

Government of Canada

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> <u>Directive on the Implementation of the Official Languages (Communications with and Services to the Public) Regulations</u>

Directive on the Implementation of the Official Languages (Communications with and Services to the Public) Regulations

1. Effective date

- 1.1 This directive comes into effect on August 23, 2022.
- 1.2 This directive replaces the following instruments:
 - The 2012 Directive on the Implementation of the Official Languages (Communications with and Services to the Public) Regulations;
 - The 2016 amendment to the *Directive on the Implementation of the Official Languages (Communications with and Services to the Public) Regulations*.

2. Application

2.1 This directive applies to all institutions subject to the *Official Languages Act* (OLA), including departments, agencies, Crown corporations, and privatized organizations that are subject to incorporating legislation or any other legislation that contains provisions that subject them to the OLA, except for the Senate, the House of Commons, the Library of Parliament, the Office of the Senate Ethics Officer, and the Office of the Conflict of Interest and Ethics Commissioner.

3. Context

3.1 The OLA is based on the *Canadian Charter of Rights and Freedoms*. The OLA reaffirms the equality of status of English and French as the official languages of Canada, and establishes equal rights and privileges as to their use in the institutions of the Government of Canada. The OLA sets out the obligations of institutions with regard to official languages. The *Official Languages (Communications with and Services to the Public) Regulations* (the Regulations) implement subsection 20(1) of the Charter and some of the

key sections of Part IV of the OLA regarding communications with and services to the public. The Regulations specify the circumstances under which the "nature" of the office justifies the provision of bilingual services, and set criteria to determine whether there is significant demand for services in both official languages. Most of the provisions of the Regulations aiming to determine whether there is significant demand in an office require the use of data from the most recent decennial census or the presence of minority language primary or secondary public educational facilities.

- 3.2 This directive supports the *Policy on Official Languages* by covering various operational aspects associated with the implementation of the Regulations, namely:
 - The time frame for an office automatically designated bilingual, under a provision related to the nature of the office or to significant demand, to implement the measures enabling the office to fulfill its language obligations;
 - The time frame for an office to define its service area;
 - The applicable terms and conditions for demographic protection;
 - The time allotted to an institution to measure demand for services in both official languages and the associated terms and conditions;
 - The time frame for an office designated bilingual, after demand has been measured, to implement the measures enabling the office to fulfill its language obligations;
 - The cycle for updating the language designation of offices subject to provisions related to specific circumstances;
 - The cycle for updating the language designation of offices subject to provisions related to the presence, in their service area, of a minority language primary or secondary public educational facility;
 - The terms and conditions and the transition period that apply to offices that are no longer required to provide services in both official languages; and
 - A clear definition of what constitutes a service area, a minority language public educational facility, demographic protection, as well as restricted and identifiable clientele.
- 3.3 This directive helps federal institutions comply with the Regulations. The directive enables the Government of Canada to reduce the risks of legal complaints due to the failure of institutions to respect the rights of the public to communicate with and receive services from these institutions in the official language of the public's choice.
- 3.4 This directive is issued by the Treasury Board pursuant to section 46 of the OLA.

3.5 This directive must be read in conjunction with Part IV of the OLA, its Regulations, the *Policy on Official Languages* and the *Directive on Official Languages for Communications and Services*.

4. Definitions

Refer to the Appendix of this directive.

5. Directive statement

5.1 Objective

 The purpose of this directive is to ensure, while respecting the spirit of the Charter and the OLA, a consistent and coherent implementation of the Regulations by specifying certain aspects.

5.2 Expected results

- In situations where a measurement of demand for services must be conducted, institutions have determined the language designation according to the methods and the time frames prescribed in this directive;
- In situations where the principle of proportionality applies, institutions have determined the number of designated bilingual offices according to the requirements of the Regulations and of this directive, and have consulted the linguistic minority population about which office location or locations should be designated bilingual;
- Institutions have respected the time frames that apply in situations where an office must define its service area;
- A newly designated bilingual office has implemented measures to fulfill its language obligations within the time frames prescribed in this directive;
- Institutions have respected the time frames and terms and conditions that apply when an office is no longer required to provide services in both official languages;
- Institutions have updated the language designation of their offices according to the terms and conditions and time frames prescribed in this directive;
- The Office of the Chief Human Resources Officer within the Treasury Board of Canada Secretariat has updated the list of minority language primary or secondary public educational facilities following the publication of the linguistic data from the most recent decennial census and five years after the publication of this data for the purposes of paragraph 5(1)(d.1) of the Regulations; and

 Institutions have updated government records, systems and databases, as provided for in this directive.

6. Directive requirements

- 6.1 Application of the Regulations

 The deputy head or their delegate is responsible for the following:
 - 6.1.1 Ensuring that any office that has to measure demand for services by the public fulfill its obligations in this regard as soon as possible. The office has a maximum of two years to do so from the date on which the office was created or from the date on which the provisions of the Regulations applied in light of the data from the most recent decennial census, as appropriate;
 - 6.1.2 Determining whether some of their offices serve a public that meets the definition of "restricted and identifiable clientele" set out in this directive. If necessary, ensuring that demand is measured using a method that enables such offices to determine the language preference of each of their clients;
 - 6.1.3 Ensuring that any office that has to define its service area fulfill its obligations in this regard as soon as possible. The office has a maximum of six months to do so from the date on which the office was created or from the date on which the provisions of the Regulations applied in light of the data from the most recent decennial census, as appropriate;
 - 6.1.4 In situations where the principle of proportionality applies, if the calculation of the number of offices that must provide services in both official languages results in a fraction, ensuring that the fraction is rounded up to the nearest whole number. If the institution provides any key services in the Montréal, Toronto, Edmonton, Calgary or Vancouver census metropolitan areas (CMAs), ensuring that one office is added to the resulting number; and
 - 6.1.5 When the principle of proportionality applies to their offices, ensuring that the English or French linguistic minority population they serve is consulted about the location of any office or offices that have significant demand for services in both official languages. The institution has a maximum of six months from the date on which the number of bilingual offices was determined to complete these consultations and to identify which office or offices are designated bilingual.

6.1.6 The deputy head or their delegated office manager is responsible for the following:

Ensuring that any office subject to a provision of the Regulations that provides for the delivery of bilingual services implements the measures needed to fulfill its language obligations as soon as possible. The office has a maximum of one year to do so from the date on which its language designation was determined or from the date on which the thresholds set by the Regulations were reached, as appropriate;

- 6.1.7 Ensuring that any office that is subject to a provision related to general circumstances and that is no longer required to provide services in both official languages continue to provide bilingual services until the office informs the minority population that it serves of the terms and conditions of the discontinuation of bilingual services and the scheduled date on which bilingual services will be discontinued. The office must also inform the minority population about websites or locations of offices where services will be provided in the minority population's official language in person, by telephone or in writing. The office has a maximum of one year to do so; and
- 6.1.8 Ensuring that any office that has to measure the public's demand for services, according to the provisions related to specific circumstances, has a maximum period of one year, from the date on which the language designation was determined, to stop providing bilingual services.
- 6.2 Updating the language designation of offices following the decennial census of the population

The deputy head or their delegate is responsible for the following:

- 6.2.1 Reviewing and updating, every 10 years, the language designation of offices subject to paragraphs 9(d) to (f) and 10(d) of the Regulations and of all offices subject to the provisions of the Regulations relating to significant demand following the publication of data on the English or French linguistic minority population, as defined in section 2.1 of the Regulations;
- 6.2.2 Fulfilling their obligations to do so according to the terms and conditions, and within the time frames established in subsection 6.1 of this directive: Application of the Regulations;

- 6.2.3 Reviewing the language designation of offices subject to the service area provisions of the Regulations five years after the publication of the data on the English or French linguistic minority population, as defined in section 2.1 of the Regulations, and updating the language designation of offices when there is a new minority language primary or secondary public educational facility in their service area. The institution has a maximum of six months from the date on which the updated list of minority language educational facilities was made available to do so; and
- 6.2.4 In the case of an office that is subject to general circumstances based on linguistic data from the most recent decennial census and that would no longer be required to provide services in both official languages after the language designation of offices is updated, ensuring that demographic protection is applied (subsection 5(3.1) of the Regulations) before implementing subsection 6.1.5 or 6.1.7 of this directive, as appropriate.
- 6.3 Other requirements concerning the measurement of demand
 The deputy head or their delegate is responsible for the following:
 - 6.3.1 Ensuring that proven methods are used to obtain results for offices, except for those serving restricted and identifiable clientele, that must measure the demand for services in both official languages;
 - 6.3.2 Ensuring that the rights of respondents to use either official language are respected when offices must measure demand;
 - 6.3.3 Ensuring that respondents are informed that their responses will be used to determine the language designation of the office where a measurement of demand is conducted;
 - 6.3.4 In cases where respondents chose both English and French as their preferred language for communications and services during a measurement of demand, ensuring that these responses are included in the data in favour of the minority language;
 - 6.3.5 For offices subject to specific circumstances, ensuring that demand is measured again when the circumstances of an office have changed;
 - 6.3.6 Providing the Treasury Board Secretariat of Canada with the results of the measurement of demand and the methodology used; and

6.3.7 Keeping in mind that the measurement of demand set out in this directive is not public opinion research, as defined in the *Directive on the Management of Communications*, and therefore does not require the application of Appendix C: Mandatory Procedures for Public Opinion Research.

6.4 Monitoring and reporting

6.4.1 Government-wide

Evaluation of the implementation of the above requirements is conducted using performance measurement tools identified by the Office of the Chief Human Resources Officer within the Treasury Board of Canada Secretariat.

6.4.2 Within institutions

The deputy head or their delegate is responsible for:

- Monitoring their institution's compliance with this directive and taking the necessary corrective measures if gaps are noted;
- Ensuring that files and information systems used to prepare reports to the Office of the Chief Human Resources Officer within the Treasury Board of Canada Secretariat are kept up to date; and
- Ensuring that government databases used to inform the public about the language designation of federal offices and their locations are kept up to date.

7. Consequences

The consequences of non-compliance with this directive are listed in the *Policy on Official Languages*, section 7: Consequences.

8. Roles and responsibilities of other government organizations

This section identifies the roles of other key government organizations in relation to this directive. In and of itself, this section does not confer any authority.

- 8.1 The Office of the Chief Human Resources Officer within the Treasury Board of Canada Secretariat is responsible for:
 - Ensuring the integrity of the application of the Regulations by providing institutions with advice and guidance on the Regulations and their application;

- Providing institutions with data on the English or French linguistic minority population, as defined in section 2.1 of the Regulations, and coordinating updates to the language designation of offices for all institutions subject to the OLA following the publication by Statistics Canada of the data on the English or French linguistic minority population from the most recent decennial census; and
- Providing institutions with the list of minority language primary or secondary public educational facilities.
- 8.2 Statistics Canada gathers data on official languages and publishes data on the English or French linguistic minority population, as defined in section 2.1 of the Regulations. Upon request and for a fee, Statistics Canada can provide institutions with a consultation service and a service to develop survey methodology.
- 8.3 Refer to the *Policy on Official Languages*, section 8: Roles and Responsibilities of Government Organizations.

9. References

Legislation

- Canadian Charter of Rights and Freedoms
- Access to Information Act
- <u>Privacy Act</u>
- Official Languages Act
- Official Languages (Communications with and Services to the Public) Regulations

Policy instruments

- Policy on Communications and Federal Identity
- <u>Policy on Official Languages</u>
- <u>Directive on Official Languages for Communications and Services</u>
- Policy on Service and Digital

10. Requests for information

Please direct all requests for information about this directive to the person responsible for official languages in your institution.

Appendix: Definitions

demographic protection

A regulatory provision (subsection 5(3.1) of the Regulations) that aims to mitigate the impact of certain demographic changes so as to ensure that an office retains its existing bilingual designation when the official language minority population referred to in the applied regulatory provision has remained the same or increased in number, even if the minority population has decreased as a percentage of the total population.

This provision applies to bilingual offices that would have become unilingual based on the update of the language designations of offices under one of the following provisions: paragraph 5(1)(b), (c), (g), (h), (i), (j), (l), (m), (o), (p), and (q) of the Regulations.

This provision does not apply to offices that measured demand based on the previous census or the census in force, or to offices that have a bilingual designation based on the presence of a minority language primary or secondary public educational facility in their service area.

key services

Federal services listed in the Regulations that are subject to specific provisions.

Within a census metropolitan area, key services are services provided by a Service Canada Centre, a passport point of service, a post office, an office of the Business Development Bank of Canada, an office of the Canada Revenue Agency, an office of Canadian Heritage, an office of the Public Service Commission of Canada, and a regional economic development agency.

Within a census subdivision, key services are the services listed above, as well as services provided by Royal Canadian Mounted Police detachments.

minority language primary or secondary public educational facility

A primary or secondary school of the English or French linguistic minority that is publicly funded. These are facilities established to respect the constitutional right provided for in paragraph 23(3) (b) of the *Canadian Charter of Rights and Freedoms*. This definition excludes universities, immersion schools, private facilities, and adult education.

office

Any location where a federal institution provides services or information to the public. It can be a post office; a border port of entry; an information counter; a toll-free service number; a train, boat or plane route; or a national park or historic site.

principle of proportionality

Principle taken from the Regulations according to which a federal institution with several offices in a given census metropolitan area (CMA) or a census subdivision (CSD) must provide services in both official languages in a number of offices that is equal to or greater than the proportion of the population represented by the minority compared to the total population in the CMA or CSD.

The following provisions of the Regulations concern the principle of proportionality: paragraphs 5(1)(b), (c), (g), (i), (m) and (p).

The Regulations provide that the following factors must be considered when deciding which offices will be required to provide communications and services in both official languages:

- the distribution of the language minority population in the region;
- the mandate of the offices, their clientele and their locations in the region; and
- the advice received after consultation with the English or French linguistic minority population that is served by the offices.

Example of the application of the principle of proportionality

Fictional CMA

Total population: 147,655 Minority population: 41,850

Percentage: 28.3

Almost 90% of the French-speaking population of the CMA is found in three of the seven localities that make up the CMA: 48% of the French-speaking population lives in the principal city, 22% in locality A and 20% in locality B.

Under the principle of proportionality, if 10 of the institution's offices in a CMA provide the same services, the number of these offices that must provide their services in both official languages should be calculated as follows: $10 \times 28.3\% = 2.8$, or 3 offices.

When the application of proportionality results in a fraction (for example, 2.8) rather than a whole number, the fraction must be rounded up to the nearest whole number. The regulatory provision requires that the number of an institution's offices providing services in both official languages compared to the total number of offices it has in a given region must be equal to or greater than the proportion of the minority population compared to the total population in the region. (If the result was 2.3 or 2.5 out of 10, the number of offices would still be 3.)

Since a high proportion of the minority population lives outside the principal city, it would be inappropriate to designate three offices in that city as bilingual offices.

It might be more appropriate to provide services in both official languages at two offices in the principal city and at one in either locality A or B, or to provide services in both official languages at one office in each of the three localities.

The final decision will also have to consider the mandate of the office and the results of the consultation with the minority population served by these offices.

When the principle of proportionality is applied in a CSD instead of a CMA, the number and location of offices required to provide services in both official languages are determined in the same way.

service area

Area determined by federal institutions based on their office networks and on the regions and clienteles served by these offices. A service area generally corresponds to a given geographical perimeter within which an office provides its services to and communicates with the public. The service area may extend beyond the boundaries of the census metropolitan area (CMA) or

census subdivision (CSD) where the office is located. Beyond the defined service area, communications with and services to the public are provided by another office of the same institution.

restricted and identifiable clientele

- a. The services specifically target a restricted clientele. The expression "restricted clientele" refers to the clientele of an office that has been given the mandate of providing certain services exclusively to a specific group or to a category of clients. The services that are covered by the provisions that concern restricted clientele are services that are not available to the general public. These services are intended only for clients, or their representatives, who make up a specific group that is defined in a statute or a governmental policy. Examples include businesses or regulated industries that are registered or licensed under federal legislation. The institution is able to show that the services in question are intended for a stable clientele, whose composition is well known. As a general rule, the clientele of an office cannot be considered restricted if the number of clients to whom an institution provides the type of services described above corresponds to more than 1% of the total population of Canada, as defined in subsection 4(2) of the Regulations.
- b. The clientele is identifiable. The term "identifiable" means that the name of each client and the official language in which they prefer to be served can be determined. The institution has an up-to-date list of its clients.
- c. Generally, the services are exclusively provided by the institution and clients cannot obtain these services elsewhere (for example, in the private sector).

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