



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Briefing on the Identity and Language (Northern Ireland) Bill

June 2022

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Summary of Recommendations

The Northern Ireland Human Rights Commission (NIHRC):

- 2.5** advises that the interpretation of 'public authority' within section 78F is too narrow and recommends that the definition of 'public authorities' is amended to reflect section 6 of the Human Rights Act 1998.
- 2.16** recommends that human rights language is embedded within section 78F, for example enabling the right to identity and cultural expression to cover where it is necessary in promoting the general welfare of a democratic society, proportionate in pursuing a legitimate aim, and adheres to the principle of non-discrimination.
- 2.23** recognises that the National and Cultural Identity Principles in section 78F must include language reflective of two main communities in NI as a post-conflict society. However, the NIHRC recommends that in upholding the right to identity and cultural expression, that other smaller minority communities are included.
- 2.28** recommends that rights based language is embedded within the aims and functions set out in section 78H. This involves amending the language to include 'promote and protect'. This is particularly important as it reflects the intended aims and functions of the Office envisaged in the New Decade New Approach document.
- 2.31** recommends that section 78H is amended to include reference to the specified international instruments at section 78R(3) within the National and Cultural Identity Principles.
- 2.32** recommends that the proposed list of specified international instruments at section 78R(3) is expanded to include relevant Articles of the UN ICCPR and the UN ICESCR, the detail of which is provided in Appendix 1.
- 2.35** recommends section 78H is amended to enable the Office to periodically audit public authorities' adherence with the National and Cultural Identity Principles, in order to reflect commitments in New Decade New Approach.
- 2.40** advises that consideration is given to how a public authority's non-compliance with the National and Cultural Identity

Principles is remedied within the Bill. This could be enabling the Office to receive complaints, providing the Office with an investigations function or extending the Director's remit. This would involve considering the relationship between the Office, the NIHRC, and the Equality Commission NI, to ensure there is no duplication of duties or functions.

- 3.7 advises that clarification in section 78I, on the status of the Irish language in tandem with the English language, is necessary to ensure legal certainty.**
- 3.10 advises that section 78I should include express provision for specific language rights. A summary of such rights is outlined in Appendix 2.**
- 3.14 recommends that the primary role of the Irish Language Commissioner in section 78K is amended to include both a duty to 'enhance and develop' and to 'promote and protect'.**
- 3.18 recommends that section 78K confers the Irish Language Commissioner a similar function as the Ulster Scots/Ulster British Commissioner in section 78R by including an advisory role in respect of the specified international instruments, which are subject further consideration as per paragraph 2.32 above.**
- 3.20 recommends that section 78K requires the Irish Language Commissioner to consult with and take account of advice provided by the NIHRC in respect of the proposed advisory function.**
- 3.25 recommends that the mandate of the Irish Language Commissioner in section 78K is widened to include, inter alia, a general advice function, a promotional function, a reporting and research function and powers to make recommendations. In addition, providing the Irish Language Commissioner with enforcement powers should be considered.**
- 3.30 recommends that section 78K(4) is amended to ensure the independence of the Irish Language Commissioner. This can be done by either or both of the following options:
 - 1. expressly stating that the Commissioner shall be independent, as in the Official Languages Act 2003 and/or;****

2. imposing conditions on Ministerial directions to ensure that any direction to the Commissioner takes into account the Commissioner's own advice or to specify that Ministerial directions are reasonable, have a legitimate aim and are proportionate.

3.34 recommends that section 78L is amended to require the Irish Language Commissioner to take into account human rights standards when drafting, implementing and monitoring the best practice standards.

3.41 recommends that section 78O be strengthened to ensure that public authorities take seriously the findings and recommendations of an investigation conducted by the Irish Language Commissioner. This may be achieved by ensuring that public authorities' failure to co-operate with investigations could lead to specific penalties.

3.42 recommends that section 78O is amended to include specific remedial provisions, such as making statutory provision for compensation or providing the Irish Language Commissioner with powers to support an individual to take legal action or intervene in cases.

3.45 recommends that section 78O is amended to include safeguards to ensure that the Irish Language Commissioner's investigation function cannot be exercised unreasonably.

3.47 recommends that section 78O is amended to provide the Irish Language Commissioner with the power to initiate 'own motion' investigations.

3.49 recommends that section 78O is amended to include provision for the Irish Language Commissioner to compel evidence in exercising its investigatory powers.

4.6 notes the UK Government's official recognition of Ulster Scots as a national minority and recommends that section 78R makes reference to the designation of Ulster Scots as a national minority within the UK.

- 4.7 recommends that section 78R ensures that designation as a member of the Ulster Scots community is premised on the principle of self-identification.**
- 4.13 advises that the Office of Identity and Cultural Expression may be the more appropriate body to develop work associated with the concept of Ulster British. It recommends that this aspect of the Ulster Scots/Ulster British Commissioner's remit is given further consideration in consultation with representatives of the Ulster Scots community and that clause 3 of the Bill is amended accordingly.**
- 4.16 recommends that the primary role of the Ulster Scots/Ulster British Commissioner in section 78R is amended to cover both 'enhance and develop' and 'promote and protect'. This language would ensure the Commissioner's remit is consistent with the human rights framework and those standards referenced within the Bill.**
- 4.20 recommends that, within section 78R(2)(a), the Ulster Scots/Ulster British Commissioner's awareness-raising function should be enhanced to include promoting Ulster Scots within wider society. This function should be developed in consultation with Boord o Ulstér-Scotch (Ulster Scots Agency).**
- 4.25 recommends that the effectiveness of the Ulster Scots/Ulster British Commissioner is enhanced by including within section 78(2)(b) a requirement that public authorities have regard to the Commissioner's advice.**
- 4.28 welcomes the broad mandate of the Ulster Scots/Ulster British Commissioner within section 78R(2)(b), which includes art and literature as well as language. The NIHRC recommends that other aspects of Ulster-Scots culture including heritage, religion, history, music, dance are also included within the Commissioner's mandate under this section.**
- 4.29 advises that the Boord o Ulstér-Scotch (Ulster Scots Agency) is consulted on how the mandate of the Ulster Scots/Ulster British Commissioner within section 78R(2)(b) is amended, to ensure that the Commissioner's remit is comprehensive.**

- 4.32** In accordance with paragraph 2.32 above, the NIHRC recommends that the list of specified international instruments in section 78R(3) is expanded to include relevant Articles of the UN ICCPR and the UN ICESCR, the detail of which is provided in Appendix 1.
- 4.33** recommends that section 78R(2) is amended to explicitly require the Ulster Scots/Ulster British Commissioner to promote and protect human rights standards in their own work.
- 4.35** recommends that the Ulster Scots/Ulster British Commissioner is required to consult with and take account of advice provided by the NIHRC in respect of section 78R(2)(b).
- 4.39** recommends that section 78R(5) is amended to ensure the independence of the Ulster Scots/Ulster British Commissioner. This can be done by either or both of the following options:
- 1.** expressly stating that the Commissioner shall be independent, as in the Official Languages Act 2003 and/or;
 - 2.** imposing conditions on Ministerial directions to ensure that any direction to the Commissioner takes into account the Commissioner's own advice or to specify that Ministerial directions are reasonable, have a legitimate aim and are proportionate.
- 4.47** recommends that section 78S is strengthened to ensure that public authorities take seriously the findings and recommendations of an investigation conducted by the Ulster Scots/Ulster British Commissioner. This may be achieved by ensuring that public authorities' failure to co-operate with investigations could lead to specific penalties.
- 4.48** recommends that section 78S is amended to include specific remedial provisions, such as making statutory provision for compensation or providing the Ulster Scots/Ulster British Commissioner with powers to support an individual to take legal action or intervene in cases.
- 4.51** recommends that section 78S is amended to include safeguards to ensure that the Ulster Scots/Ulster British

Commissioner's investigation function cannot be exercised unreasonably.

4.54 recommends that section 78S is amended to provide the Ulster Scots/Ulster British Commissioner with the power to initiate 'own motion' investigations.

4.56 recommends that section 78S is amended to include provision for the Ulster Scots/Ulster British Commissioner to compel evidence in exercising its investigatory powers.

5.3 welcomes clause 4 of the Bill which repeals Administration of Justice (Language) Act (Ireland) 1737 and facilitates the use of languages other than English in court proceedings.

6.4 recommends that Article 89A clarifies the scope of the duty on the Department of Education and that the duty is extended beyond language and reflects the full mandate of the Ulster Scots/Ulster British Commissioner as set out in section 78R, subject to further recommendations above.

6.6 recommends that the Department for Economy is subject to a similar duty, as set out in Article 89A, given its remit in the provision of Further and Higher Education.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to Section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). In accordance with these functions, the NIHRC provides this briefing on the Identity and Language (Northern Ireland) Bill. In addition, pursuant to section 78A(1) and 79B(1) of the Northern Ireland Act 1998, the NIHRC monitors the implementation of Article 2(1) of the Protocol on Ireland/Northern Ireland (Protocol Article 2) in the EU Withdrawal Agreement.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas.

2.0 Clause 1 – National and Cultural Identity

Sections 78F, 78P, 78T: Definition of a public authority

- 2.1 The Identity and Language (Northern Ireland) Bill amends the Northern Ireland Act 1998 to allow for the establishment of three new public authorities in NI, including an Office of Identity and Cultural Expression, and Commissioners on the Irish language and the Ulster Scots/Ulster British tradition.
- 2.2 The Bill confers obligations on specified public authorities in NI to ensure they have "due regard" to certain principles when carrying out their functions¹ and to advice from the Irish language Commissioner.² The Bill also contains measures to promote public authorities' compliance with advice from the Ulster Scots/Ulster British Commissioner.³ The Bill defines a "public authority" as any authority

¹ Section 78F(1), Northern Ireland Act 1998 (as amended)

² Section 78N, Northern Ireland Act 1998 (as amended)

³ Section 78S(4), Northern Ireland Act 1998 (as amended): contains a duty on the Ulster Scots/ Ulster British Commissioner to investigate complaints regarding the failure of a public authority to have due regard to their published guidance.

listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016.⁴

- 2.3 The term 'public authority' has a wider meaning under Section 6 of the Human Rights Act 1998 where it includes "a court or tribunal, and person certain of whose functions are functions of a public nature". A key distinction is that the Human Rights Act definition includes private organisations, when they are providing a public service, or their service is paid for in whole or part by public money.⁵ The definition of a public authority within the Public Services Ombudsman Act does not extend to such scenarios. Additionally, the use of the term 'public services' within Article 10 of the European Charter for Regional and Minority Languages has been interpreted to include services delivered by third parties on behalf of public bodies.
- 2.4 In terms of the practical impact this narrowed definition will have, the NIHRC highlight that there are a number of authorities with key roles in public life that would not be subject to the proposed statutory provisions. This includes, the Northern Ireland Office and its Arm's Length Bodies, the Electoral Office, the Parades Commission and the NIHRC. While it is reasonable to expect that such public authorities will act in good faith and comply with the Bill to the best of their ability, if they are not supported to do so it is likely that their actions will be significantly limited.
- 2.5 **The NIHRC advises that the interpretation of 'public authority' within section 78F is too narrow and recommends that the definition of 'public authorities' is amended to reflect section 6 of the Human Rights Act 1998.**

Section 78F: National and Cultural Identity Principles

- 2.6 Section 78F(1) provides for the national and cultural identity principles, as below:
- a) the principle that everybody in Northern Ireland is free to choose, affirm, maintain and develop their national and cultural identity, and express and celebrate that identity in a manner that takes account of the sensitivities of those with different

⁴ See sections 78F, 78P and 78T, Northern Ireland Act 1998 (as amended)

⁵ Ministry of Justice, 'The Human Rights Act 1998: the Definition of "Public Authority" – Government Response to the Joint Committee on Human Rights' Ninth Report Session 2006-07' (MoJ, 2009) at para 12.

national and cultural identities and respects the rule of law;⁶
and

- b) the principle that public authorities should encourage and promote reconciliation, tolerance and meaningful dialogue between those with different national and cultural identities with a view to promoting parity of esteem, mutual respect and understanding, and cooperation.⁷

2.7 Principle A, regarding respect for freedom of cultural expression and the right to choose one's cultural identity, reflects human rights language and principles. This includes the self-identification principle upheld in Article 3 of the CoE Framework Convention of National Minorities, which states that:

every person belonging to a national minority shall have the right freely to choose to be treated or not be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2.8 The Bill applies a caveat on the expression of identity and culture requiring that a person must have regard to the "sensitivities" of those with different national and cultural identities with "respect for the rule of law". The NIHRC recognises that there are 'sensitivities' regarding expression of culture and identity in Northern Ireland. Indeed, the UK Government within the Belfast (Good Friday) Agreement encouraged the NI Assembly to take "account of the desires and sensitivities of the community".⁸

2.9 Cultural rights are protected by a number of ECHR provisions, namely: Article 8 and the right to lead one's life in accordance with a cultural identity and the right to choose freely a cultural identity;⁹ Article 9 and the right to a religious identity;¹⁰ Article 10 and the right to cultural expression;¹¹ and Article 11 and the freedom of association with a cultural purpose.¹² Additionally, the right to cultural life, is directly provided for in Article 15 of the UN ICESCR.

⁶ Section 78F(1)(a)(i)-(ii), Northern Ireland Act 1998 (as amended)

⁷ Section 78F(1)(b), Northern Ireland Act 1998 (as amended)

⁸ Belfast (Good Friday) Agreement 1998, at Rights, Safeguards and Equality of Opportunity, at para 3.

⁹ *Chapman v United Kingdom* (2001) ECHR 43.

¹⁰ *Sinan Işık v Turkey Sinan* (2010) ECHR 2265.

¹¹ *Dink v Turkey*, Application no. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Judgment of 14 September 2010.

¹² *Sidiropoulos and Others v Greece* (2013) ECHR 62.

- 2.10 All of these are qualified rights, which can be subject to limitations when exercising these rights. However, the UN ICESCR Committee is clear that any limitations to these rights “must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of a general welfare in a democratic society”.¹³ This is supported by the ECtHR, which states any limitation of such rights must be proportionate in pursuit of a legitimate aim and based on the principle of non-discrimination.¹⁴
- 2.11 In some situations, this can lead to the need to balance one individual’s rights with another individual’s rights. It is important that the correct balance is struck, with human rights standards providing guidance on how this can be achieved. For example, consideration should be given to whether restricting the cultural expression and identity of one individual to accommodate the ‘sensitivities’ of another individual is a disproportionate interference with one or other’s right to freedom of expression (Article 10 ECHR). This was explored in the ECtHR case of *Dink v. Turkey* (2010).¹⁵
- 2.12 Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of a bilingual Turkish-Armenian weekly newspaper published in Istanbul. Following the publication in this newspaper of eight articles, in which he expressed his views on the identity of Turkish citizens of Armenian origin, he was found guilty in 2006 of “denigrating Turkish identity”.¹⁶ The ECtHR held that Dink’s right to freedom of expression (Article 10 ECHR) had been violated, on the basis that there had been no pressing social need to find Dink guilty of denigrating “Turkishness”.¹⁷ The ECtHR observed, in particular, that the series of articles taken overall did not incite others to violence, resistance or revolt. The articles had not been gratuitously offensive or insulting, and they had not incited others to disrespect or hatred.¹⁸

¹³ E/C.12/GC/21, ‘UN ICESCR Committee General Comment 21: Right of Everyone to Take Part in Cultural Life’, 21 December 2009.

¹⁴ *Sunday Times v UK* (1979) 2 EHRR 245, *Open Door and Dublin Well Woman v Ireland* (1993) 15 EHRR 50 and *Handyside v UK* (1979) 1 EHRR 737.

¹⁵ *Dink v Turkey*, Application no. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Judgment of 14 September 2010.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

2.13 Hate speech and incitement of hatred is not protected as freedom of expression under Article 10 ECHR, which makes it easier to gauge where limitations are justified or not in such situations. The right to freedom of expression must be read alongside Article 17 ECHR on the prohibition of abuse of rights, which states that:

nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

2.14 Article 17 is relevant where an individual attempts to rely on an ECHR provision which deflects from its real purpose, including in order to justify, promote or perform acts that are contrary to the text and spirit of the ECHR; are incompatible with democracy or other fundamental values of the ECHR; or infringe the rights in the ECHR. For Article 17 to apply, the:

offending actions must be to spread violence or hatred, to resort to illegal or undemocratic methods, to encourage the use of violence, to undermine the nation's democratic and pluralist political system, or to pursue objectives that are racist or likely to destroy the rights and freedoms of others.¹⁹

2.15 The NIHRC welcomes reference in National and Cultural Identity Principle A to the respect of the rule of law, which will help protect against incitement of hatred by ensuring that legislation regarding, for example, hate crime can still be applicable.

2.16 **The NIHRC recommends that human rights language is embedded within section 78F, for example enabling the right to identity and cultural expression to cover where it is necessary in promoting the general welfare of a democratic society, proportionate in pursuing a legitimate aim, and adheres to the principle of non-discrimination.**

2.17 The terminology of National and Cultural Identity Principle B acknowledges the need to encourage, promote reconciliation and

¹⁹ *Lehideux and Isorni v France* (1998) ECHR 90.

tolerance. This reflects the human rights discourse on cultural diversity, such as in Article 15 of the UN ICESCR.

- 2.18 Within the human rights framework cultural rights are realised as rights of everyone, regardless of the group or community to which they belong. Where a post-conflict situation has been addressed specifically under Article 15 of the UN ICESCR, the development of inter-culturalism is equally important as the cultural life of a minority community. For example, in relation to Kosovo, the UN ICESCR Committee noted the deep ethnic divide, incidents of inter-ethnic violence and a climate of intolerance. The UN ICESCR Committee subsequently recommended that the UN Interim Administration in Kosovo “encourage the relevant Kosovo authorities to foster inter-cultural dialogue and tolerance through school education, community level projects and Kosovo-wide campaigns”.²⁰
- 2.19 The international standards on culture outlined in the relevant articles of the UN ICESCR and UN ICCPR also highlight the need for adequate participation in the cultural life of society of minorities and migrants with any programme of integration being based on “inclusion, participation and non-discrimination, with a view to preserving the distinct character of minority cultures”.²¹ For example, the UN Human Rights Committee has placed particular emphasis under Article 27 of the UN ICCPR on the rights of the Roma, where they are significantly represented in post-conflict societies (for example, Bosnia and Herzegovina in 2012; Serbia in 2011 and Former Yugoslav Republic of Macedonia in 2008).²²
- 2.20 The UN Convention on the Rights of the Child also makes reference to cultural minority rights in Article 30:

in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or

²⁰ E/C.12/UNK/CO/1, ‘UN ICESCR Committee Concluding Observations on Serbia/Kosovo’, 1 December 2008, at para 32.

²¹ Ibid, at 33.

²² CCPR/C/BIH/CO/2, ‘UN Human Rights Committee Concluding Observations of Bosnia and Herzegovina’, 13 November 2012, at para. 21; CCPR/C/SRB/CO/2, ‘UN Human Rights Committee: Concluding Observations on Serbia’, 20 May 2011, at para. 22; CCPR/C/MKD/CO/2, ‘UN Human Rights Committee Concluding Observations on Former Yugoslav Republic of Macedonia’, 17 April 2008, at para. 19.

her own culture, to profess and practise his or her own religion, or to use his or her own language.

2.21 The UN Committee on the Rights of the Child in its General Comment No 17 specifically addresses conflict and post-conflict situations, recognising that cultural rights are often given low priority, but stressing that they can have an important “therapeutic and rehabilitative role” and requiring positive measures from the State to encourage creative expression to promote healing in post-conflict situations.²³

2.22 The Advisory Committee on the Framework Convention for the Protection of National Minorities has previously raised concerns that attention and efforts are directed at the two main communities in NI and that the needs of persons belonging to minority ethnic communities are not adequately catered for. The EU Advisory Committee recommended that the needs of all minorities are taken into account when allocating support and funding.²⁴

2.23 The NIHRC recognises that the National and Cultural Identity Principles in section 78F must include language reflective of two main communities in NI as a post-conflict society. However, the NIHRC recommends that in upholding the right to identity and cultural expression, that other smaller minority communities are included.

Section 78H: Functions of the Office of Identity and Cultural Expression

2.24 The legislation outlines that the principal aims of the Office are:

- a) to promote cultural pluralism and respect for diversity in Northern Ireland;
- b) to promote social cohesion and reconciliation between those with different national and cultural identities;
- c) to increase the capacity and resilience of people in Northern Ireland to address issues related to differences in national and cultural identity;

²³ CRC/C/GC/17, 'UN Committee on the Rights of the Child General Comment No 17: Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts', 17 April 2013.

²⁴ ACFC/OP/III (2011)006, 'Advisory Committee on the Framework Convention for the Protection of National Minorities Third Opinion on the United Kingdom for the Protection of National Minorities', 22 December 2011, at paras 78 and 82.

d) to support, and promote the celebration of, the cultural and linguistic heritage of all people living in Northern Ireland.

2.25 The legislation has included rights based language by framing the Office's aims and functions around a duty to "promote".

2.26 International human rights standards use the term 'promote and protect', as elaborated in the Vienna Declaration 1993, "the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles".²⁵

2.27 The 'protect and promote' principles have subsequently been affirmed by human rights bodies.²⁶ The UN Human Rights Committee has highlighted the need to both protect and promote rights to ensure full enjoyment of a right and effective implementation of the State's obligations.²⁷

2.28 The NIHRC recommends that rights based language is embedded within the aims and functions set out in section 78H. This involves amending the language to include 'promote and protect'. This is particularly important as it reflects the intended aims and functions of the Office envisaged in the New Decade New Approach document.

2.29 This approach can be further aided by referencing human rights treaties. For example, the Ulster Scots /Ulster British Commissioner established by section 78Q has a role in providing advice, support, and guidance to public authorities on the effect and implementation of specified international instruments in relation to the relevant language, arts and literature.²⁸ The specified international instruments are:

i) the Council of Europe's Charter for Regional or Minority Languages dated 5th November 1992;

²⁵ A/CONF.157/23, 'Vienna Declaration and Programme of Action', 12 July 1993, at para 4.

²⁶ UN Human Rights Committee, 'Civil and Political Rights: Fact Sheet No 15' (undated); GA Res 53/144, 'UN General Assembly Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms', 9 December 1998, at Preamble; A/60/L.1, 'World Summit Outcome 2005', 16 September 2005, at para 12; CCPR/C/21/Rev.1/Add.13, 'UN Human Rights Committee General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', 26 May 2004, at paras 5 and 7.

²⁷ Ibid, at paras 5 and 7.

²⁸ Section 78R, Northern Ireland Act 1998 (as amended)

- ii) the Council of Europe’s Framework Convention for the Protection of National Minorities dated 1st February 1995; and
 - iii) the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.
- 2.30 In addition, the UN ICCPR and UN ICESCR are two human rights treaties that are central in protecting culture. Articles 1, 19 and 27 of the UN ICCPR and Article 15 of the UN ICESCR are relevant to cultural rights and identity and the language and principles contained within these would assist with guiding the work of the Office of Identity and Cultural Expression.
- 2.31 **The NIHRC recommends that section 78H is amended to include reference to the specified international instruments at section 78R(3) within the National and Cultural Identity Principles.**
- 2.32 **The NIHRC recommends that the proposed list of specified international instruments at section 78R(3) is expanded to include relevant Articles of the UN ICCPR and the UN ICESCR, the detail of which is provided in Appendix 1.**
- 2.33 The New Decade New Approach document provides the Office with an additional function which is not mentioned on the face of the legislation. The function provides that the Office can “periodically audit public authorities on how they have respected and accommodated the cultural expression of minorities within their area of responsibility”.²⁹
- 2.34 This function would fulfil human rights obligations in line with international standards which require positive obligations in relation to minorities.
- 2.35 **The NIHRC recommends section 78H is amended to enable the Office to periodically audit public authorities’ adherence with the National and Cultural Identity Principles, in order to reflect commitments in New Decade New Approach.**
- 2.36 Section 78H(2)-(3) outlines that in pursuing the Office’s aims it can:

²⁹ Ibid.

- a) provide guidance concerning their due regard duty as mentioned in 78F;
- b) monitor compliance with this duty;
- c) report to the Assembly on compliance with this duty;
- d) promote best practice in relation to compliance with the duty;
- e) commission and publish research and reports in respect of cultural identities and traditions;
- f) undertake research and make recommendations;
- g) promote public awareness and educational programmes;
- h) make grants to persons promoting cultural pluralism; co-operate with other persons.

2.37 Section 78F requires that public authorities have due regard to the National and Cultural Identity Principles. Section 78H(2) continues that the Office must:

- a) promote awareness of the national and cultural identity principles;
- b) monitor and promote the compliance of public authorities with that duty;
- c) report to the Assembly on compliance with that duty.

2.38 However, there is no clear remedy for non-compliance outlined within the legislation. The Office does not receive complaints and has no investigative function. If the Office is to have a similar approach to other models such as those applied to the equality duties as set out in sections 75(1) and 75(2) of the Northern Ireland Act 1998, the Equality Commission NI and ultimately the Secretary of State for NI holds enforcement powers. This complaints process to the Equality Commission NI is usually to be exhausted, before there is potential for judicial review. Given this envisaged function of the Office, the NIHRC is concerned how this will coincide with the role of the Equality Commission NI's role in monitoring implementation of section 75 of the Northern Ireland Act.

2.39 An alternative model would be the rural needs duty. This is not schemes based, but the Department of Agriculture and Rural Affairs has issued guidance as to how to comply with the rural needs duties, which includes a 'rural needs impact assessment'.³⁰ Non-compliance with the Rural Needs Act duty is only actionable through judicial

³⁰ Schedule 9, Northern Ireland Act 1998.

review. The 'guiding principles' take a similar approach in the Bill, but the method of non-compliance is not outlined as such.

- 2.40 **The NIHRC advises that consideration is given to how a public authority's non-compliance with the National and Cultural Identity Principles is remedied within the Bill. This could be enabling the Office to receive complaints, providing the Office with an investigations function or extending the Director's remit. This would involve considering the relationship between the Office, the NIHRC, and the Equality Commission NI, to ensure there is no duplication of duties or functions.**

3.0 Clause 2 – Irish Language

Section 78I - Official recognition of the status of the Irish language

- 3.1 Section 78I sets out the purpose of this part of the Bill as providing official recognition of the status of the Irish language in Northern Ireland. The measures contained in the Bill are additional to those provided by other statutory provisions:

- a) section 28D of the Northern Ireland Act 1998 [the Irish language strategy];
- b) the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999;
- c) the statutory provisions relating to Irish-medium education.³¹

- 3.2 Section 78I(2) provides for official recognition of the Irish language. Official recognition of a language is a means by which a State can give effect to the right of minorities to use their own language as required by the international standards³² and as emphasised by treaty monitoring bodies.³³

³¹ Section 28I(1), Northern Ireland Act 1998 (as amended).

³² Article 27, UN International Covenant on Civil and Political Rights 1966; Article 15, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 30, UN Convention on the Rights of the Child 1989; Article 5, Framework Convention on National Minorities 1993; Article 2, European Charter for Regional or Minority Rights 1992.

³³ E/C.12/GBR/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 July 2016, at paras 67 and 68; CM/RecChL(2014)3, 'CoE Committee of Ministers Recommendation on the Application of the European Charter for Regional or Minority Languages by the UK', 15 January 2014, at 5 and 29; CM/ResCMN(2018)1, 'CoE Committee of Ministers Resolution on the Implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom', 7 February 2018.

- 3.3 The St Andrews Agreement 2006 includes a commitment by the UK Government to “reflect on the experience of Wales and Ireland” when introducing an Irish Language Act.³⁴ Throughout this submission, the NIHRC draws on the Welsh and Irish examples where relevant.
- 3.4 International human rights standards advise that where there is more than one official language, “the equal status or different scope of the use of official languages in various spheres must be clearly determined”.³⁵
- 3.5 Welsh legislation enshrines the following principles:
- the English and Welsh languages should be treated on a basis of equality in the conduct of public business and the administration of justice in Wales;³⁶
 - the Welsh language should be treated no less favourably than the English language;³⁷
 - persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.³⁸
- 3.6 Section 78I(3) states that “nothing in this Part affects the status of the English language”. While this provision is welcome,³⁹ the Bill does not expressly outline the status of the Irish language in tandem with the English language.
- 3.7 **The NIHRC advises that clarification in section 78I, on the status of the Irish language in tandem with the English language, is necessary to ensure legal certainty.**
- 3.8 The Bill does not expressly delineate what Irish language rights may now be enjoyed by virtue of this legislation. Nor does the Bill place any duties on the NI Executive except those relating to the establishment of an Irish Language Commissioner.
- 3.9 The NIHRC advises that there are a number of specific rights and duties applicable to the Irish language as required by the

³⁴ St Andrews Agreement, 2006, at Annex B.

³⁵ Organisation for Security and Cooperation in Europe, ‘The Ljubljana Guidelines on Integration of Diverse Societies’ (OSCE, 2012), at 53.

³⁶ Article 5(2), Welsh Language Act 1993.

³⁷ Sections 3(c) and 3(d), Welsh Language (Wales) Measure 2011.

³⁸ Sections 3(c) and 3(d), Welsh Language (Wales) Measure 2011.

³⁹ NI Office, ‘New Decade New Approach’ (NIO, 2020) at Annex E: Rights, Language and Identity, para 5.13.

international standards. These are listed in Appendix 2 and include, inter alia, the right of individuals to access public services, education, cultural activities in the Irish language. Individuals also have the right to access an effective remedy if their linguistic rights are violated. For ease of reference, Appendix 3 sets out the measures accepted by the UK under European Charter for Regional or Minority Rights, in respect of the Irish language.

3.10 The NIHRC advises that section 78I should include express provision for specific language rights. A summary of such rights is outlined in Appendix 2.

Section 78J and 78K – Establishment and functions of the Irish Language Commissioner

3.11 Section 78J provides for the establishment of the Irish Language Commissioner.⁴⁰ The Irish Language Commissioner is appointed by the First Minister and deputy First Minister acting jointly.⁴¹ Operational detail on the functioning of the office of the Irish Language Commissioner is found in Schedule 9B.⁴²

3.12 The main function of the Irish Language Commissioner is to “enhance and protect the use of the Irish language by public authorities in the provision of services to the public or a section of the public in Northern Ireland”.⁴³ The Bill specifies four separate functions:

- a) prepare and publish standards of best practice for public authorities relating to the use of the Irish language;⁴⁴
- b) monitor and promote compliance with those standards;⁴⁵
- c) investigate complaints in accordance with section 78O where a public authority has failed to have due regard to those standards;⁴⁶
- d) provide advice support and guidance to public authorities in relation to the use of the Irish language and the standards of best practice.⁴⁷

40 Section 78J Northern Ireland Act 1998 (as amended).

41 Section 78J(1) Northern Ireland Act 1998 (as amended).

42 Section 78J(4) Northern Ireland Act 1998 (as amended).

43 Section 78K(1) Northern Ireland Act 1998 (as amended).

44 Section 78K(2)(a), Northern Ireland Act 1998 (as amended).

45 Section 78K(2)(b), Northern Ireland Act 1998 (as amended).

46 Section 78K(2)(c), Northern Ireland Act 1998 (as amended).

47 Section 78K(3), Northern Ireland Act 1998 (as amended).

3.13 Whereas the function of the Irish Language Commissioner is to 'protect and enhance', the term 'enhance and develop' is found in the Bill that establishes the Ulster Scots/Ulster British Commissioner⁴⁸ and the term 'promote and protect' is found in the international human rights standards. For example, the Vienna Declaration 1993 states that "the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles".⁴⁹ Human rights bodies have consistently reaffirmed the 'promote and protect' principles.⁵⁰

3.14 The NIHRC recommends that the primary role of the Irish Language Commissioner in section 78K is amended to include both a duty to 'enhance and develop' and to 'promote and protect'.

3.15 As previously mentioned, the Ulster Scots/ Ulster British Commissioner established by the Northern Ireland Act 1998 has an advisory role in respect of three human rights instruments relating to language and culture. Specifically:

- a) the Council of Europe's Charter for Regional or Minority Languages dated 5th November 1992;
- b) the Council of Europe's Framework Convention for the Protection of National Minorities dated 1st February 1995; and
- c) the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

3.16 No similar role is provided for the Irish Language Commissioner. It is unclear why the Ulster Scots/Ulster British Commissioner would have this role whereas the Irish Language Commissioner does not.

3.17 Additional provisions that should be added to this list of treaties, however, are the UN ICCPR and UN ICESCR. These treaties are central in the protection of culture at Articles 27 and 15 respectively and are included in Appendix 1.

⁴⁸ Section 78R, Northern Ireland Act 1998 (as amended).

⁴⁹A/CONF.157/23, 'Vienna Declaration and Programme of Action', 12 July 1993, at para 4.

⁵⁰ UN Human Rights Committee, 'Civil and Political Rights: Fact Sheet No 15 (Rev.1)' (undated); GA Res 53/144, 'UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms', 9 December 1998, Article 2; A/60/L.1, 'UN General Assembly World Summit Outcome 2005', 16 September 2005, at para 12.

- 3.18 **The NIHRC recommends that section 78K confers the Irish Language Commissioner a similar function as the Ulster Scots/Ulster British Commissioner in section 78R by including an advisory role in respect of the specified international instruments, which are subject further consideration as per paragraph 2.32 above.**
- 3.19 Conferring on the Irish Language Commissioner an advice function with respect to specified human rights treaties would overlap with the NIHRC’s functions set out in section 69 of the Northern Ireland Act 1998. The NIHRC is the established National Human Rights Institution within Northern Ireland, operating in full accordance with the UN Paris Principles. As such, the NIHRC has a recognised mandate to advise on human rights compliance and engage with the relevant international treaty bodies and the UN Human Rights Council.
- 3.20 **The NIHRC recommends that section 78K requires the Irish Language Commissioner to consult with and take account of advice provided by the NIHRC in respect of the proposed advisory function.**
- 3.21 In terms of the advice function as set out in the Bill, the Irish Language Commissioner is limited to drafting advice in the form of best practice standards,⁵¹ monitoring the performance of public authorities,⁵² investigating non-compliance,⁵³ and providing support to public authorities.⁵⁴
- 3.22 Article 2(2) of the UN ICCPR requires that the “necessary steps” are taken to “adopt such laws or other measures as may be necessary to give effect to the rights recognised” in this treaty. Examples of how the Bill can be amended to more accurately reflect the UN ICCPR are provided by existing provisions in Wales and Ireland, which adopt a broader approach.
- 3.23 The Welsh Language Commissioner’s functions include, but are not limited to:

⁵¹ Section 78K(2)(a), Northern Ireland Act 1998 (as amended).

⁵² Section 78K(2)(b), Northern Ireland Act 1998 (as amended).

⁵³ Section 78K(2)(c), Northern Ireland Act 1998 (as amended).

⁵⁴ Section 78K(3), Northern Ireland Act 1998 (as amended).

- promoting the provision of opportunities to use the Welsh language;
- encouraging best practice in relation to the use of Welsh by persons who deal with, or provide services to, other persons;
- keeping under review the adequacy and effectiveness of the law relating to the Welsh language;
- producing and publishing reports;
- carrying out, or commissioning others to carry out, research;
- carrying out, or commissioning others to carry out, educational activities;
- giving assistance (including financial assistance) to any person;
- making recommendations in writing to the Welsh Ministers;
- making representations to any person;
- giving advice to any person.⁵⁵

3.24 In Ireland, the functions of the *An Coimisinéir Teanga* (Irish Language) Commissioner include to:

- monitor compliance by public bodies with the provisions of this Act;
- take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act;
- carry out investigations, whether on his or her own initiative, on request by the Minister or pursuant to a complaint made to him or her by any person, into any failure by a public body to comply with the provisions of this Act that he or she or, as appropriate, the Minister, considers may have occurred;
- provide, as he or she considers appropriate, advice or other assistance to the public regarding their rights under this Act;
- provide, as he or she considers appropriate, advice or other assistance to public bodies regarding their obligations under this Act; and
- carry out investigations, whether on his or her own initiative, on request by the Minister or pursuant to a complaint made to him or her by any person, to ascertain whether any provision of any other enactment relating to the status or use of an official language was not or is not being complied with.⁵⁶

3.25 The NIHRC recommends that the mandate of the Irish Language Commissioner in section 78K is widened to include, inter alia, a general advice function, a promotional function, a

⁵⁵ Sections 4(2)(a)-4(2)(j), Welsh Language (Wales) Measure 2011.

⁵⁶ Sections 21(a)-21(f), Official Languages Act 2003.

reporting and research function and powers to make recommendations. In addition, providing the Irish Language Commissioner with enforcement powers should be considered.

Section 78K(4) – Directions given by the First Minister and deputy First Minister

- 3.26 Under section 78K(4), the First Minister and deputy First Minister will be able to direct the Commissioner in relation to the Commissioner's functions. Further, section 78L(4) requires the Commissioner to "have due regard" to guidance given by the First Minister and deputy First Minister acting jointly, while section 78L(2) provides the First Minister and deputy First Minister the power to approve and modify the best practice standards.
- 3.27 These provisions subject the Irish Language Commissioner to more government control than the respective language commissioners in Wales and Ireland. The Independent Association of Language Commissioners promotes the principle of independence of language commissioners.⁵⁷ Furthermore, Article 2(2) of the UN ICCPR requires that the "necessary steps" are taken to ensure UN ICCPR rights are effectively fulfilled, respected and protected.
- 3.28 Section 16 of the Welsh Language (Wales) Measure 2011 states that Welsh Ministers "may give directions" to the *Comisiynydd y Gymraeg* except in the context of compliance notices, enforcement of standards and freedom to use Welsh. It is clear that the *Comisiynydd y Gymraeg* "must comply" with these directions. However, it is balanced by section 4(1), which states that "the Commissioner may do anything that he or she thinks appropriate", and section 4(3) which requires Welsh Ministers to have "due regard" for written correspondence from the Commissioner. Section 20(2) of the Official Languages Act 2003 expressly states that the *An Coimisinéir Te anga* (Irish language) Commissioner "shall be independent in the performance of his or her functions". There is no express requirement on the *An Coimisinéir Te anga* to comply with Ministerial directions.

⁵⁷ The Independent Association of Language Commissioners comprises 11 language commissioners (including *Comisiynydd y Gymraeg* and *An Coimisinéir Te anga*) and aims to advance language rights and to support the work of language commissioners, including through identifying best practice. See Language Commissioners, 'About'. Available at: <http://languagecommissioners.org/about>

3.29 As the legislation is currently drafted, it is unclear what checks and balances are in place to ensure decisions by government bodies concerning the Irish Language Commissioner are not unduly interfering with the office's independence. Independence is of particular importance with regards to the Commissioner's investigatory functions. To be an effective investigation, the persons responsible for it must be independent.⁵⁸ Amending the Bill to ensure that any directions issued by Ministers are reasonable, have a legitimate aim and are proportionate would provide an important safeguard.

3.30 **The NIHRC recommends that section 78K(4) is amended to ensure the independence of the Irish Language Commissioner. This can be done by either or both of the following options:**

- 3. expressly stating that the Commissioner shall be independent, as in the Official Languages Act 2003 and/or;**
- 4. imposing conditions on Ministerial directions to ensure that any direction to the Commissioner takes into account the Commissioner's own advice or to specify that Ministerial directions are reasonable, have a legitimate aim and are proportionate.**

Section 78L: Setting of best practice standards

3.31 Section 78L provides that when preparing the best practice standards, in addition to having regard to any Ministerial guidance, the Irish Language Commissioner is required to "consult such public authorities or other persons as the Commissioner considers appropriate", one such example being Foras na Gaeilge.

3.32 Section 78L(5) further provides for the Irish Language Commissioner to devise different best practice standards for "different public authorities or different descriptions of public authority". This tiered approach means that public authorities that have greater contact with Irish speakers will be subject to a more comprehensive set of duties than public authorities with less interaction with Irish speakers. This approach is consistent with the Framework Convention on National Minorities and the European Charter for Regional or Minority

⁵⁸ Directorate General Human Rights and Rule of Law, 'Guide to Good Practice in Respect of Domestic Remedies' (CoE, 2013), at 33.

Languages, which recognise that language duties relate proportionately to numbers, need and demand.⁵⁹

3.33 The NIHRC advises that human rights standards should also inform the development, monitoring and implementation of the best practice standards adopted by the Irish Language Commissioner.

3.34 The NIHRC recommends that section 78L is amended to require the Irish Language Commissioner to take into account human rights standards when drafting, implementing and monitoring the best practice standards.

Section 780 – Investigating complaints

3.35 Section 780 provides a power for the Irish Language Commissioner to investigate complaints. This applies where the Irish Language Commissioner has received a written complaint by a person who claims to have been directly affected within 3 months by the failure of a public authority to have due regard to best practice standards. The Irish Language Commissioner must be satisfied that the public authority has had a reasonable opportunity to consider and respond to the complaint. Having completed an investigation report, section 780(4) provides that the Commissioner may issue recommendations for the public authority. It also requires that the Commissioner lays the investigation report before the Assembly.

3.36 The NIHRC welcomes the Commissioner’s powers to receive and investigate complaints as a complement to existing legal remedies. However, the NIHRC has a number of reservations about whether the Commissioner has the necessary powers to ensure these duties are properly fulfilled.

3.37 Article 2(3)(a) of the UN ICCPR requires that States ensure that persons whose rights are violated have access to an effective remedy. The UN ICCPR is not prescriptive about the form the remedy should take. However, the UN Human Rights Committee has stated that allegations need to be investigated “promptly, thoroughly and effectively” by independent and impartial bodies. Further, remedies

⁵⁹ Article 14, Framework Convention on National Minorities 1993; Article 8, European Charter for Regional or Minority Languages 1992.

must be appropriately adapted so as to take account of the special vulnerability of certain categories of person. The Organisation for Security and Cooperation in Europe's Oslo Recommendations state that availability of administrative remedies should not replace judicial recourses.

- 3.38 The Bill does not require public authorities to amend their policies and practices in line with the findings and recommendations of an investigation conducted by the Commissioner. In contrast, in Wales, if the public authority does not action the recommendations following an investigation, the *Comisiynydd y Gymraeg's* recommendations may refer the matter to the Secretary of State, who can then make enforceable directions to the public authority concerned.⁶⁰
- 3.39 Furthermore, under sections 27 and 28 of the Official Languages Act 2003, an individual has the ability to apply for compensation or appeal to the High Court on the basis of the *An Coimisinéir Te anga's* findings. In Wales, under section 8 of the Welsh Language (Wales) Measure 2011, the *Comisiynydd y Gymraeg* can institute or intervene in a legal case linked to its functions. No similar provisions are made in this present Bill.
- 3.40 Both Commissioners in Wales and Ireland have extensive enforcement powers, including powers to issue penalties for public authorities who refuse or fail to co-operate with any statutory investigations.⁶¹ In Ireland, a person can apply for compensation or appeal to the High Court on the basis of the *An Coimisinéir Te anga's* findings.⁶² In Wales, the *Comisiynydd y Gymraeg* can institute or intervene in a legal case linked to its functions.⁶³ No similar provisions are made in this present Bill.
- 3.41 **The NIHRC recommends that section 780 be strengthened to ensure that public authorities take seriously the findings and recommendations of an investigation conducted by the Irish Language Commissioner. This may be achieved by ensuring**

⁶⁰ Section 20, Welsh Language Act.

⁶¹ In Ireland, the Commissioner has the power to "take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act". See Section 21(b), Official Languages Act 2003. In Wales, the Welsh Language Commissioner has, inter alia, powers of entry and inspection. See Section and Schedule 10, Welsh Language (Wales) Measure 2011.

⁶² Sections 27 and 28 of the Official Languages Act 2003.

⁶³ Section 8 of the Welsh Language (Wales) Measure 2011.

that public authorities' failure to co-operate with investigations could lead to specific penalties.

3.42 The NIHRC recommends that section 780 is amended to include specific remedial provisions, such as making statutory provision for compensation or providing the Irish Language Commissioner with powers to support an individual to take legal action or intervene in cases.

3.43 Concerns have been raised with the NIHRC that there are no safeguards contained within the Bill to ensure that the investigation function of the Commissioner and the Commissioner is not used unreasonably.

3.44 The Welsh legislation is crafted in a way to ensure that the powers of the *Comisiynydd y Gymraeg* cannot be used where "unreasonable or disproportionate".⁶⁴

3.45 The NIHRC recommends that section 780 is amended to include safeguards to ensure that the Irish Language Commissioner's investigation function cannot be exercised unreasonably.

3.46 While section 780 includes a power to investigate complaints, the Commissioner does not have the power to undertake own motion investigations. In contrast, in Wales, the *Comisiynydd y Gymraeg* has the power to conduct own motion inquiries⁶⁵ and investigations.⁶⁶ Likewise, in Ireland, the *An Coimisinéir Teanga* may conduct own motion investigations⁶⁷ and indeed has the power to "take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act".⁶⁸

3.47 The NIHRC recommends that section 780 is amended to provide the Irish Language Commissioner with the power to initiate 'own motion' investigations.

3.48 The Irish Language Commissioner does not have the power within the Bill to compel evidence in exercising its investigatory function.

⁶⁴ Sections 42, 43, 44,45, 55, 56, 57, 58, 60, 63, 95, Welsh Language (Wales) Measures 2011.

⁶⁵ Section 7(1), Welsh Language (Wales) Measures 2011.

⁶⁶ Section 61 and 62, Welsh Language (Wales) Measures 2011.

⁶⁷ Section 23, Official Languages Act 2003.

⁶⁸ Section 21(b), Official Languages Act 2003.

3.49 The NIHRC recommends that section 780 is amended to include provision for the Irish Language Commissioner to compel evidence in exercising its investigatory powers.

4.0 Clause 3 – Ulster Scots and Ulster British Tradition

Ulster Scots as a national minority

- 4.1 In New Decade New Approach, the UK Government states that it will recognise Ulster Scots as a national minority under the Framework Convention for the Protection of National Minorities.⁶⁹ This commitment is not found in the Bill, however, the NIHRC welcomes the adjoining Written Ministerial Statement from the Secretary of State for NI which confirms its official recognition as of 25 May 2022.⁷⁰
- 4.2 ‘National minority’ is not a legally defined term within the UK (nor is it defined within the Framework Convention for the Protection of National Minorities).⁷¹ For the purpose of reporting under the Framework Convention, the UK’s interpretation is based on the definition of ‘racial group’ in the Race Relations Act 1976. Hence, in its first State Report on the Framework Convention, the UK referred to “our ethnic minority communities (or visible minorities) and the Scots, Irish and Welsh”.⁷² Gypsies and Travellers are also included.⁷³ In April 2014, the UK agreed to bring Cornish within the scope of the Framework Convention.⁷⁴

⁶⁹ NI Office, ‘New Decade New Approach, Annex A’ (NIO, 2020), at para 24.

⁷⁰ UK Parliament, ‘Written Ministerial Statement UIN HCWVS56 – Secretary of State for NI - Recognition of Ulster Scots as a national minority and funding for An Ciste Infheistíochta Gaeilge, the Irish Language Investment Fund’ 25 May 2022.

⁷¹ The Explanatory report to the Framework Convention for the Protection of National Minorities states “it should also be pointed out that the framework Convention contains no definition of the notion of ‘national minority’. It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States”. See Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory Report’ (CoE, 1995), at para 12.

⁷² The report notes that the Scots, Irish and Welsh are defined as a racial group by virtue of their national origins. See ACFC/SR(1999)013, ‘Report submitted by the United Kingdom on the Framework Convention for the Protection of National Minorities’, 26 July 1999, at para 3.

⁷³ ACFC/SR(1999)013, ‘Report submitted by the United Kingdom on the Framework Convention for the Protection of National Minorities’, 26 July 1999, at para 3.

⁷⁴ ACFC/SR/IV(2015)004 rev, ‘Fourth Report Submitted by the United Kingdom on the Framework Convention for the Protection of National Minorities’, 26 March 2015, at para 1.

- 4.3 Previously, Ulster Scots was only recognised as a linguistic minority by the UK under the Framework Convention for the Protection of National Minorities.⁷⁵ As such, the broad provisions of the Framework Convention applied including a duty on States Parties to “encourage a spirit of tolerance and intercultural dialogue”.⁷⁶ The NIHRC highlights that recognition as a national minority means more specific duties now apply, including measures such as facilitating access to the media⁷⁷ and ensuring equal opportunities.⁷⁸
- 4.4 Regarding recognition as a national minority, the Advisory Committee on the Framework Convention for the Protection of National Minorities recommends that the principle of free self-identification is of “paramount importance”.⁷⁹ Article 3(1) of the Framework Convention guarantees that every person belonging to a national minority “shall have the right freely to choose to be treated or not to be treated as such”.
- 4.5 Further, Article 3(1) of the Framework Convention confirms that “no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice”. The Framework Convention emphasises that “affiliation with a minority group is a matter of personal choice”.⁸⁰ The “principle of self-identification also guarantees the possibility of multiple affiliation”, which can arise due to mixed marriages or due to other situations.⁸¹
- 4.6 **The NIHRC notes the UK Government’s official recognition of Ulster Scots as a national minority and recommends that section 78R makes reference to the designation of Ulster Scots as a national minority within the UK.**
- 4.7 **The NIHRC recommends that section 78R ensures that designation as a member of the Ulster Scots community is premised on the principle of self-identification.**

⁷⁵ ACFC/INF/OP/I(2002)006, ‘Advisory Committee on the Framework Convention for the Protection of National Minorities Opinion on the United Kingdom’ (CoE, 2001), at para 14; ACFC/OP/IV(2016)005, ‘Advisory Committee on the Framework Convention on National Minorities Fourth Opinion on the United Kingdom’, 27 February 2017, at para 103.

⁷⁶ Article 6, Framework Convention on National Minorities 1998.

⁷⁷ Article 9, Framework Convention on National Minorities 1998.

⁷⁸ ACFC/44DOC(2012)001 rev, ‘Advisory Committee on the Framework Convention for the Protection of National Minorities Thematic Commentary No 3’, 5 July 2012, at para 2.

⁷⁹ Ibid, at para 16.

⁸⁰ Council of Europe, ‘Framework Convention for the Protection of National Minorities and Explanatory Report’ (CoE, 1995), at para 35.

⁸¹ ACFC/44DOC(2012)001 rev, ‘Advisory Committee on the Framework Convention for the Protection of National Minorities Thematic Commentary No 3’, 5 July 2012, at para 18.

Ulster British Tradition

- 4.8 Following the designation of Ulster Scots as a national minority, the NIHRC would reiterate its concerns over the additional reference to 'Ulster British' in the Bill, which is not a term, or a linguistic/national minority group presently recognised by human rights treaty bodies. It appears that Ulster Scots culture is at risk of being conflated with a distinct political identity. This may have unintended consequences.
- 4.9 While the use of the Ulster Scots language may be commonly associated with the Unionist/Protestant community, the Boord o Ulstér-Scotch (Ulster Scots Agency) emphasises that the "Ulster-Scots language is spoken in different areas of Ireland by both Protestants and Roman Catholics alike".⁸² The Ulster-Scots Language Society highlights that its constitution stipulates that it is "non-political and non-sectarian".⁸³
- 4.10 The NIHRC notes that it should not be assumed that all Ulster Scots speakers may associate with Ulster Britishness. Indeed, the Advisory Committee on the Framework Convention for the Protection of National Minorities cautions that "while language is generally perceived as an essential marker of identity, language competence or lack thereof, as well as the mere use of a language, must not automatically be linked to affiliation with a particular group".⁸⁴
- 4.11 Binding the established Ulster Scots community recognised in international law with a concept of Ulster British in a single mandate could undermine developments in respect of Ulster Scots language and culture.
- 4.12 In this context, the NIHRC highlights the role of the Office of Identity and Cultural Expression which aims to promote cultural pluralism and respect for diversity, promote social cohesion and reconciliation and to celebrate and support all aspects of cultural and linguistic heritage.

⁸² The Ulster-Scots language is spoken principally in the "Ards peninsula, north Down, Co Antrim, and north Co Londonderry and in east Donegal (the Laggan)". See Boord o Ulstér-Scotch (Ulster Scots Agency), 'An Introduction to the Ulster Scots language'. Available at: <https://www.ulsterscotsagency.com/what-is-ulster-scots/language/>

⁸³ Ulster-Scots Language Society, 'Home Page'. Available at: <http://www.ulsterscotslanguage.com/>

⁸⁴ ACFC/44DOC(2012)001 rev, 'Advisory Committee on the Framework Convention for the Protection of National Minorities Thematic Commentary No 3', 5 July 2012, at para 16.

- 4.13 **The NIHRC advises that the Office of Identity and Cultural Expression may be the more appropriate body to develop work associated with the concept of Ulster British. It recommends that this aspect of the Ulster Scots/Ulster British Commissioner’s remit is given further consideration in consultation with representatives of the Ulster Scots community and that clause 3 of the Bill is amended accordingly.**
- 4.14 Section 78R states the principal aim of the Commissioner is to “enhance and develop the language, arts and literature associated with the Ulster Scots and Ulster British tradition in Northern Ireland”.
- 4.15 International human rights standards use the terms ‘promote and protect’. For example, the Vienna Declaration 1993 states that “the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles”.⁸⁵ Human rights bodies have consistently reaffirmed the ‘promote and protect’ principles.⁸⁶
- 4.16 **The NIHRC recommends that the primary role of the Ulster Scots/Ulster British Commissioner in section 78R is amended to cover both ‘enhance and develop’ and ‘promote and protect’. This language would ensure the Commissioner’s remit is consistent with the human rights framework and those standards referenced within the Bill.**

Section 78R(2)(a) – Awareness-raising function

- 4.17 Section 78R(2)(a) requires the Commissioner to promote awareness of Ulster Scots services provided by public authorities in NI. Section 78R(6) defines ‘Ulster Scots services’ as meaning “services which are provided in Ulster Scots or likely to be of particular interest to those with an interest in the relevant language, arts and literature”.
- 4.18 The awareness-raising function could go further than currently drafted. In addition to highlighting existing services, which are

⁸⁵ A/CONF.157/23, ‘Vienna Declaration and Programme of Action’, 12 July 1993, at para 4.

⁸⁶ See UN Human Rights Committee, ‘Civil and Political Rights: Fact sheet No 15 (Rev.1)’ (undated); GA Res 53/144, ‘UN General Assembly Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms’, 9 December 1998, Article 2; A/60/L.1, ‘UN General Assembly World Summit Outcome 2005’, 16 September 2005, at para 12.

directed at members of the Ulster Scots community, the Commissioner could have an active role in promoting its Ulster Scots within wider society.

- 4.19 Taking language as an example, the European Charter for Regional or Minority Languages encourages States to celebrate regional or minority languages as “expressions of cultural wealth”.⁸⁷ The UN Human Rights Committee similarly highlights that the “fabric of society as a whole” is enriched by minority languages.⁸⁸
- 4.20 **The NIHRC recommends that, within section 78R(2)(a), the Ulster Scots/Ulster British Commissioner’s awareness-raising function should be enhanced to include promoting Ulster Scots within wider society. This function should be developed in consultation with Boord o Ulstér-Scotch (Ulster Scots Agency).**

Section 78R(2)(b) – Advisory function

- 4.21 Section 78(2)(b) requires the Commissioner to provide advice and guidance to public authorities on enhancing and developing the relevant languages, arts and literature.
- 4.22 There is no corresponding duty on public authorities to have any regard to the guidance produced by the Commissioner. In contrast, under section 78N, public authorities are required in statute to have “due regard” to the best practice standards provided by the Irish Language Commissioner.
- 4.23 This approach echoes the Official Languages Act 2003, which in section 13(2)(a), requires that public authorities “shall have regard” to any Irish language guidelines issued. It also echoes the approach of the Welsh Language Act 1993, which in sections 5(3) and 21 requires that public authorities and a person acting on behalf of the Crown “shall have regard to any guidelines issued by the [Comisiynydd y Gymraeg Welsh Language Commissioner]” in preparing schemes. Under section 4(3) of the Welsh Language (Wales) Measure 2011, recommendations, representations or advice provided

⁸⁷ Article 7(1)(a), European Charter on Regional or Minority Languages 1992.

⁸⁸ CCPR/C/21/Rev.1/Add.5, ‘UN Human Rights Committee General Comment No 23: The Rights of Minorities’, 8 April 1994, at para 9.

by the Commissioner in writing to Welsh Ministers must be given “due regard”.

4.24 Human rights standards emphasise that rights must be “practical and effective, as opposed to theoretical or illusory”.⁸⁹ Mechanisms designed to promote and protect human rights must be effective.⁹⁰ Therefore, for the Commissioner’s advisory function to be meaningful, public authorities must be required to have regard to that advice.

4.25 The NIHRC recommends that the effectiveness of the Ulster Scots/Ulster British Commissioner is enhanced by including within section 78(2)(b) a requirement that public authorities have regard to the Commissioner’s advice.

4.26 The Commissioner’s advice function in section 78R(2)(b) is not limited to language, but instead extends to advising on the enhancement and development of the arts and literature associated with the Ulster Scots and Ulster British tradition in Northern Ireland. It is noted, however, that the current Ulster-Scots Strategy acknowledges that the diversity of Ulster-Scots culture extends further and includes “literature, language, visual arts, history, built history, music and dance”.⁹¹ Through dialogue with the Boord o Ulstér-Scotch (Ulster Scots Agency) it was also highlighted that Ulster-Scots culture also incorporates religion and heritage.⁹²

4.27 As outlined above, the UN ICESCR Committee advises that culture is a “broad, inclusive concept encompassing all manifestations of human existence”.⁹³ This includes language, literature, music and song, religions, and sport and games.⁹⁴

4.28 The NIHRC welcomes the broad mandate of the Ulster Scots/Ulster British Commissioner within section 78R(2)(b), which includes art and literature as well as language. The

⁸⁹ This principle has been constantly reaffirmed since the case of *Airey v. Ireland*, App. No. 6289/73, 9 October 1979, paragraph 24. See Directorate General Human Rights and Rule of Law, ‘Guide to good practice in respect of domestic remedies’ (CoE, 2013), at 31.

⁹⁰ Article 2(2), ICCPR requires each State Party to “undertake the necessary steps... to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant”.

⁹¹ Department of Culture, Arts and Leisure, ‘Strategy to enhance and develop the Ulster Scots Language, Heritage and Culture 2015-2035’, (DCAL, 2015), at para 4.40.

⁹² Meeting between NI Human Rights Commission and Boord o Ulstér-Scotch (Ulster Scots Agency), 27 February 2020.

⁹³ E/C.12/GC/21, ‘UN Committee on Economic, Social and Cultural Rights General Comment No 21: Right of Everyone to Take Part in Cultural Life’, 21 December 2009, at para 11.

⁹⁴ *Ibid*, at para 13.

NIHRC recommends that other aspects of Ulster-Scots culture including heritage, religion, history, music, dance are also included within the Commissioner's mandate under this section.

4.29 The NIHRC advises that the Boord o Ulstér-Scotch (Ulster Scots Agency) is consulted on how the mandate of the Ulster Scots/Ulster British Commissioner within section 78R(2)(b) is amended, to ensure that the Commissioner's remit is comprehensive.

Section 78R(2)(b)(ii) – Advisory function on human rights treaties

4.30 Under section 78R(2)(b)(ii), the Commissioner is required to provide advice and guidance to public authorities on the effect and implementation of:

- a) the Council of Europe's Charter for Regional or Minority Languages dated 5th November 1992;
- b) the Council of Europe's Framework Convention for the Protection of National Minorities dated 1st February 1995; and
- c) the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

4.31 The NIHRC welcomes the reference to the three human rights treaties, whereby the Commissioner must provide advice and guidance to public authorities on their effect and implementation. Omitted from this list, however, are the international covenants UN ICCPR and UN ICESCR. These treaties are central in the protection of culture at Articles 27 and 15 respectively and are included in Appendix 1. There is also no requirement on the Commissioner to promote and protect human rights in their own work.

4.32 In accordance with paragraph 2.32 above, the NIHRC recommends that the list of specified international instruments in section 78R(3) is expanded to include relevant Articles of the UN ICCPR and the UN ICESCR, the detail of which is provided in Appendix 1.

4.33 The NIHRC recommends that section 78R(2) is amended to explicitly require the Ulster Scots/Ulster British Commissioner

to promote and protect human rights standards in their own work.

- 4.34 Both the Commissioner, under section 78R(2)(b), and the NIHRC, under section 69 of the Northern Ireland Act 1998, have statutory advice functions with respect to human rights treaties. The Commission is the established National Human Rights Institution within Northern Ireland, operating in full accordance with the UN Paris Principles. As such, the NIHRC has a recognised mandate to advise on human rights compliance and engage with the relevant international treaty bodies and the UN Human Rights Council.
- 4.35 **The NIHRC recommends that the Ulster Scots/Ulster British Commissioner is required to consult with and take account of advice provided by the NIHRC in respect of section 78R(2)(b).**

Section 78R(5) – Directions given by the First Minister and deputy First Minister

- 4.36 Under section 78R(5), First Minister and deputy First Minister acting jointly may direct the Ulster Scots Commissioner in relation to the exercise of the Commissioner’s functions. This provision subjects the Commissioner to more government control than the respective language commissioners in Wales and Ireland.
- 4.37 Section 16 of the Welsh Language (Wales) Measure 2011 states that Welsh Ministers “may give directions” to the *Comisiynydd y Gymraeg* except in the context of compliance notices, enforcement of standards and freedom to use Welsh. It is clear that the *Comisiynydd y Gymraeg* “must comply” with these directions. However, it is balanced by section 4(1), which states that “the Commissioner may do anything that he or she thinks appropriate”, and section 4(3) which requires Welsh Ministers to have “due regard” for written correspondence from the Commissioner. Section 20(2) of the Official Languages Act 2003 expressly states that the *An Coimisinéir Te anga* (Irish language) Commissioner “shall be independent in the performance of his or her functions”. There is no express requirement on the *An Coimisinéir Te anga* to comply with Ministerial directions.
- 4.38 As the legislation is currently drafted, it is unclear what checks and balances are in place to ensure decisions by government bodies concerning the Ulster Scots Commissioner are not unduly interfering

with the office's independence. Independence is of particular importance with regards to the Commissioner's investigatory functions. To be an effective investigation, the persons responsible for it must be independent.⁹⁵ Amending the Bill to ensure that any directions issued by Ministers are reasonable, have a legitimate aim and are proportionate would provide an important safeguard.

4.39 The NIHRC recommends that section 78R(5) is amended to ensure the independence of the Ulster Scots/Ulster British Commissioner. This can be done by either or both of the following options:

- 3. expressly stating that the Commissioner shall be independent, as in the Official Languages Act 2003 and/or;**
- 4. imposing conditions on Ministerial directions to ensure that any direction to the Commissioner takes into account the Commissioner's own advice or to specify that Ministerial directions are reasonable, have a legitimate aim and are proportionate.**

Section 78S – Investigating complaints

4.40 Section 78S provides that the Commissioner must investigate a complaint made by a person directly affected by the failure of a public authority to have due regard to published facilitation guidance. Section 78S(6) defines "published facilitation guidance" as guidance by the Commissioner "facilitating the use of Ulster Scots in the provision of services to the public or a section of the public in Northern Ireland".

4.41 The NIHRC welcomes the duty within section 78S that enables the Commissioner to receive and investigate complaints as a complement to existing legal remedies. However, the NIHRC has a number of reservations about whether the Commissioner has the necessary powers to ensure these duties are properly fulfilled.

4.42 Article 2(3)(a) of the UN ICCPR requires that States ensure that persons whose rights are violated have access to an effective remedy. The UN ICCPR is not prescriptive about the form the remedy should

⁹⁵ Directorate General Human Rights and Rule of Law, 'Guide to good practice in respect of domestic remedies' (CoE, 2013), at 33.

take. However, the UN Human Rights Committee has stated that allegations need to be investigated “promptly, thoroughly and effectively” by independent and impartial bodies. Further, remedies must be appropriately adapted so as to take account of the special vulnerability of certain categories of person. The Organisation for Security and Cooperation in Europe’s Oslo Recommendations state that availability of administrative remedies should not replace judicial recourses.

- 4.43 Section 78S(1) requires the Commissioner to investigate complaints about the failures of public authorities to have due regard to their advice. The Commissioner may also provide this report to the Northern Ireland Assembly. Yet, there is no requirement within the Bill for the public authorities being investigated to amend their policies and practices in line with the findings and recommendations of an investigation conducted by the Commissioner.
- 4.44 Regarding investigations, section 19 of the Welsh Language Act 1993 requires that the *Comisiynydd y Gymraeg* provides a report of an investigation it undertakes to the public authority concerned, the Secretary of State and, if relevant, the complainant. The report may be published and can include recommendations for the public authority concerned. A similar approach is provided for within section 26 of the Official Languages Act 2003.
- 4.45 If the public authority does not action all of the recommendations, section 20 of the Welsh Language Act enables the *Comisiynydd y Gymraeg* to refer the matter to the Secretary of State, who can then make enforceable directions to the public authority concerned. In Ireland, sections 26(5) and 26(6) of the Official Languages Act 2003 provide that, in the situation where a public authority has not implemented “any recommendations” contained in the investigation report, the *An Coimisinéir Te anga* can make a report highlighting this issue and public authorities’ responses to the Houses of the Oireachtas.
- 4.46 Furthermore, under sections 27 and 28 of the Official Languages Act 2003, an individual has the ability to apply for compensation or appeal to the High Court on the basis of the *An Coimisinéir Te anga’s* findings. In Wales, under section 8 of the Welsh Language (Wales) Measure 2011, the *Comisiynydd y Gymraeg* can institute or intervene

in a legal case linked to its functions. No similar provisions are made in this present Bill.

- 4.47 **The NIHRC recommends that section 78S is strengthened to ensure that public authorities take seriously the findings and recommendations of an investigation conducted by the Ulster Scots/Ulster British Commissioner. This may be achieved by ensuring that public authorities' failure to co-operate with investigations could lead to specific penalties.**
- 4.48 **The NIHRC recommends that section 78S is amended to include specific remedial provisions, such as making statutory provision for compensation or providing the Ulster Scots/Ulster British Commissioner with powers to support an individual to take legal action or intervene in cases.**
- 4.49 Concerns have been raised with the NIHRC that there are no safeguards contained within the Bill to ensure that the investigation function of the Commissioner and the Commissioner is not used unreasonably.
- 4.50 The Welsh legislation is crafted in a way to ensure that the powers of the *Comisiynydd y Gymraeg* cannot be used where "unreasonable or disproportionate".⁹⁶
- 4.51 **The NIHRC recommends that section 78S is amended to include safeguards to ensure that the Ulster Scots/Ulster British Commissioner's investigation function cannot be exercised unreasonably.**
- 4.52 While section 78S includes a power to investigate complaints, the Commissioner does not have the power to undertake own motion investigations.
- 4.53 Section 7(1) of the Welsh Language (Wales) Measures 2011, provides that the *Comisiynydd y Gymraeg* "may conduct an inquiry into any matter relating to any of the Commissioner's functions". Section 61 of the 2011 Measures also permits the Commissioner in Wales to conduct investigations into non-compliance with standards. Section

⁹⁶ Sections 42, 43, 44,45, 55, 56, 57, 58, 60, 63, 95, Welsh Language (Wales) Measures 2011.

21(b) of the Official Languages Act 2003 enables the Commissioner to “take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act” and section 23 makes it clear that this includes conducting investigations.

4.54 **The NIHRC recommends that section 78S is amended to provide the Ulster Scots/Ulster British Commissioner with the power to initiate ‘own motion’ investigations.**

4.55 The Commissioner does not have the power within the Bill to compel evidence in exercising its investigatory function.

4.56 **The NIHRC recommends that section 78S is amended to include provision for the Ulster Scots/Ulster British Commissioner to compel evidence in exercising its investigatory powers.**

5.0 Clause 4 – Use of languages other than English in proceedings

5.1 Clause 4 of the Identity and Language (Northern Ireland) Bill repeals the Administration of Justice (Language) Act (Ireland) 1737, enabling languages other than English to be used in the Courts. New Decade, New Approach states that:

the legislation in respect of Irish language will... make any necessary statutory provision for births, marriages and deaths to be registrable through Irish, and for wills to be validly made in Irish, as an option and matter for individual choice. Irish and other languages will be facilitated when deemed necessary by the courts.

5.2 The NIHRC notes that the Bill does not place any obligations on the NI Executive to accommodate Irish speakers engaging with the judicial system. In March 2022, the Minister of Finance enacted regulations enabling new registrations of births, marriages, civil partnerships and deaths to be produced with the choice of certificate headings in English, Irish, or Bi-lingual English and Irish, with all content remaining in English.⁹⁷ While this is a significant and positive development, further steps will need to be taken in order to deliver

⁹⁷ Department of Finance, ‘Births, marriages, civil partnership and deaths can now be registered in Irish – Murphy’ 15 March 2022.

fully on the commitment in New Decade, New Approach and enable the full registration process to be conducted in Irish.

- 5.3 **The NIHRC welcomes clause 4 of the Bill which repeals Administration of Justice (Language) Act (Ireland) 1737 and facilitates the use of languages other than English in court proceedings.**

6.0 Clause 5 – Use of Ulster Scots in Education

Article 89A – Ulster Scots in Education

- 6.1 Clause 5 of the Bill amends Article 89 of the Education (Northern Ireland) Order 1998 to place a duty on the Northern Ireland Department of Education “to encourage and facilitate the use and understanding of Ulster Scots in the education system”.
- 6.2 The right to take part in cultural life is intrinsically linked to the right to education.⁹⁸ Accordingly, the NIHRC welcomes this new statutory duty.
- 6.3 However, it is unclear whether the duty applies to the Ulster Scots language alone, or whether it applies more broadly to the full mandate of the Commissioner. While the acquisition of language is key for national minorities to maintain their identity,⁹⁹ it is important that other aspects of cultural identity are not neglected.
- 6.4 **The NIHRC recommends that Article 89A clarifies the scope of the duty on the Department of Education and that the duty is extended beyond language and reflects the full mandate of the Ulster Scots/Ulster British Commissioner as set out in section 78R, subject to further recommendations above.**
- 6.5 In Northern Ireland, responsibility for some aspects of education rest with the Department for Economy, for example, Higher and Further Education. Article 12 of the Framework Convention for the Protection of National Minorities and Part III of the European Charter for

⁹⁸ E/C.12/GC/21, ‘UN Committee on Economic, Social and Cultural Rights General Comment No 21: Right of Everyone to Take Part in Cultural Life’, 21 December 2009, at para 2.

⁹⁹ See Articles 7(1)(f)-7(1)(h), European Charter on Regional or Minority Rights 1992; Organisation for Security and Cooperation in Europe, ‘The Hague Recommendations Regarding the Education Rights of National Minorities’, 1 October 1996, at Recommendation 1.

Regional or Minority Languages require that education should be interpreted broadly.

- 6.6 **The NIHRC recommends that the Department for Economy is subject to a similar duty, as set out in Article 89A, given its remit in the provision of Further and Higher Education.**

Appendix 1 – Right to Identity and Right to Cultural Expression

UN International Covenant on Civil and Political Rights

Article 1, UN ICCPR provides:

all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 19, UN ICCPR provides:

everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

See UN Human Rights Committee 'General Comment No. 10: Freedom of Opinion'¹⁰⁰ and 'General Comment No 34: Freedoms of Opinion and Expression'.¹⁰¹

Article 27, UN ICCPR provides:

in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

See UN Human Rights Committee 'General Comment No 23: the Rights of Minorities'.¹⁰²

¹⁰⁰ 'UN Human Rights Committee General Comment No 10: Freedom of Opinion', 29 June 1983, at para 4.

¹⁰¹ CCPR/C/GC/34, 'UN Human Rights Committee General comment No 34: Freedoms of Opinion and Expression', 12 September 2011, at para 37.

¹⁰² CCPR/C/21/Rev.1/Add.5, 'UN Human Rights Committee General Comment No 23: The Rights of Minorities', 8 April 1994.

UN International Covenant on Economic, Social and Cultural Rights

Article 15, UN ICESCR provides:

- 1) The States Parties to the present Covenant recognise the right of everyone:
 - a) To take part in cultural life;
 - b) To enjoy the benefits of scientific progress and its applications;
 - c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- 2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

- 3) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

- 4) The States Parties to the present Covenant recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

See Committee on Economic, Social and Cultural Rights, 'General Comment No 21: Right of Everyone to Take Part in Cultural Life'.¹⁰³

¹⁰³ E/C.12/GC/21, 'UN ICESCR Committee General Comment No 21: Right of Everyone to Take Part in Cultural Life', 21 December 2009.

Appendix 2 – Irish Language Rights and Duties

Irish language rights and duties derived from human rights standards

Rights of individuals (Users of the Irish language)	Duties of the duty bearer (Northern Ireland Executive)
Civil matters	
<ul style="list-style-type: none"> • The right to communicate orally and in writing with administrative authorities and receive all documents in Irish. NB: The term ‘administrative authorities’ includes local and regional authorities and public services.¹⁰⁴ • The right to acquire civil documents and certificates in Irish.¹⁰⁵ • The right to use or adopt family names in the Irish language.¹⁰⁶ 	<ul style="list-style-type: none"> • Ensure that all public services are available through the medium of Irish. This includes services delivered by third parties on behalf of public bodies.¹⁰⁷ • Ensure that all administrative authorities can communicate in Irish. This includes the provision of the necessary translation and interpretation facilities.¹⁰⁸ • Ensure that regional / local /public institutions keep civil registers in Irish.¹⁰⁹ • Conduct appropriate recruitment and /or training policies and programmes to ensure public services can be delivered in Irish.¹¹⁰ • Devise special measures to increase effective participation of Irish speakers in public life and in the civil service.¹¹¹

¹⁰⁴ Article 10(1)(a), European Charter on Regional or Minority Rights 1992.

¹⁰⁵ Organisation for Security and Cooperation in Europe, ‘The Oslo Recommendations Regarding the Linguistic Rights of National Minorities’ (OSCE, 1998), at Recommendation 13.

¹⁰⁶ Article 10(5), European Charter on Regional or Minority Rights 1992.

¹⁰⁷ Article 10(1)(a), European Charter on Regional or Minority Rights 1992.

¹⁰⁸ Article 10(4), European Charter on Regional or Minority Rights.

¹⁰⁹ Organisation for Security and Cooperation in Europe, ‘The Oslo Recommendations Regarding the Linguistic Rights of National Minorities’ (OSCE, 1998), at Recommendation 13.

¹¹⁰ Article 10(4), European Charter on Regional or Minority Rights 1992.

¹¹¹ Article 10(4), European Charter on Regional or Minority Rights 1992.

	<ul style="list-style-type: none"> • Ensure that traditional local names, street names and other topographical are available in Irish.¹¹² • Ensure that all authorities, organisations and persons concerned are informed of the language rights.¹¹³
Political	
<ul style="list-style-type: none"> • The right for regional politicians (i.e. MLAs) and local politicians (i.e. Councillors) to use and debate in Irish.¹¹⁴ 	<ul style="list-style-type: none"> • Ensure the provision of simultaneous translation and interpretation in the NI Assembly and Council chambers.¹¹⁵
Education	
<ul style="list-style-type: none"> • Access to pre-school, primary, secondary, technical/vocational, higher/university education, adult /continuing education in Irish.¹¹⁷ 	<ul style="list-style-type: none"> • Provide basic and further training of Irish language teachers to ensure that the Irish education rights can be met.¹¹⁶
Culture	
<ul style="list-style-type: none"> • The right to access cultural activities such as libraries, video libraries, cultural centres, museums, actives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries and new technologies in Irish language.¹²⁰ 	<ul style="list-style-type: none"> • Encourage cultural activities in Irish.¹¹⁸ • Ensure that bodies responsible for organising or supporting cultural activities have access to staff who have full command of Irish language and include direct participation of representatives of the users of the Irish language.¹¹⁹

¹¹²Article 10(2), European Charter on Regional or Minority Rights 1992.

¹¹³ Article 6, European Charter on Regional or Minority Rights 1992.

¹¹⁴ Article 10(2), European Charter on Regional or Minority Rights 1992.

¹¹⁵ Article 10(4), European Charter on Regional or Minority Rights 1992.

¹¹⁶ Article 8(1), European Charter on Regional or Minority Rights 1992.

¹¹⁷ Article 8(1)(h), European Charter on Regional or Minority Rights 1992.

¹¹⁸ Article 12(1), European Charter on Regional or Minority Rights 1992.

¹¹⁹ Article 12(1), European Charter on Regional or Minority Rights 1992.

¹²⁰ Article 12(1)(e), European Charter on Regional or Minority Rights 1992.

<ul style="list-style-type: none"> • The right to Irish language education (above) includes the associated history and culture.¹²² 	<ul style="list-style-type: none"> • If necessary, create, promote and finance translation and terminological research services.¹²¹ • Measures that promote culture abroad should include the Irish language and associated culture.¹²³
Justice	
<ul style="list-style-type: none"> • Free access to interpreter throughout judicial processes.¹²⁴ • The right to challenge instances where linguistic rights are not met. Remedies should include judicial routes and access to an ombudsman / commission.¹²⁷ 	<ul style="list-style-type: none"> • Ensure that the use of interpreters and translations in judicial proceedings does not involve extra expense for the persons involved.¹²⁵ • Make available important national statutory texts¹²⁶ • Ensure the availability of a remedy for individuals to challenge instances where linguistic rights are not met.¹²⁸ • Consider the possibility of conducting all judicial proceedings in Irish where appropriate.¹²⁹
Economic and social activities	

¹²¹ The purpose of this is to maintain and develop appropriate administrative, commercial, economic, social, technical or legal terminology in the Irish language. See Article 12(1)(h) European Charter on Regional or Minority Rights 1992.

¹²² Article 8(1)(g), European Charter on Regional or Minority Rights 1992.

¹²³ Article 12(3) European Charter on Regional or Minority Rights 1992.

¹²⁴ Article 1(a),1(b) European Charter on Regional or Minority Rights 1992.

¹²⁵ Article 9(1)(d) European Charter on Regional or Minority Rights 1992.

¹²⁶ In 2014, the Committee of Experts concluded that in the absence of any information from the State Party, it presumes that only three statutory texts have been translated into Irish: The Education Order 1998 (Northern Ireland); The North South Co-operation Order 1999 (Northern Ireland); Chapter 47, The Northern Ireland Act 1998. See ECRML (2014) 1, 'Report of the Committee of Experts on the Charter and Recommendation of the Committee of Ministers of the Council of Europe on the Application of the Charter by the United Kingdom in the Fourth Monitoring Cycle', 15 January 2014, at para 225; ECRML (2004) 1, 'Report of the Committee of Experts of the Charter and Recommendation of the Committee of Ministers of the Council of Europe on the Application of the Charter by the United Kingdom', 24 March 2004, at para 332.

¹²⁷ Organisation for Security and Cooperation in Europe, 'The Oslo Recommendations Regarding the Linguistic Rights of National Minorities', (OSCE, 1998), at Recommendation 15.

¹²⁸ Organisation for Security and Cooperation in Europe, 'The Oslo Recommendations Regarding the Linguistic Rights of National Minorities', (OSCE, 1998), at Recommendation 15.

¹²⁹ Article 9(1)(a), (1)(b) European Charter on Regional or Minority Rights 1992.

	<ul style="list-style-type: none"> • Encourage /facilitate the use of Irish language in economic and social activities.¹³⁰ • Include provisions in financial and banking regulations to allow use of Irish in commercial activities including payment orders.¹³¹ • In the public sector, to organise activities to promote Irish.¹³² • To ensure that social care facilities such as hospitals, retirement homes and hostels can provide services and treatment in Irish.¹³³ • Ensure that safety instructions are available in Irish.¹³⁴ • Ensure that information concerning the rights of consumers is available in Irish.¹³⁵
Persons with disabilities	
<ul style="list-style-type: none"> • The right to education delivered in the most appropriate languages and modes (including sign language).¹³⁶ • The right to specific cultural and linguistic identity.¹³⁷ 	<ul style="list-style-type: none"> • Ensure persons with disabilities can enjoy their specific cultural and linguistic identity and right to education through the most appropriate languages and modes.¹³⁸

¹³⁰ Article 13, European Charter on Regional or Minority Rights 1992.

¹³¹ Article 13(2)(a) European Charter on Regional or Minority Rights 1992.

¹³² Article 13(2)(b) European Charter on Regional or Minority Rights 1992.

¹³³ Article 13(2)(c) European Charter on Regional or Minority Rights 1992.

¹³⁴ Article 13(2)(d) European Charter on Regional or Minority Rights 1992.

¹³⁵ Article 13(2)(e) European Charter on Regional or Minority Rights 1992

¹³⁶ Article 21 (b)(e), UN Convention on the Rights of Persons with Disabilities 2006.

¹³⁷ Article 30, UN Convention on the Rights of Persons with Disabilities 2006.

¹³⁸ Article 21 (b)(e), UN Convention on the Rights of Persons with Disabilities 2006.

Media	
<ul style="list-style-type: none"> • The right to enjoy different forms of media including broadcast and print media in Irish. • Children have a specific right to enjoy media that has regards to their linguistic needs.¹⁴⁰ 	<ul style="list-style-type: none"> • Mass media should have regard for the linguistic needs of children who are Irish language users.¹³⁹ • Encourage/facilitate and apply existing measures for financial assistance for the production and distribution of Irish audio and visual works and encourage, facilitate or maintain at least one Irish language newspaper.¹⁴¹ • Support for the training of journalists and other staff for media using Irish.¹⁴²
UK specific obligations	
	<p>Education</p> <ul style="list-style-type: none"> • Encourage / provision of Irish language in all the appropriate stages of education outside in other territories (i.e. outside of Northern Ireland).¹⁴³ <p>Media</p> <ul style="list-style-type: none"> • Make adequate provision for the broadcasting of Irish programmes including radio and television.¹⁴⁴ • Ensure freedom of direct reception of radio and television broadcasts in Irish language from the Ireland and other neighbouring countries.¹⁴⁵

¹³⁹ Article 17, UN Convention on the Rights of the Child 1989.

¹⁴⁰ Article 17, UN Convention on the Rights of the Child 1989.

¹⁴¹ Article 11(1) European Charter on Regional or Minority Rights 1992.

¹⁴² Article 11(1)(g) European Charter on Regional or Minority Rights 1992.

¹⁴³ Article 8(2) European Charter on Regional or Minority Rights 1992.

¹⁴⁴ Article 11(1)(a)(iii), (1)(b)(ii) European Charter on Regional or Minority Rights 1992.

¹⁴⁵ Article 2, European Charter on Regional or Minority Rights 1992.

	<p>Trans frontier exchanges (UK specific)</p> <ul style="list-style-type: none">• Apply bilateral and multilateral agreements with the Ireland to foster contacts between Irish language users in the fields of culture, education, information, vocational training and permanent education.¹⁴⁶• Facilitate /promote cross border co-operation to benefit the Irish language¹⁴⁷
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¹⁴⁶Article 14(a)(b) European Charter on Regional or Minority Rights 1992.

¹⁴⁷Article 14(a)(b) European Charter on Regional or Minority Rights 1992.

Appendix 3 – European Charter for Regional or Minority Languages

Table showing the measures accepted by the UK Government found in European Charter for Regional and Minority Languages Part III.

All of the identified provisions extend to Northern Ireland. The table below identifies which provisions the devolved administration in Northern Ireland has responsibility for implementing and which provisions the UK Government has responsibility for implementing.¹⁴⁸

	Specific commitments to the Irish language	NI	UK
Article 8: Education			
Para 1a(iii)	Pre-school education in Irish should be available where requested by a sufficient number of families.	X	
Para 1b(iv)	Primary education in Irish should be available where requested by a sufficient number of families.	X	
Para 1c(iv)	Secondary education in Irish should be available where requested by a sufficient number of families.	X	
Para 1d(iv)	Technical and vocational education in Irish should be available where requested by a sufficient number of families.	X	
Para 1e(iii)	Ensure, as a minimum, the study of Irish as university or higher education subjects.	X	
Para 1f(ii)	Offer the study of Irish in adult and continuing education.	X	
Para 1g	Ensure the teaching of the history and culture reflected by the Irish language.	X	

¹⁴⁸ CoE, 'Reservations and Declarations for Treaty No 148 – European Charter for Regional or Minority Languages', at United Kingdom. Available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/declarations?p_auth=adpW1NPI

	Specific commitments to the Irish language	NI	UK
Para 1h	Provide the basic and further training of the teachers required to implement the Irish language measures.	X	
Para 2	With regard to education and in respect of territories other than those in which the Irish language are traditionally used, the Parties undertake, if the number of users of the Irish language justifies it, to allow, encourage or provide teaching in or of the Irish language at all the appropriate stages of education.		X
Article 9: Judicial authorities			
Para 3	Make the most important national statutory texts available in Irish.	X	
Article 10: Administrative authorities and public services			
Para 1a(iv)	Ensure that users of the Irish language may submit oral or written applications to administrative authorities.	X	
Para 1c	Allow the administrative authorities to draft documents in Irish.	X	
Para 2b	Allow the possibility for users of the Irish language to submit oral or written applications to local and regional authorities.	X	
Para 2e	The use of Irish in debates in regional assemblies (i.e. NI Assembly), without excluding the use of English.	X	
Para 2f	The use of Irish in debates in local assemblies (i.e. Councils), without excluding the use of English.	X	
Para 2g	The use or adoption, if necessary in conjunction with the name in English, of traditional and correct forms of place-names in the Irish language.	X	
Para 3c	With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties	X	

	Specific commitments to the Irish language	NI	UK
	undertake to allow users of the Irish languages to submit a request in Irish.		
Para 4a	In order to facilitate the above measures, provide translation or interpretation.	X	
Para 5	Allow the use or adoption of family names in the Irish language, at the request of those concerned.	X	
Article 11: Media			
Para 1d	Encourage and/facilitate the production and distribution of audio and audio visual works in Irish.	X	
Para 1e(i)	Encourage and/or facilitate the creation and/or maintenance of at least one newspaper in Irish.	X	
Para 1f(ii)	Apply existing measures for financial assistance to audio visual productions in Irish.	X	
Para 1g	Support the training of journalists and other staff for media using Irish.	X	
Para 1a(iii)	To the extent that radio and television carry out a public service mission, make adequate provision so that broadcasters offer programmes in Irish.		X
Para 1b(ii)	Encourage and/or facilitate the broadcasting of radio programmes in Irish on a regular basis.		X
Para 2	Guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries (i.e. Ireland) in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. Ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a		X

	Specific commitments to the Irish language	NI	UK
	language used in identical or similar form to a regional or minority language. This is a qualified right and can be restricted if lawful, necessary and proportionate.		
Article 12: Cultural activities and facilities			
Para 1a	With regard to cultural activities and facilities – especially libraries, video libraries, cultural centres, museums, actives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including <i>inter alia</i> the use of new technologies [...] encourage types of expression and initiative specific to the Irish language and foster the different means of access to works produced in Irish.	X	
Para 1d	Ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of Irish and culture in the undertakings which they initiate or for which they provide backing.	X	
Para 1e	Ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the Irish language concerned, as well as of the language(s) of the rest of the population.	X	
Para 1f	Encourage direct participation by representatives of the users of the Irish language in providing facilities and planning cultural activities.	X	
Para 1h	If necessary, create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate	X	

	Specific commitments to the Irish language	NI	UK
	administrative, commercial, economic, social, technical or legal terminology in the Irish language		
Para 2	In respect of territories other than those in which the Irish language is traditionally used, undertake, if the number of users of the Irish language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.	X	
Para 3	Undertake to make appropriate provision, in pursuing their cultural policy abroad, for the Irish language and the culture it reflects.	X	
Article 13: Economic and social life			
Para 1d	With regard to economic and social activities, undertake, within the whole country to facilitate/and or encourage the use of the Irish language by means other than specified in the above [to eliminate from legislation any provision that prohibits/limits the use of Irish; to prohibit the insertion in internal regulations of companies of any clauses that exclude or restrict the use of Irish; to oppose practices designed to discourage the use of Irish in connection with economic or social activities].	X	
Article 14: Transfrontier exchanges			
Para a	To apply existing bilateral and multilateral agreements which bind them with the States (i.e. Ireland) in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the		X

	Specific commitments to the Irish language	NI	UK
	fields of culture, education, information, vocational training and permanent education.		
Para b	For the benefit of the Irish language, to facilitate and/ or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form (i.e. Ireland).		X

