

Language, Law and Education Rights in Great Britain (2005)

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1. Background

Historical, cultural and constitutional contexts

Great Britain and Northern Ireland are the constituent parts of the United Kingdom (UK), which is home to nearly 60 million people, of whom 83.7% (49.9 million) live in England; 8.5% (5 million) in Scotland; 4.9% (just under 3 million) in Wales; and 2.9% (1.7 million) in Northern Ireland.¹ Great Britain is comprised of England, Scotland and Wales, which formed a single kingdom after the Treaty of Union 1707.² Part of the historical legacy of the conflicts that shaped the UK is a strong sense of national cultural identity among the Scots, Welsh and Irish peoples within its population. Preservation of indigenous languages is seen by many within these national groups as important in helping to safeguard their cultural identity and traditions and in maintaining a degree of independence from the dominant Anglo-centric culture, even though the majority of the people within each of them can speak and understand English only.

In order to understand the relationship between language, education and the law across Great Britain it is necessary to be aware of the constitutional framework within the UK and how it affects the formulation and implementation of education policy and legislation. As a single sovereign state the UK has a national government and legislative body (Parliament). In recent years, however, the desire for a degree of self-determination in Wales and Scotland has been acknowledged through varying degrees of devolution of government and legislative authority.³ Northern Ireland, on the other hand, enjoyed such status from the day it became part of the UK following the partition of Ireland in the 1920s. Under the Government of Ireland Act 1920 the six counties of Northern Ireland acquired their own Parliament and assembly, although certain areas of government were reserved for the UK Parliament at Westminster. Direct rule from Westminster was, however, instituted in the 1970s. Despite subsequent short periods of devolved government and 'power sharing', it was not until the Northern Ireland Act 1998 (aimed at giving legislative effect to the Belfast Agreement concluded between the various political factions and the UK and Republic of Ireland governments) that a new constitutional framework for devolved government was set in place.⁴ In any event, the education system of Northern Ireland has developed separately from the rest of Great Britain and had its own legislative framework and administration long before 1998. For those reasons, and bearing in mind the distinct cultural traditions within the province, including those shared with the Republic of Ireland, Northern Ireland is covered in a separate chapter (by Laura Lundy).

Scotland

Even before the devolution legislation of the 1990s, the education system in Scotland was different and separate from that in the rest of Great Britain. The legislative framework was (and still is) comprised in various Education (Scotland) Acts, made by the UK Parliament at Westminster. However, the Scotland Act 1998 has given the new Scottish Parliament authority to enact its own primary legislation in the form of Acts of the Scottish Parliament; and although certain matters are

¹ National Statistics, Population Estimates (National Statistics Office, 2004).

See Bradley A.W. and Ewing, K.D. (2003), *Constitutional and Administrative Law* (13th ed.), Pearson, Harlow, pp 34-35.

³ See Hadfield, B. (1999), 'The Nature of Devolution in Scotland and Northern Ireland', *Edinburgh Law Review*, 3(1), pp. 3-31; Olowofoyeku, A. (1999) 'Decentralising the UK: The Federal Argument' *Edinburgh Law Review*, 3(1), pp. 57-82.

⁴ See Hadfield, B. (1999), 'The Nature of Devolution in Scotland and Northern Ireland', *Edinburgh Law Review*, 3(1), pp. 3-31

reserved to the UK Parliament, such as social security, finance and the economy, education is not one of them. An important measure enacted by the Scottish Parliament is the Standards in Scotland's Schools Act 2000, which among many other things makes provision in respect of the Gaelic language in schools (see below). Education policy making and central administration in Scotland fall within the remit of the Scottish Executive, whose ministers are empowered to promulgate secondary legislation: an example is the Education (National Priorities) (Scotland) Order 2000,⁵ which sets out the national priorities made by the ministers under their duty under the Standards in Scotland's Schools Act to 'define... priorities in educational objectives for school education provided for Scotland'.⁶

England and Wales

Across the rest of Great Britain – England and Wales – there was essentially a single education system prior to the Government of Wales Act 1998, with services administered locally by local education authorities. Although policy making and central administration in England and Wales respectively were the responsibility of the Department for Education and Employment (now called the Department for Education and Skills (DfES)), based in London, and, the Welsh Office, based in Cardiff, the various basic policies were the same in both jurisdictions and there was essentially a common legislative framework. The Government of Wales Act 1998, which devolved power to a new Welsh Assembly, has not given the Assembly comparable legislative power to that given to the Scottish Parliament, so primary legislation in respect of Wales still has to be made by the UK Parliament. But secondary legislation is now formally made by the Welsh Assembly and, despite continuing areas of commonality, education policy in Wales is increasing divergent from English policy (such as in respect of the school curriculum). Recently, the UK government published formal proposals to devolve further legislative power to the Welsh Assembly.⁷

Unlike Wales and Scotland, England has no legislative assembly and devolved framework of central government of its own. Primary legislation on education matters in England is made by the UK Parliament, while regulations and other secondary legislation are made by UK government education ministers, in furtherance of policy developed with the advice of civil servants in the Department for Education and Skills.

Wales has a very strong sense of national identity, which is reflected in the importance attached to the Welsh language and the presence of numerous schools in which the medium of teaching is Welsh (see below). In England, however, there is little evidence of a comparable national identity. Most English people perceive their national identity to be 'British' rather than 'English'. There is an ongoing debate, mostly focused on England, about whether in an increasingly pluralistic society there is a need to inculcate a stronger sense of national identity based on the idea of 'Britishness' that some argue is prejudiced by the multicultural tradition in education that has developed over the past couple of decades. This in turn focuses on the question of how far the integration of minority groups into the mainstream culture should be promoted through education and other policy areas. One question that arises is whether the need to respect and uphold the cultural integrity of ethnic or religious minority groups requires acceptance of a degree of segregation and even the preservation of a minority's mother tongue; or whether there is an overriding need to promote social cohesion across the population by ensuring that education inculcates certain common values and ensures an appropriate level of competence in the majority language (English) for the maintenance of good communication and to maximise equality of opportunity within society.⁸ Certainly there has been an increasing policy emphasis on ensuring that new immigrants, from children to adults, learn English.

⁵ SI 2000/443.

⁶ Standards in Scotland's Schools Act 2000, s. 4(1).

⁷ The Wales Office (2005), *Better Governance for Wales*, Cm 6582, The Stationery Office, London.

⁸ See eg Parekh, Lord (2000), *The Future of Multi Ethnic Britain*, Runnymede Trust, London; Lord Crick, Lord (Chair of Life in the United Kingdom Advisory Group) (2003), *The New and the Old*, Home Office, London; Goodhart, D. (2004), 'Discomfort of Strangers', *The Guardian*, 24 February, pp.24-25 (reprint of essay published in *Prospect*, February 2004). For discussion, see McGoldrick, D. (2005), 'Multiculturalism and its Discontents', *Human Rights Law Review*, 5(1), pp. 27-56.

Linguistic diversity

Great Britain's linguistic diversity is in part a reflection of its ethnic diversity, particularly as a result of immigration from Africa and Asia in the post-war period. The proportion of school pupils from an ethnic minority background has continued to grow and is expected to increase from its present level of around one in eight to one in five by 2010.⁹ London is the most ethnically diverse location in the UK: in three of its districts over half the population is classed as Black and minority ethnic, with a range of religions, and in twelve other districts the proportion exceeds one third.¹⁰

English is the principal first language spoken in all parts of the UK, but some citizens are bi-lingual. There are no complete national statistics on the number of people for whom English is a second or additional language. A report published by the Department for Education and Employment in 2001 concluded that this lack of data hindered planning and delivery of education and training.¹¹ When the national census (2001) was being planned a survey was conducted to identify the languages into which the census leaflets should be translated and this established a need to translate the forms into 24 languages ranging from Albania/Kosovan through to Vietnamese. A review undertaken for the Department for Work and Pensions in 2003 established a list of priority languages for the translation of the department's information for clients who spoke a minority language: the highest priority was Bengali, followed by Punjabi, Gujarati, Urdu, Arabic, Classical Chinese, Somali, French, Polish and Tamil.¹²

Although many members of immigrant or ethnic minority groups have English as their first language, a significant number do not and as many as 30% of school children in London speak a language other than English at home.¹³ Across England as a whole, the proportion of the main ethnic minority populations who speak English as their main language was found by a major health survey to be 99% in the case of persons classed as Black Caribbean, but only 55% among those of Indian origin, 45% among persons of Pakistani origin, 20% in the case of persons of Bangladeshi origin and 41% among those of Chinese origin.¹⁴ Within some of the different groups there was also a range of languages spoken: for example, 32% of those of Pakistani origin spoke Punjabi and 20% spoke Urdu.

In terms of what may be described as indigenous languages other than English, England is basically mono-lingual apart from one county in the far south-west of the country, Cornwall, where a small number of citizens speak the *Cornish* language (in Cornish this is *Kernowek*, *Kernewek* or *Curnoack*). There has been a revival of interest in the language within Cornwall and it is supported by the local authority, the county council. It is estimated that there are 3,500 fluent speakers of Cornish,¹⁵ which has been recognised as a minority language under the European Charter for Regional or Minority Languages. (The UK signed the Charter on 2 March 2000 and ratified it on 27 March 2001.¹⁶) Cornish is recognised for the purposes of part II of the Charter, which sets out the objectives and principles to be applied to such languages by the States Parties. Cornish is one of the Brythonic group of Celtic languages that includes Welsh and Breton. Indeed, it shares about 80% of its basic vocabulary with Breton and 75% with Welsh. Another of these languages is *Manx*, which is spoken by a small minority on the Isle of Man (an island in the Irish Sea to the west of England which is not technically part of the UK but is represented internationally by the UK government). The last native Manx speaker died in

⁹ Learning and Skills Council (2004), *Moving Forward – the Learning and Skills Council's Annual Equality and Diversity Report 2002-2003*, London, Learning and Skills Council, p.19.

¹⁰ *Ibid.* The three districts where minorities total more than 50% of the populations are Brent, Newham and Tower Hamlets.

¹¹ Schellens P. (2001), *English Language as a Barrier to Employment, Education and Training*, DfE, London.

¹² Central Office of Information.

¹³ See Baker P. and Eversley J. (eds) (2000), *Multilingual Capital*, Battlebridge, London.

¹⁴ Health Survey for England, *The Health of Minority Ethnic Groups '99* (1999) (www.archive-official-documents.co.uk/document/doh/suvery99/hse99-t14-27.htm).

¹⁵ <http://www.cornwall.gov.uk> (9 June, 2005).

¹⁶ (ETS No. 148) (Strasbourg, 5.XI.1992).

1974, but interest in the language has revived and in the 2001 census 2.2% of the population of the island were identified as Manx speakers.¹⁷

The *Welsh* language, also protected under the European Charter for Regional or Minority Languages, is the most active of all the indigenous minority languages in the UK. In the 2001 census 21% of the population of Wales aged 3 or over (or 580,000 people) could speak at least some Welsh and 16% could speak, understand and write in the language.¹⁸ There is regional variation, with the Welsh language more frequently in use in western parts of Wales.

In Scotland there are two national languages other than English. The *Scots* language survives today only in the form of dialects spoken in different parts of Scotland, although it is regarded by the Scottish Executive as a 'living language'.¹⁹ In May 2005 'Scottish Language Dictionaries' was established to collect and maintain a dictionary of the Scots language in order to preserve Scots as a part of Scotland's cultural heritage and support its ongoing use and development. There are no reliable data on the precise extent of Scots usage. Scots is covered by part II of the European Charter for Regional or Minority Languages, but not part III, which contains the measures to be taken to promote the use of the language in public life. The other national language, *Gaelic*, is however specified for the purposes of part III. The 2001 Census revealed that 92,396 people, or 1.9% of the population, could speak or read Gaelic, could write in it, or could understand it.²⁰ As in the case of Welsh in Wales, this minority language is more prevalent in the west of the country. As discussed below, the use of Gaelic and the teaching of Gaelic in schools are strongly supported by the government in Scotland and by legislation.

Languages specifically for communication with and by persons with various disabilities are also important. Braille, for example, is a written language which is used throughout Great Britain by many persons who are blind or have other visual impairment. Also, there are various sign languages for persons who are deaf or have severe impairment of hearing. For the purposes of education, the use of these languages, which may form the medium of teaching, tends to be a matter falling for consideration within the framework of special education and disability law, which is a vast and complex area that cannot be accommodated within this chapter. Nevertheless, it is important to recognize the relevance of these languages.

2. Specific national measures to promote and protect minority languages, with particular reference to school education

The discussion in this section concentrates on school education. The statutory and other arrangements apply to all those of school age in the relevant jurisdictions, irrespective of their status as citizens. Although there are provisions within the Nationality, Immigration and Asylum Act 2002 that specify that the children of persons who have claimed asylum and are awaiting a final decision should normally be educated within accommodation centres rather than in the schools system, the law has not been brought into force. The Department for Education and Skills says that it is 'Government policy that children from asylum seeking and refugee backgrounds are given the same opportunities as all other children to access education'.²¹ It refers to the statutory duty of each local education authority to ensure that education is available for all children of compulsory school age in their area, being education suitable having regard to their age, ability and aptitude and to any special educational needs

¹⁷ http://www.isleofman.com/locallife/features/man_language.asp (17 June 2005).

¹⁸ National Statistics, Statistical Bulletin 2001 Census of Population. First results on the Welsh Language, SB 22/2003 (Statistical Directorate, Wales, 2003).

¹⁹ <http://www.scotland.gov.uk/nationalculturalstrategy/docs> Scottish Executive, Scotland's National Cultural Strategy (9 June 2005).

²⁰ Cited in Scottish Executive (2003), Education and Training in Scotland 2003: National Dossier, Eurydice, para 1.4.2.

²¹ www.dfes.gov.uk (June 20, 2005).

they may have.²² The vast majority of the children coming to Great Britain from abroad arrive and live in England, so the arrangements set out in the next section are of particular relevance.

England

There is no legislation prescribing the language by which children should be taught in schools in England. In practice, almost all teaching is through the medium of English. Pupils whose first language is not English may therefore face difficulties in learning through English-medium teaching. They may need extra language support, but the law specifically precludes these pupils from being classed as having a ‘learning difficulty’ where that difficulty is ‘solely because the language (or form of language) in which he is, or will be, taught is different from a language (or form of language) which has at any time been spoken in his home’.²³ Consequently, these pupils will not have rights to specific provision under the legislation on special educational needs. In some cases it might, however, be difficult to determine whether a child’s lack of progress is due to language barriers or other causes of learning difficulty, and so care will be needed in relation to such pupils.²⁴

The content of the school curriculum in England is governed by the National Curriculum, prescribed by law (see below). Children for whom English is an additional language may be granted temporary exemption from the National Curriculum, at the discretion of the head teacher, in order to receive special language support.²⁵ This power is most likely to be used in the case of children who have recently arrived to live in England. But the main source of provision specifically to help such children is the Education Standards Fund (ESF). Among the various types of funding possible under the ESF is the ethnic minority achievement grant (EMAG). The EMAG is for funding ‘to provide equality of educational opportunity for all minority ethnic groups, including in particular measures to assist pupils for whom English is an additional language and measures to raise standards of achievement for those minority ethnic groups who are at particular risk of under-achieving’.²⁶ In one school that has benefited from EMAG funding in recent years English was an additional language for as many as 57% of the pupils.²⁷ The government allocated £155 million to the EMAG in England in 2003-04 and £162 million for 2004-05. Research has found grants of this kind to make a positive contribution to raising attainment levels despite considerable variation across different areas.²⁸

EMAGs have also been used to meet the cost of extra assistance required for the education of asylum-seeker children within schools, including the hiring of interpreters, providing mother tongue teaching and the translation of school books. A report by the Office for Standards in Education (Ofsted) has painted quite a positive picture of the role played by schools in the integration of asylum-seeker pupils: in a survey of 37 schools, almost all pupils made satisfactory or good progress, despite the initial language barriers in some cases.²⁹ However, the report stressed that schools should ‘ensure that

²² Education Act 1996, ss 13 and 14.

²³ Education Act 1996, s 312(3) (emphasis added).

²⁴ Department for Education and Skills (2001), Special Educational Needs Code of Practice, DfES, London, para 6.14.

²⁵ Education Act 2002, s 93; the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) Regulations 1989 (SI 1989/1181).

²⁶ The Education Standards Fund (England) Regulations 2002 (SI 2002/510), Sch 1 para 3(b)(i) – in force until 1 April 2004. The statutory provisions under which these regulations were made have been replaced by the Education Act 2002, ss 14-18. These provisions confer very wide powers indeed on the Secretary of State to provide financial assistance for the provision of education on any conditions he or she wishes to impose.

²⁷ Office for Standards in Education (2004), Managing the Ethnic Minority Achievement Grant. Good Practice in Secondary Schools, Ofsted, London.

²⁸ Tikly L. et al (2002), Ethnic Minority Achievement Grant: Analysis of LEA Action Plans DfES Research Report No. 371, DfES, London; Office for Standards in Education (2002), More Advanced Learners of English as an Additional Language in Secondary Schools and Colleges, Ofsted, London; Office for Standards in Education (2004a), Managing the Ethnic Minority Achievement Grant. Good Practice in Primary Schools, Ofsted, London; Office for Standards in Education (2004b), Managing the Ethnic Minority Achievement Grant. Good Practice in Secondary Schools, Ofsted, London.

²⁹ Office for Standards in Education (2003), The Education of Asylum-Seeker Pupils, HMI 453, Ofsted, London.

all staff are up to date with their knowledge and understanding of the linguistic, educational and cultural needs of the asylum-seeker pupils'.³⁰

It is common for legislation to ensure that where documents, whether about education generally or about specific pupils, are to be made available for parents, there are translated versions in various minority languages for those whose first language is not English. For example, the Education (School Information) Regulations 2002,³¹ which require the publication of information about matters such as school admission policies or examination results, provide that translated versions are to be made available, including translations into Braille. Similarly, special provision for bilingual help may be needed for parents of children with special educational needs whose first language is not English, to ensure that the local education authority can meet its obligations to involve the parents and children in all aspects of the process of identifying and making suitable provision for the child.³²

Within the National Curriculum, which is compulsory only in state schools (these are attended by approximately 93% of all pupils), there are prescribed 'core' subjects (English, mathematics and science) and a range of other prescribed 'foundation' subjects.³³ At ages 11-14 only, a modern foreign language must be one of the foundation subjects.³⁴ In the past, there was a long list of prescribed foreign languages that could be offered by schools and it included, in addition to the main European languages such as French, German and Spanish, many but not all of the languages spoken within particular ethnic minority communities or used within their religious services. In 2004 the law was changed, so that schools may now offer *any* modern foreign language provided pupils are also able to study one of more of the official languages of the European Union.³⁵ However, the cultural benefits of being able to study a minority language may be somewhat limited by it being restricted to this age range only. Children may therefore have to attend classes in their local communities or places of religion if they or their parents want them to receive a more complete minority language education. Pupils may also select a modern foreign language, including subjects such as Arabic or Modern Hebrew, as part of their General Certificate of Secondary Education course at ages 14-16 and Advanced Level studies at 16-18, although, as a result of teacher shortages, choices may be limited.

The teaching of Cornish in Cornwall does not take place within this framework at present. The limited provision that is made is extra-curricular and, according to a survey approximately five years ago, it was provided in 12 primary schools and 4 secondary schools. There is currently no General Certificate in Secondary Education (GCSE) examination (usually taken at age 16) in the subject of Cornish, but pupils may sit Language Board examinations.³⁶ Cornish language teaching will need further funding and support, plus a nationally recognised qualification equivalent to GCSE, if the language is to make any real advances within the county in which it survives.

Finally, it should be noted that outside the state education system in England there are independent (private) schools. The Education Act 2002 introduced a new system for the regulation of these schools, including a power for the government to specify standards that the schools must meet as a condition of registration.³⁷ These standards were introduced in 2003 and they include a requirement that the school must have and implement effectively a written policy on the curriculum and appropriate plans and schemes of work which, if the principal language of instruction is a language other than English, must provide for 'lessons in written and spoken English', apart from where the school 'provides education for pupils who are all temporarily resident in England and which follows

³⁰ Office for Standards in Education (2003), *The Education of Asylum-Seeker Pupils*, HMI 453, Ofsted, London, para 9.

³¹ SI 2002/2897.

³² Department for Education and Skills (2001), *Special Educational Needs Code of Practice*, DfES, London, para 8:56.

³³ Under the Education Act 2002, Part 6, and various statutory instruments made under the powers contained in that Act.

³⁴ Education Act 2002, s 84(4).

³⁵ Education (National Curriculum) (Modern Foreign Languages) Order 2004 (SI 2004/260). Although the law does not expressly say so, English would not be treated as one of those official languages for this purpose, since it is already prescribed as a core subject and can hardly be described as 'foreign' within England!

³⁶ <http://www.cornwall.gov.uk/cornish/GOSW/education.htm> (9 June, 2005)

³⁷ Education Act 2002, Part 10.

the curriculum of another country'.³⁸ So various international schools in England would be exempt from this requirement. Otherwise, all pupils who are mostly not being taught through the medium of English must receive appropriate language teaching in English. That would appear to be consistent with their proper enjoyment of the right to education under the European Convention on Human Rights, Article 2 of Protocol 1.³⁹

Scotland

Scotland does not have a prescribed National Curriculum as such, but by law the Scottish Ministers must define priorities in educational objectives for school education and may include measures of performance in relation to those priorities.⁴⁰ The current priorities include: 'to promote equality and help every pupil to benefit from education, with particular regard to... Gaelic and other lesser used languages'.⁴¹ Each education authority must endeavour to improve the quality of education in schools they manage and to raise standards of education.⁴² They must publish an 'annual statement of educational improvement objectives' which must include an account of the ways or circumstances in which they will provide or seek to develop Gaelic-medium education.⁴³ These various provisions show that Gaelic is treated as an important aspect of national culture to be promoted via education, in the face of evidence (noted above) that very few citizens of Scotland have any competence in the language. Inclusion of the Scots language within the school curriculum is also encouraged,⁴⁴ through national guidance advocating teaching that provides an awareness and appreciation of the language, although this does not seem to have any legal force.

The promotion of Gaelic through and within the education system is part of the Scottish Executive's National Cultural Strategy. One of the National Cultural Strategy's defined strategic objectives is to 'Celebrate Scotland's cultural heritage in its full diversity'. It involves, among other things, supporting Gaelic-medium pre-school and primary school education, where demand is sufficient, and establishing an action group to consider what further support might be needed.⁴⁵ The number of primary schools providing Gaelic-medium education has increased from 45 (1,080 pupils) to 58 (1,925) pupils between 1993-94 to 2002-03.⁴⁶ The Scottish Executive earmarked some £3.5 million for Gaelic education in 2003-04.⁴⁷ The Scottish Higher Education Funding Council has funded additional teacher education places for persons to train to teach in the medium of Gaelic.

Courses leading to qualifications in Gaelic are still taken by only small numbers of people. In 2004, only 230 people entered for a 'higher' (typically taken at the age of 18) in Gaelic, compared with 4,614 who entered for French; and at intermediate levels 1 and 2 (normally taken by 14-16 year olds) the numbers sitting Gaelic were 11 and 57 respectively, whereas the entry numbers for French totalled 2,144.⁴⁸ Although the Scottish Qualifications Authority has announced plans to axe qualifications in subjects taken by very small numbers of people, it has confirmed that its Gaelic qualifications will continue.

³⁸ Education (Independent School Standards) (England) Regulations 2003 (SI 2003/1910), the Schedule, para 1(2)(d).

³⁹ *Belgian Linguistics* (No 2) (1979-80) 1 EHRR 252, § 3, where the Court indicated that Article 2 of Protocol would be 'meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be'. See further Kilkelly U. (1999), *The Child and the European Convention on Human Rights*, Ashgate, Aldershot, pp. 81-84.

⁴⁰ Standards in Scotland's Schools etc Act 2000, s 4.

⁴¹ Education (National Priorities) (Scotland) Order 2000 (SI 2000/443), art. 3(3).

⁴² Standards in Scotland's Schools etc Act 2000, s 3(2).

⁴³ Standards in Scotland's Schools etc Act 2000, s 5(2).

⁴⁴ Scottish Executive (2003), *Education and Training in Scotland 2003: National Dossier*, Eurydice, para 1.4.2.

⁴⁵ Strategic objective 2.

⁴⁶ Scottish Executive (2003) above n. 44.

⁴⁷ Scottish Executive (2003) above n. 44.

⁴⁸ Scottish Qualifications Authority (SQA) (2005), *Annual Statistical Report 2004*, SQA, Glasgow.

Wales

Unlike Gaelic in Scotland, Welsh is well-absorbed into the national culture and has acquired formal legal recognition. Road signs and government reports and guidelines, among many other public notices and official publications, are bilingual (English and Welsh). The Welsh language has been promoted by the establishment of a Welsh Language Board, which advises the Welsh Assembly and makes grants for bilingual education.⁴⁹ Welsh is recognised as an official language within which business may be conducted in the Welsh Assembly and in legal proceedings; moreover, the Welsh Assembly has a duty to conduct its business on the basis that Welsh and English shall be treated as equal.⁵⁰ The Welsh Assembly has a power to do anything it considers necessary to support the Welsh language.⁵¹ The Assembly's government has a national action plan, *Iaith Pawb* (Everyone's Language), which has the aim of increasing the use of Welsh and creating a 'bilingual Wales'. To this end £28.3 million was allocated to a programme that commenced in 2003 and a significant proportion of that sum is for initiatives which aim to increase the use of Welsh among young people and within the education system.

Approximately 27% of primary schools in Wales are mainly Welsh-medium schools. A further 5% use Welsh for teaching some of the time. In the remaining 68% of schools Welsh is taught as a second language only. Among secondary school pupils, some 14.4% are taught in Welsh as a first language and 84.5% as a second language.⁵² While parents have no legal right to insist on a place in a Welsh-medium school for their child, there does not seem to be a problem in securing admission to one, at least in those parts of Wales where such schools are located.⁵³ Moreover, if the parents prefer a Welsh-medium school that is further from their home than an English-medium school, it is unlikely that the local education authority could refuse to meet the transport costs by arguing that 'suitable arrangements' can be made for the child to attend the nearer school, since it is likely to be accepted that for a child of a Welsh-speaking family an English-medium school may not be suitable.⁵⁴

The statutory National Curriculum in Wales does not specify the medium of teaching but has Welsh as one of the 'core' subjects in Welsh-speaking schools⁵⁵ for pupils aged 5-16 or as an 'other foundation subject' in non-Welsh speaking schools.⁵⁶ There is comparable provision to that made in England (above) in the following areas: temporary exemption from part or all of the National Curriculum (for example, in the case of persons whose first language is neither English nor Welsh);⁵⁷ the law of special educational needs;⁵⁸ and the modern foreign languages that may be offered at a school as part of the National Curriculum.⁵⁹

Finally, independent (private) schools in Wales are subject to a similar regulatory regime to that introduced for independent schools in England (above). There is a parallel requirement as regards teaching in schools where the main medium of teaching is other than English, but in Wales it applies where pupils are mostly taught neither through the medium of English nor Welsh. In such schools provision must be made for lessons in written and spoken English or Welsh, unless it is a school

⁴⁹ Welsh Language Act 1993.

⁵⁰ Government of Wales Act 1998, s 47.

⁵¹ Government of Wales Act 1998, s 32.

⁵² National Statistics (2003), *Welsh in Schools*, SB 12/2003, Statistical Directorate, Cardiff, 2003.

⁵³ Williams, K. and Rainey, B. (2002), 'Language, education and the European Convention on Human Rights in the twenty-first century', *Legal Studies*, 22, pp. 625-650, at p. 626 n.2.

⁵⁴ *R (Jones) v Ceredigion County Council* [2004] ELR 506, which gave consideration to the Education Act 1996, ss 444 and 509.

⁵⁵ Defined as a school where more than half of the subjects taught (including, for this purpose, only religious education and all National Curriculum subjects other than English and Welsh) are taught in Welsh, ss 105(7) and 106(4).

⁵⁶ Education Act 2002, ss 105((2), (3) and 106(2), (3).

⁵⁷ Education Act 2002, s 114; the Education (National Curriculum) (Temporary Exception for Individual Pupils) (Wales) Regulations 1999 SI 1999/1855.

⁵⁸ The statutory provisions noted earlier apply also in Wales.

⁵⁹ Education (National Curriculum) (Modern Foreign Languages) (Wales) Order 2000 (SI 2000/1980) (W.141).

providing education for pupils who are temporarily resident in Wales and their education follows the curriculum of another country.⁶⁰

3. Further and higher education

So far as tertiary education is concerned, within national law there is no specific provision dealing with the medium of teaching or provision of particular courses. However, in Wales, the Welsh Language Act 1993 requires public bodies, which include universities and colleges of further education as well as school governing bodies, to prepare a Welsh language scheme showing how they will ensure that Welsh and English are treated as equal languages.⁶¹ Universities in Wales have been particularly active in provision for Welsh-medium teaching within their schemes. Cardiff University, for example, has an action plan which reveals a commitment by many academic departments to develop Welsh-medium provision. However, in many instances, an insufficiency of Welsh-speaking staff at Cardiff has prevented this from being carried forward. The University of Wales, Aberystwyth, located in a heavily Welsh-speaking region, offers a wide range of degree courses in which 70% or more of the teaching is through the medium of Welsh.

There appears to be no provision for Gaelic-medium further or higher education in Scotland, but three universities (Aberdeen, Edinburgh and Glasgow) have Celtic Studies departments in which the Gaelic language is studied. Several colleges of further education also provide courses in Gaelic, for example, those on the islands of Lewis and Skye.

4. Conclusion

There is some disparity across and within the three constituent countries that comprise Great Britain in relation to the nature and extent of linguistic diversity both among their populations as a whole and within their education systems. Essentially, English is the universal medium of teaching in England, although opportunities for pupils to learn a range of minority languages is available through the National Curriculum at the secondary stage of education or as part of religious education (for example, to facilitate study of religious texts or to understand devotional expression), plus an opportunity for persons of any age to obtain national academic qualifications in them. There is some language support for the minority of pupils in England for whom English is a second/additional language, both through specific funding schemes and the possibility of temporary exemption from the National Curriculum in order to study English more intensively. But there is little or no scope for mother tongue teaching in minority languages for such pupils within the state education system, despite the fact that among a significant number of pupils, at least in particular towns and cities, English is an additional rather than the first language. Outside the state system, in independent schools, there is a very small amount of such teaching, but pupils must nevertheless generally be taught written and spoken English.

In Wales, the Welsh language is strongly supported in government policy and reinforced by legislation and through the provision of state resources. Welsh is an important feature of cultural life. There are, for example, Welsh language television channels and a considerable Welsh language literary tradition. The Welsh education system is playing a key role in the Welsh Assembly's goal of a 'bilingual Wales', and while English is still the dominant language, an education through the medium of Welsh, where sought, is pretty much guaranteed in practice if not in law. Scotland, on the other hand, has two heritage languages, Scots and Gaelic, but is some way behind Wales in weaving them into the cultural fabric of the nation. Education is nonetheless playing an important role in the promotion of Gaelic, and this is reinforced by statutory requirements. But curricular provision is very patchy and few pupils seek and obtain formal academic qualifications in Gaelic.

⁶⁰ Independent School Standards (Wales) Regulations 2003 (SI 2003/3234 (W.314)), the Schedule, paras 1 and 2.

⁶¹ Welsh Language Act 1993, ss 5 and 6.

As English is recognised as important as an international language, whilst also being the national language of England and the UK as a whole, its predominance within education in England is uncontroversial and has not resulted in legal disputes. Within Wales and Scotland, there is sufficient autonomy at government level for indigenous national languages to be given support and recognition within education law and policy, and to meet most parents' aspirations as regards mother tongue teaching, but without disturbing the overall primacy of English. Here also there is an absence of legal conflict despite the ongoing nationalist political campaigns within Wales and Scotland. As yet, no cases asserting minority linguistic rights in education have been brought within the courts in Great Britain under the Human Rights Act 1998, which incorporates the main articles of the European Convention on Human Rights, including Article 2 of Protocol 1 (right to education, including teaching in accordance with parents' religious or philosophical convictions) or Article 14 (right to equal treatment). The Strasbourg jurisprudence on linguistic rights, to which the courts in Great Britain must have regard under the Act,⁶² has so far not offered much encouragement to any potential complainants.⁶³

⁶² Human Rights Act 1998, s 2.

⁶³ *Belgian Linguistics (No 2)* (1979-80) 1 EHRR 252.; but see *Cyprus v Turkey* Application no. 25781/94 (2002) 35 EHRR 731. See Williams and Rainey, above n. 53.