

PROTECTION OF MINORITY LANGUAGES IN THE UK PUBLIC ADMINISTRATION: A COMPARATIVE STUDY OF WALES AND SCOTLAND¹

Alessia Vacca *

Abstract

This article studies the legislation of Wales and Scotland regarding the protection of minority languages (Welsh for Wales and Scottish Gaelic and Scots for Scotland), in particular: the Welsh Language Act 1993, the Welsh Language (Wales) Measure 2011 and the Gaelic Language (Scotland) Act 2005. The most obvious difference between Welsh and Gaelic is the percentage of people which speak the languages: about 20% for Welsh and 1.2% for Gaelic. In these circumstances, it is not surprising that there will generally be different levels of provision of services in the minority language. Welsh and Scottish Gaelic are protected under Part III of the European Charter for Regional or Minority Languages. With regard to domestic protection, in Wales the legislation (Welsh Language Act 1993) was stronger than in Scotland even before the Welsh Language Measure 2011. This article focused especially on the use of Welsh and Scottish Gaelic in the Public Administration of Wales and Scotland under the linguistic legislation under force.

Key words: Welsh; Scottish Gaelic; Scots; UK; Public Administration; legislation; devolution; language rights.

Resum

Aquest article examina la legislació del País de Gal·les i d'Escòcia respecte de la protecció de les llengües minoritàries (el gal·lès per Gal·les i el gaèlic escocès i el scots per Escòcia), particularment la Llei de la llengua gal·lesa de 1993, la disposició de la llengua gal·lesa (Gal·les) de 2011 i la Llei de la llengua gaèlica (Escòcia) de 2005. La diferència més òbvia entre el gal·lès i el gaèlic és el percentatge de persones que parla les llengües: un 20% pel gal·lès i un 1,2% pel gaèlic. En aquestes circumstàncies, no és sorprenent que generalment hi hagi nivells diferents de prestació de serveis en cada llengua minoritària. El gal·lès i el gaèlic escocès estan protegits sota la part III de la Carta europea de les llengües regionals o minoritàries. Respecta a la protecció nacional, al País de Gal·les, la legislació (Llei de la llengua gal·lesa de 1993) era més forta que a Escòcia, fins i tot abans l'aprovació de la disposició de la llengua Gal·lesa de 2011. Aquest article s'ha centrat especialment en el ús del gal·lès i del gaèlic escocès a l'Administració pública de Gal·les i Escòcia segons la legislació lingüística vigent.

Paraules clau: gal·lès; gaèlic escocès; escocès; Regne Unit; administració pública; legislació; transferència de competències, drets lingüístics.

¹ I am greatly indebted to my former supervisor, Prof. Robert Dunbar, for his support and guide during my PhD at the School of Law of the University of Aberdeen, Scotland, UK. Any errors in this work are only mine

* Alessia Vacca, PhD in Law (University of Aberdeen), Researcher, Lawyer (Italy), alessia.vh@tiscali.it

Article received: 07.04.2013. Review: 25.05.2013. Final version accepted: 12.09.2013.

Recommended citation: VACCA, Alessia. «Protection of Minority Languages in the UK Public Administration: a Comparative Study of Wales and Scotland», *Revista de Llengua i Dret*, núm. 60, 2013, p. 50-90. DOI: 10.2436/20.8030.02.30

Summary

1.1 Introduction

1.2 Devolution

1.3 European Charter for Regional or Minority Languages

2 Britain

3 Wales

3.1 Introduction

3.2 The Government of Wales Act of 1998 and 2006

3.3 Welsh Language Act 1993

3.4 Welsh Language Board, Welsh Language Schemes, Public Administration, CoE reports

3.5 Welsh Language (Wales) Measure 2011

4 Scotland

4.1 History

4.2 The Gaelic Language (Scotland) Bill 2002

4.3 The Gaelic Language (Scotland) Act 2005. Introduction

4.4 The Gaelic Language (Scotland) Act 2005: Contents

4.5 Considerations on Gaelic Language (Scotland) Act 2005 in comparison with the Welsh Language Act 1993

4.6 Use of Gaelic in the Public Sector. ECRML Reports. CoE Recommendations

4.7 Conclusions on Gaelic in Scotland

4.8 Scots

5 Final Conclusions

1.1 Introduction

In the UK, the state language policy, until recently, has been directed at promoting the acquisition of English; this leads sometimes to assimilation instead of integration.

Great Britain is the home of English, one of the most widely spoken languages in the world but, despite this, there are also other languages spoken there, including autochthonous languages, such as the Celtic languages (for example Welsh, Scottish Gaelic, Irish and Cornish) and Germanic languages (for example Scots and Ulster-Scots).

English is the language which is most closely associated with the process of globalisation; it is spoken not only in the UK, Ireland, Canada, Australia and US but all over the world by an increasing number of people because it is considered a “lingua franca”. Immigrant languages are also spoken in the UK; since Great Britain is a prosperous country, there are a large number of migrants, thus, languages such as Turkish, Chinese, Indian, Panjabi are widely spoken.

The law took a long time to respond to the linguistic diversity which exists in the UK, and even then legislation was not systematic and guided by clear and consistent principles but was *ad hoc*, and created in order to answer contingent political demands.²

It is important to note that the legislative measures have been adopted only for the autochthonous minorities. However, historically, the policies of the British Government have promoted monolingualism, and English was the only language of public life. The consequence was the marginalization of the other languages.

The UK has no single written Constitutional document. English is not considered as an official language of UK in any piece of legislation but, without a doubt, English is *de facto* the sole official language of the UK, the sole language used by the UK Parliament, to a great degree (and subject to certain provision for Welsh in Wales and Gaelic in Scotland) in the judicial system, in the public administration (subject, again, to certain provision for Welsh in Wales, Gaelic in Scotland and to a limited extent Irish in Northern Ireland) and in the laws of the British Parliament.

There are effectively no monolingual speakers of the Celtic languages, and virtually all are fully fluent in English. Welsh speakers in Scotland or England and Gaelic speakers in England are not considered in the numbers of the census, but there are likely to be considerable numbers of speakers of Celtic languages, and of Scots and Ulster Scots, who have moved to England and other parts of the UK outside of the territory with which the languages are associated. In respect of legislation for the Celtic languages, the principle of territoriality is applied: Welsh speakers have protection in Wales, Gaelic speakers in Scotland and Irish speakers, to a limited extent, in Northern Ireland; however, protection does not extend beyond these jurisdictions.

The UK ratified the European Charter for Regional or Minority Languages on 27 March 2001. There is a significant variation in the extent of the commitments made by the UK regarding the minority languages under the ECRML. Scots, Ulster Scots, Cornish and Manx have been designated under Part II of the ECRML only, while Welsh, Scottish Gaelic and Irish have also been designated under Part III. The UK has bound itself to 52 paragraphs or sub-paragraphs with regard to Welsh as opposed to 39 for Gaelic and only 36 for Irish.³ Under domestic UK law, international treaty commitments such as those under the ECRML do

2 R. DUNBAR, ‘Language Legislation and Language Rights in the United Kingdom’ (2004) 2 2002/2003 European Yearbook of Minority Issues 95; W. Mc LEOD, ‘An Opportunity Avoided? The European Charter for Regional or Minority Languages and UK Language Policy’ in R. DUNBAR, G. PARRY and S. KLINGE (eds), *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Council of Europe Publishing 2008), 201 ‘The UK’s approach to the ECRML has been incoherent, that its decisions have been ad hoc and not based on systematic thinking, that policy-makers have generally given little attention to the ECRML, and the Charter has had relatively little impact on the shaping of language policy decisions and on actual provisions for the UK’s minority languages. This approach from the UK authorities is better understood as being purposive rather than negligent’.

3 W. McLEOD, ‘An Opportunity Avoided? The European Charter for Regional or Minority Languages and UK Language Policy’ in R. DUNBAR, G. PARRY and S. KLINGE (eds), *The European Charter for Regional or Minority Languages: Legal Challenges and*

not automatically become part of domestic UK law, but must be incorporated through further domestic legislation.

The UK's approach to minority language policy is variegated and amorphous. This variegation has increased following legislative devolution and reflects the fact that language is a minor issue in UK politics and there is a strong monolingualism in every sphere: English is dominant. Indeed 84% of the UK's population lives in England but the languages covered by the ECRML are not generally spoken in England (except, principally, by migrants from other parts of the UK) but in Scotland, Wales and Northern Ireland. Politics tends to be focused on England and little attention has generally been given to issues associated solely with the other nations of the UK than England; devolution has, however, changed the situation and focused great attention to issues that could be considered to be 'local' to the devolved jurisdictions, including language issues.

Generally, throughout much of the twentieth century, the UK took no measures in law to protect and promote linguistic minorities, and remained more concerned with their effective integration⁴ in British society; thus, the knowledge of English, as the only language of the British Empire, was considered essential and policy was directed at promoting its better acquisition. The change in such policies has only been quite recent.

The Race Relations Act of 1976 and the ECHR of 1950, incorporated into UK domestic law with the Human Rights Act of 1998, contain the principle of non-discrimination, and this principle should protect members of all linguistic minorities, autochthonous and immigrant, from acts of discrimination based on language; however, this protection is generally not sufficient to guarantee the maintenance of a minority language in a policy context such as that which exists in the UK. If the autochthonous languages of the UK are to be maintained, they need positive measures of support.

1.2 Devolution

Devolution has generally been an important step in this regard, as it has allowed the devolved administrations to implement policies and, to some extent, create legislation for the protection of the autochthonous minority languages. Devolution emerged on the political agenda in the seventies,⁵ after the publication of Mackintosh report about the devolution of powers⁶ but only in 1997 did the projects come to fruition with the Labour government of Tony Blair. The form devolution⁷ has taken in Scotland, Wales and Northern Ireland has been somewhat different.

Opportunities (Council of Europe Publishing 2008), 211 'There is no mechanism for judging the appropriateness of the commitments chosen by the signatory state. The Committee of Experts is empowered to investigate only whether the specific commitments the state has agreed to take on have in fact been complied with; it has no authority to rule (or even to advise) that the state should make additional commitments so as to ensure parity of treatment between similarly situated cases. The principle of flexibility in the ECRML is designed to ensure that the charter is properly adapted to the specific circumstances of each state and each language community. Such a mechanism allows for different situations to be treated differently, according to their specific dynamics; the difficulty is that there is no means of ensuring that like cases are actually treated alike. This is a serious and fundamental issue in philosophical terms'.

4 For migrants it may be useful learn English instead than a minority language since the knowledge of English is useful even if they decide to leave UK and go in another part of the world. In UK there are English courses for foreign people financed by the Government.

5 J. BRAND and J. MITCHELL, 'Home Rule in Scotland. The Politics and Bases of a Movement' in J BRADBURY and J MAWSON (eds), *British Regionalism and Devolution. The Challenges of State Reform and European Integration* (Jessica Kingsley 1997) 35-54. Before the seventies, the word 'devolution' did not mean independence from London.

6 'A. Scottish Parliament or assembly which would exercise a limited range of central government powers principally affecting Scotland. Other powers would remain within the competence of Westminster, which would retain overall control'. See G. CARVALE, 'Devolution Scozzese e Nuovi Assetti Costituzionali in Gran Bretagna' (2000) *Rassegna Parlamentare* 673.

7 A. VEDASCHI, 'La Devolution of Powers in Scozia e in Galles' (1999) *1 Diritto Pubblico Comparato ed Europeo* 83; see also P. LEYLAND, 'L'esperienza della Devolution nel Regno Unito: uno Sconvolgimento dell'Assetto Costituzionale?' (2000) *2 Le Regioni* 341; J. O. FROSINI, 'Local Government in Inghilterra e Galles: Esperienze e Prospettive' (2000) *2 Diritto Pubblico Comparato ed Europeo* 433.

In Scotland, the Scotland Act 1998⁸ gave to the Scottish Parliament legislative power in many policy areas, including areas such as education, Scottish affairs and local government, which are particularly important to language policy, Gaelic and Scots. In theory, devolution gave to the devolved institutions most of the power necessary to take measure to protect and promote both Gaelic and Scots, and to adopt new strategies for the revival of both languages. The most important example of this in the first Scottish Parliament (1999-2003) was the first Gaelic Language Bill, the Gaelic Language (Scotland) Bill 2002, introduced as a members' bill by the Scottish National Party MSP Michael Russell, which bill, however, died at the end of March 2003, when the first Scottish Parliament rose for the Scottish Parliamentary elections of May of that year.⁹

The situation was different in Wales, since the Welsh National Assembly was not given powers to enact primary legislation under the Government of Wales Act 1998.¹⁰ There were, however, some provisions regarding the Welsh language in this act itself, and implementation of language policy through administrative action in policy areas within the competence of the Assembly has been possible. The Government of Wales Act 2006,¹¹ however, introduced some important changes to the shape of Welsh devolution. It allowed for powers to pass primary legislation to be devolved upon the Welsh Assembly by the Westminster Parliament through Orders in Council of the Westminster Parliament, called 'Legislative Competency Orders', under which the Welsh Assembly could pass primary legislation, called 'Measures'. Under Schedule 5 of this act, 20 broad policy areas were specified in respect of which legislative competency could be passed to the Welsh Assembly. One such area, Field 20, was the Welsh language. As a result of the 2006 act, it became possible for the Welsh Assembly to pass primarily legislation on the Welsh language, and this power has been used.

Thus, the protection of minority languages in Wales, Scotland and Northern Ireland is a relatively recent development and it could be argued that only in Wales has the linguistic model evidenced and given rise to a coherent strategy. A feature of the various models is the almost complete absence of any formal rights,¹² and the implementation of linguistic plans has therefore depended to a considerable degree on the capacity and willingness of the bureaucracy to prepare and implement appropriate policies and plans.¹³

1.3 European Charter for Regional or Minority Languages

An important step for the protection of minority languages in UK was the signature and ratification of the European Charter for Regional or Minority Languages in 2001. The United Kingdom signed the European Charter for Regional or Minority Languages (ECRML) on 2 March and ratified it on 27 March 2001. It entered into force on 1 July 2001.

The ECRML is not applicable to the migrant languages¹⁴ but only to the autochthonous languages; in Great Britain all speakers of minority languages are also able to speak English. The aim of the ECRML is to preserve these languages, and the ECRML makes clear that without positive measures, preservation of such languages is extremely difficult. The languages under protection of the ECRML are Welsh, Gaelic, Irish, Scots and Ulster-Scots; by virtue of further declarations of 11 March and 2 April 2003, the UK recognised that Cornish and Manx, spoken in the Isle of Man, respectively were also Part II languages covered by the UK's ratification.

Part III of the ECRML contains a number of more detailed articles that apply only in respect of those regional

8 1998, c 46 <<http://www.legislation.gov.uk/ukpga/1998/46/contents>>.

9 R. DUNBAR, 'The Law and Language', in M A Mulhern (ed), *Scottish Life and Society: The Law*, (John Donald, 2012), 348-51.

10 1998, c 38 <<http://www.legislation.gov.uk/ukpga/1998/38/contents>>.

11 2006, c 32 <<http://www.legislation.gov.uk/ukpga/2006/32/contents>>.

12 The Welsh Language Measure 2011 contains important new provisions.

13 R. DUNBAR, 'Language Legislation and Language Rights in the United Kingdom' (2004) 2 2002/2003 European Yearbook of Minority Issues 95.

14 Certainly the Government is free to adopt measures for the protection of migrant languages but these are not included in the Charter.

or minority languages that the states themselves identify.

The United Kingdom has designated, in its instrument of ratification, Gaelic in Scotland, Welsh in Wales, and Irish in Northern Ireland for the additional protection of Part III of the Charter.¹⁵

Provision for the Welsh language is much more extensive than for any of the other languages in question: the UK agreed to apply 52 paragraphs and subparagraphs of Part III in relation to Welsh in Wales, whereas the UK only agreed to 39 Part III paragraphs or subparagraphs in respect of Gaelic in Scotland, and only 36 in respect of Irish in Northern Ireland. Regarding administrative authorities and public services (art. 10 ECRML), which is the article of most relevance to the subject matter of this dissertation, 14 provisions apply to Welsh, 8 to Scottish Gaelic and 9 to Irish.

The minority languages protected by Part III of the ECRML are spoken by less than two percent¹⁶ of the UK's total population, and although it is not possible to say how many speakers there are of the regional or minority languages covered only by Part II, as the UK census has not, until 2011, gathered data on any of those languages, it is unlikely that more than another two or so percent speak them. Again, although we lack any reliable data, there are generally relative fewer speakers of these languages in England. For almost all languages, representatives of speakers have called for stronger domestic measures in order to safeguard their language, and for stronger measures to be ratified under the ECRML. There were several calls in Wales, for example, from Welsh language organizations and even the Welsh Language Board, a public body created under the Welsh Language Act 1993, to ratify further or higher undertakings under the ECRML in order to strengthen the position of Welsh. The responsibility for the practical implementation of the ECRML lies largely with the devolved administrations (with the exception of Cornish).

The UK Government has the overall and final responsibility for the implementation of the ECRML. The Committee of Experts observes a continuing insufficient co-ordination between the central government and the devolved administrations and regions concerned, which, it seems, could be improved.¹⁷

2 Britain

In England, it is estimated that English is spoken as a first language by at least 94%¹⁸ of the population. There is no reliable data on numbers of speakers of other British autochthonous languages, but they are likely to be very small in absolute and percentage terms and likely much smaller than numbers of speakers of many immigrant languages. There are no Constitutional provisions on language since there is no single written Constitutional document in the UK; however, there have been some laws linked with languages.¹⁹ Wales was fully incorporated into England in 1536,²⁰ Scotland was incorporated into the UK as a result of the Union of the English and Scottish Parliaments in 1707,²¹ and in 1801, the Irish Parliament was abolished and Ireland became part of the United Kingdom of Great Britain and Ireland.²² After 1922, with the independence of

15 See also R. DUNBAR, 'The Ratification by the United Kingdom of the European Charter for Regional or Minority Languages' (2003) Mercator Linguistic Rights and Legislation Working Paper no 10 <<http://www.ciemen.org/mercator/index-gb.htm>>.

16 Based on the 2001 census.

17 ECRML, 2nd Cycle, Committee of Ministers' Recommendation UK 14-03-2007 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec2_en.pdf>.

18 J. LECLERC, 'Angleterre' (*L'Aménagement Linguistique dans le Monde: Europe*, Université Laval) <<http://www.tlfq.ulaval.ca/AXL/europe/angleterre.htm>>.

19 For example, British Nationality Act of 1981. According to its art 1 every person who is applying for the British citizenship must have a sufficient knowledge of English, Welsh or Scottish Gaelic. Thus, according to art 1 British Nationality Act of 1981 'the requirements for naturalization as a British citizen under section 6 (1) are, in the case of any person who applies for it c) that he has a sufficient knowledge of the English, Welsh or Scottish Gaelic language'.

20 J. DAVIES, *A History of Wales*, (Penguin, 2007), 225-32.

21 C. A. WHATLEY and D. J. PATRICK, *Scots and the Union*, (Edinburgh University Press, 2006).

22 R. F. FOSTER, *Modern Ireland 1600-1972*, (Penguin, 1989), 282-90.

the twenty-six counties of the Irish Free State —now the Republic of Ireland—²³ the United Kingdom was formed by England, Wales, Scotland and Northern Ireland.

In 1998 there was a significant devolution of power from the Westminster Parliament to newly-established parliaments in Scotland, Northern Ireland and Wales, and, thanks to the Government of Wales Act, all three parliaments now have powers to pass primary legislation in areas of relevance to the autochthonous languages associated with those jurisdictions. In the British Parliament in Westminster, however, English remains the only language which is used for all parliamentary matters and for the passage of legislation, and there is no simultaneous interpretation of debates and other proceedings or translation of written materials (except occasionally, in respect of legislative or policy matters relating to Welsh and Gaelic, primarily) in other languages. English is the only language used in the courts and in the public administration in England, although as a result of the common law and the Human Rights Act 1998, the accused, witnesses and other participants in criminal trials who are unable to communicate in English are allowed to use their own language and are provided, free of charge, with an interpreter.

As already noted, the UK in the past was not particularly keen to protect linguistic minorities and minority languages. Since about 1980, there have been some changes in policy at Westminster, particularly with respect to minority language broadcasting; legislation at Westminster allowed for the creation of the Welsh language television service S4C and the development of Gaelic television broadcasting which led, in 2008, to the creation of a new Gaelic language service BBC ALBA, run jointly by the BBC and MG ALBA, a public body created by the Westminster Parliament under the Communications Act 2003.²⁴ Westminster also took the first significant step, through the Welsh Language Act 1993,²⁵ to promote the development of Welsh-English bilingualism in the public sector in Wales.

3 Wales

3.1 Introduction

Welsh is a member of the Brythonic branch of the Celtic language family, and is closely related to Cornish and Breton. It is an Indo-European language of the Celtic group, and has been spoken in Wales at least since the sixth century BC, and was the most widely spoken language in Wales until relatively recently, when it was replaced by English as the dominant language of public life and, since early in the twentieth century, the language of the majority of the population of Wales.²⁶

Prior to the arrival of the Romans, the British Isles and Ireland were populated by peoples speaking Celtic languages. The Romans first turned their attention to Britain in about 55 BC, and over the next ninety years or so they gained control of most of what is now England, as well as a significant part of what is now Wales, and into what are now the Scottish Borders.²⁷ While the Roman presence in Britain effectively ended in about 410 AD, Latin never displaced the Celtic languages; while it may have been spoken by the middle and upper classes, and in the towns, it is likely that it was less widely spoken in the countryside.²⁸ Germanic tribes, the Angles, the Saxons and the Jutes, from the North Sea coast of the European continent (today, principally Denmark and Northern Germany) began arriving in the 5th century AD. It is not clear whether the Celtic speaking population of much of Britain was physically displaced or assimilated or some combination of both processes, although it is now believed that the spread of Germanic languages was more a result of language shift rather than physical displacement of Celtic-speakers; but in any case, the result of the arrival

23 *Ibid.*, 494-535.

24 2003, c 21.

25 1993, c 38, <<http://www.legislation.gov.uk/ukpga/1993/38/contents>>.

26 See, generally, J. DAVIES, *The Welsh Language*, (University of Wales Press, 1993).

27 M. RUSSELL and S. LAYCOCK, *Unroman Britain: Exposing the Great Myth of Britannia*, (The History Press, 2010), 23-61.

28 *Ibid.*, 95-7.

of Germanic tribes was that the Celtic languages became restricted to the north and west of Britain, in parts of what today is Scotland and Wales, and to Ireland.²⁹ In Wales, the law was different than in England, and Welsh was the language used by the public administration and in every domain.

Integration of the Celtic-speaking jurisdictions into what has become Great Britain was generally accomplished at the expense of the Celtic languages (and, in Scotland, also to the expense of Scots). In Wales, for example, the process of anglicisation was given a significant boost by Henry VIII. In 1536 Wales was incorporated by England and, according to the Act of Union, English was to be the only language of the courts in Wales, and those using the Welsh language were not to receive public office.³⁰ From that time until the latter part of the twentieth century, only English was used for public affairs; consequently, the Welsh “elite” started to use this language in order to achieve better positions in the public administration, and Welsh became increasingly associated with the rural peasant population.³¹ Under Elizabeth I, despite the fact that English was used in many domains of the public life instead of Welsh, the Bible was translated into Welsh, and the church used this language in the rural areas where the population was used to speaking it. The Welsh language Bible was first published in 1588.³² This fact was crucial for the preservation of this language, as it gave the language a firm foundation in an important linguistic domain, in spite of the general processes of integration which tended to favour English.³³

In addition, the industrialization of south-east of Wales was followed by strong immigration not only from other areas of Wales but also from Scotland, Ireland and England. Thus, English started to be the dominant language of the working class, at least in the industrialised parts of the country.

Education policy has also had a profound influence. The Education Act 1870, which instituted public education in Wales, made public education entirely in English and created powerful assimilationist tendencies. No instruction through any language other than English was provided for, with the result that students with no knowledge of English were educated only in English and their mother tongue was discouraged, sometimes with corporal punishment.³⁴

English became dominant in other areas of the public sector; for example, the Local Government Act of 1889 effectively made English the language of local authorities.³⁵

In the twentieth century, cracks began to appear in the British policy of monolingualism, particularly in Wales where steps were taken to begin to address the complete dominance of English in public administration and other aspects of public life in Wales. The Welsh Courts Act of 1942³⁶ permitted a limited use of Welsh in the Courts (it had effectively been forbidden from such domains in 1536), although this legislation was seen by many at the time, and by most in retrospect, as being inadequate.³⁷

29 *Ibid.* 218-21. See also M. FILPPULA, J. KLEMOLA and H. PAULASTO, *English and Celtic in Contact*, (Routledge, 2008), and H. TRISTRAM, ‘Why Don’t the English Speak Welsh?’, in N. J. HIGHAM (ed), *Britons in Anglo-Saxon England*, (The Boydell Press, 2007).

30 J. DAVIES, *A History of Wales*, (Penguin, 2007), 228-9.

31 J. DAVIES, *A Pocket Guide to the Welsh Language*, (University of Wales Press, 2005), 21-2.

32 *Ibid.*, 23-5.

33 G. AWBERY, ‘Welsh’ in A O’CORRAIN and S. MACMATHUNA (eds), *Minority Languages in Scandinavia, Britain and Ireland*, (AUU Studia Celtica Upsaliensia 1998) 154.

34 K. MAC KINNON, *Gaelic: A Past and Future Prospect*, (Saltire Society 1991), ch 5; J. DAVIES, *The Welsh Language*, (University of Wales Press Western Mail 1999) 53-104.

35 See, generally, J. DAVIES, *The Welsh Language*, (University of Wales Press, 1993) 53-104.

36 <http://www.byig-wlb.org.uk/English/welshlanguage/Pages/WelshandtheLaw.aspx>.

37 J. DAVIES, *The Welsh Language*, (University of Wales Press Western Mail 1999), 104 ‘An incident at Ammanford in 1961, when a returning officer refused to accept nomination papers because they had been completed in Welsh, publicized the imprecision of the legal standing of the language’.

The Education Act 1944 allowed for the use of Welsh in schools.³⁸ In 1962 the Welsh Language Society³⁹ started to campaign for official status for this language, citing the absence of administrative forms, signs, radio and television in Welsh as amongst their grievances.

In 1963 the government established a committee⁴⁰ 'to clarify the legal status of the Welsh language and to consider whether any changes in the law ought to be made'.⁴¹ It was resolved that anything done in Welsh should be as valid in the eyes of the law as if it had been done in English. Thus, the Committee also urged that more forms and official documents should be available in Welsh and that anyone wishing to use Welsh in a Court of Law should have an absolute right to do so.⁴² These recommendations were taken up in the Welsh Language Act 1967,⁴³ which, notably, provided that in any legal proceedings in Wales or Monmouthshire, the Welsh language may be spoken by any party, witness or other person who wishes to use it, subject to the provision of notice of the intention to do so (s. 1(1)). This act also gave Ministers the power to provide Welsh versions of forms and wordings, although it did not require them to act on this power.

Looking at the results of UK censuses, in Wales essentially the entire population speaks English, although the 2001 UK census indicates that 20.8 percent are able also to speak Welsh. In addition, the languages of immigrants are also spoken.

The percentages of Welsh speakers, according to the successive censuses, have dropped from 54.4% in 1891 to 37.1% in 1921 to 20.8% in 1971 to 18.6% in 1991. In 2001 the numbers and percentages went up: Welsh was spoken by 20.8% of the population by 582,368 people.⁴⁴ The percentages have been more or less the same over the last thirty years. Similar trends are evident in respect of overall numbers of speakers, as well: in 1891, there were 910,289 Welsh speakers and in 1921, there were 922,092; by 1971, however, there were only 542,465 Welsh-speakers, and in 1991, only 508,098, although by 2001 numbers had recovered somewhat, to 582,368. It is generally thought that changes in linguistic policies over the last forty years or so have contributed to these patterns, and in particular the cautiously optimistic results revealed in the 2001 census. However, between 2001 and 2011 there was a decrease in the number and proportion of Welsh speakers in Wales. The most recent census (2011 census) revealed that the proportion of people able to speak Welsh decreased from 20.8% in 2001 to 19.0% in 2011.⁴⁵ Despite an increase in the size of the population, the number of Welsh speakers decreased from 582,000 in 2001 to 562,000 in 2011.⁴⁶ The percentage of Welsh speakers revealed by the 2011 census (19.0%) is however slightly higher than the equivalent figure for the 1991 census (18.6%).

There are Welsh speakers in all parts of Wales, although there are greater concentrations in the north-west of the country.

38 <http://www.legislation.gov.uk/ukpga/Geo6/7-8/31/contents/enacted>.

39 http://cymdeithas.org/2004/05/31/what_is_cymdeithas_yr_jaith.html.

40 Hughes Parry Committee.

41 <http://www.hmcourts-service.gov.uk/cms/12003.htm>.

42 In 1965 a document, *The Legal Status of the Welsh Language*, recommended the equal treatment of both the Welsh and English languages, claiming that the exclusion of Welsh from the public life was not fair. Partly in response to such claims, the Welsh Language Act 1967 was passed by the UK Parliament. This law allowed the use of Welsh in the courts and provided that all official administrative documents may be written in Welsh and that where this is done, they would have the same legal effect as documents in English.

43 1967, ch 66.

44 <http://www.statistics.gov.uk/cci/nugget.asp?id=447>; 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 15.

45 <http://wales.gov.uk/topics/statistics/headlines/population2012/121211/?lang=en>.

46 *Ibid.* See also <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-unitary-authorities-in-wales/index.html> and <http://www.ons.gov.uk/ons/guide-method/census/2011-census-data/2011-census-prospectus/index.html>.

In 1967, as has been noted, with the Welsh Language Act,⁴⁷ it became possible to use Welsh in the public documents but it was not compulsory. According to the preamble to that Act, ‘it is proper that the Welsh language should be freely used by those who so desire in the hearing of legal proceedings in Wales and Monmouthshire; that further provision should be made for the use of that language with similar effects as English in the conduct of other official or public business there’.

This Act established the right to use Welsh in the Courts and provided for Ministers to prescribe Welsh versions of statutory forms.⁴⁸ Slowly some official forms in Welsh started to be available and it was also possible to deal with some bodies in the public administration—in particular, certain local authorities—in Welsh.

The situation of Welsh was paradoxical. On the one hand, it had a measure of official status with the 1967 act; however, the full sense of what ‘official status’ represents was not reflected systematically in the statutory framework, which remained rudimentary. The Welsh Language Act 1967 was considered by most activists to be insufficient: it was a limited act with limited rights, and this was the reason why it was replaced by another one in 1993.⁴⁹

3.2 The Government of Wales Act of 1998 and 2006

The constitutional structure of the UK is important to consider, as it has had an impact on the nature and development of language legislation. Historically, Wales had little autonomy within the UK; like Scotland (and, from the dissolution of the Stormont Assembly in 1972, Northern Ireland), Wales has been governed directly from London, by the UK Government and the British Parliament. In the referendum of 18 September 1997, 51.3% of the population of Wales voted for the creation of a Welsh Assembly.⁵⁰

In 1998, the Government of Wales Act⁵¹ allowed the devolution of powers at local level, which devolution occurred on 1 July 1999. It contained a number of provisions with respect to the Welsh language. For example, section 32 of the Government of Wales Act 1998 stated that the National Assembly may do anything it considers appropriate to support the Welsh language.⁵² Thus, the Welsh Assembly Government is responsible for promoting the Welsh language⁵³ and pursuant to these powers, in 2003 launched *Iaith Pawb* (Everyone’s Language)⁵⁴ as a National Action Plan for a Bilingual Wales.⁵⁵ In addition to Article 32, there were other provisions of relevance to the Welsh language in the 1998 act which created devolution in Wales. Article 47 provided that the Welsh Assembly shall in the conduct of its business give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality. In determining how to comply with this principle, the Assembly must have regard to the spirit of any guidelines under section 9 of the Welsh Language Act 1993. Article 47 also specified that the standing orders of the Welsh Assembly—essentially, its rules of procedure—must be made in both English and Welsh. Article 122 of the 1998 Act provided that the English and Welsh texts of any subordinate legislation made by the Assembly which is in both English and Welsh when made shall be

47 <http://www.byig-wlb.org.uk/English/publications/Publications/488.pdf>

48 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 27.

49 J. DAVIES, *A History of Wales*, (Penguin, 2005), 627 and 703-4.

50 *Ibid.*, 674-5.

51 J. LECLERC, ‘Pays de Galles’ (L’Aménagement Linguistique dans le Monde: Europe, Université Laval) <<http://www.tlfg.ulaval.ca/AXL/EtatsNsouverains/paysgalles.htm>>, 4.

52 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 28.

53 *Ibid.*

54 http://new.wales.gov.uk/topics/welsh_language/iaithpawb/?lang=en.

55 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 47; <http://wales.gov.uk/newsroom/welshlanguage/2009/091201iaithpawb/?jsessionid=3VGPNL2GK5KHh34GnCTTJt2Jkg02TTJvkvhRDJycChftyRgySk11452112521?lang=en>.

treated for all purposes as being of equal standing. However, in spite of these references to Welsh, it must be remembered that the Welsh Assembly originally was different from the Scottish Parliament, since it did not have the power to pass primary legislation (it could only pass secondary legislation, and only in respect of certain subjects), with the result that it could not change the legislative framework for the Welsh language, for example by replacing or amending the Welsh Language Act 1993.

The situation changed with the Government of Wales Act of 2006⁵⁶ which reformed the National Assembly of Wales by, amongst other things, providing it with further legislative powers. It provides for Orders to be made by the Westminster Parliament, which under the 1998 act continued to have sole authority to pass primary legislation, to delegate legislative powers to the Assembly which would then have the power to make primary legislation, referred to in the 2006 act as Measures. There are other aspects of the 2006 act which are relevant to the Welsh language. In particular, section 35 of the 2006 act brought forward elements of Article 47 of the 1998 act, and provides in subsection (1) that the Assembly must, in the conduct of Assembly proceedings, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality; as we shall see when discussing the Welsh Language Act 1993, this provision follows the language used in that act. It should be noted that in 2012, the National Assembly for Wales (Official Languages) Act 2012⁵⁷ was passed, to clarify the Assembly's obligations under section 35 of the 2006 act. This act amends section 35 of the 2006 act to say that Welsh and English are the official languages of the Assembly, that those two languages must, in the conduct of Assembly business, be treated on the basis of equality, and that all persons have the right to use either language when participating in the Assembly's proceedings (section 1). It also requires the Assembly Commission, which runs the business of the Welsh Assembly, in the exercise of its functions, to treat the Welsh and English languages on the basis of equality; under paragraph 8(3) of Schedule 2 to the 2006 act, the Assembly Commission is already under the obligation to give effect in the exercise of its functions, 'so far as is both appropriate in the circumstances and reasonably practicable', to the principle that the English and Welsh languages should be treated on a basis of equality, and so the 2012 act removes the qualifying language that was included in the 2006 act. The new act also requires the Commission to adopt and publish an 'Official Languages Scheme' which will have to include provisions on the simultaneous interpretation from one official language into the other, and the publication of documents in both official languages (section 2(2)).

In addition to section 35, the Government of Wales Act 2006 contained a number of other provisions of relevance for the Welsh language. Section 98(5) requires the standing orders of the Assembly—essentially, the Assembly's rules of procedure—to include a provision that an 'Assembly Measure'—these are the primary legislation that the Assembly is now able to pass—can only be passed if the text of the proposed measure is in both English and Welsh, 'unless the circumstances are such as are specified by the standing orders as any in which the text needs not be in both languages'. Section 111(5) of the 2006 act makes essentially the same provision for Acts of the Welsh Assembly—Acts are also primary legislation. Section 156 of the 2006 act provides that the Welsh and English versions of all Assembly Measures and Acts that are passed in Welsh and English are to be treated for all purposes as being of equal standing.

In addition, section 61 provides that the Welsh Ministers—essentially, the government in Wales under devolution—may do anything that they consider appropriate to support, among other things, the Welsh language. Also, section 78 of the 2006 act requires the Welsh Ministers to adopt a Welsh language strategy which sets out how they propose to promote and facilitate the use of the Welsh language. It also requires the ministers to adopt a Welsh language scheme that sets out the measures they propose to take as to the use of Welsh in the provision of services to the public by themselves or by other public bodies. Such measures must be for the purpose of giving effect, 'so far as is both appropriate in the circumstances and reasonably practicable', to the principle that in the conduct of public business in Wales Welsh and English should be treated on a basis of equality; again, the language here follows that of the Welsh Language Act 1993. The

56 <http://www.legislation.gov.uk/ukpga/2006/32/contents>.

57 2012 anaw 1, <<http://www.legislation.gov.uk/anaw/2012/1/contents/enacted>>.

section provides that the ministers must keep under review the strategy and the language scheme, and must report to the Assembly each year on implementation.

Perhaps the most significant change instituted by the Government of Wales Act 2006 was that the Welsh Assembly was given the power to make primary legislation. In the first instance, the 2006 act essentially provided that the Westminster government could, by an order in council, delegate the authority to the Welsh Assembly to make primary legislation on specified matters. The order, called a 'Legislative Competence Order' (LCO), had to be approved by the National Assembly for Wales, the Secretary of State for Wales (a minister in the Westminster Government), and both houses of the Westminster Parliament (and must, of course, receive royal assent from the Queen). Any order has to be in respect of a matter set out in Schedule 5 to the 2006 act; one of these matters, set out in Field 20, is the Welsh language. This mechanism was used in 2010 to give the Welsh Assembly the competence to legislate on the Welsh language, and out of this emerged the Welsh Language (Wales) Measure 2011. The 2006 act also provided, however, that if approved in a referendum, authority would be devolved to the Welsh Assembly to pass primary legislation on a range of subjects, without the need for LCOs and their attendant mechanisms. In a referendum held on 3 March 2011, this devolution of legislative power to the Welsh Assembly was approved.⁵⁸ As a result, the assembly can now pass primary legislation, referred to as Acts of the Welsh Assembly. Under Part 1 of Schedule 7 to the 2006 act, one of the subjects on which the Assembly can now pass Acts is the Welsh language, except in relation to the Welsh language in the courts. Thus, the assembly can now legislate directly, without Westminster approval, on a broad range of areas relating to the Welsh language, and in this respect, the situation with regard to legislative powers in relation to language matters is similar to that in Scotland.

3.3 Welsh Language Act 1993

In December 1992 the Government of the UK adopted a law on the Welsh language (The Welsh Language Act 1993).⁵⁹ This Act created a language development body, *Bwrdd yr Iaith Gymraeg*, or the Welsh Language Board (section 1), having the general function of promoting and facilitating the use of the Welsh language (section 3(1)). It was also given the power to require certain public bodies (but not voluntary and private sector bodies) to prepare and implement language schemes (Part II), and these schemes must effect to the principle that in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality (section 5(2)). In general, these schemes set out what services are to be provided in Welsh, how they are to be provided, and by when. They also set out how the body concerned will ensure the scheme is being implemented.⁶⁰ In short, a language scheme outlines how the public body considers the linguistic dimension of public functions.⁶¹ While the act did not formally declare that Welsh had the status of an official language,⁶² it could be argued that it did confer a measure of such status on the language, as it created a mechanism for generally expanding the use of Welsh within the public sector in Wales.

As noted, a statutory body, the Welsh Language Board was established to implement the new legislation and with the general function of promoting and facilitating the use of the Welsh language (section 3(1)). This wording is purposely vague. The government explained, during the passage of the Welsh Language Act 1993, that "the Bill does not define the promotional function in great detail, because it will be for the

58 <http://www.politicsresources.net/area/uk/loc11/welsh-ref.htm>.

59 1993, c 38 <<http://www.legislation.gov.uk/ukpga/1993/38/contents>>.

60 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 180.

61 2nd Cycle, State Report, UK, 22-02-2007, <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 65.

62 During the parliamentary debate on the Welsh Language Act 1993, unsuccessful attempts were made to incorporate into it a declaration that Welsh was an official language in Wales; see US English Foundation, UK <<http://www.usefoundation.org/view/633>>.

Board to decide how the functions should be exercised”.⁶³ The Board advises persons providing services to the public, or exercising functions of a public nature, on the use of the Welsh language in their dealings with the public in Wales (section 3(2)(b)). The Board also may advise the Secretary of State for Wales—and after devolution, the Welsh Assembly—on matters concerning the Welsh language (section 3(2)(a). It also has the function of advising any person providing services to the public—this includes both public sector bodies which may be required to prepare Welsh language schemes and private and voluntary sector bodies—on the use of the Welsh language in their dealings with the public in Wales (section 3(2)(c)). In order to implement these functions, the Board may make grants and loans (section 3(3)(a)).

Undoubtedly, the most important part of the 1993 act in relation to expanding the use of Welsh in public administration in Wales has been the mechanism of the Welsh language schemes, set out in Part II of the act. As noted, the Welsh Language Board has the power to require public bodies, as defined in section 6 of the act, which provides services to the public in Wales, to prepare a Welsh language scheme (section 5). As noted, the scheme must set out the measures which the public body will take to give effect to the principle that, ‘so far as is both appropriate in the circumstances and reasonably practicable’, in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality (Section 5(1) and (2)).

The purpose of giving effect to the principle that, in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality, is tempered by the phrase “so far as is both appropriate in the circumstances and reasonably practicable” (section 5(2)). Sometimes the provisions of linguistic laws are moderated by words such as “reasonable” “appropriate” or “may”, in order to give discretion to the public authorities on the implementation of any requirement to provide minority language services; this always introduces a measure of flexibility. This is the reason why Welsh Language Schemes can be different from each other, offering a different standard of service according to the circumstances in which the organisation finds itself. In a sense, it seeks to recognise that the situation of the language is different in different parts of the country, and that the sorts of commitments that might be made by public authorities operating in areas where there are large numbers and percentages of speakers of the minority language, and large numbers of people in the public administration who speak the language, may not be possible for public authorities operating in areas where numbers and percentages of speakers are small.

The Board was required to issue guidelines on the form and content of the Welsh language schemes (section 9(1)) which required to be approved by the Secretary of State for Wales and reviewed by both houses of the UK parliament; once approved and reviewed, public bodies issued with a notice to prepare a Welsh language scheme were required to have regard to the guidelines in preparing their scheme (section 5(3)).⁶⁴ In a sense, these guidelines moderate the flexibility given by the moderating language, just discussed, of section 5(2). The guidelines were approved in 1996,⁶⁵ and among other things, provided that Welsh language schemes should be prepared in a bilingual, English-Welsh format (Guideline 1), should set out what steps the organisation will take to deliver services through the medium of Welsh (Guideline 4), and should set out how the organisation will give effect to the principle of treating Welsh and English on the basis of equality in relation to: telephone communication with the public (Guideline 6(ii)); public meetings (Guideline 6(iii)); other meetings with the public (Guideline 6(iv)); other dealings with the public (Guideline 6(v)); corporate identity of the organisation in Wales (Guideline 7(i)); information signs (Guidelines 7(ii) and (iii)); publishing and printing material directed at the public in Wales (Guideline 7(iv)); all forms and other explanatory material for use by the public in Wales (Guideline 7(v)); press notices for distribution in

63 S. CARREL, *Language Rights Individual and Collective: the Use of Lesser Used Languages in Public Administration* (EBLUL 2000), 38.

64 S. CARREL, *Language Rights Individual and Collective: the Use of Lesser Used Languages in Public Administration* (EBLUL 2000), 38.

65 Welsh Language Board, *Welsh Language Schemes: their preparation and approval in accordance with the Welsh Language Act 1993*, (Cardiff, 1996). Though the Welsh Language Board website is no longer operational, the guidelines can still be found online on other websites; see, for example: <http://www.wales.nhs.uk/sites3/documents/415/WLBWelshLanguageSchemes.pdf>.

Wales (Guideline 7(vi)); publicity material, advertising campaigns and exhibition material directed at the public in Wales, material used for direct marketing campaigns in Wales, and response mechanisms related to publicity activities in Wales (Guidelines 7 (vii)-(x)); and, official notices, public notices and staff recruitment advertising in Wales (Guideline 7(xi)). The schemes should also specify the measures the organisation will take to ensure that workplaces which have contact with the public in Wales seek access to sufficient and appropriately trained Welsh speakers to enable those workplaces to deliver a full service through the medium of Welsh, and the measures that the organisation will use to identify those posts in which the ability to speak Welsh is either essential or desirable in order to deliver a full service through the medium of Welsh (Guideline 8(i) and (ii)). The scheme should set out the administrative arrangements the organisation will make to facilitate its scheme (Guideline 8(iv)). The scheme should also set out the steps the organisation will take to ensure that any agreements or arrangements made with third parties which relate to the provision of services to the public in Wales are consistent with the terms of the organisation's Welsh language scheme (Guideline 8(v)). Finally, the scheme should set out the measures that the organisation will take to monitor implementation of the scheme (Guideline 8(vi)), and should specify targets against which implementation of the scheme can be measured (Guideline 8(vii)).

The Board may give a notice in writing to any public body (section 7), and that public body must prepare a scheme which, as noted, must specify the measures which it proposes to take in order to treat English and Welsh equally (Part II (5) Welsh Language Act 1993).

The public body to which the notice is given is required to prepare a scheme; the notice which the Board issues has to specify a date before which that body is required to submit the scheme to the Board. The body must also be informed in the notice of its right to object to time limit which the Board has set out in the notice for submitting its scheme. The Board may either dismiss the objection or propose an extension of the time limit concerned (section 8). If the Board dismisses the objection or if the public body does not agree to any proposal made by the Board, the Board shall refer the objection to the Secretary of State for Wales —and after devolution, the Welsh Assembly— who will decide on the time frame for submission (section 8).

The public bodies to which a notice to prepare a Welsh language scheme are listed comprehensive in section 6 of the Welsh Language Act 1993. The Welsh Ministers (it was the Welsh Assembly Government before the 2006 Government of Wales Act came into force, and before devolution, it was the Secretary of State for Wales) could, by secondary legislation, name further bodies as being public bodies for the purpose of the Act (section 6(1)(o)), and this mechanism was used on many occasions to expand the range of public bodies potentially subject to the requirement to prepare Welsh Language schemes.

In preparing its scheme, in addition to having regard to the Board's statutory guidelines, discussed above, the Welsh language scheme of every public body that is required by the Board to prepare such a scheme has to specify a time-table for giving effect to the measures proposed in the scheme, and the ways in which the public body will ensure that the scheme is publicised (section 12). As noted above, the public body has to have regard, in preparing its scheme, to the guidelines prepared by the Board. A public body preparing the scheme for submission to the Board must also consult, as may be appropriate, representatives of Welsh speakers and other members of the public who may be affected by the scheme, and in doing so, it must also comply with any directions given to it by the Board (section 13).

If a scheme appears to the Board to be satisfactory, either as it submitted to the Board or with modifications agreed between the Board and the public body submitting it, the Board shall approve the scheme. If the public body fails to submit the scheme the Board may refer the matter to the Secretary of State (section 14).

With regard to amending schemes, if the Board revises its statutory guidelines, it may after doing so, by notice in writing to any public body whose scheme it has approved, require that body to review the scheme and submit to the Board a statement of its conclusions. Consequently, the Board may require the public body to submit a revised scheme to the Board (section 15). Furthermore, if a scheme prepared by a public body has been approved by the Board, either the public body or the Board may, at any time by notice in writing

to the other, propose amendments to the scheme; if the amendments are not agreed to by both the Board and the public body, the matter is referred to the Secretary of State for Wales and, after devolution, the Welsh Assembly (section 16).

The Welsh Language Act 1993 created a mechanism for overseeing implementation of the Welsh language schemes. If a person claims to have been directly affected by a failure of a public body to carry out a scheme approved by the Board, it is possible to write a complaint to the Board. This complaint must be made within the period of twelve months beginning with the day on which the complainant first knew of the matters alleged in the complaint⁶⁶ (section 18).

Where it appears to the Board, either by way of such a complaint or by any other means, that a public body may have failed to carry out a scheme approved by the Board, the Board may conduct an investigation in order to ascertain whether there has been a failure (section 17(1)). It is important to note that the verb used is “may”, not “must”, again giving a margin of discretion to the Board. The procedure for conducting an investigation shall be such as the Board considers appropriate in the circumstances of the case (section 17(2)). Where the Board undertakes an investigation under section 17, it shall send a report of the results of the investigation to the public body concerned, to the Welsh Ministers (and after devolution, to the Welsh Assembly) and, if the investigation is conducted on a complaint, also to the complainant. The Board, if it considers appropriate so, may arrange for the publication of the report of the results of the investigation in such manner as it thinks fit (section 19). If the public body concerned has failed to carry out the scheme, the Board may include in its report recommendations as to action to be taken by the public body in order to remedy the failure or to avoid future failures (section 19).

If at any time it appears to the Board that a public body has failed to take any action recommended in a report, the Board may refer the matter to the Welsh Ministers (or after devolution, the Welsh Assembly), who may give directions to the public body, and if the public body fails to follow such directions, they can be enforced by a mandamus action, an administrative law remedy available in England and Wales (section 20). Once again, it is important to note that both the Board and the Ministers (and Assembly) have some discretion in these matters, as the act uses the conditional form ‘may’ rather than the imperative ‘must’. Thus, even if it is determined that there is a failure of implementation, there is no guarantee that corrective action will be taken and the obligation of the public body will be enforced.

A couple of other aspects of the Welsh Language Act 1993 should also be noted. First, a right to use Welsh in any legal proceedings in Wales, whether criminal, civil or administrative, is given to any participant in legal proceedings by section 22(1). Documents in Welsh are permitted by rules of Court (section 22(2)). This is, in fact, the only clear legal right created under the act. Members of the public do not have, for example, rights in respect of any alleged failure to provide services in Welsh under a Welsh language scheme (although as noted, they may make a complaint to the Board upon which the Board may, but is not required, to take action.

This bureaucratic model creates the risk that too much power is left to the discretion of the public administration, resulting in differences in actual implementation among different public bodies.

Section 26 of Welsh Language Act 1993 is also notable as it contains details regarding the power to prescribe Welsh forms of documents or words specified in Acts. The appropriate Minister may by order prescribe a form of the document in Welsh, or partly in Welsh and partly in English, or, as the case may be a form of words in Welsh for use in such circumstances and subject to such conditions as may be prescribed by the order. Anything done in Welsh by virtue of section 26 shall have the like effect as if done in English. Some forms are prepared for the public in Wales by UK Government departments, and require Ministerial approval, however, there were many cases of such forms being provided only in English.⁶⁷

66 2nd Cycle, Committee of Experts’ Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 73.

67 <http://www.byigwlb.org.uk/english/publications/pages/publicationitem.aspx?puburl=/English/publications/Publications/20090916+DG+S+Tystiolaeth+COMEX.doc>, 31.

The Welsh Language Act 1993 significantly expanded on its predecessor, the Welsh Language Act 1967, which dealt mainly with the use of Welsh in the courts. In particular, it provided, through the mechanism of the Welsh language schemes, a means by which use of the Welsh language in the provision of administrative and other public services to the public could be greatly expanded. With the passage of the Welsh Language (Wales) Measure 2011, this mechanism has now come to an end, but over the period 1993 to 2011 virtually every public body in Wales—well over 500—prepared and took steps to implement a Welsh language scheme under the 1993 act. Some of the difficulties in implementation and effect, highlighted below, together with the failure of the 1993 act to create any real rights other than those set out in section 22, and also to make clear reference to the status of Welsh as an official language, resulted in pressure which led to the 2011 measure.

3.4 Welsh Language Board, Welsh Language Schemes, Public Administration, CoE reports⁶⁸

A crucial sector where normally the use of Welsh needs more protection is the public administration. One hundred years ago the relationship between the public administration and the citizen was not very close but now the public administration has a much greater presence in the daily life of the citizen. The modern public administration offers many services of importance in the daily life of the citizen, and with those services come a range of forms, brochures, policy statements and so forth which citizens must or should deal with. The problem is: which language does the public administration have to use in dealing with a bilingual or multilingual population? Only the majority one or also the minority? If it is not possible to use the minority language with the public administration, that language becomes marginalised.

The public administration is able to ensure prestige and development of a minority language as the use of the language by it demonstrates that the language is capable of use in important, high status contexts; use by the publication also plays an important part in the evolution of the language itself; because minority languages have often been excluded from the public administration, relevant terminology often does not exist, and the introduction of the language into the public administration therefore will often require the development of new words, new terminology, and new styles and registers.

Sometimes the public administration does not ensure the availability of some or all services in the minority language on the basis that most of the speakers of the minority language are often bilingual, and fully fluent in the majority language. If a service in the public administration is offered only in one language, and all speak that language (whether they also have the minority language or not), in theory all people are therefore being treated equally; however in reality, there is discrimination in respect of the people belonging to a minority because the members of a minority language pay the same taxes and other charges as other citizens for the provision of public services, but they do not receive the service in their language of preference.⁶⁹

The Welsh Language Act 1993 confirms in law that there is an obligation on the public sector to treat the Welsh and English languages on the basis of equality in the provision of services to the public in Wales. Based on this, it should be possible, in principle, to receive services (telephone services, face to face services,

68 For this section it was useful the following material: A strategy for the Welsh Language (01-12-1996), The Future of Welsh. A strategic plan (02-08-2005), The Welsh Language. A vision and mission (02-11-1999) <<http://www.byig-wlb.org.uk/english/publications/Pages/index.aspx?categoryid=66>>. It was useful also the following material: Language Policy and Legislation, A good time to fortify the Laws covering the Welsh Language (28-07-2005), Agenda for the Welsh Language (01-08-1988), Bilingual Future (28-01-2003), European Charter: Second Monitoring Report for the UK (16-03-2007), European Charter: The UK's second Implementation Report (01-07-2005), European Charter: Welsh Language Board written evidence to the Committee of experts (23-09-2009), Iaith Pawb (06-03-2003), Investigation under Section 17 of the Welsh Language Act 1993 (12-01-2009), Legal Status of the Welsh Language: Sir David Hughes Parry Report (05-10-1965), Our language: its future (28-01-2003), The Legislative position of Welsh: a position paper (19-01-2006), Use of the Welsh Language in the Courts in Wales: Summary of Lord Justice Edmund Davies' Recommendation (01-01-1973), Welsh Language Act 1967 (26-07-1967), Welsh Language Act 1993 (21-10-1993), Welsh Language Schemes Guidelines (English Publications) Welsh Language Scheme: their preparation and approval under the Welsh Language Act 1993, Preparing Welsh Education Schemes (English-Publications) Revised guidance for producing the third generation of Welsh Education Schemes from 2009 onwards <<http://www.byig-wlb.org.uk/english/publications/Pages/index.aspx?categoryid=67>>.

69 B. DE WITTE, 'Le Principe d'Égalité et la Pluralité Linguistique' in H Giordan (ed), *Les Minorités en Europe: Droits Linguistiques et Droits de l'Homme* (Editions Kimé 1992) 57-58.

forms, letters, websites, public meetings) through the medium of Welsh from the local council, the local hospital, the police, the local job centre, courts, a further education college or University, and so forth.

As we have seen, as a result of the Welsh Language Board's statutory guidance on the preparation of Welsh language schemes, all such schemes created under the 1993 Act must consider all contacts between public administration and citizens: correspondence, telephone calls, meetings, signs, printed material, electronic material, advertisements, and notices.⁷⁰ They also must consider activities related to the provision of such services, such as staffing, training, guidelines, monitoring and reporting. If there is not a request for Welsh normally services are provided in English. Sometimes the citizen might have the impression that a request in Welsh could lead to delay or a lower standard of service, for this reason he/she might be reluctant to use Welsh for an urgent request to the public administration. However, the statutory guidance requires public bodies to make commitments regarding the timing and quality of any service provided through the medium of Welsh. It must also be remembered, though, that the obligation to provide Welsh services on the basis of equality is a qualified one, to allow for some differences where the context, and in particular the numbers of potential users of Welsh language services are much different, is different. There are also issues as to the extent to which commitments in Welsh language schemes are fully implemented. As we have seen in the previous section, where members of the public have a complaint about implementation, or where the Board itself is aware of a failure in Welsh service provision, steps can be taken to enforce the obligation; however, this mechanism was relatively weak, and as was noted above, it was only infrequently used.

The private and voluntary sector, under the Welsh Language Act 1993, have no obligations; however, they can implement schemes if they wish so, and some banks and electricity companies have done so. Given the very strong presence of the private and voluntary sectors in the daily life of the citizen, the failure of the 1993 act to ensure that they provide Welsh language services has been viewed as a weakness in that legislation.⁷¹

Many parts of what was the public sector are now in private ownership, such as many public utilities. It is increasingly common to see private or voluntary bodies providing services in association with or on behalf of the public sector. The scope of the 1993 Act was extended to include the water companies; however, many formerly public institutions were no longer covered by the 1993 act. The private and voluntary sectors need to play a full part in providing services through the medium of Welsh and supporting the use of Welsh within their workforces. One solution is to focus on the nature of services which are provided to the public, rather than whether they are provided by an organisation which is in the public, rather than the private sector.

Also, some public bodies subcontract out to third parties (including private and voluntary sector parties) to conduct services for them; thus, in theory, Welsh language schemes might not apply to the services which have been contracted out. There is, however, a requirement in the Welsh Language Board's statutory guidance that in such circumstances, public bodies contracting out in this way need to ensure that the contractor remains bound by the terms of the Welsh language scheme, and the Welsh authorities have confirmed to the Council of Europe that the legal obligation to follow the schemes remained in the case of outsourcing.⁷² However, it is not clear whether these services are monitored in the same way as those provided by the public bodies themselves and whether the same quality of implementation is guaranteed.⁷³

There is no obligation on departments of the Westminster government in London to develop Welsh language schemes, but they can do so on a voluntary basis. In particular, central government departments are not defined as public bodies for the purpose of the Welsh Language Act, however, the UK government gave an

70 2nd Cycle, State Report, UK, 22-02-2007, <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 65.

71 S. CARREL, *Language Rights Individual and Collective: the Use of Lesser Used Languages in Public Administration* (EBLUL 2000), 38.

72 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 27.

73 *Ibid.*

undertaking that departments which provide services to the public in Wales can prepare schemes and comply with the Welsh Language Act 1993. If a Crown body decides to adopt a Welsh language scheme, the Welsh Language Board approves it in the same way as it does for the other public bodies which are subject to the 1993 act.

Many central government departments have an approved scheme.⁷⁴ According to the Welsh Language Board most Crown bodies are implementing a Welsh Language Scheme.⁷⁵ The four Police Forces in Wales⁷⁶ and the British Transport Police have Welsh language schemes,⁷⁷ as do some other state administration bodies providing services locally in Wales, such as job centres.⁷⁸

Many public services which the public in Wales is compelled to use (TV licenses, tax compliance), in fields which are not devolved, are provided by UK Government departments; thus, the adoption by them of Welsh language schemes is important. However, some departments which have prepared schemes have failed to fulfil their commitments, and services are therefore not always bilingual.⁷⁹

The monitoring work of the Committee of Experts under the European Charter for Regional or Minority Languages has revealed useful information in respect of implementation of domestic legislation, including the 1993 act, and it has been informed that only eight UK Government departments which provide public services in Wales had prepared Welsh language schemes, whereas, nine others had not done so.⁸⁰ Consequently, important services are provided in Wales from the UK departments in English only; thus, bilingualism is not guaranteed. The Welsh Assembly underlined that it is true that some government departments had not agreed Welsh language schemes, however, “the legislative competence recently conferred on the National Assembly [through a Legislative Competence Order in relation to the Welsh language, discussed earlier] would enable it to place statutory duties on Ministers of the Crown, including government departments”.⁸¹

With regard to the implementation of Welsh language schemes approved by the Welsh Language Board, public bodies subject to a Welsh language scheme have to submit annual monitoring reports to the Board, but some of them are unwilling to report their performance.⁸² Consequently, the Board recently held nine statutory investigations over a two year period.⁸³ Indeed, the Board over the time has tightened its inspection processes, and it appears that at least some of the most basic commitments in most schemes, such as responding to correspondence in Welsh and providing Welsh language forms, are now being implemented by most of the public bodies.

74 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 181.

75 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 27.

76 The police cars' written are in Welsh. The same for BT call boxes.

77 2nd Cycle, State Report, UK, 22-02-2007, <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 66.

78 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 27; <http://www.byigwlb.org.uk/english/publications/pages/publicationitem.aspx?puburl=/English/publications/Publications/20090916+DG+S+Tystiolaeth+COMEX.doc>, 31.

79 <http://www.byig-wlb.org.uk/English/publications/Publications/4973.pdf>.

80 3rd Cycle, Committee of Experts' Evaluation Report, UK, 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

81 *Ibid.*

82 3rd Cycle, Committee of Experts' Evaluation Report, UK, 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>; 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 26-27.

83 3rd Cycle, Committee of Experts' Evaluation Report, UK, 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

The problem is that their performance on other aspects varies considerably.⁸⁴ As a result, only some public bodies have a high standard of overall services in Welsh. This is partly due to differences in implementation, but also due to difference in design since there is some flexibility with regard to the application of the principle of equality of treatment of Welsh and English, and in practice some schemes are less demanding than others. This lack of uniformity results in inequality among Welsh speaking citizens regarding the Welsh services offered by the public administration.

Regarding language schemes of local authorities, despite the fact that they are monitored by the Board, the results of such monitoring are generally not in the public domain, and the Committee of Experts of the Council of Europe, whose monitoring reports are a useful source of information on implementation of legislation and policy in states which have ratified the European Charter for Regional or Minority Languages, has not always received specific details.⁸⁵ The very large number of approved schemes, the limited resources available to the Welsh Language Board to engage in comprehensive ongoing monitoring of implementation, and the relatively limited mechanisms in the 1993 act for enforcement were all amongst the reasons for consideration of other models to review implementation, including the Language Commissioner, that is an important part of the Welsh Language (Wales) Measure 2011.

The use of Welsh in the framework of the regional or local authority, the possibility for users of Welsh to submit oral or written applications, the publication by regional authorities of their official documents also in Welsh, the publication by local authorities of their official documents also in Welsh, the use by regional authorities and local authorities of Welsh in debates in their assemblies, without excluding, however, the use of the official language of the State, are requirements under art. 10 of the European Charter for Regional or Minority Languages. These are also generally requirements of individual Welsh language schemes. Thus, their implementation is monitored by both the Welsh Language Board and by the Committee of Experts of the Council of Europe. It must be remembered though, in the context of monitoring by the Committee of Experts, that undertakings of the ECRML and Welsh language schemes are not always identical. The Committee of Experts has, however, been made aware that there is a large variation in the use of Welsh by local authorities,⁸⁶ despite local authorities having adopted Welsh language schemes based on the Board's guidelines. The Committee of Experts received information from NGOs that commitments in schemes are often broken⁸⁷ and the Welsh Language Board does not have the power to sanction the public body for the infringement of provisions of the scheme. Regarding the use of Welsh in debates in the assemblies, for example, the Committee of Experts has determined that this undertaking of the ECRML is fulfilled with regard to the National Assembly for Wales, but the Committee was not able to judge if this was also the case with respect to use of Welsh in local authorities.⁸⁸

With regard to the requirement to ensure that Welsh is used in the provision of the services, under art. 10 (3 a) of the ECRML and under Welsh language schemes, themselves, the Committee of Experts has noted that it is important that such obligations are passed on to any contractor who delivers the service on behalf the public bodies.⁸⁹

With E-Government and the digitalisation of public administration, information and administrative forms are available in electronic format in websites; thus, costs involving the provision of bilingual forms (English/

84 *Ibid.*

85 *Ibid.*

86 3rd Cycle, Committee of Experts' Evaluation Report, UK, 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf> .

87 *Ibid.*

88 *Ibid.*

89 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 183.

Welsh) are reduced.⁹⁰ For example, the experts found that services in Welsh are offered even by the DVLA (Driver and Vehicle Licensing Agency), a Westminster-regulated agency, in Wales and its website is also bilingual.⁹¹

In 2006, a statement was issued on the Provision of Bilingual Services for the services offered by the Welsh Assembly⁹² under which officers have to answer in the same language used by the citizen in written communication and on the telephone. The deadline in order to receive a written answer is the same in English and Welsh. Information on the Welsh Assembly is published on a bilingual website.⁹³ Brochures sent by the Assembly are normally bilingual.

As we have seen, the Welsh Language Act 1993 places a duty on the public bodies providing services to the public in Wales to treat Welsh and English on the basis of equality. However, the act did not amend employment law in order to allow employers to designate posts as ones in which the ability to speak Welsh was either essential or desirable.⁹⁴ This is, however, implicit in such plans, if they are to be implemented, and therefore any such designations which are needed in order to ensure the implementation of Welsh language schemes should not be considered to violate equality laws, a point which was recognised by the Commission for Racial Equality (which has itself now been replaced by the Equality and Human Rights Commission).⁹⁵

The Welsh language schemes focus on the use of the language with the public instead of the internal use in the public administration,⁹⁶ for example among clerks in conducting their work.⁹⁷ Representatives of the local authorities have expressed concern to the Committee of Experts that there was a negative trend with regard to the usage of Welsh at the workplace and at council meetings.

The use of Welsh language in all kinds of workplaces is essential for the long term health of the language; by using the language in professional situations, is possible to see its practical worth. As seen, one of the weaknesses of the Welsh Language Act 1993 was that it did not include any specific provisions on the internal use of Welsh by public bodies. While, as has been discussed, Welsh language schemes require the provision of services through the medium of Welsh, and while this has meant that a certain number of staff must be Welsh-speaking, in practice the language of communication in many workplaces in the public sector to which Welsh language schemes apply tends to be English.⁹⁸

Partly in response to these limitations in the 1993 and associated concerns, the Welsh Language Board developed a project on the internal use of Welsh within the North Wales Police and Ceredigion Council.⁹⁹

90 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 73.

91 http://www.dft.gov.uk/dvla/contactus/localoffices/findnear/wales/bangor_local_office.aspx; 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 73.

92 Reviewed in 2010, see <http://www.assemblywales.org/review-of-bilingual-services-report-english.pdf>.

93 <http://wales.gov.uk/?skip=1&lang=cy>.

94 C. H. WILLIAMS, 'Language Revitalization: The Role of the Welsh Language Board' in *Language Revitalization, Policy and Planning in Wales* (University of Wales Press 2000) 85.

95 See 'Concordat between the Welsh Language Board and the Commission for Racial Equality 1996', available in Appendix 5, Welsh Language Commissioner, 'Recruitment: Welsh Language Considerations', (Cardiff: 2012).

96 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 27.

97 2nd Cycle, Committee of Ministers' Recommendation, UK, 14-03-2007, <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec2_en.pdf>. The Assembly Government argued that the use of Welsh within the internal administrations of local authorities is outside the provisions listed in paragraphs b,c,d,e & f.

98 G. WILLIAMS and D MORRIS, *Language Planning and Language Use, Welsh in a Global Age*, (University of Wales Press 2000) 134.

99 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 28.

Similarly, the Minister for Heritage in the Welsh Assembly government had published a document which set out actions, for example, establishing a national workgroup to look into the development of using Welsh in the workplace.¹⁰⁰

Recruitment has, however, generally been problematic since when there is a vacancy, there should be a requirement that role has to be fulfilled by people able to speak the minority language; where most posts are already filled, any expansion of the ability of the organisation to operate using the minority language is dependent on vacancies coming up and being filled by Welsh speakers.¹⁰¹ The use of Welsh at work, both in the public and private sector, might be difficult, also because the managerial class sometimes comes from outside Wales and, in spite of the concordat between the Welsh Language Board and the Commission for Racial Equality, any requirement of Welsh for management and staff could nonetheless give rise to accusations of discrimination.¹⁰² In spite of this, the Welsh Assembly government has stated that there are provisions within all Welsh language schemes of public sector organisations regarding the recruitment and training of sufficient civil servants with Welsh language skills in order to ensure a sufficient number of bilingual staff.¹⁰³

The recruitment and training of officials and other public sector employees having Welsh language skills is also an undertaking of ECRML, and the Committee of Experts has determined that it has been fulfilled for the Welsh Assembly Government and partly fulfilled for local authorities and public services more generally, but also that Welsh language competence appears sometimes in jobs advertisements as a desirable requirement but rarely as an essential precondition.¹⁰⁴ This is generally a very sensitive area because of the equalities considerations which are involved. The Welsh Assembly has a corporate Bilingual Skills Strategy for its own workforce, and strategies have also been produced at department level.¹⁰⁵

Health authorities have often been reluctant to acknowledge the need for specific provision of Welsh-medium services to patients. Very often, those using the health service are under physical and/or emotional stress and, if they are people whose first language is Welsh, they often find it easier to communicate in Welsh, or may simply wish to do so.

In one recommendation of the Committee of Experts on the application of the Charter in the UK and adopted by the Committee of Ministers, the Committee recommended that steps be taken to ensure that health and social care facilities offer services in Welsh.¹⁰⁶ According to the UK's third periodical report, the Welsh Assembly government has undertaken a number of actions to strengthen the provision of Welsh services in social and health care facilities. For example, a taskforce by the Welsh Minister for Health and Social Services in 2006 was re-established; however, the actual use of Welsh was still not satisfactory.

In January 2008, the Welsh Assembly Government released a Welsh healthcare circular requiring that all NHS Trusts have to appoint a full time Welsh Language Officer in order to improve the use of Welsh in health care services. Also, the All Wales Task Group for Welsh Language Service has taken a number of initiatives

100 <http://wales.gov.uk/newsroom/welshlanguage/2011/110323livinglanguage/?lang=en>.

101 J. WALSH and W. MCLEOD, 'An Overcoat Wrapped around an Invisible Man? Language Legislation and Language Revitalization in Ireland and Scotland' (2008) 7:21-46 *Language Policy* 33.

102 G. WILLIAMS and D. MORRIS, *Language Planning and Language Use, Welsh in a Global Age*, (University of Wales Press 2000) 174.

103 2nd Cycle, Committee of Experts' Evaluation Report, UK, 14-09-2006, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 73.

104 3rd Cycle, Committee of Experts' Evaluation Report, UK, 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

105 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 184.

106 3rd cycle, Committee of Ministers' Recommendation, UK, 21-04-2010 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec3_en.pdf>.

in the field of health and social care. The NHS Welsh Language Unit works to raise the importance of the Welsh language within the healthcare sector and promote the use of it.¹⁰⁷ The Unit works with the NHS Trusts and Local Health Boards in promoting the use of Welsh in healthcare services in Wales. NHS Direct is accessible 24 hours a day and callers may request an interpreter in the language of their choice, and health information materials are available in languages other than English.¹⁰⁸ However, in spite of these important steps, the Committee of Experts was informed that there were still several complaints in this sector.¹⁰⁹ The problem seems to be that medical staff is not trained in Welsh; in addition, over ninety percent of contacts are with the primary care sector (for example, through doctors' surgeries), which is provided by the private sector, a sector which is not, as noted, subject to obligations under the Welsh Language Act 1993.¹¹⁰

So, existing evidence from the monitoring process under the European Charter for Regional or Minority Languages has highlighted a number of problems in implementation of Charter commitments and, with them, underlying commitments under Welsh language schemes. As noted, there are no linguistic rights under the Welsh Language Act 1993 in respect of public services, meaning that there was only limited recourse available to citizens, and that recourse, which relied to a considerable extent on the Welsh Language Board, was fairly bureaucratic. For this and other reasons, in recent years there have been growing demands amongst activists for a new Act in order to overcome the problems that had arisen under the 1993 Act.

3.5 Welsh Language (Wales) Measure 2011¹¹¹

The new Welsh Language (Wales) Measure 2011¹¹² was approved by the National Assembly for Wales on 7 December 2010. It received Royal Assent and became law on 9 February 2011. Unlike the Welsh Language Act 1993 which it replaced, the Welsh Language (Wales) Measure 2011 is an extremely lengthy (150 pages) and complex piece of legislation. One key aim of the Measure is to give clarification about services that Welsh speakers can expect to receive. The Measure will also lead to new duties on select organisations outside the governmental sector, such as key utilities providers, something which the 1993 legislation did not seek to do. The Welsh Language Measure also introduced a much more detailed system of graduated enforcement of the obligations created under the measure. The Welsh Language Board is replaced by the Welsh Language Commissioner.

The declaration in the Welsh Language (Wales) Measure 2011 of Welsh as an official language is an historic achievement. Although welcoming this important step many activists have some objections to aspects of the legislation, including the failure to create certain key legal rights to services in Welsh. In addition to creating a new office, the Welsh Language Commissioner, with special powers to investigate service failures, the Measure makes specific provision for the participation of members of the public who are affected by alleged failures in service provision to make complaints. Provision is also made for enforcement of outcomes of investigations through court remedies. Thus, while clear rights were not created, it would appear that the Measure represents an important step towards a system of imposition of duties and of enforcement of duties that is more formalised. Though, much will depend on the content and application of the standards; much will also depend on the effectiveness of the Commissioner.

107 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 49.

108 2nd Cycle, State Report, UK, 22-02-2007, <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 67.

109 3rd Cycle, Committee of Experts' Evaluation Report, UK, 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

110 3rd Cycle, Committee of Experts' Evaluation Report, UK, 19-11-2009, <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

111 See on the Welsh Language Measure (Wales) 2011: A VACCA, Welsh Language (Wales) Measure 2011, Use of Welsh in the Public Administration: a step forward?, Revista de Llengua i Dret, 59.

112 See the Welsh Language Measure <http://www.assemblywales.org/welsh_language_measure_as_passed-e.pdf>.

Activists have generally felt that the measure does not go far enough.¹¹³ One of the criticisms of the Welsh Language Act 1993 was that it was too bureaucratic, but given the complexity of the mechanism of ‘standards’ created under the Welsh Language (Wales) Measure 2011, the same risk is clearly present in the new measure. In particular, there are concerns that the complexity of this measure might create difficulties for its implementation. There are also concerns that far too much is being asked of the Commissioner: in addition to the general promotion role assigned to the Commissioner, the office has a number of specific responsibilities associated with the development of standards, and, of course, in overseeing their implementation.

As the ongoing scrutiny of the Committee of Experts under the European Charter for Regional or Minority Languages has shown, it would appear that the Welsh language schemes created under the Welsh Language Act 1993 have done a considerable amount to expand the use of Welsh in the provision of services by public authorities to the public through the medium of Welsh, although not all authorities have been as effective as others in this regard, and the Committee of Experts have repeatedly revealed, for example, in the health care system. At very least, the standards mechanism created under the Measure has the potential to expand considerably on the foundations laid by Welsh language schemes.

The Measure certainly does create a much more detailed mechanism for monitoring enforcement of implementation, and experience in other jurisdictions and under the European Charter indicates that effective monitoring mechanisms can do much to ensure that duties are actually made real.

4 Scotland

4.1 History

Scottish Gaelic is a Celtic language, very close to the modern Irish. Both languages have a rich literature, a significant amount of which is shared, and strong cultural links. The Celtic languages have a grammar that is quite different from English and from other Indo-European languages. It is not clear how long this language has been spoken in Scotland, although most historians now agree that it was brought to the west coast of Scotland with settlers from the north of Ireland in about the fifth century A.D. Although it was, by the tenth century, spoken in most parts of what is now Scotland, by the beginning of 13th century it had begun to decline. The language first started disappearing from most of what we know today as the Scottish lowlands and by the late Middle Ages it became associated primarily with the Scottish Highlands.¹¹⁴

In Scotland, the first significant government action to erase Gaelic was taken well before the Union of the Scottish and English Parliaments in 1707. Of particular importance were the Statutes of Iona of 1609 and 1616 which required that the heirs of important Gaelic-speaking Highland Chieftains had to be educated in English.¹¹⁵

In 1707, with the Act of Union, the Scottish Parliament was dissolved and Scotland and England became one country.¹¹⁶ By around 1700 Gaelic was, as noted, spoken primarily in the Highlands and Hebrides. The Highland clans were centrally involved in the several Jacobite uprisings between 1688 and 1746 with many, though not all, giving strong support to the unsuccessful cause of the Royal House of Stewart. The ultimate defeat of the Jacobites, at Culloden in 1746, resulted in massive changes to the social and economic structure of the Highlands, which led to an increasing anglicisation of the Highland elites and mass emigration of the peasantry, two processes that worked against the language in its remaining ‘heartlands’. The Education (Scotland) Act 1872, which introduced universal state-supported education in Scotland, made no provision for Gaelic in schools and the new state schools used only English, even in the Gaelic-speaking areas. This,

113 <http://www.linguapax.org/fr/nouvelles/2011/02/18/royal-assent-for-official-status-of-welsh-language>.

114 <http://www.savegaelic.org/gaelic/scottish-gaelic-history.php>.

115 K. MACKINNON, *Gaelic: A Past and Future Prospect*, (Saltire Society, 1991), 46-9.

116 <http://www.historic-uk.com/HistoryUK/Scotland-History/ActofUnion.htm>.

too, is thought to have had a profound negative impact on the language.¹¹⁷

Regarding Scots, the other language spoken in Scotland, in the sixteenth and seventeenth century, it was used for many official purposes in Scotland, including in the courts of law. However, in 1707, with the Treaty of Union¹¹⁸ under which the Scottish and English Parliaments were united, English effectively became the language of the Public Administration. According to the Local Government (Scotland) Act of 1889 English was the only language of local authorities.¹¹⁹

In 1891 *An Comunn Gàidhealach*, historically the most important organization for Gaelic language, was founded in Oban for the preservation and development of the Gaelic language¹²⁰ and from 1892 ran the National Gaelic Mod, an important cultural festival which continues to this day. An Comunn also played an important part in Gaelic publishing and in campaigning for the protection of the language. As a result of such campaigning, a 1918 amendment to the Education Act introduced a clause that provided for the teaching in Gaelic in Gaelic speaking areas,¹²¹ and this allowed the gradual introduction of Gaelic as a subject in the secondary school curriculum. At university level, a Chair in Celtic was established at the University of Edinburgh in 1881 and a similar Chair was introduced at Glasgow University shortly thereafter. By the early twentieth century, Celtic and Gaelic studies were taught at those two universities as well as at the University of Aberdeen.

Generally, for much of the twentieth century, there was little state intervention in support of Gaelic and Gaelic continued to decline steadily. However, *Comunn na Gàidhlig* (CnaG) was established with the support of the Highlands and Islands Development Board (now, Highlands and Islands Enterprise), the main government socio-economic development body for the Highlands, in 1984 as a coordinating Gaelic Development Agency, operating at local, regional and national level. Its aim is to promote Scottish Gaelic language.¹²² CnaG is involved in many projects throughout Scotland and played a key role in the campaign for Gaelic television broadcasting, which resulted in the establishment in the early 1990s of a fund to support the production of Gaelic television broadcasting and the campaign for Gaelic language legislation which came to fruition in 2005.¹²³

With regard to the demographics of the language, according the 1991 census, 65,674 people (1,3%¹²⁴ of the Scottish population) were able to speak Gaelic. In the 2001 census, 58,652 persons (about 1,2% of the Scottish population) were able to speak Gaelic. This pattern of decline from one census to the next has generally been evident since the census of 1891.

Gaelic speakers are spread out throughout the country. Proportions are higher in the traditional Gaelic-speaking areas, particularly in the Western Islands (or Outer Hebrides as they are known) and in pockets in the Highlands (particularly Skye and Lochalsh district, and Argyllshire, especially on the island of Tiree) but,

117 R. DUNBAR, 'Gaelic in Scotland: the Legal and Institutional Framework' in W McLEOD (ed), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 1-23.

118 <http://www.scottish.parliament.uk/vli/history/treatyofunion/index.htm>.

119 P. A. JOHNSTON JR, 'Scottish English and Scots', in D BRITAIN (ed), *Language in the British Isles*, (Cambridge University Press, 2007), 105-6.

120 <http://www.savegaelic.org/gaelic/scottish-gaelic-society.php>.

121 R. DUNBAR, 'Gaelic in Scotland: the Legal and Institutional Framework' in W. McLeod (ed), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 4.

122 <http://www.culturalprofiles.net/scotland%20old%20Units/6101.html>.

123 See <http://www.cnag.org.uk/> and K. MACKINNON, 'Gaelic in Scotland' in A. O'CORRAIN and S. MACMATHÙNA (eds), *Minority Languages in Scandinavia, Britain and Ireland*, (AUU Studia CelticaUpsaliensia 1998) 175.

124 R. DUNBAR, 'The Gaelic Language (Scotland) Act' (2005) 9 *Edinburgh Law Rev* 471, 'In the 2001 census, 58,652 persons or about 1.2% of the Scottish population aged three and over, reported themselves as being able to speak Gaelic, a decline of 0.2% and 7,426 persons from 1991'.

there are also significant concentrations of Gaelic speakers in Edinburgh and Glasgow.¹²⁵ The 2001 census indicated that, in the Western Isles, 61,1% of the population was able to speak Gaelic. However, in 26 local authority areas, including Glasgow and Edinburgh, the population able to speak Gaelic is 1,0% or less.¹²⁶ Considering that the UK has 58.2 million inhabitants, the Gaelic speakers represent a very small portion of the British population (0.11%).¹²⁷

As in other parts of the UK, so-called ‘immigrant languages’ are also spoken in Scotland. According to art. 1 of the British Nationality Act of 1981 people who want to obtain British citizenship must show that they have a sufficient knowledge of the English, Welsh or Scottish Gaelic language. This does not mean, however, that Scottish Gaelic has official status or is a co-official language of the UK. The Scotland Act 1998¹²⁸ was introduced by the Labour Government, after a referendum in which the Scottish electorate voted strongly in favour of proposals for the devolution of power to a new Scottish Parliament. Under this act, the new Scottish parliament took on responsibility for a range of policy areas including many, such as education, local government and most aspects of Scottish affairs (but not broadcasting), which are relevant to Scottish Gaelic and Scots.¹²⁹ The Scottish Parliament has, as noted earlier, the power to pass primary legislation, and therefore could legislate to support Gaelic. Although the UK Government could, as a formal matter, still legislate in these areas, it operates under a convention that it does not legislate on devolved matters unless it is agreed with the devolved legislatures.¹³⁰

4.2 The Gaelic Language (Scotland) Bill 2002

Until the 1980s, Scottish Gaelic benefited from little legislative recognition and few policies had been developed in support of its speakers. There was, for example, no legislative requirement regarding the use of Gaelic in the provision of public services. *Comhairle nan Eilean Siar* and Highland Council were the only public bodies which had developed Gaelic language policies,¹³¹ but even these were relatively weak in terms of their commitments to provide public services through the medium of Gaelic and, in any case, were not implemented particularly well.

In the Scotland Act 1998 there was no reference to Gaelic and no provision for the use of Gaelic in the devolved institutions. However, as a practical matter, a policy on Gaelic was developed by the new Parliament which was quite supportive. For example, under the Parliament’s Standing Orders, Gaelic could, with the permission of the presiding officer, be used in parliamentary debates and before parliamentary committees, although legislation passed by the Scottish Parliament is required to be in English alone.¹³² There have been only two fluent Gaelic speakers in the first, second and third Scottish Parliaments, and only really one fully fluent Gaelic-speaker in the fourth parliament, elected in May 2011. Therefore, in practice, Gaelic is seldom used. However, there are two Gaelic officers currently in Parliament.¹³³ Since the very first Scottish

125 ECRML, 3rd Cycle, State Periodical Report, UK, 26-05-2009, <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 12.

126 *Ibid.*

127 J. LECLERC, ‘Ecosse’ (*L’Aménagement Linguistique dans le Monde: Europe, Université Laval 2010*) <<http://www.tlfg.ulaval.ca/AXL/EtatsNsoverain/ecosse.htm>>.

128 <http://www.legislation.gov.uk/ukpga/1998/46/contents>.

129 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 2-8; <http://www.scottish.parliament.uk/vli/history/pathtodevolution/index.htm>.

130 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>.

131 R. Dunbar, ‘Gaelic in Scotland: the Legal and Institutional Framework’ in W. McLEOD (ed.), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 12.

132 *Ibid.* 10.

133 R. DUNBAR, ‘Language Legislation and Language Rights in the United Kingdom’ (2004) 2 2002/2003 European Yearbook of Minority Issues 121. See also US English Foundation <<http://www.usefoundation.org/view/637>> and www.scottish.parliament.uk/gaidhlig.

Parliament and Scottish Executive (now the Scottish Government) in 1999, there has always been a Minister with responsibility for Gaelic. Both the Scottish Executive and the Scottish Parliament developed very early the practice of answering in Gaelic correspondence which has been written in that language,¹³⁴ and it has become the practice of both institutions to produce a Gaelic or a bilingual, Gaelic-English version of important documents, particular ones of special interest to Gaelic speakers.

Gaelic organisations and language activists, led by *Comunn na Gàidhlig* (CNAG), the main development body for the language, had campaigned since the mid-1990s for language legislation but the coalition government formed in first Scottish Parliament (1999-2003) by the Scottish Labour Party and the Scottish Liberal Democrat Party was not particularly responsive. Rather than bringing forward legislation, the Scottish Executive appointed a task force to examine the funding and role of existing Gaelic organisations, and when that task force recommended the creation of both a new language planning body and the creation of legislation, a second task force was appointed. When that task force reported in spring 2002, it made recommendations similar to those made by the first task force. In response, the Scottish Executive did not bring forward any language legislation but did create, also in 2002, the recommended language planning body, the Scottish Gaelic Board (*Bòrd na Gàidhlig h-Alba*).¹³⁵ As it had no statutory basis, it also did not have any significant new powers or an agreed long-term funding base.¹³⁶ It was, in fact, much weaker than the Welsh Language Board.

As a result of the lack of progress on legislation for Gaelic and the apparent opposition to such legislation by the Scottish Executive, Michael Russell of the SNP¹³⁷ put before the Scottish Parliament a member's bill, the Gaelic Language (Scotland) Bill, in late 2002. The Bill would have required public bodies to publish, within two years of the coming into force of the legislation, a Gaelic language plan, in which the public body would set out the measures it would take as to the use of Gaelic in the provision of its services to the public and in its internal processes (sections 1(1) and 1(2)). The plan would give effect to the principle that the Gaelic and English languages would be treated on the basis of equality ("so far as is both appropriate in the circumstances and reasonably practicable"). The requirement to prepare a language plan would, however, only have fallen on public bodies which exercise internal processes or which serve the public in the local government areas of *Comhairle nan Eilean Siar*, the Highland Council, and most parts of Argyll and Bute Council (sections 3(1) and 6(1)). This is an area which corresponds roughly to the historical 'Highlands', the area over which Gaelic was once (but, in most parts of the area, is no longer) widely spoken. While the appearance of a long-awaited Gaelic bill was generally welcomed, this particular aspect was widely criticised on the basis that, according to the 2001 census, well over forty percent of Gaelic speakers lived outside the territory that would have been covered by the bill, and it would therefore have done little for the development of the language in areas such as Glasgow and Edinburgh, where there are significant concentrations of speakers and considerable energy, as reflected, for example, in the relative strength of support for GME (Gaelic Medium Education) in such areas. Although this bill received support at the first stage of the parliamentary process in the Scottish Parliament, it ultimately failed when the first Scottish Parliament was dissolved at the end of March 2003, in advance of the parliamentary elections in May of that year.

4.3 The Gaelic Language (Scotland) Act 2005. Introduction

The Gaelic Language (Scotland) Act 2005,¹³⁸ which was passed by the Scottish Parliament in April 2005, received Royal assent in June 2005 and came into force in February 2006. It contains several statutory provisions designated to secure the status of Gaelic in Scotland. The Scottish Parliament passed the Gaelic

134 R. DUNBAR, 'Gaelic in Scotland: the Legal and Institutional Framework' in W McLeod (ed), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 10.

135 <http://www.savegaelic.org/gaelic/bord-na-gaidhlig.php>.

136 R. DUNBAR, 'Language Legislation and Language Rights in the United Kingdom' (2004) 2 2002/2003 European Yearbook of Minority Issues 121.

137 Scottish National Party.

138 US English Foundation <<http://www.usefoundation.org/view/633>>.

Language (Scotland) Act 2005 without a single dissenting vote.¹³⁹ The Act created no rights for Gaelic speakers and, although it created a mechanism for increasing the use of Gaelic by public bodies in Scotland, it contained little detail as to the precise nature of any obligations that would be imposed and it is perhaps in part because of this vagueness that it was able to gain such wide support in the Parliament.

This Act was modelled, to a certain degree, on the Welsh Language Act 1993 although that act was an act of the Westminster government whereas the Gaelic Language (Scotland) Act 2005 was an act of the Scottish Parliament.¹⁴⁰

Virtually all areas of public policy relevant to Gaelic have, except for broadcasting, been devolved to the Scottish Parliament. However, the Scottish Parliament cannot impose duties on national bodies and this imposes a limitation on the reach of the legislation as many Departments of the Westminster Parliament and other public sector actors that are regulated by Westminster are active in Scotland. Generally speaking, only English is used in the services provided by such bodies and there is little that the Scottish Parliament can do to change that.

The Gaelic Language Act 2005 covers only Scottish bodies and does not cover public bodies which serve the entire United Kingdom since it is an enactment of the Scottish Parliament rather than of Westminster Parliament. This leads to some difficulties in developing an integrated strategy for Gaelic in the public sector.

The decision to extend the legislation to all of Scotland, rather than only to the Gaelic areas, was in sharp contrast to the 2002 Bill and presents some challenges.

Given its deep roots in Scotland, including the role of its speakers in creating the Scottish state in the middle ages, Gaelic is a language which can be seen as forming part of Scotland's national identity. However, it is now only spoken by a tiny minority of Scottish (only 1,2% of the population), and it is now most closely associated with the West Highlands and Hebrides, where it is still spoken to some degree. Although in 2001 almost half of Gaelic-speakers lived in other parts of the country, they make up tiny percentages of the local population and most members of these populations have little connection with or knowledge of the language.

This, indeed, is a significant problem (as was already noted in the context of the discussion of the 2002 Bill). Only 1,2% of the national population knows Gaelic and almost three-quarters of Gaelic speakers live in local authority areas where they form less than 1% of the population. Significant numbers of Gaelic speakers are living in the most important cities such as Edinburgh and Glasgow but they are a very small percentage of the entire population: less than 1% in both cities.¹⁴¹ Such small concentrations mean that it is really difficult for the public administration to provide more than a very few services through the medium of Gaelic.

The 2005 Act has a flexible approach to Gaelic development in Scotland which, based on these local demographic realities, has to be reasonable and proportionate, according to the particular circumstances of individual public authorities.¹⁴² This Act establishes a body, *Bòrd na Gàidhlig*, having functions exercisable with a view to securing the status of the Gaelic language as an official language of Scotland, commanding equal respect to the English language (Preamble). The preamble to the legislation declares Gaelic to be an official language of Scotland and public bodies are covered by the provisions of this act. The legal recognition of Scottish Gaelic, as an official language, is a milestone as previously it had little formal status or recognition in law at all. However, the implications of this status are more limited than the words 'official

139 *Ibid.*

140 R. DUNBAR, 'Is there a Duty to Legislate for Linguistic Minorities?' (March 2006) 33(1) *Journal of Law and Society* 181; see also R. DUNBAR, 'Language Legislation and Language Rights in the United Kingdom' (2004) 2 *2002/2003 European Yearbook of Minority Issues* 95 and R. DUNBAR, 'The Gaelic Language (Scotland) Act' (2005) 9 *Edinburgh Law Rev* 466.

141 R. DUNBAR, 'The Gaelic Language (Scotland) Act' (2005) 9 *Edinburgh Law Rev* 472.

142 Guidance on the Development of Gaelic Language Plans (*Bòrd na Gàidhlig* 2007) <<http://www.gaidhlig.org.uk/Downloads/Language-Plans/Stiuireadh%20Phlanaichean%202007%20Beurla.pdf>>, 5.

language' convey and, in reality, even after the passage of this legislation, Gaelic does not have an official status that is in any way comparable to Catalan in Catalonia, for example, and Gaelic-speakers are still without any linguistic rights.

The Act does not go as far as the Welsh Language Act 1993 in making reference to any concept of equality between the Gaelic and English languages. The Welsh Language Act 1993 required that Welsh and English are to be treated "on a basis of equality". Instead, the Gaelic Language (Scotland) Act 2005 uses the words "equal respect". However, these do not have any clear meaning and appear to have been chosen to avoid any suggestion that the Act might generate a general requirement of English-Gaelic bilingualism for public bodies in Scotland.¹⁴³ As usual, "respect" has a very loose meaning. This "respect" does not imply full bilingualism or any formal equality; it has to be flexible since it has to take consideration of the different levels of use of Gaelic across Scotland.

4.4 The Gaelic Language (Scotland) Act 2005: Contents

The Gaelic Language (Scotland) Act 2005 (the 'Gaelic Act') created a statutory body, *Bòrd na Gàidhlig*¹⁴⁴ which has the general functions of promoting and facilitating the development of the use and understanding of the Gaelic language and Gaelic education, advising the Scottish Ministers, public bodies and other persons exercising functions of a public nature on matters relating to the Gaelic language, Gaelic education and Gaelic culture and of monitoring and reporting to the Scottish Ministers on the implementation of the European Charter for Regional or Minority Languages¹⁴⁵ (art. 1 (1) (2) (3) Gaelic Language Scotland Act 2005).

The *Bòrd* consists of no fewer than 5, nor more than 11, ordinary members and a person whose function is to chair the *Bòrd* ("*Cathraiche*"), appointed by the Scottish Ministers. The first Chairman and first members of the *Bòrd* were appointed by Scottish Ministers in January 2006. The *Bòrd* at the moment has ten members including the chair. It is directly funded by the Scottish Ministers and is accountable to them.¹⁴⁶ It works closely with the Scottish Government, public authorities and Gaelic organisations to promote Gaelic, ensuring also that public funds are effectively and strategically spent.¹⁴⁷ The working language of the *Bòrd* is Gaelic and, as a matter of *Bòrd* policy, its public meetings are held in Gaelic as much as possible, with simultaneous interpretation services utilised where necessary and possible.¹⁴⁸ In job descriptions for positions within the *Bòrd*, reading, writing, speaking Gaelic are essential skills.¹⁴⁹ NGOs have expressed the concern that the *Bòrd* 'might not have enough human and financial resources to fulfill its responsibilities'.¹⁵⁰ However, the *Bòrd* staffing structure has been recently strengthened to ensure it is fit for purpose¹⁵¹ and additional staff were appointed in 2010. The *Bòrd* is working under the supervision of the Scottish Government.

The *Bòrd* functions, according to the Act, are to be exercised with a view to securing the status of the Gaelic language as an official language of Scotland, commanding equal respect to the English language, by increasing the number of persons who are able to use and understand the Gaelic language, encouraging the use and understanding of the Gaelic language and facilitating access to the Gaelic language and culture (art.

143 See R DUNBAR, 'The Gaelic Language (Scotland) Act' (2005) 9 *Edinburgh Law Rev* 466-479.

144 See <http://www.gaidhlig.org.uk/en/the-bord>.

145 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 44.

146 See <http://www.gaidhlig.org.uk/en/the-bord>.

147 *Ibid.*

148 *Bòrd na Gàidhlig* Gaelic Policy <<http://www.gaidhlig.org.uk/Downloads/Vacancies/GaelicPolicy.pdf>>, 5.

149 *Ibid.*, 6.

150 ECRML, 2nd Cycle Committee of Experts' Evaluation Report UK 14-09-2006 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML2_en.pdf>, 6.

151 *Ginealach Ur na Gàidhlig* An Action Plan to increase the numbers of Gaelic speakers <<http://www.gaidhlig.org.uk/Downloads/Ginealach-Ur-na-Gaidhlig-English-2011.pdf>>, 6.

1 (3)). Again, the official status is only a proclamation, and the word “respect” is really generic and does not generate specific obligations. The Scottish Ministers may give the *Bòrd* directions and guidance (art. 1 (3)).

Bòrd na Gàidhlig is required, within one year of the coming into force of the act and every five years thereafter, to develop a national plan for the language which it must submit to the Scottish Ministers. Each national Gaelic language plan must include proposals as to the exercise of the *Bòrd*'s functions under the Act (art. 2). In preparing the plan the *Bòrd* must consult the Parliament, publish a draft of the plan, publicise the opportunity to make representations about the draft plan and take into account any representations received (art. 2 (3)).

The *Bòrd* prepared a National Plan for Gaelic, which was approved by the Scottish Government in March 2007, with an overview of Gaelic needs in order to increase the number of speakers. This is a point of reference for all those bodies in Scotland which have to prepare Gaelic plans.¹⁵² The Plan is meant to establish a strategic approach to the development of the language and its culture and to provide government, local authorities, public bodies and the private and voluntary sectors with a five-year program to take the language forward. The final version of the plan contains detailed targets and clear aims.¹⁵³

The publication of the national plan for Gaelic by the *Bòrd* was a significant milestone and is a long-term strategic plan for *Bòrd na Gàidhlig* and other organisations involved in Gaelic development.¹⁵⁴

In December 2009 the *Bòrd* launched the action plan “*Ginealach Ur na Gàidhlig*” to increase the number of Gaelic speakers.¹⁵⁵ This plan supports the National Plan for Gaelic 2007-12 and the requirements of the Gaelic Language (Scotland) Act 2005, reprioritising resources to increase Gaelic speakers.¹⁵⁶ The Action Plan underpins the Scottish Government's Gaelic Language Plan, approved by the *Bòrd* in May 2009, which acknowledges that Gaelic has a future only if more people learn and use this language.

Perhaps the most important aspect of the Gaelic Language (Scotland) Act 2005, however, is the mechanism for the creation of Gaelic language plans by public authorities. In particular, the Board is empowered to require selected public bodies to prepare and implement Gaelic language plans¹⁵⁷ in which they specify the services that they will provide to the public through the medium of Gaelic, and how they will increase the use of Gaelic in their internal operations. Gaelic Language Plans certainly have the potential to increase the profile and visibility of the language, thereby helping to increase its status.¹⁵⁸

In the selection of public bodies that must develop a Gaelic language plan, the *Bòrd* has to consider a number of factors, including the following: the most recent national Gaelic language plan prepared by the *Bòrd* itself; the extent to which Gaelic is used by the public which the public body serves and in its internal operations; the extent to which, in the *Bòrd*'s opinion, the public body has the potential to develop the use of Gaelic in relation to its services to the public and its internal operations; any representations that have been made to the *Bòrd* and any guidance that has been given by the Scottish Government (section 3(3)). As a consequence, public authorities that serve a large number of people having Gaelic skills are more likely to be served a

152 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 25.

153 US English Foundation <<http://www.usefoundation.org/view/633>>.

154 National Plan for Gaelic <<http://www.gaidhlig.org.uk/en/national-plan-for-gaelic>>.

155 See <http://www.gaidhlig.org.uk/en/the-bord>.

156 *Ginealach Ur na Gàidhlig* An Action Plan to increase the numbers of Gaelic speakers <<http://www.gaidhlig.org.uk/Downloads/Ginealach-Ur-na-Gaidhlig-English-2011.pdf>>, 5. The former Minister for Gaelic, Michael Russell MSP, emphasised ‘the need to take radical steps to motivate more people to learn Gaelic and to address, as a priority, the issue of creating a new generation of Gaelic speakers.’

157 The word ‘plans’ is used maybe in order to distinguish them from the Welsh ‘schemes’.

158 Gaelic language skills become useful job skills in an increasingly wide range of employments.

notice by the *Bòrd*.¹⁵⁹

The *Bòrd*'s written notice will specify a date by which the authority must submit the plan to the *Bòrd*. The notice must inform the authority of its rights to request a review of the issuance of the notice and to appeal to the Scottish Ministers (art. 3 (1) (2) (3)).

When a public authority receives a notice requiring it to prepare a language plan, it may appeal against both the date specified by the *Bòrd* for the submission of its plan and against the requirement to prepare a plan at all, and these provisions differ considerably from the Welsh Language Act 1993 where no such rights of appeal against a notification by the Welsh Language Board to prepare a Welsh language scheme under that act existed. It is likely that this appeal procedure was included to address fears that at least some public bodies may have had that the *Bòrd* would use their powers inappropriately, particularly to prioritise public bodies which served a very small Gaelic speaking public. These provisions therefore highlight the somewhat more contested position of Gaelic within Scotland as compared to Welsh within Wales.

With regard to appeals against the date for submission, where a public body that has been served with a notice to prepare a Gaelic language plan considers that the date specified in it is unreasonable, it may, within 28 days of receipt of the notice, request the *Bòrd* to review the date (art. 4 (1)). If the authority is aggrieved by the *Bòrd*'s decision in respect of this review, it may, within 28 days of receiving intimation of the decision, appeal to the Scottish Ministers (art. 4 (5)). The Scottish Government must consider the matter within two months and, if they uphold an appeal, they must specify another date for the submission by the public authority of its plan.

However, as noted, the public authority may also appeal against the obligation to prepare a Gaelic language plan itself. Again, such an appeal must be brought within 28 days of the receipt of the notice and the public authority may only appeal on the basis that, having regard to the matters which the *Bòrd* must consider in issuing a notice, set out in section 3(3)(a) to (d), the issuance of the notice by the *Bòrd* was unreasonable (section 4(8)). Unlike the appeal against the date for submission of the plan, this appeal is made directly to the Scottish Government. The Scottish Government must determine the matter within six months (section 4(9)) but, if it upholds the public authority's appeal, the *Bòrd*'s notice ceases to have effect and the *Bòrd* may not give a further notice to the authority until the expiry of the period of 2 years beginning with the date on which the notice to which the appeal relates was given (art. 4 (10)). As noted, it is thought that this right of appeal was created in order to control the *Bòrd*'s power to issue notices and to protect against the *Bòrd* prioritising, for example, public bodies located in areas with few Gaelic speakers.¹⁶⁰

As has been noted earlier, the *Bòrd* cannot require public bodies under the jurisdiction of Westminster to prepare Gaelic language plans. In this way, the powers of the *Bòrd* and the scope of the Gaelic Language (Scotland) Act 2005 itself are more limited than had been the case for the Welsh Language Board under the Welsh Language Act 1993. This is a significant gap in the legislation as many of these bodies, for example the Coast Guard, have an important role in the daily life of Gaelic speaking communities.¹⁶¹

With regard to the contents of a Gaelic language plan, it must set out the measures to be taken by the relevant public authority in relation to the use of the Gaelic language in connection with the exercise of the authority's functions, specifying also the date by which the measures are to be taken (art. 3 (4)). For these purposes, the public authority's functions include its internal operations and the provision by it of services to the public (section 10(4)).

159 Guidance on the Development of Gaelic Language Plans (*Bòrd na Gàidhlig* 2007) <<http://www.gaidhlig.org.uk/Downloads/Language-Plans/Stiùreadh%20Phlanaichean%202007%20Beurla.pdf>>.

160 R. DUNBAR, 'Gaelic in Scotland: the Legal and Institutional Framework' in W McLEOD (ed), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 18.

161 R. DUNBAR, 'Gaelic in Scotland: the Legal and Institutional Framework' in W McLEOD (ed), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 18.

The Gaelic Language (Scotland) Act 2005 does not anticipate that the Gaelic language plans of all public bodies in Scotland will be identical; rather, it anticipates that they will differ, but in a proportional way, based on considerations such as the extent to which a particular public authority serves a Gaelic speaking population. In preparing their plans, public authorities must have regard to a number of matters, including the following: the most recent national Gaelic language plan; the extent to which the public that the authority serves uses the Gaelic language and the extent to which the language is already used in the authority's internal operations; the potential for developing the use of Gaelic in the authority's provision of services to the public and in its internal operations; any representations that have been made to the public authority in the course of the preparation of its plan; and any guidance given by either the Scottish Government or the *Bòrd* (section 3(5)).

The guidance for relevant public authorities, prepared and submitted by the *Bòrd* to the Scottish Ministers under section 8 is, in practice, very important in guiding the structure and content of Gaelic language plans. The *Bòrd* has prepared and submitted to the Scottish Government its guidance, and this guidance was approved by the Scottish Government in April 2007.¹⁶² The guidance is meant to provide practical advice to public authorities and the steps they should follow in the development of their Gaelic Language Plans. It specifies areas of Gaelic language service delivery, internal processes and policy development to be considered in their plans and, certainly, also the National Plan has to be considered.¹⁶³

Bòrd na Gàidhlig's guidance on the development of Gaelic language plans suggests that public bodies have very broad latitude, i.e. there is a permissive approach in shaping the plans.¹⁶⁴ However, the latitude is not open-ended. In the guidance, the *Bòrd* makes clear that it expects public authorities to make certain 'core commitments' relating to the use of Gaelic in the following areas of their activities: identity, which includes the use of Gaelic in its corporate identity and signage; communications, which includes the use of Gaelic at reception areas, in telephone communications, in mail and e-mail, in forms, at public meetings and in its complaints procedures; publications, which includes the use of Gaelic in public relations and media, in printed media, websites and exhibitions; and staffing, which includes training in Gaelic language use, Gaelic language learning, in recruitment of staff with Gaelic language skills, and the use of Gaelic in advertising (p. 19). The precise nature of what the *Bòrd* will expect in relation to such core commitments will depend primarily on the extent to which Gaelic is used by the population which the public authority serves. Where, for example, a public authority operates in an area in which Gaelic-speakers make up the majority of the population, the *Bòrd* will expect the public authority to create the conditions 'in which Gaelic can be used across all of its services to the public, and in which any employee who wants to use Gaelic in the execution of their duties can do so'. The guidance goes on to say that such public authorities should 'endeavour to identify a comprehensive range of commitments' for their plan, 'most of which may be of a relatively high level, to ensure Gaelic is given a high profile and to provide a variety of means by which Gaelic speakers will be encouraged and enabled to interact with the authority through the medium of Gaelic' (p. 20). The guidance expects that somewhat weaker commitments will be made in relation to public authorities which serve areas in which there are only some localities in which Gaelic speakers form a majority of the local population, and weaker commitments still where the public authority serves areas in which there are no localities in which Gaelic speakers form a majority of the local population but stronger commitments are expected where there are localities in which Gaelic speakers are present in significant numbers or concentrations. Finally, for public authorities serving areas in which the language is very weak, the guidance requires the least in terms of provision of Gaelic services and use of Gaelic in the authority's operations; the guidance recognises that 'significant Gaelic provision may not be possible', but that the authority should still 'endeavour to work towards identifying service areas in which some Gaelic provision can be made available' and recommends that such authorities should take policy measures 'to assist in the creation of Gaelic language environments,

162 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 25.

163 Guidance on the Development of Gaelic Language Plans (*Bòrd na Gàidhlig 2007*) <<http://www.gaidhlig.org.uk/Downloads/Language-Plans/Stiuireadh%20Phlanaichean%202007%20Beurla.pdf>>.

164 J. WALSH and W. MCLEOD, 'An Overcoat Wrapped around an Invisible Man? Language Legislation and Language Revitalization in Ireland and Scotland' (2008) 7:21-46 *Language Policy* 22.

such as schools, community centres, and other locally-based institutions and events' (p. 21).

The Gaelic language plan mechanism has the potential to considerably expand the use of Gaelic by public authorities in Scotland, thereby enhancing the presence of Gaelic in the public administration. More generally, Gaelic language plans are an important policy tool since they can promote the use of Gaelic, increase its status and promote its visibility since, in the past, the public bodies used only English for their activities. As noted earlier, until the passage of the Gaelic Language (Scotland) Act 2005, hardly any public bodies had any policy for the use of Gaelic and, in practice, even those that did, such as *Comhairle nan Eilean Siar* and the Highland Council, tended to offer very limited Gaelic-medium services. However, much depends on the actual content of the Gaelic language plans which the *Bòrd* approves, the number of plans which are prepared and the degree to which public authorities actually implement their commitments.

When the legislation was passed, the Scottish Executive (as the Scottish Government was then called) expected that about ten public authorities would be notified each year to develop language plans. At the beginning of 2011, 13 Gaelic Language Plans had been approved and 21 were being prepared. In addition, a further 8 organisations were asked in 2011 to prepare their plans.¹⁶⁵ This is far below the pace that was anticipated when the legislation was passed and, considering the number of public authorities in Scotland which are potentially subject to a requirement to prepare a plan (there are several hundred), at the present pace, the implementation of the Gaelic Language Act will take a long time. Some of the most important public authorities, in terms of the numbers of Gaelic speakers they serve, have prepared plans which have been approved by the *Bòrd*—these include *Comhairle nan Eilean Siar*, Highland Council, Argyll and Bute Council, and the City of Glasgow Council—as have some high profile national institutions (the Scottish Parliament and the Scottish Government) and other public bodies of importance in the Highlands such as the main socio-economic development body for the region, Highlands and Islands Enterprise. However, the commitments have generally not been as strong or as clear as they might have been.¹⁶⁶ They are, for example, often subject to qualifications or are phrased as aspirations rather than commitments. It should be noted that the plans have to be reviewed every five years (art. 7).

Finally, whilst no significant research has been done on the implementation by public authorities of their Gaelic language plans, it is understood that this is an issue that the *Bòrd* is concerned about and that implementation has not been as effective as it should be.¹⁶⁷ Implementation of Gaelic plans is easier when the commitments are detailed, clear and achievable and, as has been noted, many of the plans are not as detailed or clear as they should be. Furthermore, bilingual signs, forms, leaflets, personnel with language skills, front-line staff, support staff, translation and interpretation services are important in order to achieve the commitments of language plans but because almost no public bodies have ever had such plans, and even those that do have not really implemented them, the level of provision in respect of all of these items is low.

In recognition of this reality, the Gaelic Language Act Implementation Fund was established by the *Bòrd*, with the support of the Scottish Government which supplied an additional £1.4 million to the *Bòrd* to establish this fund to help public authorities in the delivery of commitments in their Gaelic plans and in support of the National Plan for Gaelic.¹⁶⁸ Consideration is given, for example, to projects which ensure that eligible bodies increase the profile and use of Gaelic when dealing with the public or other bodies, develop workplace Gaelic language skills, raise awareness and confidence in relation to Gaelic and provide resources which support language usage, encourage acquisition of Gaelic, or further development of existing skills amongst staff and service users.

165 Gaelic Language Plans <<http://www.gaidhlig.org.uk/en/our-work/gaelic-language-plans.html>>.

166 J. WALSH and W. MCLEOD, 'An Overcoat Wrapped around an Invisible Man? Language Legislation and Language Revitalization in Ireland and Scotland' (2008) 7:21-46 *Language Policy* 22.

167 Personal communication with Prof. Robert DUNBAR, 12 December 2011, who is a member of the *Bòrd*.

168 Gaelic Language Act Implementation Fund GLAIF 2011-12 Application Guidelines, <<http://www.gaidhlig.org.uk/Downloads/Taicairgid/Information%20for%20Applicants%20GLAIF%202011-12.pdf>>.

Finally, services offered under the Gaelic language plans and the possibility of obtaining such services have generally not been advertised as well as they could be¹⁶⁹ and there is some suspicion that citizens are not aware. The public authorities producing Gaelic plans have to encourage people to use Gaelic when dealing with them and expand their Gaelic services.¹⁷⁰

With regard to enforcement of Gaelic language plans, if a public authority's Gaelic language plan has been approved by the *Bòrd* or by the Scottish Ministers, if at least 12 months have elapsed since the date of approval, the *Bòrd* may require the authority to submit to it, by a date no earlier than 3 months after the date of the requirement, a report on the extent to which the authority has implemented the measures set out in the plan (art. 6 (1) (2)) and the *Bòrd* now routinely asks for such reports. Thus, the *Bòrd* is now monitoring the implementation of the plans.

Where the *Bòrd* considers that a relevant public authority is failing to implement adequately measures contained in its Gaelic language plan, it may submit to the Scottish Government a report setting out its reasons for that conclusion (art. 6 (4) (5)). The Scottish Ministers may lay a copy of the report before the Scottish Parliament or may direct the authority in question to implement any or all of the measures in its Gaelic language plan by a date specified in the direction (art. 6 (5)). Thus, the *Bòrd* has a power of supervision over the implementation of the plans but it cannot impose sanctions in case of failure. Enforcement is a matter for the Scottish Ministers.¹⁷¹

To conclude, as has already been noted, the *Bòrd* does not have authority to issue notices to private sector organisations, voluntary bodies or UK Departments or UK-regulated public bodies. However, private firms such as banks and telecommunications companies, as well as voluntary organisations such as churches and UK Government departments are encouraged by the *Bòrd* to develop Gaelic policies on a voluntary basis, since they have an important role in developing Gaelic in Scotland, and the *Bòrd* is willing to provide assistance to them in preparing such plans.¹⁷² For such bodies and organisations, the *Bòrd* has recommended that the guidance should also be used. Although some such bodies and organisations have shown some interest in Gaelic, and most in the Highlands and Islands of Scotland have provided at least some services, especially bilingual signage, —indeed, Scotrail, the main passenger rail service in Scotland, is using bilingual livery and signage on many routes throughout the country— few such bodies have actually prepared formal plans based on the *Bòrd*'s guidance.

4.5 Considerations on Gaelic Language (Scotland) Act 2005 in comparison with the Welsh Language Act 1993

Scotland, even though it has had legislative power since devolution in 1999, developed a linguistic policy expressed in legislation quite late, in 2005. Wales, on the other hand, secured a legislative basis for language policy for the protection of Welsh even before devolution, in 1993.

The difference is partly due to the much smaller number of Gaelic speakers, both in absolute and percentage terms, than Welsh speakers in Wales, meaning that Gaelic is generally a less significant political issue in Scotland. Also, it would appear that Gaelic speakers have not been quite as effective as activists, and lobbying is important in pushing politicians to act.

In Scotland, as in Wales, the implementation of the language legislation depends on local authorities and

169 Framework Convention, 2nd Cycle UK <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_UK_en.pdf>.

170 Guidance on the Development of Gaelic Language Plans (*Bòrd na Gàidhlig* 2007) <<http://www.gaidhlig.org.uk/Downloads/Language-Plans/Stiuireadh%20Phlanaichean%202007%20Beurla.pdf>>.

171 R. DUNBAR, 'Gaelic in Scotland: the Legal and Institutional Framework' in W. McLEOD (ed), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 19.

172 Guidance on the Development of Gaelic Language Plans (*Bòrd na Gàidhlig* 2007) <<http://www.gaidhlig.org.uk/Downloads/Language-Plans/Stiuireadh%20Phlanaichean%202007%20Beurla.pdf>>.

other public bodies selected by a specialist language planning body to develop policies to support the greater use of the language in the public administration. Thusfar, it would appear that the legislative model has had a greater impact in Wales, but this is partly due to the fact that there are about ten times more Welsh speakers than Gaelic speakers, with the result that there is a much more significant demand. It is also generally the case that Wales has had a longer history of attempting to increase the amount of Welsh language use in the public administration, and therefore the amount of preparation to offer Welsh language services has been higher. Even before the legislation, some local councils in Wales were developing language policies and after the legislation some local councils have in fact gone further than the legislation. For these reasons, even though the Welsh legislation pre-dated the Gaelic legislation by twelve years, the pace of implementation is quite slow in Scotland compared to Wales.

Another important difference between Wales and Scotland is the number of language schemes (in Wales) and plans (in Scotland) that have been approved by the language board. As we have seen, in Wales, about 600 public bodies have prepared Welsh language schemes that have been approved, whereas in Scotland, only 13 Gaelic language plans had been approved by the beginning of 2011. This huge difference is not wholly explained by the fact that the Welsh legislation has been in place for about eighteen years and the Scottish for only about a third of that time. It is also due to the much smaller number of relevant staff at *Bòrd na Gàidhlig*, and the very low level of preparedness in the Scottish public administration for plans.

Although legislation is important, the attitude of the users of a minority language is also crucial in contributing to the success of protection of a language. In Scotland, the low percentage of Gaelic speakers makes the implementation of the law difficult and, as we have seen, provisions have to be flexible according to the local situation; there are areas with very low percentages of Gaelic speakers where it is not possible to have a high level of services in Gaelic since there is little demand.

In Wales recently, with the Welsh Language Measure 2011, another step was achieved for the protection of Welsh whereas, in Scotland, it is too soon for any new legislation since even the 2005 Act is not totally implemented. One area of similarity is that neither legal regime is based on clear language rights. There are no linguistic rights in Scotland, and, in Wales there is only one clear legal right, that of using Welsh in the courts. With the Welsh Language Measure 2011, a new type of commitment, language ‘standards’, was created. It is still too early to tell whether these standards will accomplish for Welsh speakers what clear linguistic rights accomplish for speakers of minority languages in other jurisdictions. The relative lack of rights seems to be a British phenomenon and may be attributable to a somewhat different legal and legislative culture. For example, the UK does not, as has frequently been noted, have a single written constitutional document, nor did it have a comprehensive human rights framework until the incorporation of the European Convention on Human Rights into UK law through the Human Rights Act 1998. Generally, the UK has relied to a much greater extent on administrative action and administrative law to deal with matters that are covered by legislation and protected by explicit rights in other jurisdictions.

Thus, in both the Gaelic Language (Scotland) Act 2005 and the Welsh Language Act 1993, responsibility for the language was, to a significant extent, handed to language development bodies, the Gaelic Language Board for Scotland and the Welsh Language Board for Wales, although the two boards operate based on a somewhat different sets of core principles as, in the Welsh legislation, language schemes had to reflect the principle that English and Welsh should be treated on a basis of equality, whereas there is no such general principle regarding Gaelic. With the Welsh Language Measure 2011, the Welsh Language Board comes to an end. However, responsibility for the language and its development will continue to lie primarily with public bodies: the Welsh Assembly Government, which assumes many of the responsibilities formerly placed on the Welsh Language Board, and the new office of the Welsh Language Commissioner. While the citizen may have somewhat more involvement in, and power over, language policy under this measure, public bodies still have a crucial role to play.

A final point to note is that the Scottish legislation, although modelled to a considerable degree on the Welsh Language Act 1993, differed from that act in important respects that go beyond the expression of the general

principle of equality that applies in Wales. In particular, when it came to the issuance of notices to public bodies, in Scotland the powers of the language planning body, *Bòrd na Gàidhlig*, were constrained in ways that the similar powers of the Welsh Language Board were not: notices of the *Bòrd* could be challenged by the public authority to which the notice was given and, in cases of dispute, the matter would be settled by the Scottish Government. This is an indication of the relatively more contested place of Gaelic in Scotland as compared with Welsh in Wales, and this is yet another very important difference in context.

4.6 Use of Gaelic in the Public Sector. ECRML Reports. CoE Recommendations

The public sector has a vital role to play for the future of Gaelic in Scotland. The use of Gaelic in providing services to the public as well as in the internal operations of public bodies is therefore important. Gaelic-language skills have to become useful job-skills in a range of public employments¹⁷³ in order to guarantee the delivery of Gaelic services, and the existence of larger numbers of jobs in which such skills are needed should encourage more people to learn and use the language, and more speakers of the language to pass it on.

The work of the Committee of Experts under the European Charter for Regional or Minority Languages is an important source of information on how that treaty, and by implication, how the domestic arrangements for the protection and promotion of minority languages, are being implemented. The devolved administration, along with the UK Government, is responsible for implementing the provisions of the European Charter for Regional or Minority languages in Scotland. The *Bòrd* also has to monitor the implementation of the European Charter for Regional or Minority Languages.

Scottish Gaelic is one of the languages protected under the ECRML, under its part III of the Charter, and the United Kingdom declared that 39 paragraphs in part III will apply to Scottish Gaelic.

Regarding the use of Scottish Gaelic in the public authorities, only eight paragraphs or subparagraphs of art. 10 of the ECRML were subscribed to by the UK, whereas for Welsh fourteen were chosen. The reason might be due in part to the fact that, according to census data, at least Scottish Gaelic is spoken by far fewer people, in both absolute and percentage terms, than Welsh in Wales; thus it is more difficult to guarantee public administrative services in Gaelic extensively in most places in Scotland. In addition, in order to provide Gaelic services, the staff of the public administration has to be able to speak in Gaelic or be trained in Gaelic, and at least in comparison with Welsh, there are far fewer people in the public administration in Scotland that are able to do so.

In its 2010 Recommendations, the Committee of Experts recommended, as a matter of priority, that the authorities continue to take resolute action for the promotion of Scottish Gaelic in all areas, in particular Scottish Gaelic education.¹⁷⁴ In the previous set of recommendations, increasing support for the printed media in Scottish Gaelic had been recommended.¹⁷⁵

The Scottish Government and *Bòrd na Gàidhlig* undertook a consultation with local authorities, public bodies and Scottish NGOs in order to remind them of the requirements of the undertakings of the ECRML and to enquire as to how they are contributing to their implementation.¹⁷⁶

Regarding the implementation of art. 10 of the ECRML (on administrative authorities and public services), the first paragraph states that, as far as is reasonably possible, the administrative authorities are allowed to

173 Guidance on the Development of Gaelic Language Plans (*Bòrd na Gàidhlig* 2007) <<http://www.gaidhlig.org.uk/Downloads/LanguagePlans/Stuireadh%20Phlanaichean%202007%20Beurla.pdf>>, 6.

174 ECRML, 3rd Cycle Committee of Ministers' Recommendation UK 21-04-2010 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec3_en.pdf>.

175 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 47.

176 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 49.

draft documents in a regional or minority language, which is one of the commitments undertaken by the UK in respect of Gaelic. The Committee of Experts urged Scottish authorities to provide information on its implementation.¹⁷⁷

In the third periodical report, the authorities informed the Committee of Experts that, despite the fact that UK authorities operating in Scotland are not covered by the provisions of the Gaelic Language (Scotland) Act 2005, there are no restrictions on UK bodies, answerable to the central UK authorities, operating in Scotland regarding the drafting of documents in Gaelic. Indeed, some UK authorities have made use of Gaelic (see, for example the cover of UK passports, which is now in a trilingual format with Welsh and Gaelic appearing as well as English; the post office has also used Gaelic on the livery of its vehicles in specific locations).¹⁷⁸ This, however, has been achieved on voluntary basis, and such provision is not so extensive as in Wales.

Representative bodies of Gaelic speakers have affirmed that, since UK bodies operating in Scotland had no obligation to use Gaelic, there is no expectation from the people that services in Gaelic would be received. The Committee of Experts affirmed that the responsible authorities have to inform the relevant bodies to create conditions in order to draft documents in Gaelic; however, the use of Gaelic within the state administrative authorities in Scotland is generally only sporadic.¹⁷⁹

Regarding the use of Gaelic within the regional or local authorities, at the time of the most recent report, only five (which is a very small number) Gaelic language plans have been approved by the *Bòrd*, for Highland Council,¹⁸⁰ Argyll & Bute Council,¹⁸¹ *Comhairle nan Eilean Siar*, Highlands and Islands Enterprise and the Scottish Parliament Corporate Body.¹⁸² Also, the Scottish Government had by that time delivered its plan to the *Bòrd*, although it had not, at the time of the report, yet been approved by the *Bòrd*. Thus, there was relatively little that the Committee of Experts was able to say at this point about the implementation of the Gaelic language plans.¹⁸³

There is, however, significant variation in how local authorities and public bodies approach the use of Gaelic. Some local authorities have no provision for the use of Gaelic, others are making some improvements.¹⁸⁴ Also, the Committee of Experts has found that some public authorities in Scotland that do not yet have a Gaelic language plan have nonetheless taken some measures. For example, the website of National Galleries of Scotland contains basic information in Gaelic,¹⁸⁵ although this information is not so visible at first sight.¹⁸⁶ The Committee found that Glasgow City Council (which now has a Gaelic language plan approved by the *Bòrd* under the Gaelic Language (Scotland) Act 2005) has a number of bilingual documents and that Scottish

177 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

178 *Ibid.*

179 *Ibid.*

180 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 142.

181 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 143. 'Argyll and Bute has plans to produce more official documents in Gaelic, and some documents have already been produced bilingually, for example a Welfare Rights leaflet'.

182 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>; ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 143.

183 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

184 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 143.

185 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

Enterprise, the economic development body for the rest of Scotland outside the Highlands and Islands,
186 See <http://www.nationalgalleries.org/>.

has a link in its website which allows one to request Scottish Enterprise publications in Gaelic.¹⁸⁷ Stirling Council, despite not having official documents in Gaelic, will respond positively to requests for this service for specific documents.¹⁸⁸

Regarding the possibility of Gaelic speakers to submit oral or written applications in Gaelic, representatives of speakers informed the Committee of Experts that it was possible to do so only with the authorities which adopted a statutory language plan,¹⁸⁹ for the others, the possibility of having such applications accepted was unpredictable. Indeed, the Committee found that it is possible to make such submissions with the Scottish Executive and some other authorities. However, few Gaelic speakers are aware of this possibility.¹⁹⁰ Even in the areas with large concentrations of Gaelic speakers, the possibilities for using Gaelic with administrative authorities is not always guaranteed.¹⁹¹

Regarding the publication by local authorities of their official documents in Gaelic, the Committee of Experts found that this generally does not happen on a regular basis. Regarding the use by regional authorities of Scottish Gaelic in debates in their assemblies, the Committee found that the Scottish Parliament allows its use in Chamber debates and in committee meetings. Several members of the Scottish Parliament used Gaelic in debates on the Gaelic Language (Scotland) Act and they can also submit written questions in Gaelic.¹⁹² In the Parliament, there is also a Gaelic Development Officer, and the Parliament website¹⁹³ contains some information in Gaelic.¹⁹⁴

Regarding the use by local authorities of Gaelic in debates in their assemblies, the Committee of Experts found that this happens only in the Western Isles Council (*Comhairle nan Eilean Siar*) and the Highland Council. Regarding bilingual place names and road signs, the Committee found again that these are adopted only by the Highland Council and by *Comhairle nan Eilean Siar*. The focus on the Highlands was of concern to many activists who provided information to the Committee of Experts since around half of Gaelic speakers live in the Lowlands.

The impact of the European Charter for Regional or Minority Languages on language policy was not so proactive as expected.¹⁹⁵

It is not possible to use Gaelic in the Westminster Parliament and there are no special provisions regarding Gaelic in the Scottish Parliament. All laws are written in English. The members of the Scottish Parliament, under the Parliament's Standing Orders (Rules of Procedure), can use Gaelic if they want. The Committee of Experts found that the Scottish Parliament has encouraged the use of Gaelic and several official documents are published in bilingual versions. Also, the citizens can deal with the Scottish Parliament in Gaelic.

187 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 144.

188 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 144.

189 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKPCRML3_en.pdf>.

190 Framework Convention, 2nd Cycle Opinion UK 06-06-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf>, 34.

191 *Ibid.*

192 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 145.

193 See <http://www.parlaimaid-alba.org/vli/language/gaelic/index.htm>.

194 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 145.

195 R. DUNBAR, 'Gaelic in Scotland: the Legal and Institutional Framework' in W McLEOD (ed), *Revitalising Gaelic in Scotland* (Dunedin Academic Press 2006) 14.

4.7 Conclusions on Gaelic in Scotland

In conclusion, historically the Gaelic language was generally excluded from the public administration in Scotland. Only two important public bodies, *Comhairle nan Eilean Siar* and Highland Council, had any form of Gaelic plan and these tended to be rather general and incompletely implemented. In this context, the Gaelic Language (Scotland) Act 2005 is expected to stimulate a significant increase in the provision of public services. However, careful strategies are still needed to equip speakers of Gaelic to use their language in relation to public services, given the historical dominance of English in these domains. It is important to recruit bilingual staff but, without careful planning, the risk is that the outcome will not be meaningful but only symbolic.¹⁹⁶ Nonetheless, the complete absence of any language rights in the area of services from the public administration is a notable aspect of the Scottish regime for Gaelic.

The low proportion of Gaelic speakers in several areas of Scotland might complicate the situation, since it is difficult to have plans for national bodies or for bodies in areas where Gaelic is not used at all or very little used. Even where it is still used, the level of provision is low. The implementation of the act looks slow and there is no awareness of how and why bilingual services might be offered.¹⁹⁷ Scottish Gaelic speakers are often not aware of the possibility to use Gaelic with the public administration and are not encouraged to do so. In general, then, significant challenges to the greater institutionalisation of Gaelic in the public administration in Scotland remain.

4.8 Scots

Gaelic is not the only autochthonous language spoken in Scotland. Scots, a Germanic language, is also spoken. The situation of Scots is, in comparison to Gaelic, arguably somewhat more complex. On the one hand, although the precise number of Scots speakers is unknown (a question on knowledge of Scots was asked for the very first time on the 2011 UK census, but the final results are not yet available), it is believed that many more people in Scotland have some capacity in Scots than in Scottish Gaelic, and arguably Scots fulfills an identity function for many more Scots than Gaelic does.¹⁹⁸ However, in linguistic terms, unlike Gaelic, Scots is closely related to English and, because of this linguistic proximity, planning for the greater use of Scots presents different and, arguably, greater challenges than planning for the maintenance and revitalisation of Gaelic. Although there has long been an interest in and support for the maintenance of Scots, generally speaking, such efforts have been both less coordinated and less effective than those in support of Gaelic. With the greater recognition by government of Gaelic, though, there has been greater demand for increased recognition in policy and, to some extent, in law for Scots.

Scots has several varieties (for example Lallans and Doric). Until 2011, the UK census has never included a question on competence in the Scots language, and there has been little reliable research as to the precise number of speakers of Scots in Scotland. Given its linguistic proximity to English and given that there is no agreed standard form of the language, the question of what it means to be a 'Scots-speaker' is itself complex. Therefore, at present, the best that can be said is that it is likely that a very significant number of people in Scotland have some familiarity with Scots and at very least use some Scots words in their daily conversation. On this basis, it is likely that many more people in Scotland are familiar to some degree with Scots than are with Gaelic.

196 J. WALSH and W. Mc LEOD, 'An Overcoat Wrapped around an Invisible Man? Language Legislation and Language Revitalization in Ireland and Scotland' (2008) 7:21-46 *Language Policy* 22, the authors affirm that 'without a parallel strategy to equip speakers of Gaelic to use their languages in relation to public services, the legislation risks becoming "an overcoat wrapped around an invisible man" as MACKINNON warned (1998)'. See K MACKINNON, 'Neighbours in Persistence: Prospects for Gaelic Maintenance in a Globalising English World' (1998). Oral version of paper published in another form in G McCOY and M SCOTT (eds), *Aithne na nGael/aelic Identities* (Institute of Irish Studies/Iontaobhas ULTACH. 2000) 144-155.

197 W. Mc LEOD, 'Gaelic in the New Scotland: Politics, Rhetoric and Public Discourse' (2001a-2002) *Journal on Ethnopolitics and Minority Issues in Europe* <www.ecmi.de/jemie/download/JEMIE02MacLeod_28-11-01.pdf>.

198 S. O' RIAIN, 'Irish and Scottish Gaelic. A European Perspective' (2009) 33:1 *Language Problems & Language Planning* 43-59.

Because of the uncertainty regarding numbers of Scots speakers, the Committee of Experts under the European Charter for Regional or Minority Languages, which has noted that the number of Scots speakers has only been estimated, has indicated that it considers that, as an essential basis for a coherent strategy, a determination of the real number of speakers is essential.¹⁹⁹ As has been noted, the 2011 UK census²⁰⁰ included for the first time a question on Scots for Scotland.

Scots, in the mediaeval period, became the language of the urban areas and, from there, spread throughout the Scottish lowlands. In the late middle ages it had considerable status and was used for official purposes, such as in the legal system. After the union of the Scottish and English Parliaments in 1707, though, it was displaced for official purposes by English and came under pressure in other domains. Despite this, Scots survived in Scotland as a language of a powerful literature²⁰¹ and traditional song. However, it has been subject to a gradual dialectalisation and assimilation by English. Unlike Gaelic, Scots does not have any legislative support in domestic law. However, with devolution, more attention has been paid to the language by the Scottish Parliament and Scottish Government. For example, a Scots Language Working Group has been established in order to report to the Scottish Ministers on the development of Scots, and the Scottish Government has commissioned research on public attitudes towards the Scots Language.²⁰²

There was a change of Government in Scotland in May 2007 and, in its pre-election manifesto, the Scottish National Party, which came to power as a result of that election, expressed its commitment to promoting awareness of Scots.²⁰³ Between April and October 2008, the Scottish Executive carried out an audit of provision for the Scots language. The audit represents the first stage of a process to develop a cogent policy for the Scots language.²⁰⁴ Scots benefits from an increased degree of public recognition and respect;²⁰⁵ however, the Advisory Committee under the Council of Europe's Framework Convention for the Protection of National Minorities received complaints from Scots speakers since the efforts of non-governmental organisations for the promotion of Scots in public are hindered by the fact that Scots lacks recognition in public institutions in Scotland.²⁰⁶

Some local authorities are in favour of adopting a local policy strategy but a kind of standardisation and codification of the language, which has a number of dialects but no agreed standard, is really important for the use of the language in many aspects of public life.

Despite high level policy statements and some initiatives at local level, there seems to be a lack of comprehensive planning and of concrete measures to protect and promote the Scots language.²⁰⁷ The impression is that the development of a national language policy has come to a standstill. With regard to the public administration, there is, effectively, no use of Scots and there is no domestic legislation nor domestic

199 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>.

200 See <http://www.ulster-scots.co.uk/?item=scots-language-question-in-2011-census-for-northern-ireland-scotland-for-first-time> and <http://www.scotlandscensus.gov.uk/en/faqs/detailed/censusquestions.html#q9>.

201 For example the poetry of Robert Burns.

202 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 63. See also <http://www.scotland.gov.uk/Publications/2010/01/06105123/0>.

203 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 16.

204 Framework Convention, 3rd Cycle State Report UK 23-03-2010 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_UK_en.pdf>, 72; the research was published in January 2009, see <http://www.scotland.gov.uk/Publications/2009/01/23133726/0>.

205 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 9.

206 Framework Convention, 2nd Cycle Opinion UK 06-06-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf>, 35.

207 ECRML, 2nd Cycle, Committee of Ministers' Recommendation UK, 14-03-2007 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec2_en.pdf>.

policies which alter this situation.

Finally, Scots is recognised by the UK government as a regional or minority language which benefits from the protection of Part II of the European Charter for Regional or Minority Languages, and the provisions of the Charter still represent the single most important legal protection for the language. The Committee of Experts has recommended that efforts to improve the position of Scots be strengthened²⁰⁸ but, in spite of the obligations under Part II, such as the requirement to promote the use of Scots in public life, few concrete recommendations with regard to the use of Scots in the public administration have been made to date.

5 Final Conclusions

Welsh and Scottish Gaelic are covered by the ECRML under part III; however, the use of minority languages in public and with administrative authorities is much less developed in Scotland than in Wales.

Art. 10 ECRML deals with administrative authorities and public services. The actual reality of delivery on commitments made under Art. 10, as well as implementation of domestic obligations, is different among the various protected languages. It must also be remembered that Part II languages do not benefit from the protection of Art. 10. Among Part III languages, Welsh receives much greater formal protection and much more extensive provision, in fact, than Gaelic. Fourteen sub-paragraphs have been designated under Art. 10 of the ECRML with regard to Welsh, compared with eight for Gaelic.

With regard to domestic protection, in Wales the legislation (Welsh Language Act 1993) was stronger than in Scotland even before the Welsh Language Measure 2011. The Welsh Language Act 1993, although enacted by the Westminster Parliament, did not extend to Crown bodies such as central government departments. However, the Government gave a commitment when the Act went through Parliament that these bodies would prepare Welsh Language Schemes. Even now, Welsh speakers have only one clearly identifiable language right: an absolute right to speak Welsh in court proceedings. Under the Welsh Language Measure 2011, the Welsh model continued to evolve, arguably towards a more rights based approach (though no new rights were explicitly created). Thus, Wales, at the moment, has the strongest legislation on minority languages in the UK.

The Gaelic Language (Scotland) Act 2005 was adopted by the Scottish Parliament, but as that Parliament is not able to legislate on matters outside of Scotland, the legislation has the potential only to reach those public bodies that operate within Scotland or deal with devolved matters.

The fact that there are different schemes in Wales for each public body is useful since the obligations imposed on each body can be better suited to the real circumstances in which they operate. However, at the same time, too much flexibility can lead to inconsistencies and inequities amongst similarly-placed speakers. Furthermore, the large number of different schemes can create confusion because, if each one differs, people cannot be expected to be fully aware of what they can expect from the public administration. In these circumstances, even if members of the public speak Welsh, they may be reluctant to use it because they have to ask for information for each public administration and this can delay their request. It was partly to address these inconsistencies and inequities that the Welsh Language Measure 2011 was introduced. One of the aims of the measure is to promote greater consistency and, with it, greater transparency in terms of Welsh language service provision.

The most obvious difference between Welsh and Gaelic is the percentages of people which speak the languages: 20% for Welsh and 1.2% for Gaelic. In these circumstances, it is not surprising that there will generally be different levels of provision of services in the minority language.²⁰⁹

208 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 45.

209 R. DUNBAR, 'The Gaelic Language (Scotland) Act' (2005) 9 *Edinburgh Law Rev* 466.

In both cases, though, languages schemes (as they are called under the Welsh Act 1993) or plans (as they are called under the Gaelic Language (Scotland) Act 2005) are particularly useful in order to create services in areas with relatively more speakers; where there are relatively few speakers the level of protection is lower. The Welsh Language Schemes have generally been more detailed than the Gaelic Language Plans created to this point under the Gaelic Language (Scotland) Act.

Scots is protected under part II of the ECRML. A precondition to greater institutionalisation of Scots is its standardisation and codification. There is, however, also a lack of comprehensive planning for, and of concrete measures to protect and promote, the Scots language. The impression is that the development of a national language policy has come to a standstill.²¹⁰

On 15 July 2008, the EU Council of Ministers granted the status of “co-official language” to Welsh, Scottish Gaelic and any other language recognised by UK legislation.²¹¹ This means that UK Ministers are able to speak in Welsh at Council meetings, with interpretation to other languages assured, and citizens are able to write to the EU institutions in Welsh and receive a reply in the same language, at the expense of the Welsh Assembly Government. Welsh and Scottish Gaelic joined Catalan, Basque and Galician, on which co-official status was conferred on 13 June 2005.²¹² In some respects, at least for Scottish Gaelic, this change offers the possibility of greater entitlements to service in their own language from EU institutions than they can count on from local public administrations in their home territory.

In the public life, in their respective territories, Welsh and Scottish Gaelic (both protected under part III of the ECRML) are present in the public life. However, a bilingual public administration is not guaranteed and the situation varies from council to council. Certainly, the best performance is obtained by Welsh.

Another problem for all these lesser used languages is that, even when public administrative documents are provided in the minority language, the availability of these documents is not normally made publicly known or even easily accessible on the government websites. In some cases the public is not informed of the possibility to submit applications in the minority language. This is clearly a significant weakness, as it does little to encourage uptake of the opportunities which do exist to use the minority language in dealing with the public administration.

210 ECRML, 2nd Cycle, Committee of Ministers' Recommendation UK, 14-03-2007 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec2_en.pdf>.

211 <http://new.wales.gov.uk/news/presreleasearchive/2391611/?lang=en>.

212 S. O' RIAIN, 'Irish and Scottish Gaelic. A European Perspective' (2009) 33:1 Language Problems & Language Planning 43-59.