notion that rights for Irish speakers should be balanced against rights for people who do not want to see or hear Irish remains current. As Conradh na Gaeilge, CAJ and the University of Ulster have observed:

It has been suggested that exposure to the Irish language itself has an ‘adverse impact’ on some groups, on the basis that this intrudes on the rights of persons who do not want to see or hear the Irish language. However, having to see Irish used alongside English on a logo or sign, or to hear other people speaking Irish, does not breach any recognised right, domestic or international. (2019: 53)

Nevertheless, this notion of ‘balancing’ language rights against linguistic remains part of discourse in the north of Ireland. More generally, the traditions of colonialism in relation to Irish were to be celebrated just as unproblematically as those of pre-colonialism and anti-colonialism.

This issue resonates with a wider tension within the notion of language rights.¹⁴ Arguably, however, this all changed significantly in 2020 with murder of George Floyd and the global Black Lives Matter movement. This moment reset the paradigm. Amid all the outworking of this confusion – from police chiefs ‘taking the knee’ to the toppling of statues around the world – it was clear that colonialism and its legacies were now no longer beyond contestation. Rather the legacy of colonialism *in the present* has become a reflection of the zeitgeist. In Ireland the position of the Irish language is perhaps the key metonym for this colonial legacy. Irish placenames and personal names now emphasise that however much ‘Ulster British’ present is emphasized and celebrated, this rests upon an Irish history. The six Irish counties that now constitute Northern Ireland have a deep and profound Irish language history. This new context places the tensions around Irish medium education centre-stage in a recalibrated understanding of rights and identity in the north. In this regard, it bears emphasis there are similar language-based legacies *everywhere* across the six counties – in every misspelled name and every renamed place. These are all neatly précised in the debate was to whether the second city is to be known as Doire or Derry or Londonderry.¹⁵

Thus, with the BLM moment the question of what to do about colonialism and its legacies was back on the world agenda. The broader lens encouraged states around the world - particularly those with direct colonial histories - to confront their own practices. In the north this shift in perspective is particularly striking since exceptionalist discourse has been so prevalent and so hegemonic. Whatever divisions and inequalities exist across the north, they were often consciously and deliberately disconnected from other wider colonial and post-colonial forces and analyses. This analysis starts from the position that this is no longer possible to sustain – morally or empirically. The world has reconnected to the question of how to address live contemporary

13 McBride .v. McGovern [1906] 2IR 181

14 Se De Varennes (2001) for a broader discussion. He concludes: ‘language rights are not collective rights, nor do they constitute “third generation” or vague, unenforceable rights: by and large, the language rights of minorities are an integral part of well established, basic human rights widely recognised in international law, just as are the rights of women and children’.

15 Or indeed ‘Londaindoirecholmille’ as one Irish language activist from the city styled it.

rights-based issues embedded in colonial history. In this regard, the BLM moment has helped to reframe the interconnectedness of all these aspects of Irish history. It is not an accident that Irish language rights issues so exercise both unionists and nationalists.

All this suggests that any Irish language activity often finds itself within what might be characterised as a 'hostile environment'. There is a sustained history of anti-Irish language discrimination that continues to inhabit the present – this is one past that is definitively 'not past'. There has, of course, been a huge expenditure of time and energy on the question of dealing with the past in the context of the Irish peace process and the GFA. Arguably, however, this template never extended to the Irish language – even though Irish language rights had been regarded as so central to the peace process. Instead, the parties to the GFA adopted a 'clean slate' approach to this history.

This research accepts that the statutory duty framed by the GFA was intended in good faith to 'reset' the relationship between the Northern Ireland state and the IME sector. The detailed history of the difficult relationship between the state in Ireland and the Irish language since, however, suggests the project was optimistic. In retrospect, it seems improbable that that centuries of gaelophobia and linguicide could be resolved by a legal instrument, no matter how finely crafted. Moreover, it seems unlikely that this history would be transcended by simply *ignoring* it. But this is precisely what the GFA and the statutory duty did – both assumed that relations would be transformed without any acknowledgement of the backstory. The statutory duty says nothing about this history. Arguably it assumes that the toxic legacy of state/Irish language relations would simply disappear in a new dispensation that would treat IME in the same way as IE. With hindsight it is possible to suggest that this approach was naïve. The status of Irish had been contested in Ireland for centuries. The teaching of Irish had been ridiculed and repressed and prohibited by the Northern Ireland state since its inception. So, the notion that a 'clean slate' was possible without dealing with this past was mistaken.

Part of the solution to more fully developing IME must involve confronting the difficult history more directly as part of a rights-based approach. As we have already seen, there is a political and cultural division towards the language and IME in the north of Ireland which is deeply embedded in Irish history. It bears emphasis that this is not 'the politics of the language' but rather in the politics of attitudes towards the language.

Here it is instructive to remember that colonial *legislation from 1737* on the Irish language remains a live issue in 21st century Northern Ireland. *This is legislation from nearly two hundred years before the Northern Ireland state came into existence.* This provides a telling example of how history continues to frame the question of Irish and language rights as well, of course, as the broader educational context in which IME is expected to develop. On the one hand, for contemporary observers the remarks of Justice Girvan in 2010 in response to Mac Giolla Cathain's application 'in the matter of the Administration of Justice (Language) Act Ireland 1737' might appear eminently reasonable.¹⁶ In finding against the right of the applicant to use Irish in court in Northern Ireland the Judge argued that 'English is not merely the working language of the courts, it is now clearly the working language of nearly the entire population.' He went on to suggest that 'conferring on individual litigants a right at their option to convert court forms from English into a language not understood by the vast majority of intended recipients would frustrate the interests of justice'.

But when the legislation was passed in 1737, *English* was a 'language not understood by the vast majority of intended recipients' in Ireland. In that regard the law was unambiguously intended to frustrate the interests of justice. Justice Girvan suggested that there 'is nothing [in the 1737 Act or its outworking] to suggest that those who could only speak Irish were prevented from giving their evidence in Irish subject to translation'. But we can imagine the furore that would follow any similar notion that English speakers could provide their evidence to court – in either 1737 or 2022 - 'subject to translation'? Thus, the timeframe within which we judge the meaning of

16 Neutral Citation No. [2010] NICA 24

language rights and justice completely structures the contemporary discussions. If the relationship between the state and the IME sector is to be reset, this must be grounded in facing this history rather than denying it. We might also suggest that it requires some acknowledgement of the continued legacies of past inequity and discrimination. This broad truth holds in terms of the specific question of the IME and the functioning of the statutory duty.

Fortunately, a rights context does provide a paradigm to begin to do this. The global reach of human rights is echoed in the resonance of the ongoing debates about how to address the multifarious legacies of colonialism and conflict – in the US, the UK and Ireland – and of course elsewhere around the world. This is true *a fortiori* in the north of Ireland because of the centrality of rights discourse to the ongoing peace process. This is a position held by both CAJ and Conradh na Gaeilge.¹⁷ This includes a recognition that the failure to address the history of anti-Irish language activity by the state in Ireland has hindered rather than helped peace-building. One immediate consequence is that this makes it easy to present basic rights for Irish speakers as a demand for preferential treatment rather than a remedial measure to deal with the past legacy of discrimination.

This analysis is anchored in the approach that has evolved in the human rights framework *from one of negative to positive obligations*. This has specific application in terms of human rights and minoritized languages. After WWII, the human rights position was essentially one of ‘stop banning minority languages’. By the 1990s, however, this had evolved to recognise that the state must take proactive steps to restore minoritized languages to where they were, essentially by reversing the historical process by taking the reverse steps to what were originally taken to undermine the language. For example, this position holds that since states once banned languages in legislatures

and judicial systems, they should now not simply unban them but also encourage and promote them in those same structures. Thus, the evolution of language rights over recent decades allows us to begin synergising these concerns with other human rights discourse that attempts to deal with the past. Here human rights discourse begins to resonate with wider discussions about ‘reparations’ and ‘transitional justice’. The General Assembly of the United Nation established ‘Basic Principles and Guidelines on the Right to a Remedy’ to include these in the arsenal of international instruments on human rights (United Nations 2005).

In terms of the IME, any accounting for past abuses is arguably less important than addressing their legacy in the present. In this regard, it is hardly surprising that centuries of Gaelophobia and linguicide did not disappear overnight with the statutory duty. In retrospect it appears that IE was an imperfect comparator for IME statutory duty – since the development of IE carried none of this toxic legacy. Some people across the education sector in Northern Ireland may have been less than positive about the principle of IE. But the state had never repressed the model; it had never campaigned politically against it; and it had never threatened to prosecute those working within the model; and it had never been suggested that those working within the model were the ‘avowed enemies of Northern Ireland’. This difference suggests that for the IME statutory duty to work properly there must be some more formal and institutionalised engagement with this history of anti-Irish discourse. We must begin any analysis of contemporary IME by acknowledging that the policy of the current state is situated by the long history of the state’s treatment of the Irish language in Ireland.

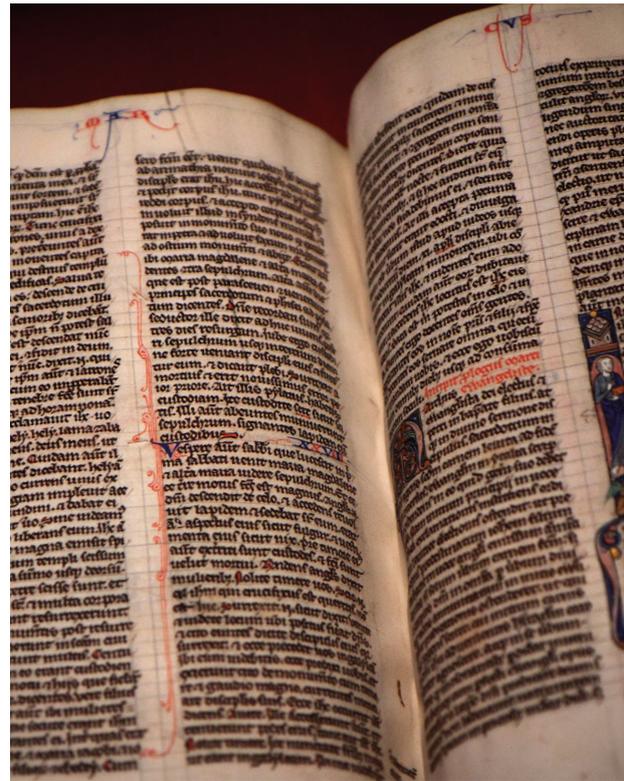
17 CAJ is the cosponsor of an ongoing research project on ‘Dealing with the Past’ with QUB <https://www.dealing-withthepastni.com/about>. This is largely focused on the ECHR art 2&3 duties to investigate and provide accountability for human rights violations– mostly killings during the recent ‘Troubles’. The most recent product has been the dismantlement of the UK Command Paper on impunity <https://www.dealingwiththepastni.com/project-outputs/project-reports> Conradh have been less specific regarding dealing with the past. But it argues that historical grievances would be remedied by the introduction of progressive measures such as language legislation.

Overview of Education policy towards the Irish language historically

Irish History and IME

Written Irish can be traced back to the 3rd Century and it was spoken long before this. Inscriptions of names and titles written in ogham on standing stones can be found in Ireland (and western Britain). This confirms the written language as around 1800 years old. It also makes the Irish the first people in Europe to write in their own language rather than Latin – and thus supports the claim that Irish is the 'oldest vernacular language in Europe'. It bears emphasis that both before and after colonialism, there was a great deal of 'IME' in Ireland. It might bear little resemblance to contemporary education through either Irish or English in the north of Ireland but nevertheless it was education through the medium of Irish. Two paradigmatic examples suffice. First the traditional bardic schools all followed this format. Second, the hedge schools of the later colonial period also followed this pattern. Thus, the dissolution of the Irish-speaking and Irish-literate upper classes did not entail a similar decline in Irish among the Irish working class and peasant class. Despite the absence of state support - and very often in the face of active hostility from the state - Irish students continued to be educated through the medium of Irish. Some of the richness of this Irish-speaking world is conveyed in the remarkable *Cín Lae Amhlaoibh* the diary of a schoolmaster and campaigner from the years just before *An Gorta Mór*.¹⁸

While this history long pre-dated the partition of Ireland, many of the key sites of this kind of IME were in what was to become Northern Ireland.



Credit: "The Book of Armagh" by Neil Melville-Kenney

There are Ogham stones with this earliest form of written Irish scattered across the Six Counties. So, there is no ambiguity regarding the longevity of the spoken and written Irish language tradition in the territory of what was to become 'Northern Ireland' nearly two millennia later. Ecclesiastical sites like Doire Colmcille, Nendrum and Bangor were centres of learning and teaching of European significance – all teaching and learning through Irish.¹⁹ Bangor, in particular, was a major centre of learning characterized as the 'Light of the World'.²⁰ Armagh of course, was and remains the ecclesiastical capital of Ireland – again completely defined by the Irish language as the medium of scholarship. By the 7th century, Armagh had become the site of the most important church, monastery, and monastic school in the north of Ireland. The *Book of Armagh*, produced in the monastery in the early 9th century, contains some of the oldest and most important surviving specimens of Old Irish in the world.

18 Translated into English and edited by Tomás de Bhaldraithe as 'Diary of an Irish Countryman' (1979).

19 Thus the 'St. Gall Priscian Glosses' - an Irish manuscript of a Latin grammar- provides one of the main sources of Old Irish writing. These were written around 845 in County Down in either Nendrum or Bangor, the home of St Gall.

20 While Sinlán Moccu Míin (who died 610) was a scholar and abbot of Bangor who was known in Latin as *famosus magister mundi* or 'teacher of the world'. This inscription adorns the National Archives building in Dublin.

Later, following colonization and the suppression of these centres of learning, the north was as dependent on hedge schools as the rest of the island (Ulster Historical Foundation 2021). William Carleton provides a detailed account of such schools in Tyrone before *An Gorta Mór* in his 'The Hedge School' in his *Traits and stories of the Irish Peasantry* (1830). He provides the example of the range of subject matter offered by one teacher:

Greek Grammar, Greek Testament, Lucian, Homer, Sophocles, Aeschylus, Thucydides, Aristophanes, Xenophon, Plato, Aristotle, Socrates, and the works of Alexander the Great; the manners, habits, customs, and usages of the Grecians; the Greek Di-gamma resolved. Prosody, Composition, both in prose and verse, in English, Latin, and Greek; together with various other branches of learning — *quos enumerare longum est* — along with Irish Radically, and a small taste of Hebrew upon the Masoretic text. *Matthew Kavanagh, Philomath.*

More recently, Brian Friel's *Translations* became the definitive artistic representation of the forced transition from Irish to English told through the hedge school experience. In short, therefore, our analysis is framed by the reality that neither in 1920 nor in 1972 nor 1997 was education through the medium of Irish a *novel* phenomenon in the north of Ireland. Rather, if we aggregate across history, most Irish people have been educated – in various formal and informal forms – through the medium of Irish.

Colonial policy and the Union 1800-1920

It hardly needs rehearsing that the English and later British colonization of Ireland had direct consequences for the status of the Irish language (Ó Ruairc 2018). Colonization was broadly accompanied by an English-only policy that has obtained for all subsequent Irish history. This history was précised by the Irish MP O Connor Power in Westminster in 1878:

A large part of the educational debt due by England to Ireland has reference to the teaching of the Irish language. When the

religion of the Native Irish was proscribed, and even their dress and their style of wearing the hair also, it need not be said that their language did not escape the general persecution. A price was put on the head of the schoolmaster as well as that of the priest, and compulsory ignorance was enforced by the law of the land. Some of the methods employed to destroy the Irish language are very amusing to contemplate at the present day. The Irish parent was required to keep a stick and make a notch in it every time his child, disregarding or forgetting the instructions given him at school, ventured to express his thoughts in his Native tongue; and the child had to bring the stick to school every morning, and for every notch it showed he received a specified amount of punishment.²¹

In other words, colonial state policy towards Irish began to be regarded as an act rather than an omission - it appeared more like a linguicide than an issue of neglect. This history continues to have contemporary resonance of course. It is striking that contemporary debates on Irish in the north continue to focus on a law from 1737 – 'the last of the penal laws' (Dunbar 2008). Thus, repeal of the *Administration of Justice (Language) Act (Ireland) 1737* formed part of the discussions around NDNA agreement nearly 300 years later in 2019.

The question of the role of Irish in education was focused following the Union in 1801 across a century that saw the development of a modern Irish state education system. The general failure to recognize and develop Irish within the education system remained. But discussion was often less on the issue of teaching Irish to people in Ireland who already spoke English but rather those who were *monoglot* Irish speakers:

The Board of Education gave little attention to Irish—not even to place it on the same footing as French. The people who did not know a word of English were taught to read English reading lessons with as much success as would attend an effort to teach English children Greek without a grammar or vocabulary. In the West of Ireland the unfortunate urchins at school were put through their lessons in English, and

21 HC Deb 15 July 1878 vol 241 cc1524-32

taught to read that language without knowing a single word of it, and taught to spell just as if they were parrots. The thing was so comical, so ridiculous, that it could not possibly occur in connection with any other institution than the Irish Board of Education.²²

It bears emphasis that this was state policy:

The conduct of the Board of Education was extraordinary. For £1,000 or £2,000 a-year they would be able, from the numerous monitors and teachers who were sent up from the country knowing Irish fluently, to give the children who required it instruction in Irish, and cheap instruction. Books could also be printed in the Irish language, by aid of which they would be ultimately able to teach the children to read English. But what was the result of the present system? Why, that the children neither knew Irish nor English. When they came to England, if their necessities brought them to this country, they were laughed at—when they went to America also they became the laughing-stock of the people, who did not, by the way, laugh at Germans or Italians for not knowing English, because they were not expected to know it.²³

Ironically, however, in the middle of this drastic decline we find one remarkably progressive intervention. Thus in 1855 Sir Patrick Keenan - Resident Commissioner on the National Board, and formerly Head Inspector of National Schools - offered an alternative reading of the place of Irish in education in Ireland:

Many good men seem to me to forget that the people might know both Irish and English, and they also forget that by continuing to speak Irish and learning English through its medium, the latter language would be enriched by the imagery and vigour of the mother tongue, and the process of learning would be a mental exercise of so varied and powerful a character, that its disciplinal effect upon the mind would

be equal in itself, and by itself, to a whole course of education of the ordinary kind. The shrewdest people in the world are those who are bilingual; borderers have always been remarkable in this respect. But the most stupid children I have ever met with are those who were learning English whilst endeavouring to forget Irish. (Twenty-second Annual Report of the Commissioners: 75)

Sadly, this insightful support for a bilingual approach was not adopted.²⁴

As formal state education developed in Ireland under the control of the British state, the Irish language remained excluded for most of the nineteenth century. There was a gradual, grudging admission of *some* capacity for the teaching of Irish, but English remained the default medium of education even for monoglot Irish speaking children. WE Foster, then recently appointed Chief Secretary to Ireland, summed up this approach in 1880:

I cannot encourage the teaching of Irish or of any other difficult extra subject to children in the second, third, and fourth classes. The hon. Member refers to the need of working for subsistence. That need obliges children in the lower classes to give their time almost exclusively to reading, writing, and ciphering.²⁵

It is telling that he made this pronouncement - equally imbued with classist and racist notions about the function of Irish in education - *before* he ever arrived in Ireland to assume his responsibilities for Irish education.

The tensions around Irish and IME intensified as the movement towards Home Rule progressed between 1868 and 1912. This discourse often combined two contradictory logics: first Irish should only be taught as a 'dead language' not a living one; second Irish should not be taught because it was a dead language. Either way, a deep-seated Gaelophobia obtained. Thus, one of the most committed opponents of Irish language education, the unionist MP JA Rentoul insisted,

22 Orders Of The Day. Volume 283: debated on Friday 17 August 1883 cc1035-1037

23 Orders Of The Day. Volume 283: debated on Friday 17 August 1883 cc1037-1041

24 Ironically, Keenan was subsequently transferred as a colonial administrator to Malta where he did manage to implement a successful bilingual policy in its education system.

25 National Education (Ireland)— The Irish Language Volume 252: debated on Friday 4 June 1880 c1197

'The Irish language will carry us nowhere. It is of no value anywhere outside a few mountainous districts in Ireland':

The people of Ireland, as regards their relation to the Irish language, are of three classes: first, those who do not know Irish, which is nine-tenths of the people; second, those who know and speak both English and Irish; and thirdly, some thirty or forty thousand who know only Irish. The first class had better leave Irish alone; the second class had better cultivate the English, and the third class had better learn English by mixing with English-speaking people...²⁶

Increasingly, however, objections to the teaching of Irish were now characterized in terms of the potential disadvantaging Protestants and/or unionists in the context of a devolved Home Rule parliament.²⁷ As James Craig – later Prime Minister of Northern Ireland – argued:

Does anyone deny that the modern teaching of Irish has been carried out with no other purpose than to use it as a political lever in the county councils, the boards of guardians, and in other local institutions? We have a very recent example of the way in which this language has been forced upon the people. There is no real demand coming from the people to learn it, otherwise far more people in Ireland would speak it than do so to-day.... Does anyone present imagine that if [Irish nationalist] Members had their way this learning of Irish would not penalise everybody who was not prepared to come to [them] and ask for mercy? That is really what it amounts to.²⁸

In other words, for all the current arguments about *weaponizing* the Irish language, it appears that some unionists served first in this regard. As Andrews points out, unionist attacks on the

teaching of Irish began in Westminster long before the Gaelic League was established. Moreover, there was a concerted unionist campaign against the use of Irish in education a generation before the establishment of either Sinn Féin or the modern republican movement.

In any event, the debate around the Irish language and Irish language teaching was moving into a new phase. What might be regarded as the birth of 'modern' IME began with Pearse's Scoil Éanna, set up in 1908 as a secondary school for boys and followed by Scoil Íde for girls in 1910. Pearse himself was obviously central to wider political developments in the 1916-21 period which culminated in the partition of Ireland. Over this period, language activism and nationalism and republicanism did become very deeply entwined. When Ireland was partitioned and Northern Ireland established by the Government of Ireland Act in 1920, it was clear that Irish language teaching would be immediately politicised and sectarianised. At that point, the dominant political actors in south were nearly all graduates of the Irish language revival. The civil war did not change this – free state and republican sides were both made up of and were both heavily committed to Irish and Irish language education. The state that emerged from that conflict regarded Irish as its first language and Irish language education as a defining goal of state policy.

Stormont 1920-72

Following the partition of Ireland and Ulster into the Irish Free State and Northern Ireland, the largest Irish-speaking area in the Ulster in County Donegal was included in the Irish Free State. However, there were Gaeltacht areas (communities that continued to speak Irish as their first language) in Northern Ireland at the time; the most prominent of these were the Sperrins in County Tyrone and Rathlin Island in County

26 Class Iv Volume 86: debated on Friday 20 July 1900 c697.

27 In this regard there were attempts to insert 'English only' protections into the various home rule bills. For example, in 1912 the Tory MP Ian Malcolm proposed an amendment to 'really and truly to-determine that the Gaelic language shall not be the official language of Ireland in the Irish Parliament or any department, and that no man or woman shall be at the disadvantage that they cannot enter a profession or public life if ignorant of that language. Clause 2 (Legislative Powers Of Irish Parliament) Volume 42: debated on Tuesday 22 October 1912 cc 1970-1.

28 Government of Ireland Bill Volume 42: debated on Tuesday 22 October 1912 cc2011-12



Source: BBC NEWS

Antrim. Despite this reality, unionist opposition to Irish – and IME – continued in a new and intensified form. This had lasting consequences. It rolled back, almost immediately, on the modest progress that had been made in relation to teaching of Irish in schools before partition. As a result, Irish was taught in more schools in the north in 1920 than in 2020.

After 1921, the Irish-language movement in Northern Ireland responded to a lack of state support by pursuing a self-help approach aimed at preserving Ulster Irish. By 1923, only one branch of the Gaelic League was left in operation in Northern Ireland. But from this low base, the number of branches peaked at 182 in 1946. So, there is ample evidence of a commitment to Irish during the period. However, most efforts of activists in Northern Ireland concentrated on ensuring Irish could survive in urban contexts rather than the remaining six county gaeltachtaí.

Meanwhile, the state did nothing to support these efforts. Rather, the new Northern Ireland state actively resisted any promotion of Irish at all. Education was of course a significant element in this process. The teaching of Irish - education in Irish and Irish-medium education was marginalized – and repressed - from the first by the Northern Ireland government. The number of primary schools

teaching Irish was halved between 1924 and 1927, and numbers studying Irish as an extra subject fell from 5531 to 1290 between 1923 and 1926. The subsidy for Irish as an extra subject was completely abolished in 1934.

As we have already seen, the philosophy behind this approach was confirmed by Craigavon as Prime Minister of Northern Ireland. Speaking in 1936 he asked:

What use is it here in this progressive busy part of the Empire to teach our children the Irish Language? What use would it be to them? Is it not leading them along a road which has no practical value? We have not stopped such teaching; we have stopped the grants – simply because we do not see that these boys being taught Irish would be any better citizens.

This hostile environment had profound consequences. The last speakers of varieties of Irish native to what is now Northern Ireland died in the 20th century. From one perspective, varieties of Irish *indigenous* to the six counties of Irish within Northern Ireland became extinct when the last native speaker of Rathlin Irish died in 1985. As the Ultach Trust suggests:

Counties Down and Fermanagh were the first

counties where Irish died out, but according to the 1911 census, Irish was spoken by the majority of the population over 60 years old in parts of the Sperrin mountains and Rathlin Island. Sound recordings have been made of the Irish of Antrim, Armagh, Londonderry and Tyrone. One of the last speakers of Antrim Irish, Jimmy Stewart of Murlough, died in 1950, and the last speaker of Tyrone Irish, Johnny McAleer, died in 1970. Bella McKenna, the last speaker of Rathlin Irish, was recorded on videotape and died in 1985. With her death came the extinction of the East Ulster dialect of Irish which had been spoken in what is present-day Northern Ireland.²⁹

This period can be characterised as a linguicide – the state presiding over the disappearance of an autochthonous spoken and written language. This reality bears some emphasis – the period marks the ‘language death’ in Northern Ireland of the oldest vernacular language in Europe. It requires some depth of philistinism – or Asimov’s ‘cult of ignorance’ - to regard this as something other than profoundly tragic.

Fortunately, a wealth of recordings and stories from these last speakers was recorded by academic researchers and language activists. Moreover, there are ongoing attempts at revival focused on all these areas. Nevertheless, it is striking that as Northern Ireland celebrated its centenary, there was little acknowledgement of this linguicide. From the perspective of linguists, the most notable ‘achievement’ of the Northern Ireland state was to see its indigenous language extirpated. Through a series of acts and omissions the Northern Ireland state administered the disappearance of its autochthonous language. While the decline of Irish across the six counties long predated the establishment of Northern Ireland, most of these

dialects died out under the Stormont regime between 1920 and 1972; and the last speakers died under Direct Rule from Westminster. What had been lost – to Ireland and to the world - is of course incalculable. The richness of this culture is captured in Peadar Mac Gabhann’s ‘Cloch ar a gCarn: Macallaí Ghaeltacht na Speiríní’ (1989). Michael Murphy’s *Tyrone Folk Quest* reflects poignantly some of the last days of the Sperrin Gaeltacht in the 1950s.³⁰

One of the supreme ironies of this period was the wilful denial of this history. For example, a return of the repressed featured in the biographies of two of the most committed anti-Irish actors suggesting that neither could sever their connection to the language completely. Thus, Craig chose as his honorific title ‘Craigavon’ – a name derived from the Irish Carraig Abhainn. (As a further honour, this form would later be used to name Northern Ireland’s new city in the 1960s.) Lord Londonderry, despite his wish to expunge the language from the education system remains buried – without apparent irony - at *Tír na nÓg* in the grounds of his family estate at Mount Stewart in County Down.

As if to confirm the incompleteness of the linguicide, in the late 1960s a group of Irish speaking families set up the Pobal Feirste urban Gaeltacht on Shaw’s Road in West Belfast. In 1971 Bunscoil Phobal Feirste was started with nine children from that community. At one level this marked the beginning of an entirely new chapter in the history of IME – the start of IME as we understand it today in the north of Ireland. There was, however, no change in the attitude of the state towards this project. The Ministry of Education informed the parents:

29 Iontaobhas Ultach <http://www.ultach.org>

30 In a timely rejoinder to contemporary divisions around Irish, MJ Murphy identified six Protestant native speakers of Irish in Tyrone in the 1950s (Mag Eacháin 2021). If we go further back the 1901 and 1911 censuses, they suggest something further for Tyrone. There is no Protestant category since only denominations are provided but if we aggregate ‘Church of Ireland’, ‘Presbyterian’ and ‘Methodist’ we capture most of the Protestant community. In the 1911 census in terms of those who have ‘Irish and English’ we get 6791 Catholics and 108 Protestants. But the situation is more counterintuitive in terms of the category ‘Irish’ – which is supposed to identify monoglot Irish speakers. Here the census suggests 55 Catholics and 90 Protestants. At this point we must assume some degree of census error, but the disparity holds for 1901 too. In 1901 the corresponding figures are 5943 Catholics with ‘Irish and English’ and 67 ‘Irish only’ with 159 Protestants with ‘Irish and English’ and 179 ‘Irish only’.

I can now let you know that it is the Ministry's view that instruction given entirely through the medium of Gaelic would not "constitute ... efficient and suitable instruction" for the pupils of an independent school. A complaint would therefore be served by the Ministry.

As if to close the chapter on the response of the Stormont state to Irish language teaching, the school opened without state support and with teachers and parents under threat of prosecution.

Direct Rule 1972-1998

While the collapse of Stormont and the imposition of Direct Rule suggested some reform of the most egregious discrimination that had occurred over the previous fifty years, this had little immediate positive impact in terms of IME. This period saw the consolidation of Bunscoil Phobal Feirste as the first Irish medium school in the North. The IME model in Northern Ireland began to assume a recognizable form. But this process was 'outside' the state and the state remained generally hostile to the concept of IME. The school received no statutory support in the beginning and voluntary fundraising kept the school running for the first thirteen years. As Iontaobhas na Gaelscolaíochta records, 'It had a difficult and fraught relationship with the Department of Education in its early years and was threatened with both closure and legal action by the Department'.

The Belfast school accepted only children from Irish-speaking families at first. The next milestone in IME development occurred in 1978 when a full nursery programme was introduced. At this point English speaking families could enrol their children from the age of three in an immersion programme. By now this was a broader project beyond the

Irish-speaking community and open to anyone with an interest in IME. The character of IME in the north was now set with early immersion as key component of language acquisition for most children.

Most of this growth still developed outside of mainstream education provision and without support from the state. This changed when in 1983 an Irish-medium unit was set up in a Catholic primary school in Derry. The unit, which operated under the management of an established English-medium school, was recognised and funded by the Department of Education from its inception. Enrolment in Derry grew steadily over the next ten years, and it developed into a free-standing Catholic maintained school. Bunscoil Phobal Feirste was finally funded by the Department in 1984. Later efforts extended to secondary education and Meánscoil Feirste, the first IME secondary school in the north, was founded in 1991 with nine pupils.

As the peace process developed, the status of Irish and IME became one of the key indicators of 'confidence building' on the nationalist/republican side. Thus, relatively small improvements in IME provision were regarded as having a much greater symbolic importance.³¹ This dynamic culminated in the issue of state funding for Meánscoil Feirste - the Irish language secondary school in West Belfast - which became the 'litmus test for the peace process' for many nationalists and republicans.³² The decision to refuse funding to Meánscoil Feirste, was regarded as a key stumbling block and the reversal of that decision a key aspect of nationalist confidence building. When this was provided, it appeared that a new relationship between the Northern Ireland state and IME had been established.³³ This was later confirmed by the

31 Thus in 1996 the key Anglo-Irish Inter-Governmental Conference 'considered recent progress in the work which it had commissioned into ways of improving and extending RTE and Telefis na Gaeilge reception in Northern Ireland. it looked forward to early agreement on this subject.... It also welcomed the recent decision to recognise Bunscoil an Iuir in Newry and looked forward to the continuing facilitating of parental choice as regards Irish language schooling in Northern Ireland'.

32 'It is important to recall that at my first meeting the British Prime Minister within days of my assuming office I raised the issue of Meánscoil Feirste. While there has been some significant improvement in the position of Meánscoil Feirste since then as a result of the representations made by me and others, further evidence of a commitment to respect for the Irish language through this school can and should be given'. Dáil Éireann debate - Tuesday, 14 May 1996, Vol. 465 No. 3 'Northern Ireland Peace Process'.

33 Breen, Suzanne. 1996. 'Irish language school on Falls Road to get full British funding' *Irish Times* 15.05.96.



Credit: Cultúrlann McAdam Ó Fiaich

specific and detailed commitment – including the statutory duty to IME - in the 1998 Good Friday Agreement. This moment initiated the period that forms the focus of this research – the new context in which the ‘statutory duty’ frames the state response to IME.

The Good Friday Agreement to the present

The expectation in the Irish language community was that the statutory duty would end the negative approach of the state to IME and completely *reset* the relationship between the state and IME. Put simply, the ‘enactors intent’ was that this new departure should have transformed the relationship between the Northern Ireland state and IME from a negative one to a positive one. At face value, IME now had a more privileged status than any other sector –except for the IE sector.³⁴ The state was not obliged to develop any other form of education, but it had committed to promoting IME as well as encouraging and facilitating its development. There was therefore a not unreasonable assumption that the history of

state resistance to IME would be transcended, and the future relationship become more constructive and positive.

Certainly, the dynamic was transformed over the following years. The new relationship between the Northern Ireland state and IME post-GFA saw wider developments across IME. As well as the growing number of funded IME schools, there was support for a wider IME infrastructure. *Gaeloiliúint* was established with responsibility for the establishment and development of new Irish-medium primary schools. Altram was founded in 1990 as a regional training and advisory organisation for the Irish-medium early years sector. In 1998 the *Áisaonad LánGhaeilge* which had been originally set up in Bunscoil Phobal Feirste was transferred to St Mary’s University College. This book publishing facility produces books for Irish Medium Education at Primary and Secondary level.

DENI established two new voluntary bodies to deal with Irish Medium Education. In 2000 Comhairle na Gaelscolaíochta (henceforth CnaG), the council for Irish-medium education

34 Given that IE is expressly named as a comparator in the GFA, this was the model for the IME statutory duty (See Integrated Education Fund 2022).

was established as a company limited by guarantee, and without share capital (Comhairle Na Gaelscolaíochta, 2015). CnaG has charitable status and has been recognised as a charity by the Charity Commission for Northern Ireland in April 2017. Although CnaG is a non-statutory body and a charity, it receives its core funding through grant-in-aid from DENI under the powers contained within Article 89 (2) of the Education (Northern Ireland) Order. As a result, it was designated as a Non-Departmental Public Body (NDPB) in 2012. Comhairle na Gaelscolaíochta represents IME at policy making level within the Department of Education, CCEA, and the Education Authority (formerly the area-based Education and Library Boards).

In 2001, Iontaobhas na Gaelscolaíochta, was established as a trust fund for Irish-medium education. It received an initial payment of £1.25m from Government. This funding was later supplemented by a further grant of half a million pounds. The total DE set up funding for InaG was £3.6m - up to 2004. This was almost entirely spent in the first 8 years in supporting the pent-up demand for IME. It is administered by a board of trustees appointed by the DENI and CnaG. Most of its funding is directed at non-funded schools and preschools. Thus, Iontaobhas na Gaelscolaíochta provides financial support to schools at primary and secondary level, which are not yet in receipt of government funding, and to those setting up and developing new preschool, primary or secondary provision. It also provides loans and grants for the development and enhancement of existing educational provision. After CnaG and Iontaobhas were established, Gaeloiliúint reshaped its role and assumed responsibility for the development of Irish-medium education at tertiary level. Finally in 2008 the Department of Education provided its own assessment of the new post-GFA IME provision in its *Athbhreithniú ar Ghaelscolaíocht Tuarascáil/Review of Irish-medium: Irish-medium Education Report*. This remains the most recent statutory baseline analysis of the sector including 'challenges to be addressed' as well as a series of 'Recommendations on the way forward for Irish-medium for Irish-medium Education'.

Since this review the sector has grown by some 80% yet many of the recommendations remain partially or totally outstanding. In 2021 this expanding sector constitutes some 7000 school students across all levels of pre-school and statutory education provision (NISRA/DE 2021). Within this school population 90+% of pupils are from a family background with English as their first language. Thus, immersion now forms a key element within IME pedagogy. Arguably this establishes the core character of IME in the north. For a substantial proportion of the students, immersion is the key to language acquisition. More widely, of course, early immersion is bedrock of international best practice in terms of language acquisition. This remains one of the key challenges for IME. There remains a wider failure to recognise the importance of early years in an IME environment to prepare children to engage fully with the curriculum through Irish at primary school.

Department of Education and EA policy towards the Irish language since 1998

Mercator provides a useful overview of the broad demography and history across the IME sector since 1998 in its *The Irish language in education in Northern Ireland* (2019). The primary responsibility for the statutory duty sits with the Department of Education with additional responsibilities now sitting with Education Authority. In this regard, the most significant change happened in 1998 as the state became a provider of IME. Gradually, since that point, most IME provision occurs 'inside the system'. This means that any examination of DE now embraces the infrastructure which emerged to integrate IME within the mainstream education provision in Northern Ireland – particularly Comhairle na Gaelscolaíochta and Iontaobhas but also the IME structures inside DE and EA. DE now has an IMIE team, which also deals with integrated education. There is no specific IME team in EA, but they have one IM directed officer, on a part time basis and a head of 'sectoral support'.³⁵ CCEA made their IM co-ordinator position redundant several

35 EA have, since August 2021, appointed a 'Teacher Developer for IME' on a temporary basis with the possibility of an extension.

years ago and have not so far replaced. Whatever the shortcomings, however, it bears emphasis that there is a state IME infrastructure which was not there before 1998. This is undoubtedly a significant change.

In 2011, the Treacy judgement characterised the DE's own sense of how post-GFA IME developments were grounded in the statutory duty:

The respondent's [DE] position is that a number of steps, outlined in its affidavit evidence, provide concrete evidence of the appropriate discharge of the Article 89 duty. These include, *inter alia*, the establishment of CnaG and Iontaobhas na Gaelscolaíochta; amendment to the transport policy in 2001 to permit payment of up to twice the sessional rate; review of Irish-medium education in 2008; and carrying out a latent demand survey in 2010.³⁶

Despite these profound changes, however, this research suggests that huge challenges remain.

Significantly, the development of IME promised by the statutory duty and confirmed by the Treacy judgement has taken place within the wider shifting tectonics of the state in Northern Ireland. As the state transformed after 1998, the statutory duty to develop IME was being interpreted and implemented by broadly the same civil servants who had operated an English-only policy up to that point. In reality, the state had developed what might be characterised as a 'toleration policy' towards Irish so the DE and the EA (and before that the education boards) had to respond to their new obligations towards IME. Many of the ongoing tensions reflect this ongoing transition.

This underlines the obvious point that just because a given education minister is supportive of IME does not mean that the whole educational bureaucracy follows his or her lead.

Alongside these issues, the other striking structural shift in Northern Ireland has been the *Catholicisation* of education. In 1920 the state developed an education system in which most students were in state or 'Protestant' schools while Catholic schools – within which all Irish language teaching took place – formed a distinct and marginalised minority. Since the 1970s, however, a demographic transition in education has gradually seen a Catholic plurality of children across all schools – in other words most children in the Northern Ireland education system are Catholic. A similar plurality now obtains in terms of school type – most children in the north of Ireland are now educated in Catholic schools.³⁷ This profound transition might have been expected to deliver a more tolerant approach to IME. Generally, however, this appears not to have been the case. While a proportion of IME students are found in Catholic schools, this has not led to much evidence of any kind of synergy on this issue. The Catholic education sector has been little more engaged in supporting the statutory duty than the state sector. Thus, while we might expect to find a less hostile environment for IME in the context of a catholicizing sector, it appears that this is not generally the case.

Finally, there has been a narrower shift in terms of the alteration of ministers of education. After 1998, there was an initial phase when SF held the education brief with three successive ministers.³⁸ SF saw itself and was widely regarded as the most committed advocate of Irish – and by association IME – among all the political parties in the north. Thus, when the last SF education minister John O'Dowd was replaced by Peter Weir of the DUP in 2016 there was a clear disjuncture at ministerial level. The DUP presented itself – and was widely

36 Coláiste Feirste's Application [2011] NIQB 98: 9-10

37 It bears emphasis that these are not the same things. Large numbers of Catholic children attend non-Catholic schools (including most IME schools) while a smaller number of non-Catholic children attend Catholic schools.

38 There was a five-year period of Direct Rule between the first SF minister and the subsequent ones (2002-2007). This did not reverse the bi/trilingual policy already in place. It did, however, introduce guidance relevant to IME on the European Charter.

regarded - as hostile to the Irish language – and by association IME. Its 2016 election manifesto specifically included a commitment to, 'tackling the preferential treatment of Irish Medium' as part of its 'education equality agenda'. This ministerial change in the Department of Education was characterised as a new policy of 'English First'. In the case of IME this was more than rhetorical. There was a threat that the incoming minister would overturn an IME-related decision by his SF predecessor – a departure unprecedented even in the vagaries of post-GFA governance in Northern Ireland. Thus, even with the best will in the world, we might assume that these political changes would have significant impact in terms of institutional attitudes towards IME.

This significant change is summarised by the Equality Coalition:

A DUP MLA, Peter Weir, then took up office as Education Minister on 25 May 2016. In June 2016, the Irish language policy was subject to review and an entirely new draft 'languages policy' had been produced. No consultation or equality screening took place, nor does there appear to have been any engagement with Irish language speakers or advisory bodies. No records were kept as to what prompted the sudden review and re-writing of the policy. As regards to purpose, the DE stated that the new policy changed the language for the administration of the department's functions from English and Irish, to 'English only'. It also led to a monolingual logo being adopted. (2020: 41)

This volte face also had wider effect across the wider statutory education sector:

Around the same time the Education Authority dispensed with its multilingual logo, which had included Irish, to adopt instead 'English only' branding policy. CAJ sought clarification of what had prompted this change and was initially told in September 2018 that it had been on the basis of a ministerial instruction. This was understood as a verbal 'instruction' as no record of it was disclosed. Subsequently the EA changed its position and argued that the "the Chief Executive made an operational decision to use the mono-lingual option in line



Credit: Northern Ireland Assembly, Peter Weir MLA, DUP

with the DE practice at the time". (Equality Coalition 2020: 42)

Thus, the Education Authority appeared to indicate that its adoption of an 'English Only' policy was not a consequence of ministerial direction:

'The EA initially said that "with a change in Department of Education ministry in May 2016, the logo was changed to English language only". Less than two months later a letter from the same official said: "I would like to clarify that there was no ministerial instruction in May 2016 to change the EA logo/corporate branding/promotional literature". The official confirmed that while mono-lingual and tri-lingual options for the EA corporate logo remained in place, "in 2016 the chief executive made an operational decision to use the mono-lingual option in line with the DE (Department of Education) practice at the time".' (Young 2019)

Neither was anyone in DE ever asked for a 'ministerial direction' (i.e., the formal way a minister 'instructs' officials to do something against their advice (normally based on applicable governance standards). But the department did change policy on Irish in an entirely arbitrary manner, by passing s75 and other duties. Department



Credit: Comhairle Na Gaelscolaíochta

officials did nothing to stop this, including allowing bypass of procedural equality duties. Rather, they should have advised the position was contrary to international obligations and the IME promotion duty and sought a binding direction to absolve themselves from the blame for it. Whether ministerial direction or departmental agency is held responsible, the consequences for Irish and IME were the same. The new start promised by the statutory duty had been replaced by a relationship to Irish that looked closer to the situation in 1922 or 1972 or 1997. The sector had a de facto 'English Only' position once again. This remains the current position. In other words, in 2016 the transition from a minister whose party was in principle actively supportive of IME to one whose party appeared actively hostile clearly *did* have immediate and substantive consequences. This approach was maintained when Michelle McIlveen of the DUP replaced Peter Weir as education minister in June 2021. It bears emphasis that this change was significantly *more* problematic for the DE and EA than other departments and institutions since they had responsibility for the IME sector. Since the GFA and the statutory duty the whole sector had been dual lingual servicing two different language communities, Irish and English. The return to monolingualism was more

than an offensive gesture toward the Irish language – it diminished its own IME work as well as clearly undermining its responsibility to develop the sector.

This 'English Only' signal on and to IME – which could hardly read as anything but directly undermining the statutory duty on *developing* IME - was the responsibility of Department itself, albeit under guidance of its DUP ministers. The notion that that the equality and statutory duty mechanisms of the power-sharing government were sufficiently robust to prevent any change to IME policy and practice have not been supported. At both ministerial and departmental level, the commitment to develop IME had been undermined in the most profound manner.

These structural changes have in turn impacted on the practical relationship between the statutory education sector and the IME sector. At one level the issues addressed are well-rehearsed. For example, the Irish Medium School Leaders Working Group publication, *Collaborative Practice to Drive School Improvement* offers a comprehensive overview of what needs to be done that is grounded in the sector. As it observes:

Irish Medium Education differs fundamentally from all other sectors in that it provides an alternative system of education. The immersion/bilingual model of education espoused by IM schools is not replicated by any other sector and thus this entails major implications in terms of pupil need, pedagogy and sustained sectoral development. There is a perception that something of a cavity has arisen between the sector and the relevant education authorities. (2016: 4)

This notion of a 'cavity' between the sector and the 'relevant educational authorities' is confirmed by this research. In other words, there is little doubt that this fissure has worsened in the intervening period.

In terms of both the DE and the EA, the current optics are striking. Any initial engagement with either body fails to indicate *any* connection with Irish or IME *at all*. For example, their respective websites require a detailed search before any link to IME is made. Anyone chancing upon the home page of either the Department of Education or the Education Authority might assume that there was no such thing as either Irish or IME in Northern Ireland. They present as having an English-only policy. All their introductory presentation is through the medium of English – and no Irish language version is offered or available. In other words, both bodies respond to their statutory duty to 'encourage and facilitate the development' of IME by failing to acknowledge its existence *at all* in their introductory presentation to their audience across the internet. This contrasts starkly with the education departments in Ireland, Scotland and Wales which are bilingual in their respective 'regional' languages. For example, the current Welsh Government suggests:

Ensuring that all learners will be able to use the Welsh language when they leave school is important in our ongoing education reforms. This is part of our national journey towards a million Welsh speakers by 2050. Our schools are already playing a crucial role in enabling thousands of children each year to begin or continue their journey towards becoming bilingual citizens. We want more children to

acquire skills in both languages and to use Welsh in their daily lives. (Welsh Government 2020: 28)

Even the Isle of Man – which supports one Manx language primary school – has more Gaelic on its department of education home page than either DE or EA. This tells us, 'The DESC actively promotes Manx language and its unique history, heritage and culture.' This approach contrast starkly the public-facing materials of the statutory education sector in Northern Ireland.

With some effort, some basic information is available from the education sector – lists of IME schools and school enrolment numbers and so on. But there is no sense of this being *promoted* or even acknowledged in any way whatsoever that might accord with the duty to develop the sector. Rather, the casual observer might reasonably assume that IME is being hidden by both bodies. All this suggests that something has gone very wrong since 1998 and the assumption that the relationship between the state and IME in Northern Ireland had been 'reset'.

Moreover, the EA now insists that it is not bound by the statutory duty in its 'current position regarding the statutory duty to Irish Medium Education':

Under Article 89 of the Education (NI) Order 1998 it is the statutory duty of DE to encourage and facilitate the development of Irish-medium education. As an arms length body EA's overall aims and objectives support DE's wider strategic aims and objectives and the contribution to the Executive's Programme for Government. Where DE policy highlights specific requirements and needs for the IM Sector, EA endeavours to implement these within available resource.³⁹

This appears retrograde since this notion of supporting rather being bound by the statutory duty had not appeared an issue for twenty years. Nor indeed did it appear to be an issue for the education boards that preceded the EA. The GFA commitment had been quite explicit – the statutory duty for IME was modelled on the statutory duty for IME and this named the boards

as being covered by that statutory duty.⁴⁰ In other words, it will be a shock for many working in IME to discover after twenty years that the statutory duty does not apply to the EA.⁴¹

This approach contrasts with the approach of Comhairle na Gaelscolaíochta – the body tasked with supporting IME:

Comhairle na Gaelscolaíochta, for our part, remains committed to working pro-actively and positively with our partners in the DE, the EA and other statutory bodies to ensure the best possible outcomes for children learning through Irish. We see our role as providing the expert guidance and advice to other statutory bodies to ensure that policies, schemes, resources etc, are compliant with the specific needs of immersive education and consistent with best practice and legal duties. We believe that that is provided for under the statutory duty and we have made several suggestions to this end over many years. We will continue to do so in the future.⁴²

But Comhairle is also clear that there have been limitations in the effectiveness of the statutory duty:

We are firmly of the view that the statutory duty in and of itself has not delivered the outcomes that were originally anticipated when it was introduced. Almost 25 years after its ratification we still, as a sector, encounter

numerous issues, across all the key areas of education, from Special Education Needs to accommodation, that expose the limitations and/or the failure to meaningfully comply with the spirit and letter of the statutory duty. It is telling that the integrated sector, subject to an identical statutory duty, have now moved beyond it and are seeking redress through a specific Integrated Education Bill. If the statutory duty was working as it had originally been intended, perhaps this would not have been the case.⁴³

In combination, the sequence of developments after 1998 confirms that whatever was transformed by the GFA in terms of the relationship of the state and IME, much remains to be addressed, not least by the Department of Education and the EA.

This sense of a specific problem in terms of the statutory education sector and IME was confirmed by the recent *DE Landscape Review of the Education Authority (2022)*. This suggested:

EA has statutory functions in terms of sectoral support and a recurrent feature of stakeholder feedback from the educational system was the effectiveness of sectoral support. There appear to be significant weaknesses in the support offered by EA to CnaG and NICIE in particular, and feedback suggests a lack of willingness at times to engage with those bodies. There appears to be poor understanding of the

40 It seems difficult for the EA to argue with any credibility that they are bound by the substantive part of IE duty on the Department– i.e. ‘to facilitate and encourage the development’ of IE; but not bound by the exact same IME duty on the Department with the same wording. That there is a separate duty on EA to provide ‘advice and information’ on IE is neither here nor there with regard to binding on the statutory duty. Either EA argue they are bound by neither or both substantive parts of the duties. The EA is bound by both as in simple terms the DE discharges its functions through the EA so is duty bound to make arrangements to ensure the EA fulfils this part of its duty.

41 In terms of the new *Integrated Education Act of 2022*, this disparity between the IE and IME statutory duties does become more complicated. The new Act changes the duty expressly on the Department – to add ‘support’ to ‘encourage and facilitate’ but then it replicates the same duty expressly in the EA in its powers. This does appear to leave IME in a disadvantaged position as the EA might argue they now have an express duty in IE and not IME. However, since the IME statutory duty was always supposed to be modelled on the IE statutory duty, any enhanced support for IE should be mirrored by similar enhancement for IME. If the spirit of the original GFA commitment to accept the IE statutory duty as the template is not recognised, this suggests a need to swiftly enact a similarly enhanced statutory duty for IME.

42 Research communication 03.02.22

43 Research communication 03.02.22

Irish Medium Sector (IMS) needs, limited workforce planning and policy development to support IMS services including SEN services to children in need. EA has a statutory duty to support these organisations but appears to have limited ability to do so which is reflected in the overall findings and therefore raises concerns on EA's ability to meet its statutory responsibilities. We are aware of a Cross Directorate Group on Support for Irish Medium Education and at a recent Board meeting an update suggested that it had implemented an audit of EA support across all Directorates. It is anticipated that the outcomes of the audit would inform the development of a Cross-Directorate Action Plan – this may go some way to effecting positive change in this regard. (2022: 66)⁴⁴

While this commitment to 'positive change' is welcome, it bears emphasis that it appears nearly twenty five years after the GFA commitment to the statutory duty on IME. While there has been a great deal of positive change in the interim, other profound challenges remain. In particular, there remains an unhelpful ambiguity between maximalist and minimalist readings of the statutory duty and its implications across different educational bodies. Moreover, the return to English-only branding and English-only policy in 2016 showed that it was possible to *undermine* rather than develop IME within the statutory education sector despite the promise of the statutory duty.

This English-only approach appears the very antithesis of 'development'. As one of our respondents put it, it is hardly surprising that this makes people working in the IME sector feel like a 'dirty little secret':

People are almost embarrassed. I just feel like we're like a dirty secret. Keep us hidden. We're the education system's dirty little secret.

... Often, people that you think could be or should be sympathetic, people that you know have a background in the language ... they may support us in private meetings but in a public forum with other organisations and agencies, they just keep quiet. They don't want to be tarnished by supporting us ... That's how it feels.

This suggests a profound gulf between the statutory education sector and its own Irish medium provision:

I think the biggest problem we face is complete and utter ignorance in terms of what Irish medium education is. I don't know if it's genuine. In certain cases, I believe it is. There is a genuine lack of understanding that we even exist as a sector. And I'm speaking about people at the highest levels in DE and EA. This sense of if you're lucky and you get someone with an interest who has 'oh, my child or my neighbour ... went to IM.' Or 'I did A level Irish.' If you're lucky and you get someone like that, they'll be willing to speak to you. But more often than not in these places, people are moved around really quickly. So you're relying on the good will, or the specific interest of one or two ... sympathetic individuals ... who will actually listen to you and give you your place. In a lot of cases the eyes roll when you speak ... You're always the contentious voice in the room and it's a really uncomfortable feeling and I've spoken to people... I'm not afraid to raise the issues because my attitude is we're here to be the voice of those voiceless children and practitioners in the classrooms.

In other words, our research suggests that whatever has been transformed by the statutory duty since 1998, the new, positive relationship between state and sector envisioned by the statutory duty is some way from complete.

⁴⁴ This report also notes: 'Further levels of assurance on corporate governance have been created through the establishment of a Performance and Engagement Standing Committee as a standing committee of EA. This Committee's focus is to support EA on the oversight and monitoring of [inter alia] the exercise of EA's functions in relation to Irish Medium schools in the context of the Department's duty to encourage and facilitate the development of Irish-medium education.' (2022: 79)

International standards and the domestic NI legal framework

International standards

The UK State has duties on language rights under international standards. Thus, the experience of the Irish language community – and IME – sits within a broader narrative of human rights standards for linguistic minorities. These range from banning action to suppress minority languages to the more proactive positive duties codified in the *European Charter for Regional or Minority Languages* (ECRML) in the 1990s. The ECRML is the European convention for the protection and promotion of languages used by 'traditional minorities'.⁴⁵ Together with the *Framework Convention for the Protection of National Minorities* it constitutes the Council of Europe's commitment to the protection of national minorities. This development coincided with the peace process and commitment to the ECRML was one of the key rights gains of the GFA.

The ECRML includes specific commitments on minority language education. Thus Part III – Measures to promote the use of regional or minority languages in public life includes *Article 8 – Education* with an undertaking 'according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State' to make available inter alia 'pre-school education', 'primary education', 'secondary education', 'technical and vocational education' and 'university and other higher education' 'in the relevant regional or minority languages'. It also commits parties, 'to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports

of their findings, which will be made public'. The charter is an à la carte instrument where the state party agrees to a certain number of provisions depending (in theory) on the status of development of each language – the UK has signed up to most but not all the above for Irish in the north.⁴⁶

While these obligations are all qualified, this comprehensive provision would be the optimal choice in each case. Since the education sector in Northern Ireland is already under a statutory duty to develop IME, it might be expected that this would lead to a similarly maximalist approach to provision. The accompanying explanatory note makes it clear that:

63. A crucial factor in the maintenance and preservation of regional or minority languages is the place they are given in the education system. The charter is content in Part II to affirm the principle, leaving it to the States to define implementing measures. However, it requires that regional or minority languages be present "at all appropriate stages" of the education system. The arrangements for the teaching of the regional or minority language will obviously vary according to the level of education concerned. In particular, in some cases, provision will need to be made for teaching "in" the regional or minority language and in others only for teaching "of" the language.

This also suggests:

Respect for regional or minority languages and the development of a spirit of tolerance towards them are part of a general concern to develop understanding for a situation of language plurality within a State. The development of this spirit of tolerance and receptiveness through the educational system and the media is an important factor in the practical preservation of regional or minority languages.

There are also provisions of the charter that outlaw

45 The British Government ratified the European Charter on 27 March 2001. Welsh, Scots-Gaelic and Irish were given protection under Part 3 of the Charter, the highest level of protection, while Scots and Ulster Scots were given more limited protection under Part 2.

46 See UK European Charter for Regional or Minority Languages (ETS No. 148) ratification document for details.



Credit: Mal McCann

discriminatory policies (Article 7) and have the general duties through education (in general) to promote linguistic diversity and tolerance.

The periodic review of the UK performance by the Committee of Experts (COMEX) of the Council of Europe (henceforth CoE) in the context of the Charter provides an ongoing measure of the status of Irish language rights including IME (see CoE 2010, 2014, 2020).⁴⁷ The most recent report offers a useful right-based overview of the broad situation for Irish in Northern Ireland:

The public use and promotion of Irish in Northern Ireland continues to be highly politicised. Some departments of the Northern Irish authorities as well as some local authorities have adopted "single-language policies" and thereby exclude the use of Irish, which is incompatible with the Charter. Despite recommendations by the Committee of Ministers in previous monitoring cycles, the Northern Ireland Assembly has so far

not reached consensus on the adoption of an Irish Language Act. Given the ongoing political resistance, the Committee of Experts considers that such legislation should be passed at central governmental level and comprehensively regulate the use and promotion of Irish. It is seen as essential by both the Committee of Ministers and the Committee of Experts to free the promotion of Irish from political tensions. The Committee of Experts emphasises that it is an obligation of the United Kingdom to implement the undertakings selected for the Irish language. The fact that for many undertakings the power is devolved does not take away the responsibility of the United Kingdom to fulfil its treaty obligations. In education, Irish is a medium of instruction in pre-school, primary and secondary education. As the number of pupils is growing annually, the need to plan more strategically for the projected demand remains. This concerns in particular the training of teachers able to teach subjects in Irish at

⁴⁷ The next UK report to COMEX is not due till July 2023. The NI Executive will have not submitted information to the UK government on compliance with Article 8 as it was either blocked by the DUP or SF (the former as it highlighted failures to comply the latter as it didn't) who have to sign off on same. Whilst this means the UK government as the contracting party is duty bound to provide information on the devolved issues, it has not.



Credit: www.thecanadianencyclopedia.ca | Royal Commission on Bilingualism and Biculturalism André Laurendeau (left) and Davidson Dunton (right)

pre-school and secondary levels, taking into account the particular educational needs in immersion education. The use of Irish in court is still prohibited pursuant to the 1737 Administration of Justice Act, which the Committee of Experts considers discriminatory.

The Framework Convention for the Protection of National Minorities also has specific commitments on language and education.⁴⁸ Thus the British Government has quite clear and detailed obligations in terms of the provision of IME outside the obligations that flow from the statutory duty and other domestic commitments on the language. For example, in 2021 the CoE made it clear that the commitment on Irish language in the NDNA document were 'not comprehensive enough'

– and this included specific criticism of related IME provision.⁴⁹ There have also been issues in reporting to CoE.⁵⁰ More generally international bodies such as the Council of Europe Committee of Ministers and the United Nations Committee on Economic, Social and Cultural Rights have monitored and made recommendations in terms of recognising and promoting Irish language rights.

Finally, it bears emphasis that alongside the international standards which apply to both the UK and the NI states, there are also models of good practice which illustrate ways in which the *objective* of the IME statutory duty has been realised elsewhere. Perhaps the most relevant existing model addressing educational rights in the context of wider language rights is provided

48 Including Article 14 - The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language [and] In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

49 BBC News 2021. Irish language proposals 'not comprehensive enough' 02.04.21.

50 The NI Executive has periodically failed to provide information to the UK government on compliance with Article 8 as it was either blocked by the DUP or SF (the former as it highlighted failures to comply, the latter as it didn't) who have to sign off on same. The UK - as the contracting party - is still duty bound to provide information on the devolved issues, but so far it has not done this.

by the Canadian province of New Brunswick (Commissariat aux langues officielles du Nouveau-Brunswick/Office of the Commissioner of Official Languages for New Brunswick 2014).

The 'New Brunswick model' is situated within an evolving history of language equality in the Canadian province. Around two thirds of the population is anglophone and one third of the population is francophone.⁵¹

The New Brunswick *Official Languages Act 1969* made it the only officially bilingual province of Canada. This development focussed discussion of educational rights on the issue of different linguistic communities. In 1981 'Law 88' - an *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* - was passed and provided independent school boards for both linguistic groups. In 1982, the Canadian *Charter of Rights and Freedoms* was added to the *Constitution of Canada* and in 1993, the Charter was modified by the insertion of *Section 16*. This development guaranteed the equality of English-speaking and French-speaking residents of New Brunswick and entrenched the official bilingualism of New Brunswick in the Charter. Thus these language rights are now embedded in the *Canadian Constitution Act 1982*:

The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

In New Brunswick a new *Official Languages Act 2002* replaced the 1969 Act in order to include the constitutional obligations toward the two official languages. The new law created a *Commissariat aux langues officielles du Nouveau-Brunswick - Office of the Commissioner of Official Languages of New Brunswick* with a mandate to

apply the *Official Languages Act* in governmental institutions and to promote bilingualism (Commissariat aux langues officielles du Nouveau-Brunswick - Office of the Commissioner of Official Languages for New Brunswick 2022).⁵² This law confirms English and French as the two official languages of New Brunswick. They have equal status in all provincial government institutions including, of course, education.

This education model is characterised as a 'dual system':

The provincially-funded public education system, Kindergarten to Grade 12, is offered through a dual system of English and French schools. Attendance at New Brunswick public schools is compulsory until the completion of high school or the age of 18. In addition, Early Childhood Services is now part of the Department's mandate to create a continuum of learning from birth to high school graduation within a robust system with greater policy coherence and to focus on children from birth to age eight.... For administrative purposes, the province is divided into seven school districts, four Anglophone and three francophone. (Nouveau/New Brunswick 2022)

Interestingly, while the New Brunswick approach embodies a general commitment to bilingualism, in practice education is regarded as 'an exception'. In other words, the language rights involved are not to 'bilingualism' but rather to education that may be delivered monolingually in English or in French. Thus:

In New Brunswick, each linguistic community (Anglophone and Francophone) has the right to its own schools and educational institutions. That right exists in order to protect the vitality and ensure the development of each community. Consequently, the following are not required to provide their services in both official languages: the provincial school system, including the English and French

51 In Canada there is no federal government department or agency involvement in the formation or analysis of policy regarding education as education rests entirely within provincial jurisdiction under the Canadian Constitution. Catholics are also entitled to a separate Catholic school system by constitutional right.

52 It also considers the revision of the act every 10 years as well as matters such as criteria for the translation of municipal laws.

sectors of the Department of Education and Early Childhood Development; schools and their committees; district education councils; community centres; community colleges; universities. (Le Commissariat aux langues officielles du Nouveau-Brunswick/Office of the Commissioner of Official Languages for New Brunswick 2017: 2)

This is an important model as we seek rights-based solutions to issues with the effectiveness of the statutory duty. A similar commitment to equality between *linguistic communities* with a 'right to distinct educational institutions' might usefully ground the IME statutory duty within wider language rights.

Domestic British and NI legal framework

The Good Friday Agreement included a broad commitment on linguistic diversity which included Irish:

All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.

This was extended to a more detailed series of commitments specifically on Irish.⁵³ Obviously in terms of our present research, the key commitment was to:

place a statutory duty on the Department

of Education to encourage and facilitate Irish medium education in line with current provision for integrated education;

So, the promotion of IME became a 'statutory duty'; and the key comparator in terms of delivery was the integrated education sector at that time. Crucially, this indicates a broad commitment to develop IME above and beyond other sectors – state controlled and Catholic maintained. The Northern Ireland Act 1998 gave effect to the broad commitments on rights in domestic legislation while Article 89 of Education (Northern Ireland) Order 1998 gave specific effect to the commitments on IME:

89.—(1) It shall be the duty of the Department to encourage and facilitate the development of Irish-medium education.

(2) The Department may, subject to such conditions as it thinks fit, pay grants to any body appearing to the Department to have as an objective the encouragement or promotion of Irish-medium education.

(3) The approval of the Department to a proposal under Article 14 of the 1986 Order to establish a new Irish speaking voluntary school may be granted upon such terms and conditions as the Department may determine.

(4) In this Article "Irish-medium education" means education provided in an Irish speaking school.

The *Education (Northern Ireland) Order 1998* and its Article 89 duty to encourage and facilitate the development of Irish-medium education were

53 the context of active consideration currently being given to the UK signing the Council of Europe Charter for Regional or Minority Languages, the British Government will in particular in relation to the Irish language, where appropriate and where people so desire it: • take resolute action to promote the language; • facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand; • seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language; • make provision for liaising with the Irish language community, representing their views to public authorities and investigating complaints; • place a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provision for integrated education; • explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of *Teilifís na Gaeilge* in Northern Ireland; • seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland; and • encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the desires and sensitivities of the community.

assumed to mark the start of a new relationship between IME and the state in Northern Ireland. Our review of previous state policy makes clear that this was not before time given the centuries of anti-Irish language policy by the colonial state. The start of a new relationship, however, did not mean that the legacies or tensions were transformed overnight. Arguably the period since has seen a long and tortuous explication of something that seemed a simple given when supporters of IME first mobilized the notion of a 'statutory duty'.

The broad peace process commitment on Irish was re-emphasised in 2006 in the St Andrew's Agreement in Annex B 'Human Rights, Equality, Victims and Other Issues':

The Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.

Thus, St Andrews provided a commitment to the statutory duty as part of a wider Irish Language Strategy for the first time. This approach was further reconfirmed in the New Decade, New Approach document which emerged from the Stormont House Agreement in 2020. This agreement indicated that the Programme for Government *could* be underpinned by key supporting strategies, including the Irish Language Strategy. It also included Annex E: 'Rights, language and identity' which firmed this commitment up with further detail on the role of the Irish Language Commissioner as well as the commitment to repeal the *Administration of Justice (Language) Act (Ireland) 1737* and make any necessary statutory provision for births, marriages and deaths to be registrable through Irish, and for wills to be validly made in Irish, as an option and matter for individual choice. Irish and other languages will be facilitated when deemed necessary by the courts.

It also included the commitment towards a new *Northern Ireland Act 1998 (Amendment No 2) Bill* To make provisions for the Irish Language ... and that:

The Irish language provisions will form a new [Part X] of the Northern Ireland Act 1998.

At the time of writing, neither the Bill nor the Strategy nor the Commissioner has been

implemented. Even if these are implemented, they remain minimalist. As lawyer Niall Murphy suggests:

In relation to the status of Irish language, my view is that Irish language is given official status by s.78F. My view is that the legal effect of that status is limited to the provisions on an Irish Language Commissioner and best practice standards (in addition to the already existing provisions e.g. s.28D Northern Ireland Act 1998 and Article 89 of Education (Northern Ireland) Order 1998 etc). I do not consider that the official status in s.78F provides any legal rights other than those mentioned in s.78F.

Clearly the Covid-19 pandemic has not helped to expediate this process, but it is striking that this minimal recognition has been a very long time coming. If it occurs, it will be 25 years from the peace process and the GFA. As we have seen, the GFA had explicitly affirmed a transformed relationship between the Northern Ireland state and the Irish language community in general and IME in particular.

The absence of movement was also highlighted by its juxtaposition with other UK legislation. For example, Wales is often regarded as providing a model of good practice in terms of its advanced support for and provision of Welsh. This support is framed by the *Welsh Language Act 1993* and the office of the Welsh Language Commissioner. These are complimented by development-focused strategies that pro-actively set about trying to increase the number of Welsh speakers. Scotland too has provided some of the broad language rights measures that have been resisted in the north of Ireland. The *Gaelic Language (Scotland) Act 2005* and the *National Gaelic Language Plan 2018-2023* provide a comparative framing. In contrast to the Welsh Language Act, the Scots legislation created no new rights to use the language in public administration. Nevertheless, the current Scottish Government strategy does clearly support GME growth:

We will encourage the promotion, availability and growth of GME. We will support parents and carers who want GME for their children and those who would like to see a GME school established in their area. (NGLP 2018: 46)

Thus, even in terms of the immediate comparators, the IME statutory duty appears to fall far short of its intentions. There is already a prima facie case to suggest that the notion that the statutory duty reset relations between the state and IME is not born out.

Litigation on IME

One striking aspect of the 'failure' of the statutory duty is that it has seen *more* rather than less litigation on IME, mostly from parties arguing that the duty has not been met in different ways. Moreover, *threatened* legal intervention also appears to have changed policy on more than one occasion. Of course, this is also a paradox – there can be no language rights litigation in the absence of established language rights. So, in this narrow sense it might be argued that the statutory duty is working - it does provide a fallback safeguard as there was nothing there before. At the same time, however, the profusion of litigation around IME itself suggests that the normalisation of relations between IME and the state anticipated by the duty has failed to materialise. Furthermore, despite successful cases being brought, these rarely lead to systemic change but rather address the narrow and particular issue at hand. For example, in the course of the research we came across a number of ongoing cases around transport provision.⁵⁴

The most definitive of these cases addressed the implications of the statutory duty for IME. In this Justice Treacy ruled:

[43] Art 89 is the statutory embodiment of the clear commitment enshrined in the Belfast/ Good Friday Agreement to place a statutory duty on the respondent to encourage and facilitate Irish medium education in line with the current provision for integrated education.

[44] I do not accept the respondents contention that this duty is merely aspirational. The imposition of the statutory duty has and is intended to have practical consequences and legislative significance....⁵⁵

The judgement made a clear distinction between contexts in which the statutory duty applied and those in which it did not:

[The Department of Education] does *not* have a corresponding duty in relation to the traditional established educational sector. Accordingly it may facilitate and encourage the IM post primary sector in ways that it need not for other sectors by taking positive steps or removing obstacles which inhibit the statutory objective.

This confirmed that the statutory duty entailed a proactive responsibility to provide a specific, 'bespoke' support to IME. This was much more than formal equality or equity.⁵⁶ importance of this judgement is recognized across the sector:

I think the big issue is that the statutory duty is a bit like Lewis Carroll's Alice in Wonderland - the words can mean whatever one likes. Don't forget, it was only after Coláiste Feirste took a SF minister to court - about lack of access to transport that Judge Séamas Treacy came out with his finding - which empowered us but is still being ignored. The DE barrister at that case said that the GFA was an aspirational document!

In other words, this provided a helpful clarification of the statutory duty which supported the widespread reading of its implications with the Irish-speaking and IME community. It *should* have practical consequences. Moreover, these would be reasonably understood to be above and beyond narrow, formal 'equality' with other education sectors.

54 Thus some transport was provided for north Belfast following a judicial review but other areas are still taking similar cases.

55 Coláiste Feirste's Application [2011] NIQB 98

56 Both terms appear fairly loosely in debates around IME. It bears emphasis that international standards and domestic legislation focus on the word 'equality', so this remains the appropriate frame. *Equality discourse itself spans a continuum between equality of opportunity and equality of outcome.* It bears emphasis that the Treacy judgement confirms that the statutory duty places an obligation upon the statutory education sector substantially beyond 'equality of opportunity'.



Credit: Comhairle Na Gaelscolaíochta

While some of the IME related cases have been regarded as important 'victories' for IME, it is reasonable to suggest that no education sector should have to continually assert its rights through legal action. This is arguably a huge waste of time and energy on all sides that would be better spent promoting and developing the sector. In other words, while the solution to this reality may be more challenging, recognising the undesirability of the current dynamic should further inspire a fundamental reset in relations with the state and its education sector.

There is also one further judgement on integrated education and the meaning of the statutory duty which has immediate implications for IME. The case concerned a challenge to the approach taken by the Department of Education to Drumragh Integrated College's development plan to increase pupil numbers.⁵⁷ The Court held that integrated education was a standalone concept that envisages education together at the same school. The Court described DE's 'Needs Model', which is the basis for long-term education planning, as 'inflexible' and suggested it provided an 'additional difficulty' impeding the progress of expansion in integrated schools. This creation of an 'additional difficulty'

is the opposite of '...facilitating and encouraging (integrated education).' The Court ruled that DE needed to be '...alive to its Article 64 duty at all levels, including the strategic one.'

Since the IME statutory duty was modelled on this existing IE statutory duty it is reasonable to conclude that the same principle applies to the application of IME. Our analysis of experiences within IME suggests that the sector faces a whole series of 'additional difficulties' impeding its development. Moreover, as we shall see in the next section, there appears a distinct absence of any strategic commitment from the DE and EA to develop IME.

57 In the matter of an application by Drumragh Integrated College for judicial review NIQB 19.06.14

Documenting obstacles faced by IME

The key empirical challenge for our research on the statutory duty was ‘documenting obstacles faced by IME’. This is obviously measured against the responsibility of the duty to ‘encourage and facilitate the development of Irish-medium education’. This analysis draws heavily on primary research with respondents across the IME community (See ‘Methodology’ in Annex 2). But the notion that the statutory duty has been imperfect is reflected more generally. For example, Comhairle na Gaelscolaíochta observes:

It is worth noting, that successive reports, from both NGO’s and other statutory bodies, have consistently highlighted the need for more specific and tailored support for IME, in a manner consistent with the statutory duty. Indeed, as early as 1999 the ‘Education and Training Inspectorate’ (ETI) identified several failings in relation to the provision of SEN support in IM schools. It is a source of great frustration to CnaG and the sector at large that these failings, to a large extent, are yet to be addressed, despite the significant growth of IME in the intervening period. Furthermore, DE carried out a ‘Review of Irish-Medium Education’ (2008) and from analysis carried out by CnaG, most of the recommendations contained within the review await implementation.⁵⁸

Of course, none of these issues is fixed in time and part of the challenge of developing IME in NI is the need to respond to changing circumstances. Twenty-five years ago, the statutory duty was introduced for a sector with a very small existing base in the north of Ireland. Since then, IME has undergone significant growth. It remains the fastest growing educational sector and a plurality of new schools formed in last 20 years is in IME.

Thus, IME now constitutes an expanding – albeit still relatively small – established sector with schools right across the six counties (NISRA/

DE 2021). This growth means much greater demand for resources like capital support. Many of the obstacles facing IME appear to flow from a failure to integrate this expanding IME sector across statutory education provision. This is compounded by the broader tendency in which the wider ‘school estate’ is declining. This decline informs at the highest level the DE approach to planning education: indeed, area planning was set up for this very purpose. It appears inflexible, however, in the face of the countervailing growth of the IME sector.

It also bears emphasis that IME – with its emphasis on a pedagogy of bilingualism and immersion - remains profoundly *different* from the EME education sectors. As one respondent observed:

I’ve really started in recent times drawing a real distinction between bilingualism and immersion and I’m really trying not to be pedantic here... I’m just thinking about the experience I’ve had, you know, say knowledge of bilingual schools in Spain, which are a very very different methodology... So, bilingualism, I feel, will be a by-product of immersion, but it’s not our main goal. Our main goal is to immerse the children in Irish.

This means that IME is not just another ‘sector’ in NI, despite the fact that it occupies an overlapping space across EME sectors. Rather it reflects the existence of two different language communities with different pedagogies:

In my view, a much more relevant distinction is on linguistic terms; those educated through English and those educated through Irish. If we consider that, by and large, there is little difference in terms of the classrooms between maintained/integrated/controlled only the pictures on the wall and some vague nod to ‘ethos’. There is a huge difference between what happens in IME and all other sectors but that isn’t reflected and essentially this disadvantages us as it views our issues along ‘sectoral lines’ alongside ‘competing interests’ from other sectors.

This point about sectors is also crucial. IME – like

58 Research communication 03.02.22

EME – can be, and increasingly *is* – provided within *all* of the existing educational sectors in NI. The statutory education must engage with the reality that it is now responsible for education in two different languages – with all the challenges and opportunities this creates. More specifically, bilingual/immersion education through IME presents a whole set of additional challenges and opportunities that are unlikely to be met by an educational system characterised by monolingualism.

This basic difference in IME in terms of bilingualism and immersion is further compounded by issues such as social class. For example, IME has disproportionate numbers of pupils with free school meals entitlement. Besides this class difference, over 20% of pupils with special educational needs (2.5% with a Statement of SEN and 19.4% without) (NISRA/DE 2021).

Free school meal Entitlement	IME	EME
Primary (years 1-7)	35.4%	28.5%
Post-primary	44.3%	26.8%

Source: NISRA/DE 2021

Furthermore, these structural differences are further compounded by a widespread hostility towards IME that we have described already.

Our analysis of 'obstacles' begins from this current position – IME is no longer simply an area of anticipated growth as it was in 1998. Rather, it is an established sector of over twenty years standing with specific characteristics and challenges. As we have seen there is a body of existing researching pointing to the issues inhibiting IME development (DE 2008; The Irish Medium School Leaders Working Group 2016). The recent CoE Committee of Experts report puts this in broader human rights context:

In light of the information obtained during the on-the-spot visit, primary education in Irish is available in a number of schools. However, there is a lack of teachers and planning for Irish-medium education, which is why Article 8.1.biv [covering primary education] is only partly fulfilled.... The Committee of Experts encourages the authorities of the United Kingdom to comply also with all undertakings under the European Charter for Regional or Minority Languages which are not considered "fulfilled" ... as well as to continue to comply with those that are fulfilled. (2020: 2.2.2)

The recommendations by the Committee of Experts on how to improve the protection and promotion of Irish in the United Kingdom were headed by *two recommendations for immediate action*: 'a. Adopt a comprehensive law and a strategy on the promotion of Irish in Northern Ireland [and] b. Provide the basic and further training of a sufficient number of teachers teaching in Irish'. It also included 'Extend the provision of pre-school, primary and secondary education in Irish' as a *further recommendation*. In other words, there is a broad recognition from the CoE that the current provision of IME is inadequate.

This broad context is reflected in our respondent's analysis of the current situation. This broad point was confirmed by many respondents to our research. They were key to point out that the statutory duty had failed in many ways:

What does it mean, the statutory duty, if it didn't have practical effect? Why did it take a protracted legal process to state the obvious that the statutory duty has to mean something practically? The fact that this required a court case is probably evidence itself of - to put it as benignly as possible - the inert response from the DE / EA to the duty. Actually, in recent correspondence, the EA stated

they don't have a statutory duty, its role is to support the statutory duty - what the difference is I don't know....

This specific disappointment with the effectiveness of the statutory duty also signals a widespread sense of frustration across the sector:

Principals in IME are exhausted with the on-going battle to secure what are our rights for our schools: Fit for purpose schools, bilingualism to be recognised and understood, equitable SEN provision for our children.

It bears emphasis that the present research also confirmed the general sense of 'obstacles' across the sector. This was confirmed routinely across the research:

The main obstacle to the development of Irish-medium education is DE's lack of a proactive overarching strategy. There is no serious attempt to work in partnership with the sector and schools to facilitate this development. There is no shared analysis of the challenges faced by the sector, agreement on the clear objectives and targets, never mind a plan to meet such objectives. The last Review of Irish-Medium Education was carried out by DE in 2008. While this Review was not perfect, it nevertheless made a number of positive recommendations. The approach taken to these proposals by DE has been piecemeal and "tick-boxy".

This sense of an absence of any positive strategy on IME then structures all aspects of relationships with the statutory education sector:

Irish-medium schools face a lack of understanding, urgency or responsibility when they raise issues and needs with the Department. We are dragged into a bureaucratic process which drags on for years and sometimes returns to the start with new officials. It is clear that we do not even have a partner to work with, never mind a facilitator for development. DE believes that its statutory duty is fulfilled by funding Comhairle na Gaelscolaíochta to facilitate the development of Irish-medium education, and that this is sufficient. This is a hand-washing exercise.

C na G have a role in helping schools with development and advocacy but they do not have the capacity to meet the wide range of strategic needs faced by the sector.

Many respondents suggested that at the heart of this issue is a general failure to understand the point of bilingualism:

Pupils who have attended Irish Medium primary schools and then continue their secondary school education at an English Medium secondary school are completely failed by our education system. How can bilingualism and multilingualism ever flourish in the North if at the very heart of its education system lays a distinct bias against Irish medium bilingual students? Bilingualism is something to be proud of, cherished, nurtured, encouraged and supported but our education system chooses to ignore the needs of these children. It chooses not to invest in meeting their needs. 70% of the world's population is bilingual. I feel that our education system's aim is firmly rooted, almost proudly, in the minority 30%.

The sense of generic failure and lack of support is widespread. This broader failure then frames the experience of specific issues between the sector and IME that this research was asked to address.

This also of course begs the question of how IME is currently managed within the statutory education system. Respondents identified issues with the institutional context for IME development:

CnaG remains in essence an advisory body however DE conveniently use CnaG as insulation that protects them from direct criticism - 'that is an issue for CnaG' or 'you should raise that with CnaG' even though it has no managing or planning authority and that, by and large, they ignore its recommendations on a whole range of issues relating to IME. There would undoubtedly be benefits to CnaG having more power and resources in this regard, particularly in relation to area planning in a way which sets us apart from existing DE/EA structures.

In other words, the status and role and funding

of CnaG forms a key element in any broader discussion of how the whole education sector should fulfil its obligations under the statutory duty.

Obstacles faced in planning and developing of Irish Medium Schools

Respondents were keen to emphasise that planning obstacles begin with the overarching failure to first anticipate and then recognise that the IME sector was going to grow:

There didn't and doesn't appear to be any clear strategic thinking on behalf of DE in regard to IME schools. The growth of the IME school was never, that I was aware of, seriously considered. The majority of IME schools were growing at a greater rate than those in the English medium sector. It is clear that DE /EA have never taken se IME seriously as they do not still understand the concept of bilingual education.

Once this fatal mistake was made, a host of other failures followed:

I have experience as a teacher /vice principal in [named school] going through capital build process. It is a very long, drawn-out process from beginning to end – as would be for any capital build educational programme. The original setting and building provision was extremely poor. As many IME schools when initially set up would have depended on local community to secure some type of building premises. Often schools began, as did [school named] in rooms belonging to a local community hall. The original classroom provision was - more often than not - definitely not fit for purpose. often cramped, cold and too small. When we moved to new school [named] in 2005 it was if we had won the lottery- purpose built, state-of-the-art premises. But it was felt we 'lost' some of our community's backing and that we were now ok to go it alone. We as a school management had to work to continue to engage all parents. The impact on staff and children's morale was

incredible. Teachers could use a school site to enhance the children's learning experiences.

Our respondents were able to identify a tranche of other developmental issues. In particular, there was concern about the decision of the minister not to include any IME schools in the most recent capital call. In particular, the criteria were changed which awarded extra points for shared sites, which de facto, punishes IM schools since, because of immersion model, shared sites are inappropriate:

We have been working continually with DE in relation to minor works applications and capital build possibilities for our school since 2007. We have been through numerous processes to date including the completion of a feasibility study and economic appraisal following an announcement from DE which included us on their capital build list. We then continued to apply pressure on DE to be included on further lists and queried why we were not included on more than one occasion since the original announcement. Our numbers have grown steadily since early 2007 and we successfully completed a development proposal for increased enrolment in 2017 to allow us to develop our school further. The physical building however is well below DE expectations when compared to their handbook and on a recent visit to our school site by [the] Minister for Education, he acknowledged that we have outgrown the site and utilised all minor works schemes available leaving capital build as the only option available for future development. We are still unsure however when the next capital announcement may be and are unable to move this issue forward in any way without full support of DE.

This long-drawn-out process can have a debilitating impact on school morale:

This has all impacted on our school and although we continue to make the very best of our situation, we are entering a phase where we will have more than 200 pupils on a site which is not suitable and in classrooms/school building which falls below DE standards. We have invited the Minister to the school and are working with Iontaobhas na Gaelscolaíochta

and CnaG to ensure that we complete all relevant surveys and collate evidence of need before the next call is made.

The decision not to support new build in Derry city was suggested as particularly concerning by different respondents. This took place in the context of a broader concern about the poor accommodation of the three bunscoileanna in Derry City. The poor physical infrastructure is a disincentive to parents who may consider IME for their children. Despite this, numbers have continued to expand. Many respondents from Derry and beyond suggested there should be some focus on Derry City and the accommodation deficit in the IME sector in the city.

There are similar issues with School Improvement support. The EA, working under DE, is tasked with supporting school improvement – learning and support for the needs of pupils, teacher capacity and practice and so on (the range of issues a school inspection would look at). They also have several other functions and responsibilities.

EA should have a team of School Improvement Professionals supporting the work of IM schools. They have one person at present for a whole sector. A previous Minister for Education, John O'Dowd, set up an Irish Medium School Leaders' Working Group to examine how to best support schools. He accepted most of the recommendations in the subsequent Report and asked that EA should discuss an implementation plan with IM school leaders. They produced a further report. Most of these recommendations, which form an agreed school improvement programme for IM, remain outstanding. The focus is on the development of leadership capacity, and the development and sharing of best practice in the sector through an IM learning Community. There is also a plan to develop SEN capacity and practice in the sector and to begin to address with CCEA the issue of baseline assessments. The most pressing recommendation is the appointment of a Coordinator for the group who could then facilitate the implementation or furtherance of the other recommendations.

These issues are also keenly felt within schools:

However, while the needs of IM have been noted in the work of DE and EA (for example in their Continuity of Learning workstream) there has been little practical support for IM schools on the ground. Again, DE did not respond proactively to meet their statutory duty but take the attitude that it is up to us to lobby them - and then they will consider it (for a very long time).

Similarly, the IME sector encounters specific issues with school development. Boards of Governors and school principals in the IM sector are faced with significant development issues not faced by other sectors and much of their time is taken up with lobbying DE for accommodation and resources.

Teacher training and capacity

Teaching qualifications for both primary and secondary level IME are supported through the degrees of Bachelor of Education (B.Ed.), provided by St Mary's and Stranmillis university colleges, and through a Post-Graduate Certificate in Education (PGCE) provided by Queen's University Belfast and Ulster University (Mercator 2019: 34). Graduates of these courses teach in Irish-medium primary and secondary schools, even though they have received limited specific training for teaching in an immersion situation. As well as providing a B.Ed. qualification for mainstream students, St Mary's University College, provides the only dedicated training for the Irish-medium sector. It offers two options. Postgraduate students intending to teach in Irish medium primary schools may take a one-year full-time course, taught substantially through the medium of Irish, to gain a Post-Graduate Certificate of Education (PGCE). Alternatively, under-graduates may take a four-year full-time Bachelor of Education course. Taught bilingually, this course equips students to teach in both Irish-medium and English-medium schools. They obtain a B.Ed. Honours Degree with a teaching certificate in bilingual education.

As we have already seen, this issue was also raised as a subject demanding 'immediate action' by CoE:

The Committee of Experts regrets the lack of sufficient progress in the field of teacher training. It considers that there is an urgent

need for increased numbers of teachers able to teach fully in Irish.... The Committee of Experts asks that the authorities work with representatives of Irish language speakers to develop a long-term strategy to tackle this shortage, as well as short-term remedies such as incentives to students (such as further bursaries, guaranteed employment or salary bonuses) and intensive courses to boost capacities to teach in Irish. The Committee of Experts reiterates its previous recommendation that the authorities should take steps to provide basic and further training of a sufficient number of teachers in Irish. (2021b: 8)

This analysis of a crisis in terms of IME teacher numbers was reflected across our research:

It is evident and has been raised by many people of the last number of years that there are simply not enough IME teachers in the system. There have been calls for additional funding to be made available to get more teachers through the universities and teacher training colleges.

We don't have enough teachers. The courses that are in place at the moment are not fit for purpose in that we have ... the BEd, the four year course at St. Mary's and then we have the TICO, the primary PGCE at St. Mary's and then we don't have anything at post-primary. So, we don't have a specific TICO for the post primary.... So that's an issue. We need a whole review of the courses.

Once again, respondents suggested a generic failure across the system:

The development of the IM sector and the opening or expansion of schools obviously requires extra staffing resources, particularly qualified specialist teachers, but also auxiliary staff such as classroom assistants. This requirement has been recognised for many years, by ETI (the inspectorate) and indeed in the Review in 2008. Many meetings have been held with DE but very little progress has been made. Some recommendations were favourably received by DE in June 2019, but two years later there has been little progress. The sector is now in crisis while the

Department continues to consider this issue. Again, it should have been DE who recognised the need for a solution before the problem escalated, rather than the sector lobbying DE for a solution.

This general situation has been compounded during the Covid-19 pandemic and associated lockdowns:

Principals are struggling to manage schools during the pandemic with sufficient teacher capacity. Rural schools are definitely experiencing it much more. Currently a number of schools can only provide a classroom assistant who will provide childcare as teachers are having to work from home as they have child minding difficulties or are ill.

It's been another problem that's been a nightmare during covid. We don't have the staff, never mind the subs, never mind the additional subs ... in a lot of cases, these people who are brought in, if you're lucky enough to get them, that are brought in to do specific language support, they're then having to go in to rang a ceathar, rang a cúig ... because somebody's got covid or somebody has to self-isolate, or somebody's at home.

In short, the research confirms the issues highlighted by CoE in terms of teacher numbers and the urgency with which this should be addressed.

Special Educational Needs (SEN)

The DE has special educational needs units, but dedicated staff are not available to address the specific needs of special education in the Irish medium sector (Mercator 2019: 23). In 1999, the ETI produced a report on special needs in the Irish-medium sector entitled 'A Survey of Provision for Special Needs in Irish Medium Primary Schools'. Pobal carried out an extended survey in June 2010, which included a survey of Special Needs in IME. This survey concluded that the three most identified special needs in gaelscoileanna in the north of Ireland are: moderate general learning disability, mild general learning disability and social and emotional behavioural difficulties (Pobal 2010).

Respondents recognised a series of key issues specific to SEN work in IME. These included the absence of appropriate diagnostic tools and delays in diagnosing SEN. There was also a lack of awareness in support agencies of specific needs of IME. It was suggested that awareness-raising was needed on the specific challenges of IM pedagogy / immersion education / bilingualism. There was also a lack of support materials in Irish / IQ test in Irish / reading recovery. This was then compounded by the absence of any Learning Support Centres and limited number of Nurture units in whole sector (currently two). Strikingly the 2008 DE IME review made a series of recommendations on many of these issues which have still not been implemented (2008: 96-7).

As respondents pointed out:

These examples give an illustration of the department's minimalist interpretation of its statutory duty and to the frustrations of Irish-medium schools in arguing for equal opportunities and equitable outcomes for their pupils. Some of us have been in the sector for over 20 years, arguing about the same issues over and over. There is unprecedented demand for Irish-medium education, and it should be flourishing. Instead, there is a danger that rapid development without the necessary DE support will create stresses in the sector which could undermine the high quality of education enjoyed by our children.

Again, there are widespread concerns across the sector:

[Two IME schools including our own] secured Nurture provision 4 years ago. We were told in the March get staff out for training within the next fortnight as you have been granted Nurture. Last day of school June 2017 2.30pm (ish) we received a call from a DE official to say that the minister said money isn't available. My response was 'tell the minister he now has a fight on his hands as I will not sit on this'. I mobilised staff to prepare to go to Stormont the following Tuesday which we did. While on holiday in July I received a phone call saying that the 'minister has secured funding'. I was since told, albeit unconfirmed, that the DE

contact was actually the person who made the initial decision. The reason for this example is to evidence how we were never treated with respect and on a parity with other school leaders. The planning for these provisions were never contemplated by DE. Total and blatant discrimination. I believe that things are changing slightly now is because it is obvious the IME continues to flourish.

In the example cited, some 40 schools were chosen to host specific nurture units targeting kids with SEN in deprived areas. Two of these were IME schools. This was agreed by the outgoing minister. When a new minister assumed the office, he removed the two IM schools from the list. This was robustly challenged, and the schools were reinstated after the finance minister agreed to provide additional finance alongside some parallel funding for loyalist projects. As respondents were keen to point out, it seems entirely inappropriate that such political horse trading was required to provide basic educational rights.

These suggestions of direct discrimination have been accompanied by more general failures to regard IME as a positive educational choice for children with special educational needs:

Lack of understanding of IME has often led to education psychologists, speech and language therapists and others to often recommend to parents that IME 'cannot address your child's needs'. I was actually speaking to a principal today who also (as I have) had that experience. Outside agencies assessing children in IME will very rarely have spoken Gaeilge. Parents who wish to speak Gaeilge and who wish to speak Gaeilge to specialists cannot ever discuss in Gaeilge. Children who have additional needs which require specialist interventions i.e. autism unit, behavioural units must leave the sector. I am currently interviewing a number of these parents who are most often angry to have their child leave the IME school. There are often siblings who are in the school or parents wish to enrol in the future. The model whereby the child must leave their school to avail of specialist support totally and absolutely undermines IME.

Arguably the whole mechanism of assessing SEN in IME is flawed.⁵⁹ There are no diagnostic tools to assess competency in Irish which means external assessments can only take place after primary 4, when pupils begin learning how to read and write English.

Finally, the wider chronic accommodation issues in IME put specific pressures on SEN work:

We had a small SEN room where SEN teacher could work with small groups. Looking back now it was not forward thinking at all. Those peripatetic and outreach teacher were not catered for. They had to use spaces outside classrooms for working with children one to one.

It was suggested that these challenges have been compounded by a recent EA strategy for 'Specialist provision in mainstream schools' which, due to accommodation requirements, would further preclude 60% of IME schools.

In summary, therefore, there appears a profound inability of an EME-based system to support IME SEN appropriately. This holds even in terms of the basic language difference between EME and IME systems. But it is compounded by the pedagogical differences associated with the language immersion approach prevalent in IME.

Resources (online and others)

An tÁisaonad - part of St Mary's University College, Belfast and funded by Foras na Gaeilge - is responsible for the provision of teaching materials for the Irish-medium sector (Mercator 2019: 24).⁶⁰ But there were widespread concerns across the research about the limitations of this ad hoc approach to resource provision outside of statutory education provision with an under-resourced unit expected to supply a rapidly expanding sector. Structural failures were also signalled by respondents in terms of learning and curriculum resources:

It is vital that IM pupils receive the same learning opportunities and support as their English-medium peers. The Department accepted in 2010 that there was an inequity of these resources and funded CCEA to translate or develop IM resources. In terms of primary schools, the approach has been incoherent without clear objectives behind the resources produced. In terms of post-primary, a major textbook project was completed in 2015. Then CCEA moved their capacity for translation and development to qualification support for their new GCSE and A-level specifications. This should have been completed in 2018. Very little has been produced since. We have now recommenced a planned and agreed approach to curriculum resourcing at post-primary but there is a major obstacle in relation to the lack of capacity (and funding) within CCEA. DE say that while they removed ring-fenced IM funding from CCEA a few years ago, this was to enable them to plan their finances more flexibly (e.g., over more than one financial year) and should not result in a reduction of capacity for IM in CCEA.

More recently there were also suggestions that the pandemic had specifically disadvantaged provision to IME (Meredith 2020a). Often this kind of difference is framed by a refusal to recognise any of the specificity to IME provision:

One example which is really horrifying is in June of 2020, the Department of Education, the Minister, released funding for every primary six pupil to have a subscription with IXL, which is an online software thing ... basically, it was aimed at those primary six pupils who were going to take the transfer test but it wasn't packaged in that way. It was through the medium of English only, so our pupils couldn't access it. So, we worked to find an alternative. We identified an alternative, which was a miracle in itself because there's nothing out there. But we did and it took eight months for the funding to be made available

⁵⁹ conversation regarding this research, the EA insisted that this recommendation to leave the sector for appropriate SEN support is not policy but IME practitioners insist that it is routine.

⁶⁰ An tÁisaonad/The Irish Medium Resource Unit <https://www.stmarys-belfast.ac.uk/academic/aisaonad/default.asp?cid=110788085953>

for Irish-medium schools. But the reason being that there had to be an additional business case so that English-medium pupils would also have the same access. So, rather than just giving us something that we didn't have, they delayed it by eight months and then spent additional money on replicating it for English-medium pupils. So, basically English-medium pupils got two things, we got one and we were delayed by eight months. So they can't even give us anything without it being a tit-for-tat.

More broadly, it bears emphasis that resource provision issue for IME is an obvious example of when the IE comparator does not work. With IE resources were broadly in place for sectoral development. With IME however this challenge is completely different:

I think the issue of the default comparator between IME and IE is twofold, primarily because of the statutory duty which covers both but also because they are both relatively new models of education which is a break from how education has traditionally been delivered here. [There are] limitations for IME given the different needs, primarily linguistic, for our sector which don't apply for IE. IE, it could be argued, is in an advantageous position whereby they have additional legal protection but also can draw from and are part of larger EM education infrastructure in ways that we simply cannot. This is clear through school amalgamations and transformations for example, where schools can transform from maintained or controlled school to integrated school. This obviously couldn't happen for us. [There are also] additional political/social hurdles IME faces as a result of hostility to the language.

The current approach goes to the heart of the failure to deliver, on an equitable basis, for IME. This was highlighted specifically in the context of the pandemic when learning from home meant access to additional, high-quality resources were sorely needed. There is a widespread sense that EA particularly failed significantly in this regard. More broadly, the broad principle holds that SEN support should be provided in the language of instruction – a key part of developing IME is developing appropriate Irish medium SEN.

Secondary level IME

Irish-medium secondary provision is currently delivered in two ways: through Irish-medium immersion education in Irish-medium secondary schools and through Irish-medium immersion units in English-medium schools (Mercator 2019: 26-30). Coláiste Feirste, an Irish-medium secondary school located in West Belfast, was established in 1991. There is a newly established IME secondary school based in Dungiven, Gaelcholáiste Dhoire. There are also three Irish-medium secondary units: one in Co. Tyrone, one in Co. Down and one in Armagh City.

Respondents suggested that there was a need to focus specifically on the issue of secondary level IME. The challenges of providing secondary IME are arguably even more complex than primary since competence is now required in a whole series of different subjects. Added to this this becomes a long-term project. For example, the first secondary-level IME students will not present at a new school until nine years after the establishment of a naíscoil and seven years after the establishment of a bunscoil. In other words, this level is by definition required to find long-term strategic planning if it is to be supported. Yet, it took some 23 years from Coláiste Feirste was established to establish a new school. This is indicative of failure in planning for expansion. As a result, of course, many young people educated through Irish were denied the opportunity to remain in the sector.

Whilst recognising general shortages across the sector, the CoE Committee of Experts report made specific mention of this issue at secondary level:

The Committee of Experts regrets the lack of sufficient progress in the field of teacher training. It considers that there is an urgent need for increased numbers of teachers able to teach fully in Irish. This concerns, in particular, the training of teachers able to use Irish at pre-school and to teach subjects at secondary level, taking into account the particular educational needs in immersion education. The Committee of Experts observes that the lack of teachers able to teach in Irish is systemic, reflective of a necessity to plan more strategically and for the long-term need for teachers in

Northern Ireland. Furthermore, it notes that representatives of Irish speakers have been proactive in seeking solutions to this shortage. (2021: 8)

The need for the statutory education sector to be equally 'proactive' is felt keenly in terms of secondary level IME:

For example, numbers entering Irish-medium at pre-school and bunscoil level have been increasing steadily over many years in Belfast. Consequently, there has been a significant rise in numbers transferring to Coláiste Feirste for their post-primary education. The school accommodation was extended in 2005 to accommodate 380 pupils (according to DE accommodation schedule), yet there were over 500 pupils for several years until a long-drawn out new build was completed in 2018. By this time the school had 678 pupils, and the accommodation was already inadequate. It had to be supplemented with four mobile classrooms as a temporary measure. Numbers continued to grow. The school had an approved enrolment number of 100 per year, yet was regularly oversubscribed. This meant that we had to apply to DE for approval for a "temporary variation in numbers ...for one year only". Yet this was not a temporary situation – it happened year after year, resulting in the school having to manage enrolment, teacher recruitment, curriculum development and of course accommodation shortages ad hoc through a temporary mechanism never designed for school development. DE policy is that such a situation is unacceptable as it places undue pressure on the fabric of the accommodation. For Coláiste Feirste it placed undue pressure on pupils and staff and was an inappropriate learning environment.

In this case there was a widespread perception that hurdles continue to be put in the way of developing post primary provision in North Belfast, even though this would alleviate some of these pressures on the sole existing secondary school in Belfast.

In combination, the absence of sufficient coverage and the absence of sufficient teachers creates an unsatisfactory situation. At an immediate level this means that many children who graduate from IME

primary schools do not have a realistic prospect of attending IME secondary.

My own child has been brought up in a bilingual home from birth. Her mother speaks to her solely in English and I have always spoke to her solely in Irish and her to me in Irish. The Irish language is an integral part of her life.' 'When she started secondary school last year, her linguistic needs and ability were ignored. She was placed in the same class as complete beginners of the language. She was learning to count from 1-20, recite the days of the week and also learn the colours in Irish. This is a child who has received 8,550 teaching hours of Irish Medium education and also tens of thousands of hours of natural linguistic development outside of school. She regularly came home feeling deflated, embarrassed, and academically unchallenged and continuously feels so as they are compelled to attend these classes. This is by no means unique to her own school. This is the norm in virtually every other English medium secondary school in the North at which fluent Irish speakers attend.

In other words, there is a specific need to address the current delivery of secondary level IME proactively and urgently in the context of the statutory duty. Crucially this needs to recognize the differences between IME and EME especially at secondary level:

Coláiste Feirste began a development proposal to establish a satellite of the school in north Belfast, both resolving the numbers/accommodation problem and also developing a second post-primary provision for the sector in Belfast. DE advised us to withdraw and change the development proposal twice, once because they would not accept the concept of a "satellite" school. There was no attempt to deliberately obstruct the proposal but neither was there any attempt to facilitate it. In 2020 the proposal to increase the enrolment number was approved and extra temporary accommodation will come with that. However, the long-term objective of a provision in north Belfast is dependent on finding a site acceptable to DE.

More generally planning and development issues that should be proactively addressed by the statutory education authorities are left to the IME sector:

The point is that there was no forward planning or positive facilitation on the part of DE. However, they analyse pupil numbers in English-medium schools and contact post-primaries to find a solution, without being asked to do so, because they have a duty to find school places for children. This happened [around] 2018 when they realised that there were not enough post-primary places for pupils in north Down; and in 2021 when they are offering extra places in grammar schools to accommodate the increase in pupil numbers in P.7. Coláiste Feirste approached DE offering to help them facilitate their duty to find extra places for IM pupils leaving P.7, yet it was left to us to push a solution on them.

Of course, there was almost no formal secondary IME provision when the statutory duty was introduced. But there is a particular need to respond creatively and flexibly to the growing numbers of secondary level IME students across the north. The sustainability thresholds, which are the same for IME and EME, make it virtually impossible for any new IM secondary provision to emerge, without a minister 'vesting' the provision, as happened in the case of GCD. In the absence of a sympathetic minister this is unlikely to happen. Thus, the thresholds in no way reflect the experience of the sector and rather undermine the spirit of the statutory duty.

Summary: Obstacles face by IME

The widespread sense of fatigue across the sector reflects a wider sense of dissatisfaction with the implementation of the statutory duty. Most obviously, IME remains profoundly different from existing education sectors. This includes IE, even though the two sectors are framed by a statutory duty. Bilingual and immersion education presents a whole set of additional challenges that, with the best will in the world, are unlikely to be met by a

monolingual educational system. Alongside this reality, it seems reasonable to suggest that the level of hostility and political opposition faced by IME is also of a different order to IE or indeed any other educational sector. This was sadly exemplified by the recent 'hate campaign' against Naíscoil na Seolta which saw it removed from the Braniel in East Belfast.⁶¹ It hardly requires emphasis that it was IME status not IE status that was associated with the campaign against the school.

Thus, experiences within the sector often present a *prima facie* case of discrimination – cases in which there was widespread concern that they had been treated unfairly by the system precisely because they were IME schools. These appear to involve various degrees of institutional sectarianism in decision making. The suggestion is that decisions were not made for unfortunate but legitimate reasons - lack of resources or bureaucracy for example - but rather due to ill-disguised sectarianism and anti-Irish bias in decision making.

In this structural context, treating IME 'equally' becomes itself a prescription for unequal outcomes. For example, both IE and IME sectors are subject to the exact same sustainable thresholds as the much larger controlled and Catholic-maintained sectors. Arguably, the current area planning model arguably works for neither IE nor IME. In this context, these sectors have sometimes combined to attempt to affecting change on this through a joint approach. But it also remains the case that the two sectors have different positions and challenges on a range of issues. In other words, treating IME 'equally' with IE is also sometimes inappropriate.

This research finds a widespread sense of the statutory duty having 'failed' to do what it was intended to do – to engage the statutory education sector as a proactive partner in supporting the growth of IME. The overall sense is that the relationship between the statutory education section and the IME sector is not working to *develop* IME. This suggests the need for a further 're-set' – in other words the need for a fundamental restructuring of the relationship between IME and the state educational system.

61 UTV News 2021. 'First Irish language school in east Belfast to relocate after 'hate campaign'' 29 July 2021.

Teaching of Irish in EME

While the teaching of Irish in English medium educational contexts sometimes attracts less attention than the issue of IME in the north, it has a much longer history. Moreover, the most negative interventions around Irish in the education system in the nineteenth and twentieth centuries were around this form of teaching Irish rather than what we now understand as IME. Gael Linn has had a role in the promotion of Irish in the education systems, north and south since it was set up in 1953. In 2014, however, Foras na Gaeilge appointed it as a lead organisation with a particular focus on Irish in the English medium sector in both Northern Ireland and in the Republic of Ireland. This remains a significant element in the teaching of Irish.⁶² For example, in 2021 it emerged that Irish would soon replace French as the second most popular language choice in the north.⁶³ But this change has taken place within the context of a decline in overall language teaching (Ó Ciaráin 2021).⁶⁴

Before the development of IME, most teaching of Irish in EME schools occurred at secondary level and we get some sense of numbers from that (Pritchard, 1982). An overview in 1987 suggested:

One of the few available sources of information 'on the extent of knowledge of Irish in NI are the secondary school examination entries in the subject. These figures show some 1800 students in the most recent year of available data, 1986, taking secondary level examinations in Irish. This compares with roughly 9,000 taking French and 1,000 German. These figures of course reflect only those taking formal examinations in the language and take no account of pupils who may study Irish at secondary level but not take it to examination level. It has been estimated that 24-25,000 pupils study Irish at post primary level. (Sweeny 1987: 8)

Thus, we get a broad sense of overall numbers across the last fifty years when we compare this historical data with contemporary statistics on examinations:

Modern language examination entries in Northern Ireland - Irish				
Year	1972	1977	1982	1986
O' level/CSE entries	2131	1917	1658	1529
A' level entries	329	320	319	268

Source: THE IRISH LANGUAGE IN NORTHERN IRELAND 1987 (Sweeny 1987).

62 In addition to statutory education provision, there is also widespread adult education in Irish. Mercator reports adult classes being offered across the north of Ireland (2019: 36). Based on surveys carried out by Líofoa in the DfC, Northern Ireland, it is estimated that there are between 3000 and 3500 adults taking Irish language night classes in Northern Ireland (2019: 36).

63 <https://www.belfasttelegraph.co.uk/news/northern-ireland/irish-set-to-overtake-french-in-popularity-with-school-pupils-40493459.html>

64 The 'urgency' of this situation – and its implications for Irish teaching - has been raised by a recent campaign by An Gréasán <https://angreasan.ie/litir-oscailte-chuig-aire-an-oideachais/>

Entries to Gaeilge (5012) and Irish (5550) examinations - 2014/15 to 2018/19								
		2014/15	2015/16	2016/17	2017/18	2018/19		
						IME1	Other	Overall
Gaeilge	GCSE	0	0	0	0	152	52	204
Irish	GCSE	1647	1570	1526	1549	209	1352	1561
	AS Level	412	417	436	411	78	299	377
	A Level	321	315	327	324	80	204	284
Sources: RM Education [2014/15-2017/18] and DE Exams Database (experimental) [2018/19]								
Notes: Does not include equivalent qualifications. Due to the use of differing datasets care should be taken in interpreting the data. ¹ Includes pupils in IME schools and pupils in IME units.								

There are two striking conclusions. First, the importance of teaching Irish in EME obtains for a whole range of reasons. Many young people do not have the option to choose IME at either primary or secondary level, so for them EME remains the only educational route to competency in Irish. We also need to bear in mind that historically this route has been the backbone of IME development – as IME developed, for examples, most IME teachers would have emerged from this EME route.

Given this context, the overall decline in numbers of people studying Irish in EME over the past fifty years should be a cause concern for DE and EA given their broader responsibility for promoting the teaching of Irish. The decline in EME teaching of Irish also needs to be put the context of a broader decline in language teaching which has been exacerbated by the Covid pandemic. Arguably, the success of the IME sector has seen a concomitant retraction in Irish language teaching across EME. Nevertheless, the EME route to fluency and confidence in Irish remains the only option for many students and an important support to developing IME structures. In this context, the statutory duty implies a need to re-energise and develop Irish language provision in EME contexts.

Crucially, therefore, the IME/EME distinction is not an either/or situation and we might expect the broader commitments on support for the Irish language to impact positively on Irish language teaching in EME. There is more than one route to bilingualism and biliteracy and this remains another useful route for many school students. It also bears emphasis that the transition from primary to secondary level has traditionally seen a drop-off in IME numbers with students either unable or for other reasons choosing to attend EME. It would be particularly importantly for these graduates of primary IME to be offered continuing opportunities for Irish language development through their secondary careers.



Credit: An Dream Dearg

Conclusions

Perhaps the most depressing aspect of the contemporary discontents around the Irish language is that a creative, positive solution was posited nearly two hundred years ago. This invites us to contemplate a whole counterfactual relationship between the British state and IME. Moreover, it was made in the British House of Commons— and based on the opinion of the Chief Inspector of the National Board of Education in Ireland. As we have seen, Keenan – as a British civil servant – made the prescient observation that bilingualism in Irish and English was the best model for education in Ireland. In response, Irish MP O'Connor Power asked:

Now, if it be desirable, according to Mr. Keenan's theory, that, as far as possible, the people should be taught to speak two languages, what is the best and easiest way to make the Irish a dual-speaking people.⁶⁵

This positive challenge of a bilingual education system has hardly altered – what is the best and

easiest way to make the Irish a dual-speaking people? The statutory duty *should* be the key to answering this question in Northern Ireland. It should be regarded as the point at which monolingualism stopped being regarded as an educational virtue in Northern Ireland. A concomitant embracing of bilingualism would provide the simplest and most positive solution to some of the toxic debates around Irish and IME. For all its limitations and disappointments this promise is still embodied by the statutory duty.

The notion of a 'statutory duty' is an important one in terms of signalling the specific obligations of the state towards a particular educational sector or language community. It helps to reinforce the protection of human rights standards for linguistic minorities. Moreover, the commitment to the statutory duty on IME represented a cornerstone of the peace process and the GFA. The GFA continues to have profound implications for peace and equality in contemporary Northern Ireland. If the statutory duty is not working particularly well this has implications for everybody in the north, not only students in IME.

The most immediate conclusion to the research

65 Intermediate Education (Ireland) Bill—Lords—Bill 249

is that the statutory duty has been an imperfect mechanism for developing IME. This is not to deny all the positive changes that have happened since 1998. For example, it would have been unthinkable in 1970 that the Department of Education would undertake a review of IME let alone publish it bilingually (An Roinn Oideachais 2008). There was, however, an expectation in the GFA and surrounding debates that it would re-set relationships between the state in Northern Ireland and IME. While there have been significant developments towards that end, this process has stalled. Thus, our key conclusion is that we need to find a way to refocus this project and make the statutory duty 'work' to develop IME.

It bears emphasis that recognising that the statutory duty has not always worked particularly positively for IME is not to suggest that there should not be a duty. Nothing in this analysis should be taken to suggest that the statutory duty should be removed, rather it must be made to work more effectively to achieve its laudable aims. The recent strengthening of the IE statutory duty through the *Integrated Education Act* illustrates one way of doing this.

For most people in the IME community – and in wider Irish language community – the statutory duty *should* have reset the relationship between the Northern Ireland state and IME. For others, it was nothing more than an aspiration traded as a political negotiation. Of course, the legal situation is now more clearly defined in Northern Ireland by the Treacy judgement of 2011 which made it clear that the duty *should* have 'practical consequences and legislative significance'. So, the notion that the statutory duty was no more than 'aspirational' is no longer tenable. This means that in principle IME development *should* sit in a uniquely proactive relationship with the Northern Ireland state (alongside IE).

Our reading of the appearance of the statutory duty in 1998 is that it was intended to reset the relationship between the Northern Ireland state and IME. Thus, the aim of the IME statutory duty was clear: despite years of hostility and neglect, the state might now 'encourage and facilitate the development of Irish-medium education'. It was assumed that the duty would frame a more 'normal' relationship between the state and this specific educational language

community. Moreover, the expectation was that the state would now take a key pro-active role in *developing* IME. The progress that has been made with the framework of the statutory duty needs to be recognised. Relations have improved substantially since 1998 and the state is now central to the provision of IME. Nevertheless, the key conclusion of this research is that this reset has not happened in the manner envisaged in the GFA.

This research reflects the widespread sense of hurt and disappointment that characterizes the experience of the IME community of its relationship with the DE and EA. It bears emphasis that the onus must be on the state – most particularly its educational infrastructure of the DE and the EA – to finally make the statutory duty work to develop IME. This implies centring IME in the work of both institutions rather than hiding it from public view. Whether deliberate or not, current policy clearly advantages declining sectors and disadvantages growing sectors like IME. This clearly breaches the statutory duty and in practice serves to discourage and impede IME growth.

Why the statutory duty has failed in some of its key objectives is a complex question. For a start there was a naïveté in the notion that a 'clean slate' approach in 1998 would nullify the continuing effects of centuries of anti-Irish language ideology and practice. There needs to be a more proactive engagement with this history to counter its multifarious legacies. Broader ongoing processes around 'dealing with the past' provide an appropriate human rights context for this work. As the detailed history of the difficult relationship between the state in Ireland and the Irish language suggests, the attempt to reset relations was optimistic. The statutory duty was unlikely to do this on its own without some process of addressing the abuses of the past and the continuing legacy of anti-Irish and anti-IME sentiment across the education system and beyond. The 'hostile environment' for IME always placed this education project in a unique relationship to the state and this history needs to be addressed and corrected.

In a related issue, the notion that IE provided the template for the IME statutory duty needs to be revisited. Despite IE providing the model for the notion of a 'statutory duty', the level of hostility and political opposition faced by IME

was of a different order to IE. For example, IE is often presented as a 'remedy' to division while IME remains portrayed as a divisive single identity issue. In short, therefore, the statutory duty which has 'worked' (albeit imperfectly) for IE has not 'worked' for IME. It bears emphasis that the relationship between IE and the state has not stood still either. The recent passing of the Integrated Education Act in the Assembly marks a significant *strengthening* of the statutory duty on IE. Insofar as the IE statutory duty was the template for the IME statutory duty, this suggests that the latter should be similarly reinforced. In other words, we should expect a corresponding legislative strengthening of the IME statutory duty in tandem with the changes to the IE statutory duty on which it was modelled.

Notwithstanding this key point, it is also possible to suggest that IE was an imperfect comparator for several reasons. Most obviously, IE was less profoundly different from existing education sectors – for example, most of the educational resources were appropriate for integrated education. In contrast, bilingual, immersive education presents a whole set of additional challenges. Crucially, the specific challenges in terms of *bilingual* and *immersion* education were underestimated on all sides. In this sense, the appropriate comparator is more obviously Welsh Medium Education in Wales or Basque Medium Education in the Basque Country or Catalan Medium Education in Catalonia. Perhaps the best existing model addressing educational rights in the context of wider language rights is the 'linguistic community' approach provided by the Canadian province of New Brunswick.

IME involves immersion for perhaps 90% of its students who come from English-speaking backgrounds, so this adds an even more profound challenge in terms of IME pedagogy. It is also clear that IME contrasts starkly with IE in terms of the social background of most students. In other words, any strengthening of the IME statutory duty

should also take cognisance of these additional challenges if it is to successfully 'encourage and facilitate the development of Irish-medium education'. On the other hand, the recent passing of the Integrated Education Bill illustrates that educational relationships *can* be reset – this is a normal part of improving educational provision in Northern Ireland.

Any further reset of the relationship between IME and the state should take place with these factors in mind. There are several broader issues which would help to reframe this project. It is striking that there appears to be so little north/south synergy in IME. This obtains even though 'All-Ireland opportunities for Irish Medium Education' was strongly flagged in the Department of Education's own review of IME (2008: 103-5). On the one hand, it would be inappropriate to suggest that Northern Ireland should 'export' its IME delivery and solve its challenges around teachers and materials by drawing on the extensive IME network in the south. It bears emphasis that the focus around the meaning of the statutory duty has been about the Northern Ireland doing a much better job in converting its legal obligations on Irish into tangible improvements. Nevertheless, we might expect a much greater degree of north/south synergy in a language community which appears uniquely well-placed to build cross border cooperation. It seems disappointing that a language community that should illustrate all the positive synergies of north/south integration seems to benefit so little from such engagement.

The policy of conjoining Irish to Ulster Scots also appears unhelpful to IME.⁶⁶ This holds *a fortiori* in the education sector where the comparison distorts the reality of the dual lingual system in which English and Irish are both languages of instruction. In terms of Irish and IME the key comparator is English and – as with the Welsh Language Act – it is parity with English that matters. This broad point is true with added force in terms of IME and the responsibilities of DE and

66 The NDNA legislation commits to introducing a statutory duty to "to encourage and facilitate the use and understanding of Ulster Scots in the education system." This is of course quite different to Ulster Scots *Medium* education. It remains to be seen how it is operationalised but it does apply across the whole 'education system' – presumably Scots language will be offered as a subject in EME and IME schools if this does become law. Alternatively, if the UK now proceeds to redefine Ulster Scots as an ethnic group rather than a language – as has been mooted - the duty could become a duty to promote understanding of one ethnic group in schools.

EA. There is a no 'Ulster Scots medium' education to offer a comparator. There is only EME and in this regard the statutory duty should clearly advantage IME development vis-à-vis the EME community. It bears emphasis that this is reversing the weight of decades and centuries of pro-EME bias by the state.

Whatever comparator is used, it remains crucial to emphasise the specific challenges and resource requirements attendant to the commitment to a dual lingual education system in NI. This now has constituent EME and IME systems servicing two different language communities, Irish and English. Equally crucially the pedagogy is profoundly different within these different languages of instruction. The IME system is characterised by *bilingual and immersive education* and thus profoundly different from the dominant monolingualism of the EME model. Like EME, IME also includes a complex variety of school management models including controlled, maintained, and integrated. In this regard the state is nowhere near completing the *first phase* of its responsibility to meet the IME statutory duty. Until every child in Northern Ireland can reasonably access IME if they want to - at nursery, primary and secondary levels - the initial *development* challenge remains ongoing. IME in Northern Ireland will remain under developed until that is achieved. We are clearly some distance from that endpoint.

So, what changes in policy and practice might reinvigorate 'the duty of the Department to encourage and facilitate the development of Irish-medium education'? First, it bears emphasis that IME does not exist in a bubble. It is important to transform the wider 'hostile environment' for the Irish language community in Northern Ireland. Wider measures such as the Irish Language Act and Language Commissioner will help to create a more positive context for the development of IME. Likewise removing anti-Irish legislation such as the 1737 Act will signify a more positive relationship between the state and the Irish speaking community. The development of IME will always be framed by measures designed to improve the wider standing of Irish speakers in Northern Ireland. IME is not the only element in the Irish language revival; it is a key element within much broader efforts.

While IME is sometimes regarded as an educational 'sector', in reality Irish as a language of instruction cuts across different existing management sectors. There is a strong case to suggest that where Irish is a language of instruction, it should have a more defined status to protect it from the monolingual approaches dominant within each of these sectors. While IME is often regarded as a discrete sector, in reality it crosses the other 'maintained', 'controlled', and 'integrated' sectors. It would seem sensible to reverse this dynamic and reframe IME as a defined element within what is now a dual lingual education system servicing two language communities – Irish and English. In this context, the support for IME transcends each of these different management models. This approach would, of course, see an enhanced role for CnaG integrating its support across the different school management structures within IME.

There is also a case to suggest that IME should integrate more closely with Irish provision in EME contexts. Historically of course the only Irish language education available was within EME. Indeed, many of the current IME teaching cohort came through this system. More formal integration might encourage a greater synergy between these sectors. First, because many IME graduates still proceed to EME contexts, and it would be sensible to develop a more strategic approach to supporting their pedagogy in Irish. Second, because Irish language teaching should in any case be provided as IME; best practice suggests that Irish should be the medium of teaching Irish even in EME schools. It remains the case that both IME and EME learning communities remain vectors to fluency and confidence in Irish and it would seem sensible to integrate this provision to grow IME teaching.

In summary, there remains a deal of work to be done in terms of finally realising the commitment made to the Irish language community in the GFA. It is important that all interested parties – including DE, EA and the IME community – commit to a fundamental review of IME provision in the context of the statutory duty. The outcome should see a further resetting of the relationship between the statutory education authorities and the Irish language community. It bears emphasis, however, that this is only the *starting point* of

IME development across the Six Counties. The statutory duty will only be met at the point at which every child in the north has a meaningful choice to experience IME at every stage of their educational career. This goal would be an ambitious but not unrealistic target for the actualisation of the statutory duty promised in the GFA.

Policy and practice recommendations to enhance effective implementation of the statutory duty and provision of Irish in education in NI in general

There is currently no mechanism for assessing how effectively DE is implementing the statutory duty. This clearly needs to change. It bears emphasis that bodies like the EA which now have core functions of statutory education provision need a similar mechanism. The starting point might be a policy framework which informs how the statutory duty (for both IE and IME) is applied by DE and then EA and others in relation to Area Planning, SEN, Resource Provision, and other key areas of educational policy and practice.

As part of changing the dynamic, it would be helpful for DE itself – in partnership with interested parties – to review of the work of the statutory duty. The Review of Education promised as part of the NDNA is going to explore the role of sectoral bodies. This might well be a useful context in which to integrate the review of IME alongside broader consideration of the whole statutory education sector. Any review must start from the position that the statutory duty is more than a vague aspiration; rather it should define and structure the approach of the Department to IME.

This review should aim to genuinely reset the operation of the statutory duty and in so doing reset the relationship between the statutory education sector and IME. The intended outcomes are already clearly indicated in the statutory duty – it must work to encourage and facilitate the *development* of Irish-medium education. As the Treacy judgement confirmed, 'the imposition of the statutory duty has and is intended to have practical consequences and legislative significance'. Strategic planning without

proper consideration of the need to develop IME is no longer an option for the Department.

Many of the key issues in terms of IME provision and development are already well-rehearsed. For example, the Department of Education's own Review of IME in 2008 signalled many of the changes that needed to be made. Despite this, most of its own recommendations are yet to be implemented. Likewise subsequent work like that of the Irish Medium School Leaders Working Group 2016 offers grounded analysis of what needs to change.

Finally, it bears emphasis that there is an obvious legislative mechanism to frame any review of IME and the statutory education authorities. The commitment to an IME statutory duty in the GFA was explicitly modelled on the existing IE statutory duty. This IE duty has now been significantly reinforced by the passing of the *Integrated Education Act (Northern Ireland) 2022* by the Northern Ireland Assembly. We might therefore expect a swift reciprocal strengthening of the IME statutory duty. This should of course be compatible with international standards on language rights. It is also important to recognise that any strengthening of the statutory duty for IME based on the Integrated Education Act should be cognisant of the differences between IE and IME as well as the similarities. Here the key issue is that IME represents not just an 'educational sector' but a distinct linguistic community.

In this regard, the best comparator rights-based legislation is the 'New Brunswick model'. This situates educational language rights in the context of a wider recognition of the rights of 'linguistic communities'. Adjusted to the NI context, this would suggest something like the following commitment:

The English linguistic community and the Irish linguistic community in NI have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

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Annex One: Terms of Reference

Overall: An appraisal of the effectiveness of the Department of Education and the Education Authority in relation to the teaching of Irish and in particular delivering on their statutory duty to encourage and facilitate Irish-medium Education in view of the legal framework and applicable international standards;

1. Overview of Education policy towards the Irish language historically⁶⁷
2. International standards and the domestic NI legal framework;⁶⁸
3. Department of Education and Education Authority and other education bodies policy towards the Irish language
4. Teaching of Irish in EME
5. Documenting obstacles faced by IME:
 - a. *Obstacles faced in planning and developing of Irish Medium Schools within the Area Planning Framework and accommodation;*
 - b. Teacher training and capacity;
 - c. Special Educational Needs (SEN)
 - d. Resources (online and others)
6. Policy and practice recommendations to enhance effective implementation of the statutory duty and provision of Irish in education in NI in general.

Annex Two: Methodology

The methodology was outlined in the terms of reference for the research – to be based on desk-based research, interviews with key respondents or *faisnéiseoirí* within the sector. This notion captures the target respondent – people working within the IME sector with either general or specific experience that would help to illustrate the broad question of how well the department of education and education authority have met their responsibilities in terms of the delivery of IME (and more broadly education *as Gaeilge*). These contributors were guaranteed anonymity and are not identified individually in the research.

This group comprised some thirty individuals working in different roles within IME, mostly involved in teaching but others working on Bord na Gobhnoirí. It included people teaching at all levels across the sector and a number of retired teaching professionals. It was broadly representative in terms of gender and geographical spread across NI.

⁶⁷ Colonial policy, Old Stormont Parliament; Direct Rule;

⁶⁸ Education (Northern Ireland) Order 1998 and the Article 89 duty to encourage and facilitate the development of Irish-medium education. (meaning and interpretation & NI judicial review cases to date); duties under international standards – the Council of Europe treaties ECRML & FCNM;



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