



CHAPTER 1

An Empirical Overview of the Constitutional, Legal, and Public Policy Status of the Languages of the UK and the EU

Abstract This chapter provides an overview of the UK's and the EU's language policy. The purpose of this overview is to provide an empirical background for the arguments advanced in Chaps. 2 and 3. With regard to the UK, the chapter especially focuses on the legal status of English and of the other autochthonous languages of the UK, also highlighting the distinctiveness of Northern Ireland. The chapter also briefly examines the status of allochthonous languages in the UK. With regard to the EU, the chapter illustrates the origins and evolution of the EU's official multilingualism, also highlighting the growing distinction between official and working languages within EU institutions as well as the tension between the promotion of communication and that of linguistic diversity within the EU. The chapter finally examines the current place of English in the EU, and how this may be affected by Brexit.

Keywords United Kingdom; European Union; language policy; English language; minority languages

INTRODUCTION

The first part of this chapter provides an empirical overview of the position of the various languages of the UK, autochthonous and allochthonous, in public life. In order to properly understand the issues at hand here one must note that while the UK is a unitary state within which devolved administrations exist for Northern Ireland, Scotland, and Wales, it is

comprised of three distinct legal jurisdictions, namely, (1) England and Wales, (2) Scotland, and (3) Northern Ireland. Historically, Ireland constituted a separate legal jurisdiction within the UK, up until the secession of the Irish Free State (subsequently the Republic of Ireland) from the UK in 1920. Northern Ireland was born of this act of secession and remained a part of the UK while, at the same time, forming a new legal jurisdiction. One ought also to note in addition that a body of legislation understood to be ‘Welsh law’ is said to exist since devolution in 1997 (as per the website of the National Archives & UK Legislation—<http://www.legislation.gov.uk/browse/wales>).

The second part of the chapter offers an overview of the EU’s language policy. More specifically, it provides a brief historical overview of the way in which the EU has dealt with its linguistic diversity, both within its institutions and in its relationship with its citizens and member states. It also highlights potential sources of tension between the promotion of the free movement of people and goods, on the one hand, and the recognition and protection of linguistic diversity, on the other hand. Finally, it illustrates some of the measures that the EU has implemented in order to promote language learning and the protection of regional and minority languages.

LANGUAGE POLICY IN THE UK

The English Language

It is a widely held view that the English language is simply the de facto official language of public life in the UK and that this fact of practice is not recognized in law. However, the English language is granted de jure recognition in several pieces of legislation, and there is considerable historical evidence that confirms this. English was first granted official status in the form of the Pleading in English Act 1362 (36 Edw. III c. 15) [Repealed by Statute Law Revision Act 1863 & Statute Law (Ireland) Revision Act 1872]. The effect of the Act was to allow for court cases in England, and subsequently Wales, to be debated in English while requiring the written record to be maintained in Latin. The Court of the Exchequer was exempted from this law. The Act was aimed at resolving the problem posed by the use of Law French in the courts, which meant that the ‘people’ were unable to understand any aspects of the proceedings as, by that stage, Norman French was largely unknown as an ordinarily spoken language. The Act required therefore that

all Pleas which shall be pleaded in [any] Courts whatsoever, before any of his Justices whatsoever, or in his other Places, or before any of His other

Ministers whatsoever, or in the Courts and Places of any other Lords whatsoever within the Realm, shall be pleaded, shewed, defended, answered, debated, and judged in the English Tongue, and that they be entered and inrolled in Latin. (Pleading in English Act 1362)

One of the effects of the Act was to bring to an end the use of Law French and to normalize the use of English as the language of law. This in turn led to the development of a recognizable style of English particular to the legal system by the reign of Henry V (1413-22), described as Chancery Standard, or Chancery English (e.g. see Fisher 2009; McArthur 1998; Richardson 1980). A related development is that of Chancery Hand, a particular form of handwriting.

The official status of English was next recognized in the Laws in Wales Act 1535. In this case, the Act was intended to resolve the problem posed by the ‘people’ of Wales commonly using ‘a speche nothing like [...] the naturall mother tonge used within this Realme’ (‘a speech [i.e. the Welsh language] nothing like [...] the natural Mother Tongue [i.e. English] used within this Realm’). This was considered a cause of division, and it was asserted that English should be the sole language of the law courts as follows:

Also be it enacted by the Authority aforesaid, That all Justices, Commissioners, Sheriffs, Coroners, Escheators, Stewards, and their Lieutenants, and all other Officers and Ministers of the Law, shall proclaim and keep the Sessions Courts Hundreds Leets Sheriffs Courts, and all other Courts in the *English* Tongue; and all Oaths of Officers, Juries and Inquests, and all other Affidavits, Verdicts and Wager of Law, to be given and done in the *English* Tongue. (Laws in Wales Act 1535, Section XX)

In addition, the Act asserts that those who would use Welsh are not to be appointed to public office in Wales, as follows:

and also that from henceforth no Person or Persons that use the Welch Speech or Language, shall have or enjoy any manner Office or Fees within this Realm of England, Wales, or other the King’s Dominion, upon Pain of forfeiting the same Offices or Fees, unless he or they use and exercise the English Speech or Language. (Laws in Wales Act 1535, Section XX)

It is understood, in Wales in particular, that the parts of the Act relating to language were definitively repealed only in 1993, by the Welsh Language Act 1993; of which there is more below. However, annotations on the

Statute Law Database indicate that sections 18–21 of the Act were repealed by the Statute Law Revision Act 1887 (Laws in Wales Act 1535, Sections XVIII–XXI, Annotations).

The status of English as the official language of public life was then further reinforced by law in the seventeenth century, under a piece of legislation described as An Act for Turning the Books of Law, and all Process and Proceedings in Courts of Justice, into the English Tongue 1650 (4 Geo II. c. 26). This Act was passed by the so-called Rump Parliament on 22 November 1650, during the Commonwealth of England (1649–1660). This Act requires that all legal documentation be in English, as follows:

The Parliament have thought fit to Declare and Enact, and be it Declared and Enacted by this present Parliament, and by the Authority of the same, That all the Report-Books of the Resolutions of Judges, and other Books of the Law of England, shall be Translated into the English Tongue: And that from and after the First day of January, 1650, all Report-Books of the Resolutions of Judges, and all other Books of the Law of England, which shall be Printed, shall be in the English Tongue onely. (An Act for Turning the Books of Law, and all Process and Proceedings in Courts of Justice, into the English Tongue 1650, pp. 455–456)

In addition, the Act asserts that all writs, pleadings, and similar such are to be in English only, as follows:

And be it further Enacted by the Authority aforesaid, That from and after the first Return of Easter Term, which shall be in the year One thousand six hundred fifty and one, all Writs, Proces and Returns thereof, and all Pleadings, Rules, Orders, Indictments, Inquisitions, Certificates; and all Patents, Commissions, Records, Judgements, Statutes, Recognizances, Rolls, Entries, and Proceedings of Courts Leet, Courts Baron, and Customary Courts, and all Proceedings whatsoever in any Courts of Justice within this Commonwealth, and which concerns the Law, and Administration of Justice, shall be in the English Tongue onely, and not in Latine or French, or any other Language then English, Any Law, Custom or Usage heretofore to the contrary notwithstanding. And that the same, and every of them, shall be written in an ordinary, usual and legible Hand and Character, and not in any Hand commonly called Court-hand. (An Act for Turning the Books of Law, and all Process and Proceedings in Courts of Justice, into the English Tongue 1650, pp. 455–456)

Persons found to be in breach of the Act would be subject to a fine of 20 pounds, a very substantial sum of money at that time.

The status of English as the exclusive official language of the courts of England and Wales was underscored again in the Proceedings in Courts of Justice Act 1730 (1731. 4 George II. c. 26. 16 S. L. 248—for Wales, 1733) [repealed by the Civil Procedure Acts Repeal Act 1879]. The Act makes the use of English, rather than Law French or Latin, obligatory in the courts of England and Wales, including the Court of the Exchequer, and also in the case of the Court of the Exchequer in Scotland. An effect of the Act was to specifically disallow the use of other languages. The aim of the Act was to prevent the ‘many and great mischiefs’ that result from ‘the proceedings in courts of justice being in an unknown language’, by requiring that all court proceedings in England and Wales, and in the Court of the Exchequer in Scotland ‘be in the English tongue and language only, and not in Latin or French, or any other tongue or language whatsoever (Proceedings in Courts of Justice Act 1730–1731. 4 George II. c. 26. 16 S. L. 248—for Wales, 1733)’, and that any person found in breach would be subject to a fine of 50 pounds, a very substantial sum of money at that time. In the case of courts in Ireland, the Administration of Justice (Language) Act (Ireland) 1737 had a similar effect. In this case, the Act remains in force in Northern Ireland and, as primary legislation, it is mandatory, and courts are required to comply with it. The Act proscribes the use of any language other than English in court proceedings, as it is made crystal clear in the explanatory foreword to the Act, which reads as follows: ‘An Act that all Proceedings in Courts of Justice within this Kingdom shall be in the English Language.’ The text of the Act itself differs little from that pertaining to England and Wales, although it is interesting to note in passing that in England and Wales, persons found in breach would be subject to a smaller fine, in this case 20 pounds.

Since then, it would appear that the position of the English language in public life was considered to be sufficiently secure as to merit no further attention until very recently. Thus, the Immigration Act 2016 places specific English language requirements upon public sector workers, as follows: ‘A public authority must ensure that each person who works for the public authority in a customer-facing role speaks fluent English’ (Immigration Act 2016, Part 7). Importantly for the Welsh language, as regards application to Wales, ‘references to English [i.e. the English language] are to be read as references to English or Welsh [i.e. the Welsh language]’, as is also made clear in the statutory guidance and code of practice on the implementation of the Act (Cabinet Office 2016; HM Government 2016). At around the same time, some other pieces of legislation, with very different aims, that have an indirect impact on the official

status of the English language have been passed. The most significant of these, perhaps, is the National Assembly for Wales (Official Languages) Act 2012. The stated purpose of this Act is ‘to make provision about the use of the English and Welsh languages in proceedings of the National Assembly for Wales and in the discharge of the functions of the Assembly Commission’ (National Assembly for Wales (Official Languages) Act 2012). In this Act, it is declared that the Government of Wales Act 2006, a piece of legislation of constitutional significance in the UK, be amended in relation to the equality of treatment accorded to the English and Welsh languages such that it is declared that ‘The official languages of the Assembly are English and Welsh’, and that ‘The official languages must, in the conduct of Assembly proceedings, be treated on a basis of equality’ (National Assembly for Wales (Official Languages) Act 2012). In addition, legislation has been passed in Scotland that touches the place of the English language in public life there, namely, the Gaelic Language (Scotland) Act 2005. While the Act is concerned with Scottish Gaelic, it asserts that the purpose of the Act is to secure the status of that language as an ‘official language’ in Scotland, ‘commanding equal respect to the English language’ (Gaelic Language (Scotland) Act 2005). Thus, in both Scotland and Wales, the English language is understood to be equal, in some sense, to certain other languages that have now official status of some sort.

The Other Autochthonous Languages of the UK

There is considerable variety as regards the position in public life of the other autochthonous languages of the UK. The largest of these, in demographic terms, is the Welsh language in Wales. According to the results of the Census 2011 (StatsWales n.d.), there are around 562,000 Welsh speakers in Wales. The status of the language is enshrined in several pieces of legislation. The most substantive of those in terms of its impact upon public services is the Welsh Language (Wales) Measure 2011, which largely replaces the Welsh Language Act 1993. Under this legislation, the Welsh language is recognized as having official status in Wales and, accordingly, a duty is placed upon organizations that provide public services in Wales to provide those services, to some extent, in the Welsh language. Also, the Welsh Courts Act 1942, along with the Welsh Language Act 1967, allow for Welsh speakers to use the Welsh language in courts of justice in Wales. The most important piece of legislation regarding the constitutional status of the Welsh language is the National Assembly for

Wales (Official Languages) Act 2012, which declares the Welsh language to be an official language in the Assembly, along with the English language. In addition, the UK Government ratified the European Charter for Regional or Minority Languages 1992 in respect of the Welsh language in 2001 (Council of Europe 1992).

The largest autochthonous language in Scotland is Scots, with a population of around 1,542,000 speakers according to the Census 2011 (Scotland's Census 2018). Despite this, the Scots language is not provided with any statutory recognition in domestic legislation. It is, however, classed as a language under the European Charter for Regional or Minority Languages, the UK Government having declared as much in 2001 (Council of Europe 2018). This does not have any practical statutory implications. In contrast, while the population of speakers of Scottish Gaelic in Scotland is smaller than that of Scots, at around 57,000 speakers according to the Census 2011 (Scotland's Census 2018), Scottish Gaelic does enjoy statutory recognition in domestic law in the form of the Gaelic Language (Scotland) Act 2005. This Act implies that Scottish Gaelic is an official language in Scotland, and it places a duty upon some organizations that provide public services in Scotland to do so, to a limited degree, in Scottish Gaelic. As with the Welsh language in Wales, the UK Government ratified the European Charter for Regional or Minority Languages 1992 in respect of Scottish Gaelic in 2001 (Council of Europe 1992).

Scotland is the only jurisdiction in the UK in which a sign language has been provided with statutory recognition in domestic law. British Sign Language is recognized under the British Sign Language (Scotland) Act 2015, and its users are provided with a range of protections under this Act. None of the other sign languages of the UK, namely British Sign Language, Irish Sign Language, and Northern Ireland Sign Language, are provided with any such statutory recognition.¹ That said, the duties upon organizations providing services to the public arising from the Disability Discrimination Act 1995 may be said to provide some protections to users of sign languages. Under this Act, providers of goods, services, and facilities are expected to make 'reasonable adjustments' in providing assistance or making changes to the manner in which they provide their services, including the provision of a sign language interpreter, if required. This duty was strengthened under the Equality Act 2010, although this Act

¹ See Hull et al. (2014) for an overview, but since overtaken by the Scottish legislation, and also the British Deaf Association (n.d.) for activism in this area.

does not apply to Northern Ireland. In addition, the UK Government has recognized in terms of public policy, but not as a matter of domestic law, British Sign Language in 2003 (Stiles 2013). It has also signed the United Nations' Convention on the Rights of Persons with Disabilities 2006, as a result of which sign language is declared to be on a par with spoken languages.

The most politically sensitive autochthonous languages of Northern Ireland, namely, the Irish language and Ulster Scots, are given statutory recognition under the Good Friday Agreement 1998, also known as the Belfast Agreement. This recognition has some practical implications for the Irish language in particular, due to the commitments made by the UK Government, in 2001, in relation to Irish in Northern Ireland, under the European Charter for Regional or Minority Languages 1992 (Council of Europe 2018). According to the Census 2011, around 104,000 individuals in Northern Ireland are said to be able to speak Irish to some degree (NISRA 2012; CSO 2014). Similarly, around 140,000 individuals are said to have some ability to speak Ulster Scots according to the results of the Census 2011 (NISRA 2012). While Ulster Scots is recognized as a language under the Charter, the precise manner of this recognition does not have practical implications, in that no particular requirements are placed on government to deliver public services in the language, for example (Council of Europe 1992).

Of the other autochthonous languages of the UK, the Cornish language, spoken by several hundred individuals (Cornwall Council 2017) in Cornwall in England, has been recognized under the European Charter for Regional or Minority Languages 1992 (Council of Europe 1992). The UK Government ratified the Charter in respect of Cornish in 2002, and while this generated some excited attention in the media (BBC 2002), the commitment has few practical implications. Similar excitement accompanied the UK Government's decision to ratify the European Framework Convention for the Protection of National Minorities in respect of Cornish in 2014 (Ministry of Housing, Communities & Local Government 2014). This too, it has to be said, has very limited practical implications for the Cornish language in public life, if indeed any. Finally, while Shelta, a language associated with Irish Travellers in all parts of the UK (Kirk and Ó Baoill 2002), is not provided with statutory recognition, nor are its speakers provided with any protections as speakers of Shelta, it is nonetheless the case that Irish Travellers are identified by law, since 2000, as an ethnic minority group and protected as such in accordance with the Race

Relations Act 1976 and the Race Relations (Amendment) Act 2000, the Equality Act 2010, and the Human Rights Act 1998.² It is not known how many speakers of Shelta live in the UK.

The Allochthonous Languages of the UK

The various allochthonous languages of the UK (and according to the Census 2011, there are several hundred such languages) are not provided with any statutory recognition, nor are the speakers of these languages provided with any legal privileges or protections as speakers of such languages. That said, equality, human rights, and race relations legislation together provide for indirect support to the allochthonous languages of the UK. Broadly speaking, one of the primary aims of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000, the Human Rights Act 1998, and the Equality Act 2010, along with the European Convention on Human Rights 1950 [effective 1953], is to prevent discrimination and to promote equality and good relations between different racial groups. Therefore, speakers of allochthonous languages in the UK may not be prevented from using those languages in their private lives, including in their place of employment, and there have been a number of cases concerning this matter in the UK (e.g. see Choudry 2016; Deans 2016). Also, organizations that provide public services are under a duty to ensure that those services are accessible to members of the public, including immigrants, and this often means providing for translation and interpretation in allochthonous languages as some immigrants lack the requisite skills in English. This is especially the case in the justice system, whereby the right to a fair trial is understood to mean that an individual must be able to understand the charges brought against them and the court proceedings as they occur. This often requires translation and [or] the provision of an interpreter.

It ought to be noted that Northern Ireland is exceptional compared to the rest of the UK in some ways. Firstly, under the Good Friday Agreement 1998, the signatories agree to ‘recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland [...] the languages of the various ethnic communities’ (see the Section entitled ‘Rights, Safeguards and Equality of Opportunity’). Northern Ireland is also a place apart on the matter of accommodating

²See also the Equality and Human Rights Commission (2017) on this.

allochthonous linguistic diversity, in that while the Race Relations Act 1976 does not apply there, the Race Relations Order (N.I.) Order 1997 (as amended by the Race Relations Order (Amendment) Regulations (N.I.) of 2003) has provisions that are broadly similar, in effect. In addition, section 75 of the Northern Ireland Act 1998 makes similar provisions regarding equality of opportunity and interpretation services as the Race Relations Act 1976.

LANGUAGE POLICY IN THE EU

A Brief Historical Overview

The second part of this chapter aims to provide a brief overview of the EU's language policy.³ Compared to the UK, the EU has a relatively short history, and so does its language policy. However, since the creation of the European Coal and Steel Community (ECSC) and, subsequently, of the European Economic Community (EEC), a number of measures have gradually provided a clear and defined legal and policy framework for many of the languages spoken within EU member states.

The ECSC was created in 1951 in the aftermath of WWII. It is interesting to note that the equal recognition of the national languages of EU member states, that would have subsequently become one of the key tenets of EU language policy, was in fact not a central aspect of the Treaty of Paris, which established the ECSC in 1951. On the contrary, Article 100 of the Treaty implicitly assigned priority to French, stating the following:

Le présent Traité, rédigé en un seul exemplaire, sera déposé dans les archives du Gouvernement de la République Française, qui en remettra une copie certifiée conforme à chacun des gouvernements des autres Etats signataires. (Traité instituant la Communauté Européenne du Charbon et de l'Acier 1951, Article 100)

The Treaty was only subsequently translated into the official languages of the other signatory states (Germany, Italy, Belgium, the Netherlands, and Luxemburg).⁴

³For more comprehensive accounts, see Gazzola (2006) and van der Jeught (2015).

⁴It should be noted that Luxembourg has three official languages: French, German, and Luxembourgish. The latter is, together with Turkish in Cyprus, the only national official language that does not have official status in the EU.