

Language at the Border and in Selective Service Provision: Legal Rules and Policy Realities

PhD project: Language provision in public services: a view from Scotland.

This project examines language accommodation and provision in a range of Scottish public services, particularly in Edinburgh and Glasgow, including local authority, education and healthcare services. Through the discussion of policy documents and legal instruments at various governmental levels (supranational, national and local) and the way in which they shape approaches in public services at the local level, as well as findings from interviews with a range of service providers, this research aims to provide an insight into the realities of service provision at the local level and the challenges faced by service providers in ensuring equal access for those who require language support.

CROSS-BORDER MOBILITY: LANGUAGE AS GATEKEEPER

CROSS-BORDER MOBILITY: THE LAW

International law provides different frameworks for EU Member States, depending on whether the migrant is an EU Citizen or not. Language is engaged usually through the requirement that competence in the state language is demonstrated at some point in the migration process, usually when seeking some form of permanent residence status, or, later, citizenship.

EU Citizens:

The right to freedom of movement—set out in Articles 20(2)(a) and 21 of the Treaty on the Functioning of the European Union, and enshrined in Article 45 of the EU Charter of Fundamental Rights—is, of course, a cornerstone of EU law, and is given effect to by EU Directive 2004/38, on the right of citizens of the EU and their family members to move and reside freely within the territory of other Member States. The result is that generally language requirements cannot be imposed on EU migrants entering the state, though they can for citizenship purposes. It is also possible for states to require language competence for entry into particular employments: *Groener v. Ireland* (Case C-379/87, [1989] ECR 3987).

Non-EU Citizens:

Non-EU citizens ('third country nationals') who have established themselves as long-term residents in an EU member state may be subject to language proficiency requirements should they move to another EU member state—Article 5, paragraph 2 of Council Directive 2003/109/EC, concerning the status of third country nationals, provides that EU member states may require third country nationals to comply with integration conditions, in accordance with national law of the member state

More generally, international law imposes relatively few standards. Of relevance is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 (UNGA Res. 45/158), but no EU Member State has yet ratified it. General principles of human rights law which do apply to all EU Member States suggest that any language requirement must be proportionate.

The use of language as an “institutional gatekeeper” (Wodak and Boukala, 2015, p. 269) has become more common among EU states in recent years, as increasingly stringent language requirements for non-EU migrants have been introduced at various stages of gaining access to the state.

The UK:-

- 2004: B1 English language requirement introduced for non-EU migrants who wish to become British citizens
- 2007: B1 English necessary in order to obtain ‘indefinite leave to remain’ (permanent residence)
- 2010: A1 English needed for multiple categories of non-EU migration to the UK.

Proficiency in a state language can of course be practically useful in terms of socioeconomic participation. Stringent requirements such as these, however, can restrict access to the state and could be argued to represent the explicit practice of exclusion (Wodak, 2007).

Language requirements that have been put in place for more secure residency statuses, e.g. ‘indefinite leave to remain’ in the UK, restrict access to social benefits and rights such as family reunification, equal access to the labour market and the use of social welfare systems.

This use of language to control access to the state and to citizenship can lead to a situation of inequality, given differing degrees of access to language learning.

A range of factors, including age, education level and gender (Böcker and Strik, 2011), can affect chances of satisfying language requirements. This can result in inequalities for people from vulnerable groups, such as refugees, older people and those with less access to formal education (Strik et al, 2013; Migrant Integration Policy Index, 2015).

All of these effects on migrants raise significant questions about whether the language requirements are proportionate: they may establish levels of proficiency which are greater than what would be required for the purposes of ensuring effective integration of the migrant.

MULTILINGUAL PUBLIC SERVICES: THE LAW

International instruments relating to minorities create some obligations in relation to provision of certain public services and some circumstances education through the medium of minority languages: Council of Europe treaties such as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages are particularly important examples. However, these tend to be applied only to minorities of long standing on the state and tend not to benefit migrants.

International human rights treaties do provide some important though very limited guarantees which would benefit migrants, such as the right to use the language which a person understands in the criminal justice system. In most other areas, though, states retain a high degree of discretion about what language is used in provision of public services.

Equality law does require, though, that if the state provides such services in a language other than the official language, it should provide such services in other languages which are similarly situated. This is important, though, because as our research has shown, states are increasingly providing such services, although generally on an ad hoc basis (which could make such provision vulnerable to challenge).

Also, developments in equality law may require the state to offer some minority language services in areas, such as health care and certain key social services, where persons with inadequate command of the official language(s) of the state may be vulnerable and therefore severely disadvantaged by a failure to provide such services in a language they understand.

MULTILINGUAL PUBLIC SERVICES.

Public services in Edinburgh and Glasgow have responded to the needs of an increasingly multilingual population by expanding interpreting and translation services, but face a number of challenges in meeting increased demand without a corresponding increase in resources.

Some services have to partly rely on agencies in order to meet demand for interpreters, which can lead to quality control issues, and in some cases, different service providers – such as local authorities and the National Health Service (NHS) draw from the same limited pool of interpreters.

There are also significant attitudinal challenges faced, given the monolingual culture of the UK (McLeod, 2008) and the expectation of linguistic conformity for allochthonous language speakers (Wright, 2016). Language support in education, such as English as additional language (EAL) services, are engaged in trying to foster more positive attitudes towards multilingualism and in capacity building within schools, in addition to challenging the misinformation and conflicting messages that both schools and families often receive from other services.

