

**EUROPEAN CHARTER FOR REGIONAL
OR MINORITY LANGUAGES**

**Parallel Report to the
Committee of Experts on the
Third Periodical Report
of the United Kingdom**



**NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION**

September 2009

Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA

Telephone: +44 (0)28 9024 3987
Textphone: +44 (0)28 9024 9066
SMS Text: +44 (0)7786 202075
Fax: +44 (0)28 9024 7844
Email: information@nihrc.org
Website: www.nihrc.org

CONTENTS

	Paragraphs
Introduction	
The Northern Ireland Human Rights Commission	1-2
The monitoring process	3-11
Irish and Ulster-Scots	12-20
Major overarching developments	
Bill of Rights for Northern Ireland	21-25
Irish Language Act	26-38
Strategies for Irish and Ulster-Scots	39-56
Part II observations: Irish and Ulster-Scots	
Promoting respect, tolerance and understanding	57-62
Ulster-Scots: standardisation and codification	63-66
Elimination of unjustified distinctions	67-69
Part III observations: Irish	
Education (Article 8)	70-75
Judicial authorities (Article 9)	76-79
Administrative authorities and public services (Article 10)	80-91
Media (Article 11)	92-96
Cultural, economic and social life, transfrontier exchanges (Articles 12-14)	97

INTRODUCTION

The Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is the national human rights institution (NHRI) for Northern Ireland. It was created in 1999 by the United Kingdom Parliament through the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998. The Commission is accredited with 'A' status by the International Co-ordinating Committee of NHRIs.¹ In all its work, the Commission bases its positions on the full range of internationally accepted human rights standards, including treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The 1998 Agreement followed multiparty negotiations during the peace process, and was endorsed by an international treaty and by referendum. Under the terms of the Agreement, powers in relation to a range of economic, social and cultural functions, including language matters, are devolved to the Northern Ireland Assembly (the unicameral regional legislature) and its Executive (the regional government). Positions in the power-sharing Northern Ireland Executive are allocated in proportion to party strengths represented in the Assembly. Although the Assembly and Executive faced long periods of suspension following the Agreement, devolution was restored in May 2007. This followed the St Andrews Agreement 2006, an international treaty between the British and Irish Governments covering a wide range of issues, specifically including language matters.

The monitoring process

3. The Commission has engaged extensively with United Nations' and Council of Europe's treaty monitoring processes, and is grateful for the opportunity to provide this parallel report to the Committee of Experts of the European Charter for Regional or Minority Languages (hereafter, COMEX and the Charter).
4. In addition to parallel reporting, and in accordance with its

¹ The UK has two other NHRIs: the Equality and Human Rights Commission is the 'A' status accredited NHRI for Great Britain, except in respect of matters devolved to Scotland, which has established the Scottish Human Rights Commission. The present submission is solely on behalf of the Northern Ireland Human Rights Commission.

competencies as a NHRI, the Commission has worked to contribute appropriately to the preparation of UK treaty reports, in a manner consistent with the Principles relating to the Status of National Institutions (the Paris Principles). Section A of the Paris Principles outlines the competence and responsibilities of NHRIs. This includes the responsibility to:

...contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence.²

5. Further, the Conclusions of the International Round Table on the Role of National Human Rights Institutions and Treaty Bodies included the following recommendation:

NHRIs should contribute in an appropriate manner in the preparation of State party reports in accordance with the Paris Principles, including through consultation or commenting on the State party report.³

6. The Commission interprets that role not in terms of contributing content to treaty reports, but as providing an independent critique of the draft text to help ensure that the state delivers accurate, timely and adequate information to each treaty's supervisory body. In relation to the present reporting cycle of the Charter, the Commission made contact, prior to the original submission deadline, with the Northern Ireland Executive's Department of Culture, Arts and Leisure (DCAL) which compiles the Northern Ireland input to the UK report. In an unusual move, DCAL indicated it would not consult with the Commission and, to date, the Commission has not seen any of the material provided for the state report. The Commission was pleased, however, with the review into this matter conducted by the then DCAL Minister, Gregory Campbell MP, MLA, which acknowledged that the Commission should have been consulted during the compiling of the Northern Ireland input and that it is to be consulted in future monitoring cycles.⁴ However, the omission on this occasion meant that the Commission has been unable to discharge fully its functions in relation to the preparation of the present UK report.

² Adopted by General Assembly resolution 48/134, 20 December 1993, 3(d).

³ Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies (Berlin, 23/24 November 2006) UN Doc HRI/MC/2007/3 12 January 2007 (recommendation 3).

⁴ Correspondence to Commission, DCAL ref: COR/97/2009, 30 March 2009.

7. The UK submitted its Third Periodical Report, which had been due on 1 July 2008, on 26 May 2009. Notably information in relation to the Irish language and Ulster-Scots is absent from the Report insofar as it relates to devolved matters in Northern Ireland. The Report indicates that this information will be provided subsequently in a supplementary report from the devolved administration.⁵ The DCAL Minister has cited lack of agreement on its content by the coalition partners in the Northern Ireland Executive as the reason for the delay.⁶
8. At the time of writing, the supplementary report has yet to be issued and therefore, to date, the Commission have not seen any of the information in relation to the Irish language and Ulster-Scots insofar as it relates to devolved matters in Northern Ireland, in either draft or final format.⁷ The Commission has therefore compiled this Parallel Report in the absence of this information. In this context the Commission has sought further official documents from DCAL; however, the Department has treated and processed this request under Freedom of Information legislation, the outcome of which will not be determined in time for this present report. The Commission will consider forwarding a supplementary submission to COMEX once further official information becomes available.
9. The Commission is concerned at DCAL's assertion that commitments "that were not taken forward" during the monitoring cycle are not a matter of concern for the Periodical Report. In the Commission's view, if the state party has failed to fulfil treaty commitments, and regardless of whether it is claimed that responsibility lies with the central or regional government, the reasons behind this failure and planned actions for future implementation should be clearly set out, rather than simply omitted from a monitoring report.⁸
10. In previous monitoring cycles both COMEX and the UK Government have set out the advantages of devolved administrations being best placed to take forward commitments pursuant to the Charter. Both COMEX and the UK Government have also recognised that the ultimate responsibility for ensuring fulfilment of the UK's Charter obligations lies with the UK

⁵ Council of Europe, UK Third Periodical Report, MIN-LANG/PR (2009)2.

⁶ *Hansard*, Northern Ireland Assembly, AQW 7502/09 (15 May 2009).

⁷ Information on Charter commitments in respect of matters which are not devolved to the Northern Ireland administration is included in the Periodical Report.

⁸ *Hansard*, Northern Ireland Assembly, AQW 7502/09 (15 May 2009).

Government.⁹

11. On a more positive note, the Commission commends DCAL for the ongoing co-ordination of an Inter-departmental Charter Implementation Group (ICIG), which brings together both devolved and non-devolved government departments in Northern Ireland in relation to Charter obligations.

Irish and Ulster-Scots

The UK's Charter commitments

12. The UK has registered three languages under Part III of the Charter, signing up to specific undertakings for measures in areas including education, administrative authorities, media, culture, economic and social life and transfrontier exchanges. Irish is registered under part III for Northern Ireland, with the State accepting 36 specific commitments out of around 100 options identified in the Charter; the other two UK languages are Welsh (in Wales, where 52 commitments apply) and Scottish Gaelic (in Scotland, 39 commitments).
13. In addition to the above three languages, the UK has also registered under the general provisions set out in Part II of the Charter Scots (in Scotland), Cornish (in Cornwall) and Manx Gaelic (in the Isle of Man, a Crown Dependency not strictly part of the United Kingdom). Ulster-Scots is registered under Part II for Northern Ireland. Part II of the charter contains objectives and principles in relation to regional and minority languages.

Irish and Ulster-Scots

14. Irish is registered under Part II and Part III of the Charter. The presence of Irish dates back over two thousand years and Irish belongs to the Celtic language group. Irish is the first official language of the Republic of Ireland and an official language of the European Union. The 2001 Census indicated that 10.4 per cent of the Northern Ireland population had "some knowledge of Irish". The census data showed that Irish is used across Northern Ireland, although levels of knowledge vary slightly in different geographical areas.¹⁰

⁹ See: Council of Europe, Application of the Charter in the United Kingdom, ECRML (2004)1 (COMEX Finding C, p 57 and Appendix II, section 2, Comments by UK Government, p 62).

¹⁰ Council of Europe, UK Third Periodical Report, MIN-LANG/PR (2009)2, p 12.

15. Ulster-Scots is registered under Part II of the Charter. Ulster-Scots is a regional type or variant of Scots. Scots is from the Germanic language group and is closely related to English. There was no question in the 2001 census in relation to Ulster-Scots.¹¹ It is primarily a spoken tradition, found mainly in those parts of the region that were settled by Scottish people, though its use is not confined to those of Scottish descent. The Ulster-Scots Language Society notes that "Ulster-Scots is a regional folk variety long confined to the countryside is indicated by its extensive vocabulary for rural and domestic life and by the fact that Catholics speak it as well as Protestants in the same districts".¹² Its main geographical areas in Northern Ireland are north Down, parts of Antrim and east Derry/Londonderry, although words and idioms from Ulster-Scots are used in other parts of Northern Ireland.¹³

The Belfast (Good Friday) Agreement

16. The Belfast (Good Friday) Agreement 1998 stated:

All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.¹⁴

17. The Agreement went on to list eight further specific UK Government commitments in relation to the Irish language, set in the context of the UK's subsequent ratification of the Charter, as follows:

- take resolute action to promote the language;
- facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;
- seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;
- make provision for liaising with the Irish language community, representing their views to public authorities and investigating complaints;

¹¹ The 1999 Northern Ireland Life and Times Survey found that two per cent of people in Northern Ireland spoke Ulster-Scots.

¹² Available: <http://www.ulsterscotlanguage.com/en/texts/what-is-ulster-scots/> [accessed 27 August 2007].

¹³ Along with parts of Donegal in the Republic of Ireland. See: <http://www.ulsterscotagency.com/sitefiles/resources/ulster.JPG> [accessed 14 September 2009].

¹⁴ Economic, Social and Cultural Issues, in Chapter 6, 'Rights, Safeguards and Equality of Opportunity', Belfast (Good Friday) Agreement, para 3.

- place a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provision for integrated education;
 - explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of Teilifís na Gaeilge¹⁵ in Northern Ireland;
 - seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland; and
 - encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the desires and sensitivities of the community.
18. The commitment to place a statutory duty on the Department of Education to encourage and facilitate Irish-medium education was taken forward in article 89 of the Education (Northern Ireland) Order 1998.
19. In 2003, the British and Irish Governments issued a joint declaration, within which the British Government reaffirmed that it “will continue to discharge all its commitments under the Agreement in respect of the Irish language”. This included specific commitments to “take all necessary steps to secure the establishment as soon as possible” of an Irish Language Broadcast Fund and work to increase reception of TG4. The Joint Declaration also committed the British Government to “take steps to encourage support to be made available for an Ulster-Scots academy”.¹⁶
20. The 2006 St Andrews Agreement between the British and Irish Governments committed the UK Government to introducing an Irish Language Act, working with the Northern Ireland Executive to enhance and protect the development of Irish, and affirmed that the UK Government believed in the need to enhance and develop Ulster-Scots and would support the Northern Ireland Executive to take this forward.¹⁷ Some of these commitments were taken forward in legislation – the Northern Ireland (St Andrews Agreement) Act 2006, which introduced a statutory duty on the Northern Ireland Executive to adopt strategies in relation to Irish and Ulster-Scots.¹⁸

¹⁵ Teilifís na Gaeilge, an Irish state-funded Irish language television channel created in 1996, subsequently rebranded as TG4.

¹⁶ Joint Declaration by the British and Irish Governments, April 2003, para 30.

¹⁷ Annex B, para 6 (Irish), para 7 (Ulster-Scots).

¹⁸ Section 15 of the Northern Ireland (St Andrews Agreement) Act 2006, which inserts section 28D to the Northern Ireland Act 1998 (as amended).

MAJOR OVERARCHING DEVELOPMENTS

Bill of Rights for Northern Ireland

21. In its response to COMEX's findings in the First Periodical Report, the UK Government concedes that "there is an issue regarding the position of the [European Charter for Regional or Minority Languages] in UK law" and refers to the potential for future legislation to "contain provisions to ensure compliance with the Charter at all levels of Government".¹⁹
22. The Commission has recently recommended to the Government justiciable provisions to ensure that public authorities act in compliance with obligations under the Charter. This recommendation forms part of the Commission's advice on a Bill of Rights for Northern Ireland, and is separate and additional to the need for freestanding language legislation.
23. The development of proposals for a Bill of Rights for Northern Ireland emerges from the Belfast (Good Friday) Agreement 1998. In accordance with its own mandate set out in the Agreement and under domestic legislation,²⁰ the Commission delivered its final advice on the scope for a Bill of Rights for Northern Ireland to the UK Government on 10 December 2008. This includes recommendation of a provision, in respect of Irish and Ulster-Scots, that:

...Public authorities must, as a minimum, act compatibly with the obligations undertaken by the UK Government under the European Charter for Regional or Minority Languages...²¹
24. The inclusion of this provision was in the context that the Charter is an instrument under which the State's commitments can be progressively increased. The intention is for an evolutionary approach to be undertaken and commitments strengthened in accordance with the developing needs of speakers.

¹⁹ Council of Europe, Application of the Charter in the United Kingdom (ECRML (2004)1) p 62.

²⁰ Rights, Safeguards and Equality of Opportunity, para 4, Belfast (Good Friday) Agreement 1998; and Section 69(7), Northern Ireland Act 1998.

²¹ Northern Ireland Human Rights Commission (2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland*, 10 December 2008. Available: www.nihrc.org/index.php?option=com_content&task=view&id=12&Itemid=17. The advice also recommends provision for persons belonging to linguistic minorities to have the right to learn or be educated through their minority language where there are substantial numbers of users and sufficient demand.

25. Bringing forward legislation for the Bill of Rights for Northern Ireland is now a matter for the UK Government. The UN Committee on Economic, Social and Cultural Rights, noting the Commission's advice and its inclusion of justiciable economic, social and cultural rights, has called for its enactment "without delay".²²

The Committee may wish to recommend that the UK enacts promptly a Bill of Rights for Northern Ireland inclusive of provisions to ensure compliance with the Charter.

Irish Language Act

26. In 2006, the UK made a treaty-based commitment to introduce an Irish Language Act; this has yet to be implemented. In 2009, the UN Committee on Economic, Social and Cultural Rights expressed concern that there was still no Irish Language Act in Northern Ireland. Contrasting the situation to the protection afforded to the other two main UK minority languages, under the Welsh Language Act 1993 and the Gaelic Language (Scotland) Act 2005, the UN experts recommended:

...that the State party, or the devolved administration in Northern Ireland, adopt an Irish Language Act with a view to preserving and promoting minority languages and cultural heritage...²³

27. Following the previous monitoring cycle of the Charter, the Committee of Ministers recommended that the UK authorities "develop a comprehensive Irish language policy".²⁴ The Commission views legislation, along with broader strategic policy, as clearly being key elements of comprehensive policy for the language, noting that legislation is in place in relation to both of the other two UK Part III languages.
28. However, the UK has given no clear indication of how it plans to legislate for the status of the Irish language in Northern Ireland. In addition to the Committee of Ministers Recommendation, this issue engages Article 15 of the International Covenant on Economic, Social and Cultural Rights as well as Article 27 of the International Covenant on Civil and Political Rights; relevant UN

²² E/C.12/GBR/CO/5, 22 May 2009 (Concluding Observations) para 10.

²³ As above, para 37.

²⁴ Council of Europe, Recommendations of the Committee of Ministers, RecChL (2007)2 adopted 14 March 2007, recommendation 2.

Declarations (for example, Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities); the Framework Convention on National Minorities; and the treaty commitment between the British and Irish Governments under the 2006 St Andrews Agreement, which provides:

Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming [Northern Ireland] Executive to enhance and protect the development of the Irish language.

29. "Reflecting on the experience of Wales" requires legislators to take note of the scope of the Welsh Language Act 1993, the official promotion of bilingualism, and the fact that in Wales the Welsh language benefits from a much wider application of Charter undertakings than has to date been the case for Irish in Northern Ireland. Similarly, "reflecting on the experience" of the Republic of Ireland means that the Assembly should take account of the Constitution's designation of Irish as an official language (formally, though not in practice, the first official language), with all that flows therefrom in terms of support for the language's development and, in particular, the right of everyone to choose Irish as their medium of communication with any public authority.
30. The Commission's position on the Irish Language Act and, more broadly, language policy and practice is based on two fundamental principles. The first is that it endorses a rights-based approach; the second is that it seeks to secure full conformity with the international human rights treaty commitments entered into by the United Kingdom. Different models have been suggested by the Government for the Irish Language Act. COMEX's sister body in the Council of Europe system, the Advisory Committee for the Framework Convention for the Protection of National Minorities, summarised them as follows:

The Advisory Committee understands that the consultation document on the draft Irish Language Bill issued by the Government included a number of different models, and that there is currently disagreement as to whether the Act should follow a rights-based approach (following Ireland's example) or whether it should work on the basis of language schemes (as in Wales). Irish-language NGOs, who are strongly in favour of the former, point out that a language act based purely on consensus

and cooperation would not be sufficient, given the tension which surrounds language issues in Northern Ireland.²⁵

31. The UK consulted on legislation in December 2006, and in more detail in March 2007. The options put forward did not follow a rights-based approach and did not demonstrate full conformity with treaty commitments. Responsibility for legislation was passed in May 2007 to the devolved administration which, in October 2007, gave its first official indication that it would not enact an Irish Language Act.²⁶

32. In December 2008, on being pressed by a Northern Ireland Assembly Committee on the matter, the then DCAL Minister, Gregory Campbell MP, MLA, gave a further clear statement that he had no intention of introducing an Irish Language Act. Further, the Minister indicated that he regarded the responsibility as belonging to central government, stating:

The British Government and the Government of the Irish Republic committed themselves to the St Andrews Agreement. I did not, and neither did my party, so we will not be implementing its recommendations.²⁷

33. While treaty compliance can be achieved by regional authorities meeting relevant standards, if a devolved government fails to deliver the state does not escape the obligations that it assumed, and the Commission therefore expects the UK Government to ensure that legislation is enacted. The Commission understands that a similar situation arose in 2007 with reference to another international obligation, namely the EU Gender Directive on Goods and Services, where, in the reported absence of agreement in the Northern Ireland Executive, the UK Government legislated on the matter.

²⁵ Advisory Committee, Second Opinion on the United Kingdom, ACFC/OP/II (2007) 003, Adopted on 6 June 2007, para 187.

²⁶ Statement by Edwin Poots MLA, Minister of Culture, Arts and Leisure, to the Northern Ireland Assembly, 16 October 2007.

²⁷ Northern Ireland Assembly *Hansard*, Committee for Culture, Arts and Leisure, Language Strategy, 4 December 2008, pp 10 and 30. Prior to becoming the present DCAL Minister, Nelson McCausland MLA (writing in his then capacities as the Democratic Unionist Party's culture spokesperson and an Ulster-Scots activist) accused the UK Government of bad faith in relation to the commitment to introduce Irish language legislation stating: "The message is that if Unionists go into the [Northern Ireland] Executive and the Assembly is operational, the Irish Language Act will become a devolved matter and Unionists can veto it. Once again Downing Street and the Northern Ireland Office have politicised the Irish language" (McCausland N, 'Act is a shillelagh to coerce Unionists into Stormont', *News Letter*, Belfast, 17 March 2007).

34. In June 2009, the Commission wrote to the Secretary of State for Northern Ireland (the UK Minister who heads the Northern Ireland Office which is the central government department retaining responsibility for non-devolved issues) in relation to the Irish Language Act, and it is still awaiting a response.

'Consensus' and the Irish Language Act

35. A significant majority of persons who responded to both consultations were in favour of Irish language legislation.²⁸ The Advisory Committee on the Framework Convention for the Protection of National Minorities made the following recommendation, urging UK authorities to ensure that legislation reflects the needs of Irish speakers rather than broader political considerations:

The Advisory Committee encourages the Government and Northern Ireland Assembly to ensure that the process of adopting the Irish Language Act is not dominated by political considerations and reflects as far as possible the needs of the Irish-speaking population as set out in the responses submitted to the Government's public consultation process.²⁹

36. However, lack of 'community consensus' and even the suggestion that an Act would damage relations between Nationalists and Unionists³⁰ were cited as reasons for the non-progression of the Act by the then DCAL Minister in October 2007.³¹ Prior to the re-establishment of devolution, UK Government Ministers had also indicated a change in approach to the legislation in order to build consensus. The ministerial foreword to the March 2007 document indicated a substantial retreat from the rights-based approach favoured by the vast majority of respondents to the earlier December 2006 consultation. The 2007 document proposed a regime of "Irish language schemes" and an office of Commissioner to monitor and encourage their implementation; the focus was on systems and services, rather than rights. The

²⁸ Department of Culture, Arts and Leisure, *Consultation Paper on Proposed Irish Language Legislation for Northern Ireland: Summary of Responses*, October 2007, p22 (incorporates analysis of responses to both consultations).

²⁹ Council of Europe, Second Opinion on the United Kingdom, ACFC/OP/II (2007)003, adopted 6 June 2007, para 190.

³⁰ The Belfast (Good Friday) Agreement can be drawn on to provide definitions of the nationalist community as "a substantial section of the people in Northern Ireland [who] share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland" and the Unionist community as the present majority of people in Northern Ireland who wish to maintain Northern Ireland as part of the UK through the Union with Great Britain [Constitutional issues 1(i-iii)].

³¹ Statement by Edwin Poots MLA, then Minister of Culture, Arts and Leisure, to the Northern Ireland Assembly, 16 October 2007.

Minister described this as “a middle ground approach” that “will not meet the expectations of those who wish to see the strongest possible legislative provision promoting and protecting the Irish language”. The scheme’s approach was said to be aimed at “building consensus over a period of time”.

37. The Commission has consistently maintained that a long-term search for consensus is not an appropriate basis on which to conceptualise the protection of human rights, most especially where the rights of linguistic or any other minorities are concerned. The priority for any administration committed to governance based on human rights must be to legislate and direct resources as necessary to recognise, respect, protect and fulfil human rights, having particular regard to minority rights. If it is ever the case that there is any lack of understanding or consensus around rights, the administration should nevertheless legislate and thereafter can, and should, work assiduously to gain the widest possible public acceptance of those rights. This is what has happened in Wales where, despite initial scepticism and opposition among elements of public opinion, general acceptance of language rights has developed over the years following the enactment of the legislation. The broadest possible consensus is of course much to be desired, but the achievement of consensus is not a precondition for giving people access to their rights.
38. This general principle of minority rights is reflected in the jurisprudence of the European Court of Human Rights. In *Barankevich v Russia*, in the case of assemblies and expression by minorities, the Court stated that any *de facto* subjugation of the exercise of rights to permission from the majority would be incompatible with the Convention. The court recalled that its decisions in reference to the hallmarks of a democratic society had “attached particular importance to pluralism, tolerance and broadmindedness” and noted that “democracy does not simply mean that the views of the majority must always prevail”, emphasising the importance of a balance ensuring the proper treatment of minorities and avoiding abuse of a dominant position.³²

The Committee may wish to ask the UK when it plans to bring forward Irish language legislation.

³² *Barankevich v Russia* (app no 105119/03) (2007) ECHR 648, 30-31.

Strategies for Irish and Ulster-Scots

Recommendations of the Committee of Ministers

39. In relation to Irish, following the previous monitoring cycle of the Charter, the Council of Europe's Committee of Ministers recommended that the UK:

...develop a comprehensive Irish language policy, including measures to meet the demand for Irish Medium education.

In relation to Ulster-Scots, the Committee of Ministers recommended that the UK:

...strengthen the efforts to improve the position of Scots and Ulster Scots.³³

40. The Committee of Ministers, in relation to its 2008 conclusions further to the UK's examination under the Framework Convention for National Minorities, also drew attention to the "lack of clarity regarding the language rights of Irish speakers" and called for "further support... for the Ulster Scots language, culture and heritage".³⁴ The Convention's Advisory Committee had urged the devolved administration to adopt strategies "in accordance with the commitment expressed in the 2006 St Andrews Agreement" for Irish and Ulster-Scots "at the earliest opportunity".³⁵

St Andrews Agreement

41. In relation to Irish, the 2006 St Andrews Agreement, in addition to the aforementioned commitment to introduce legislation, also included a commitment by the UK Government to work with the incoming Northern Ireland Executive to "enhance and protect the development of the Irish language".
42. In relation to Ulster-Scots, the St Andrews Agreement also contained the following commitment:

³³ Council of Europe, Recommendations of the Committee of Ministers RecChL (2007)2, adopted 14 March 2007, recommendations 2 and 6; recommendation 4 also deals with Irish (and Scots Gaelic) urging increased support for the print media; this recommendation is dealt with in greater detail under Part III.

³⁴ Council of Europe, Committee of Ministers Resolution CM/ResCMN(2008)7, adopted 9 July 2008, p 2.

³⁵ Council of Europe, Advisory Committee on the Framework Convention, Second Opinion on the United Kingdom, ACFC/OP/II(2007)003, adopted 6 June 2007, para 190.

The [UK] Government firmly believes in the need to enhance and develop the Ulster-Scots language, heritage and culture and will support the incoming [Northern Ireland] Executive in taking this forward.

43. UK legislation, in the form of the Northern Ireland (St Andrews Agreement) Act 2006, then took forward these two commitments by introducing a statutory duty to adopt strategies in relation to Irish and Ulster-Scots, and to keep both of the strategies under review, with a power to periodically revise or adopt a new strategy accordingly. The differences in formulation of the two strategies reflected the wording of the St Andrews Agreement [emphasis added]:

(1) The Executive Committee shall adopt a strategy setting out how it proposes to **enhance and protect** the development of the **Irish language**.

(2) The Executive Committee shall adopt a strategy setting out how it proposes to **enhance and develop** the **Ulster Scots language, heritage and culture**.³⁶

Current proposals for implementation

44. The Department for Culture, Arts and Leisure (DCAL) is yet to take forward the commitment to introduce the two strategies to the Northern Ireland Executive; however, it has stated its intention to do so. The present (September 2009) position is that a number of issues are still under consideration by the Minister who has stated his intention to bring a paper to the Executive in the near future.
45. DCAL has stated that it intends to implement the statutory duty under a sole vehicle entitled, "A Strategy for Indigenous or Regional Minority Languages", which will encompass both the above strategies as well as initiatives in relation to ethnic minority languages and sign languages.³⁷
46. It is a matter for the Government to determine the administrative arrangements by which it takes forward the linguistic duties in relation to Irish and Ulster-Scots. The Commission welcomes the statement by the Minister that the strategies will be underpinned by the commitments in the

³⁶ Section 15, Northern Ireland (St Andrews Agreement) Act 2006, which inserts section 28D to the Northern Ireland Act 1998 (as amended).

³⁷ The commitments to measures on ethnic minority languages, sign languages and Ulster-Scots heritage and culture have the potential to fulfil broader positive human rights obligations in their own right. However, as they are outside of the scope of the Charter, they are not dealt with in this submission.

Charter which, as he notes, already take into account the position of each individual language, and he indicates that the strategy will also do so.

47. However, the Commission is concerned at indications of how the two duties in relation to Irish and Ulster-Scots, where there are objectively very different levels of need and development, are to be related in the strategy. The DCAL Minister has stated the development of a single strategy is designed to “strive towards parity” between Irish and Ulster-Scots. The Minister states that he accepts that Irish and Ulster-Scots are at two different levels of attainment “at the moment”, adding that:

...the strategy’s drive will be to ensure that [this] differential minimises, decreases, and over time disappears. A single strategy is even more important in trying to achieve that objective...³⁸

48. The logic of this statement is that the aim of the strategy will not be to treat the Irish language and Ulster-Scots on the basis of genuine needs of speakers, but to delay the development of Irish while accelerating that of Ulster-Scots until (if ever) the latter reaches the same stage of development as the former. Given the drastic differences in the stages of development and usage of both, it is not unrealistic to suggest that if implementation of such a policy was carried out it would amount to a freeze on state support for Irish, not only for the duration of the monitoring cycle but for at least the present generation of Irish speakers.
49. The most optimistic and ambitious proponents of Ulster-Scots would have difficulty in envisaging the development within the foreseeable future of the level of demand for linguistic provision that currently exists for Irish in, for example, education, cultural life and the media. The Commission can only base its position on the objective reality that no such parity exists at present, and on the principle that rights cannot be claimed at par purely to drive sociolinguistic change in a direction desired by a particular interest group. The Charter has been very carefully framed so as to establish a correlation between the state’s obligations and the existence of reasonable levels of demand in particular areas.
50. To the extent that an approach posited on bringing about parity between two unrelated minority languages with, at present, very different levels of usage and need would require the diversion of

³⁸ Minister for Culture, Arts and Leisure, *Hansard*, Committee for Culture, Arts and Leisure, 4 December 2008.

resources from the more used to the lesser used minority language, it is clearly incompatible with the provisions of the Charter and other human rights instruments. It is the duty of the state party to respect, protect and fulfil through progressive realisation measures to promote recognised rights on an objective, fair and rational basis. A strategy that had the intention, or effect, of rolling back provision for one minority language in order to meet the developmental needs of another would be a regressive step, in addition to being incompatible with the specific objectives that the strategy is mandated to pursue.

51. Among its key findings in the UK's second monitoring report, COMEX noted that the Northern Ireland administration was conscious of its obligations of affirmative action in relation to Irish. The same finding commended authorities for creating favourable conditions which had helped facilitate the growth in the number of Irish speakers, but added that the Committee had gained the impression that the consequences of such growth had not been adequately planned for.³⁹ The present proposal would not only change the position in relation to affirmative action, but would leave authorities less able to plan proportionate measures to cater for the growth in numbers, and therefore in needs, of Irish speakers.

Comparisons between regional and minority languages

52. In the previous monitoring cycle, COMEX also directly addressed the issue of comparisons between the treatments of regional or minority languages. COMEX commented that in many cases such comparisons can have positive effects in promoting languages. However it pointed to circumstances where comparisons can lead to problems, singling out Northern Ireland. It noted that the reports from representatives of Irish speakers regarding practical problems "due to calls for parity of treatment with Ulster Scots", drawing attention to information on instances where requests for actions appropriate to Irish had led to inaction "since it was not practically possible to apply identical measures to Ulster Scots". In light of this, COMEX concluded that:

The Committee of Experts wishes to underline that each regional or minority language should be protected and promoted according to its own situation.⁴⁰

³⁹ Council of Europe, Application of the Charter in the United Kingdom, (ECRML (2007)2) p 62, Finding F.

⁴⁰ As above, para 32.

53. However, the then Minister regarded the issue as a “traditional disparity in funding” between Ulster-Scots and Irish and compared figures (£12.5m and £40m over eight years respectively) for funding allocations to both, without relating this to proportionality in development or needs of speakers. The Minister stated that he regarded this as an equality issue and reiterated that he would look at a strategy which “narrows or eliminates the disparity”. The Minister regarded Ulster-Scots as at disadvantage due to neglect for a variety of reasons, while accepting that Ulster-Scots may not have been systemically discriminated against. In the same Northern Ireland Assembly Committee debate, the present Minister, then speaking in his capacity as an MLA on the Committee, went further, arguing, “the fact is that for far too long Ulster-Scots has been discriminated against in favour of Irish”.⁴¹
54. That assertion is not the position of the state party; the UK stated that it did “not accept that either the Irish or Ulster-Scots language movements suffer unequal treatment” adding that the UK was working proactively to develop and secure the situation of both in line with the Charter.⁴² The principle of non-discrimination does not prevent state parties from taking special measures in order to promote full and effective equality, provided there is an objective and reasonable justification for such measures. Recent measures in relation to promoting Irish can be seen in this context for which the historical backdrop is one of discriminatory practices against Irish (in general, not in relation to Ulster-Scots). Such trends have only recently begun to reverse: for example, the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1949, which prohibited the erection of street signs in Irish, remained in force until its repeal in the mid-1990s⁴³ and was subsequently followed by the Agreement and ratification of the European Charter. The Commission is therefore concerned about the potential for policy to take an erroneous approach to non-discrimination as requiring measures to allocate resources equally, rather than equitably and proportionately to need, and so to impact detrimentally on the rights of Irish language speakers.

⁴¹ As above.

⁴² Second UK state report, Framework Convention for National Minorities ACFC/SR/II(2007)003, 22 February 2007, para 282.

⁴³ By the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995.

Summary

55. The Commission welcomes the UK's adoption of legislative commitments for strategies for Irish and Ulster-Scots based around the formulation set out in the St Andrews Agreement.
56. The Commission also recognises the potential for such strategies to progress the previous recommendations of the Committee of Ministers. The duty for a strategy to *enhance and protect the development of Irish*, along with the commitment to introduce an Irish Language Act, can contribute to meeting the identified need for a comprehensive Irish language policy. The duty for a strategy to *enhance and develop Ulster-Scots* can progress the recommendation to strengthen efforts to improve its position. The two strategies can also contribute more broadly to the fulfilment of other human rights commitments in relation to Irish and Ulster-Scots. However, the Commission is concerned at both the delay and the stated rationale for developing a single strategy for both Irish and Ulster-Scots, with the evident risk of that approach rolling back support for Irish and not treating each language in accordance with its own situation.

The Committee may wish to seek assurances from the UK that strategies for Irish and Ulster-Scots are based on the respective needs of speakers of each, and seek to fulfil the commitments entered into through the Charter and other international obligations.

PART II OBSERVATIONS: IRISH AND ULSTER-SCOTS

Promoting respect, tolerance and understanding

57. Article 7(3) of the Charter commits state parties to taking appropriate measures to promote respect, tolerance and understanding in relation to regional or minority languages. A similar formulation is found in the Belfast (Good Friday) Agreement 1998.

Promotion of bilingualism

58. Iontaobhas na Gaelscolaíochta (the Trust Fund for Irish Medium Education) has recently drawn attention to research and data demonstrating the benefits of bilingualism.⁴⁴ This includes recent research conducted by Dr Judith Wylie and Dr Gerry Mulhern from the Queen's University Belfast School of Psychology which indicated significant advantages for children in Irish-medium schools. Analysis identified a pattern of Irish-medium children outperforming their counterparts in English-only schools and demonstrated the cognitive gains and hence significant benefits of bilingualism.
59. Such findings and broader statistics can be harnessed to tackle misconceptions regarding bilingualism (in Irish or any other language) in a largely monolingual society. Iontaobhas na Gaelscolaíochta also drew attention to Key Stage 2 (primary 7, age 12) tests in English and Mathematics, and the pattern of Irish-medium schools achieving higher attainment than the Northern Ireland average. Such data can help contradict popular myths that bilingualism 'confuses' children or can isolate persons from English-speaking society. Such research can also help to more broadly promote the social, cultural and learning gains of bilingualism for Irish speaking children, but also much more broadly bi/multilingualism in Northern Ireland in other languages.

The Committee may wish to ask the UK what steps it is taking to tackle misconceptions about bilingualism, and more broadly to promote its benefits.

⁴⁴ Iontaobhas na Gaelscolaíochta, 'Groundbreaking research demonstrates underlying advantages of Irish-medium education', June 2009, press release.

Representation of Ulster-Scots in the media

60. The Charter urges states to encourage the mass media to pursue the agenda of tolerance and respect. In the previous monitoring report, COMEX noted that it had been made aware of articles in the press and other media that ridiculed speakers of minority languages or otherwise provided negative portrayal. COMEX urged that more should be done to “encourage the media to refrain from contributing to prejudice by for example ridiculing persons” for being speakers of minority languages.⁴⁵ The Commission is aware that, in the past, Ulster-Scots advocates have complained about instances where the media have ridiculed Ulster-Scots.⁴⁶ There has also been media commentary questioning the linguistic status of Ulster-Scots and/or the economic or social benefit of investing in it, but when such material appears to disparage the status of Ulster-Scots – rather than those who speak it – it may be found to be within the acceptable limits of robust debate on matters of scholarly controversy and public policy concern; the same of course applies to the Irish language, which is equally subject to polemical discourse that does not equate to hostility or disrespect towards users of the language.

The Committee may wish to ask if the UK if it has been aware of media articles ridiculing Ulster-Scots speakers, and, if so, whether there has been subsequent engagement with the media to encourage tolerance and respect.

61. The Commission remains concerned at examples of intolerance, hostility and even demonisation of speakers of the Irish language. A debate in the Northern Ireland Assembly in 2007 provides one example where a member of the Assembly (MLA) had proposed a motion to *inter alia* request members of the Northern Ireland Executive to refrain from speaking Irish at the Assembly and from using Irish in MLA correspondence. During the debate, the MLA who put forward the motion stated: “I am heartily sickened to hear a Minister of this institution speaking in Irish”. He gave details of correspondence he had sent to the Minister of Education in response to her issuing a bilingual letter relating to the Review of Public Administration; his response stated: “I find your communications inclusive of Irish

⁴⁵ Application of the Charter in the United Kingdom (Council of Europe (ECRML (2007)2, para 159.

⁴⁶ See, for example: McCausland N, ‘Ulster-Scots and the BBC: the Current Situation’, in Ó Riagáin, Donall (ed) (2003) *Language and Law in Northern Ireland*, Queen’s University Belfast.

intimidating, disrespectful and off-putting. I would respectfully request that in future you would correspond with me in English only". Another MLA, speaking in the debate, stated that the Irish language was "closely associated with terrorism". The motion was narrowly defeated by 46 votes to 44, indicating that the status of Irish in Assembly business is far from secure.⁴⁷

62. The Commission is aware of reported examples of officially sponsored public awareness campaigns in Wales, which have helped to tackle prejudice against the language. Given the level of hostility and stereotyping facing the Irish language, the Commission foresees a need for significant measures in order to promote tolerance and respect for the Irish language.

The Committee may wish to ask the UK what measures it intends to take to tackle stereotyping and hostility against the Irish language.

Ulster-Scots: standardisation and codification

63. Following the second monitoring cycle, COMEX drew attention to the lack of standardisation and/or codification of Scots and Ulster-Scots. COMEX found that this partially explained the phenomenon of few persons using written forms, and decreased possibilities of using Scots and Ulster-Scots in the public sphere. The Committee drew attention to standardisation and codification as prerequisites to being able to use languages in many aspects of public life and, among its conclusions, recommended policy and concrete measures to create conditions where Scots and Ulster-Scots could be used in the public sphere.⁴⁸
64. The Commission is conscious that work to this end on Ulster-Scots is still at an early stage of development. Issues of standardisation will have to address questions of differences among speakers and others in relation to the spectrum of divergence from English and boundaries with English. This issue arises in the context that in Scotland there is no standard form of Scots, which the Scottish authorities describe as a range of regional, local and/or demotic variants to which it attaches equal respect to each form as used.⁴⁹ Ulster-Scots may have more in

⁴⁷ *Hansard*, Northern Ireland Assembly, 9 October 2007, quoting Mr David McNarry MLA and Mr G Robinson MLA respectively.

⁴⁸ Council of Europe, Application of the Charter in the United Kingdom (ECRML (2007)2, Finding L, para 35 and Recommendation 7.

⁴⁹ Third Periodic Report of the United Kingdom MIN-LANG/PR (2009)2 (Council of Europe) p 12.

common with forms of Scots found in the Scottish Lowlands, but may well have drawn in, and evidently continues to borrow, vocabulary from other regional variants of Scots. The lack of an extensive literary canon makes it difficult to establish the extent to which forms of Ulster-Scots used nowadays in, for example, translations of official texts and advertisements bear relation to the spoken forms that were more common in the past. The potential for the development of broader linguistic initiatives which can benefit users of Ulster-Scots is dependent on further scholarly work on such baseline issues, and that in part explains the present tendency of many Ulster-Scots initiatives to focus on culture and heritage rather than linguistic aspects. The Commission would hope that initiatives to linguistically develop Ulster-Scots be designed to address the needs and rights of users of Ulster-Scots from a rights-based approach that seeks conformity with international human rights commitments.

Ulster-Scots Academy

65. Following the previous monitoring cycle, COMEX had welcomed the steps to establish an Ulster-Scots Academy, and commented on the generous funding (£12m) set aside for this purpose, noting its aim as being the codification and standardisation of Ulster-Scots.⁵⁰
66. The commitment to establish the Ulster-Scots Academy is still being progressed by DCAL. An Ulster-Scots Academy Implementation Group (USAIG) was set up to advise on the establishment of the Academy and it produced proposals in August 2006. The Commission has limited information in relation to the process of development of the Academy and its proposed role and is unable to comment in detail. The Commission is aware that the USAIG Partnership Board had prepared an Ulster-Scots 'roadmap' which departments were unable to fully support.⁵¹ There have also been fundamental disagreements with the Academy proposals from key stakeholders, including as regards the conceptualisation of Ulster-Scots itself, and these have reached the public domain.⁵² More recently, given both the lapse of time and concerns raised by consultees, DCAL commissioned a review of proposals. This is being taken forward by Deloitte and was due to report in early 2009.⁵³ The

⁵⁰ Council of Europe, Application of the Charter in the United Kingdom (ECRML (2007)2, Finding M and para 55.

⁵¹ Minutes of Interdepartmental Charter Implementation Group, July 2008.

⁵² See, for example: *Ulster-Scots academy 'misguided'*, BBC News Online, 31 July 2008.

⁵³ Available: <http://www.dcalni.gov.uk/index/language-cultural-diversity-r08/ulster-scots.htm> [accessed 10 September 2009].

Department has recently informed the Commission that the present position is that:

DCAL is refreshing the Ulster-Scots Academy concept and is currently in consultation with key stakeholders with the aim of developing an approach to the Ulster-Scots Academy project which develops clear objectives within a specified timeframe and which reflects the views of stakeholders and meets the Departments requirements.⁵⁴

The Committee may wish to ask the UK for further information on the steps it intends to take to codify and standardise Ulster-Scots in accordance with the needs of speakers, and on progress in relation to the Academy.

Elimination of unjustified distinctions

67. Under Article 7(2) of the Charter, state parties undertake to:
- ...eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it.
68. The Commission is aware of a number of legislative distinctions in relation to Irish, for which there is no clear, objective and reasonable justification. The distinctions are further highlighted by provision in UK law having been made for the other two Part III languages (Welsh and Scottish Gaelic) in broadcasting, the courts and in the processes for naturalisation or settlement. For thematic convenience (as they are not directly relating to present Part III commitments) the Administration of Justice (Language) Act (Ireland) 1737 (courts) and the Communications Act 2003 (broadcasting) are both dealt with in the following sections on the judiciary and media.
69. In relation to naturalisation as a British citizen, from 2004 applicants have been required to sit a language test. This test can be taken in English, Welsh or Scottish Gaelic. From 1 April 2007, provision for tests was extended to applications for settlement in the UK whereby 'life in the UK' tests, mandatory for most applicants, can be taken in English, Welsh or Scots Gaelic (in Wales or Scotland respectively).⁵⁵ At present there is no

⁵⁴ DCAL correspondence to Commission, 9 September 2009.

⁵⁵ See: <http://www.ukba.homeoffice.gov.uk/ukresidency/settlement/languageandlifeinuk/>.

equivalent provision in relation to Irish. New legislation in 2009 included a similar language requirement for naturalising family members.⁵⁶ During a debate on the passage of the 2009 Bill through Parliament, the immigration Minister was asked directly why Irish was not included with Welsh and Scottish Gaelic. The Minister responded that he honestly did not know.⁵⁷

Notwithstanding the broader questions in relation to the necessity of language testing for residency and the restriction to English and regional/minority languages, the rationale for this particular distinction in relation to Irish remains unclear.

The Committee may wish to ask the UK to explain the rationale for not including Irish in its settlement and naturalisation provisions.

⁵⁶ Section 40(3) Borders, Citizenship and Immigration Act 2009 amended paragraph 3 of Schedule 1 of the British Nationality Act 1981 to include a naturalisation requirement for family members to have “sufficient knowledge of the English, Welsh or Scottish Gaelic language”.

⁵⁷ *Hansard* [HC] Public Bill Committee, 11 June 2009, column 110, response of Immigration Minister Phil Woolas MP to David Hamilton MP.

PART III OBSERVATIONS: IRISH

Education (Article 8)

70. Irish-medium (IM) education is a particular sphere where the Irish language is thriving with recent figures showing that the numbers of students have more than tripled over a ten-year period.⁵⁸ The Committee of Ministers, following the previous monitoring report which recommended the development of a comprehensive Irish language policy, singled out the need to include measures for Irish-medium education. COMEX, in its findings, noted that the development of the sector was promising, but noted shortcomings in meeting growing demand. This included, in common with Welsh and Scots Gaelic, the lack of continuity between primary and secondary education.⁵⁹
71. Subsequent to COMEX adopting its report, the Northern Ireland Department of Education published the Report of the Independent Strategic Review of Education. This report included a recommendation that “The Department of Education should develop a comprehensive and coherent policy for Irish-medium education”.⁶⁰ The Department accepted the recommendation and conducted a review of the sector. Having published the report of the Review of the Irish-medium Education,⁶¹ the Department consulted on its findings between October 2008 and January 2009.
72. To date, the Commission has not commented in detail on these proposals but welcomes the Department’s acceptance of the recommendation to develop a comprehensive and coherent policy for Irish-medium education. In the context of the effective progression of such commitments in this growing sector, the UK Government may wish to strengthen its commitments under the Charter.

The Committee may wish to address the developments in Irish-medium education and ask the UK if it has plans to

⁵⁸ *School Population for Primary and Post-Primary Pupils in Irish-medium provision 1996/97–2007/08*, Northern Ireland School Census quoted in Irish-medium Education Report (2008) Department of Education, Table 3.2.

⁵⁹ Council of Europe, *Application of the Charter in the United Kingdom* (ECRML (2007)2, Finding G.

⁶⁰ *Schools for the Future: Funding, Strategy, Sharing, Report of the Independent Strategic Review of Education* (known as the Bain Report), December 2006, Department of Education, Recommendation 56.

⁶¹ *Review of Irish-medium Education Report* (2008) Department of Education.

strengthen its commitments under the Charter in this area.

School transport and the Irish-medium sector

73. The Commission has responded to requests for advice from the Department in relation to the outcomes of present school transport policy regarding the Irish-medium sector. COMEX noted reports that the criteria for school transport provision were creating problems in the Irish-medium sector. The Committee referenced the transport factor when reporting a “fear that the rapidly growing demand for Irish-medium education cannot be met for post-primary education”.⁶² Government responded to COMEX’s comments by arguing that the current school transport arrangements are “designed to ensure pupils attending IM schools are treated no less favourably than pupils travelling to other schools”.⁶³
74. The Commission has also received reports that the transport policy is leading to unequal outcomes for Irish-medium school pupils. The Commission has advised the Department in relation to human rights compliance and the present policy, in relation largely to those outside of the urban centres. The issues identified by the Commission include:

IM Duties: Legislation requires education authorities to provide transport assistance; this is largely determined by a 1996 policy document⁶⁴ and as such predates the duties to encourage and facilitate Irish-medium education. The policy urgently needs to be updated;

Unreasonable expenditure: although criteria for assistance are aimed at limiting 'unreasonable' expenditure, and the overall costs of assistance at present are high, there are differentials between educational sectors in meeting need;⁶⁵ and

Equality of outcome: the policy treats all five⁶⁶ state funded educational sectors equally. However equality of treatment,

⁶² Application of the Charter in the United Kingdom (Council of Europe (ECRML (2007)2), paras 433, 416.

⁶³ As above, p 80.

⁶⁴ Circular Number 1996/41, 'School Transport', issued 31 October 1996.

⁶⁵ The school transport policy is likely to be one of, if not the, most expensive in the UK as it is neither means-tested nor restricted (other than by walking distance) to a pupil attending the nearest school in their chosen category. The Department of Education has stated that the bulk of expenditure lies in the post-primary grammar sector where most long-distance dedicated buses are provided, and has conceded present policy did largely benefit the 'better off'.

⁶⁶ Namely: 'Catholic maintained controlled or other voluntary'; 'Integrated'; 'Irish medium'; 'denominational'; 'non-denominational'.

when there are clear differences in constituent sectors, will not necessarily deliver equality of outcome, hence applying the same approach across sectors with objectively different needs may not be appropriate;⁶⁷

International standards: Department of Education compliance analysis has focused on the provisions of the European Convention on Human Rights, which is enforceable through domestic courts, although the Commission has drawn attention to other relevant international standards;

Legal clarity: the Commission has drawn attention to the principle that decisions on school transport provision, and applications for support, should be made according to fair criteria and procedures, published in a timely, clear and transparent fashion.

75. The Department has now indicated that it will review the school transport policy in relation to the Irish-medium sector, and the Commission welcomes this. In the context of the review of the sector, expansion of Irish-medium education would presumably lead to more local provision and a reduced need for transport, but that would not of itself negate the need to review transport policy to ensure it is fit for purpose for each sector. The Department has stated that the review will take place alongside the present reforms to mainstream (English-medium) post-primary education and that, in the meantime, it is considering mitigating interim measures.

The Committee may wish to urge the Department of Education to promptly conduct the review and develop policy designed for the specific nature of the Irish-medium sector.

Judicial authorities (Article 9)

76. At present, in the sphere of judicial authorities, the UK is committed under the Charter to providing important national statutory texts in Irish.⁶⁸ There is no commitment at present to allow persons to use Irish in court proceedings or other legal interactions with the state.

⁶⁷ There are clear differences in the number of, and therefore accessibility of, schools as between Irish-medium and the 'Catholic maintained, controlled or voluntary' sectors; there are in fact only 32 IM schools or units and upwards of 1,100 primary and second-level schools with no Irish-medium provision. In the IM post-primary sector there is only provision in three locations.

⁶⁸ Article 9(3).

77. The Committee will be aware that in Northern Ireland the continued existence of the Administration of Justice (Language) Act (Ireland) 1737 prohibits the use of any language other than English in the courts.⁶⁹ The Committee drew attention in its previous observations to an apparent contradiction between the 1737 Act and commitments under the Belfast (Good Friday) Agreement 1998 regarding the use of Irish in courts. This matter relates to commitments under the Agreement to remove restrictions which discourage or work against the maintenance of Irish, as well as Article 7(2) of the Charter in relation to elimination of unjustified restrictions.
78. In 2008, the UN Committee on Economic, Social and Cultural Rights sought information from the UK regarding provision to use regional and minority languages before the courts. However, the UK's reply only detailed legislation and provisions enacted to facilitate the use of Welsh in Wales and Scottish Gaelic in Scotland.⁷⁰
79. Legal challenges under present legislation have not been successful to date,⁷¹ but the UK Government has the power to legislate to provide for use of Irish before the courts. The removal of the prohibition in the 1737 Act would allow the UK authorities to strengthen their commitments under the Charter in the judicial sphere.

The Committee may wish to ask the UK if, through an Irish Language Act, through the repeal of the 1737 Act, or through other legislation, it plans to provide for use of Irish before the courts in Northern Ireland.

⁶⁹ In accordance with Article 6(3)(e) of the ECHR, persons not fluent in English are permitted the free assistance of an interpreter in court. This does not permit interpretation on the basis of a person whose first or preferred language is Irish choosing to use that language, if, as is usually the case, they are also fluent in English.

⁷⁰ E/C 12/GBR/Q/5/Add.1 6 (UK Reply) March 2009, paras 307-312.

⁷¹ Application by Caoimhín Mac Giolla Cathláin for Judicial Review [2009] NIQB 66.

Administrative authorities and public services (Article 10)

Language skills

80. In relation to putting into effect its commitments under Article 10, the UK has undertaken under Article 10(4) of the Charter to provide translation and interpreting facilities. COMEX, noting the provision by the Department of Culture, Arts and Leisure (DCAL), in Northern Ireland, considered the undertaking to have been fulfilled.
81. There have also been a number of initiatives which take a more mainstreaming approach, including the recruitment and provision of training for public service employees. The Commission is aware that the Interdepartmental Charter Implementation Group has been taking forward a language audit of staff in the Northern Ireland Civil Service. In addition, a number of local Councils have also appointed bilingual Irish Language Officers. In addition to translation and interpreting facilities, the Commission welcomes a mainstreaming approach to language skills, as in-house facilities are likely to be more effective, both in cost terms and, more broadly, if promotion and inclusion of the language is seen as an integral part of work rather than an optional 'add-on'. The development of such initiatives may also facilitate the UK in strengthening its commitments under the Charter in this area.

The Committee may wish to seek further detail from the state party regarding initiatives to mainstream Irish language skills.

Local government boundaries

82. Article 7(1)(b) of the Charter sets out the principle that new administrative divisions should not constitute an obstacle to the promotion of regional or minority languages. In this context, the Committee of Experts urged the UK authorities to take into account concerns that the reorganisation of local government in Northern Ireland under the Review of Public Administration might put at risk current positive action initiatives by Councils in promoting Irish, and encouraged the Government to ensure there would be not be regressive steps by new Councils to this effect.⁷²

⁷² Application of the Charter in the United Kingdom (Council of Europe (ECRML (2007)2), para 44.

83. The Northern Ireland administration is presently moving forward to implement a reduction in the present number of 26 local Councils to 11 new local councils. In the absence of information in the periodical report, the Commission is unaware if initiatives have been taken to safeguard present Irish language promotion at local government level.

The Committee may wish to ask the UK if it is planning safeguards to mitigate any regression in Irish language policy matters following the reorganisation of local government in Northern Ireland.

Use of Irish in place-name signage

84. Article 10(2)(g) commits the UK to permitting the use or adoption of place names in Irish. The Committee has sought further information from the UK in relation to the facilitation of street signs in Irish, which are permitted (albeit only in bilingual or transliterated signage, rather than in Irish language signage) under the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995. The Commission's interpretation of the Charter is that monolingual (untranslated and untransliterated) Irish signage must be permitted in traditional and correct forms of place names where there is sufficient evidence of demand, but that is prohibited by the 1995 Order.
85. The Commission is also aware that the Department for Regional Development (DRD) had planned to take forward legislation to provide for bilingual road traffic signs in English and Irish in certain specified circumstances. The Department, which has also received legal advice that confirmed that DRD is legally able to introduce such a measure, did not take forward plans to include the measure in a Miscellaneous Provisions Bill, but instead a draft policy was developed by Roads Service which will require approval by the Northern Ireland Executive. The DRD Minister intends to take forward the provision,⁷³ but there has been no recent progress.

The Committee may wish to seek further information on plans to legislate to authorise street signs in Irish without translation, and to authorise traffic signs in Irish with or without English.

⁷³ E-mail to Commission, 11 September 2009.

Use of Irish in Assembly Chambers

86. Article 10(2)(e)-(f) commits the UK to permitting the use of Irish, alongside English, in debates in the Northern Ireland Assembly and local government chambers. Reference is made earlier in this submission to a 2007 debate in the Northern Ireland Assembly relating to the use of Irish in the chamber. Standing Order 78 of the Assembly provides that “Members may speak in the language of their choice”. There are, however, no facilities for simultaneous interpreting, with the practice being for Irish-speaking MLAs to speak in Irish and then immediately translate their intervention into the English language within allotted speaking time.

The Committee may wish to ask the UK if there are plans for introducing interpreting facilities in the Northern Ireland Assembly or local government chambers.

Corporate promotion of Irish

87. The Commission has on several occasions been asked to provide advice when organisations in fulfilling commitments to promote the Irish language, through for example bilingual policies, have subsequently received a complaint that obliging staff to promote Irish violates their rights. One of these instances relates to local government – when the Council of Limavady/Léim a' Mhadaidh consulted over the extension of the Council's bilingual logo in early 2009.⁷⁴
88. The Commission responded by advising that, first of all, from a human rights perspective it is difficult to see any legitimate grounds for objecting to a minority language being promoted by an employer or, more generally, a public body. On broader issues, the Commission has drawn attention to the fact that there is no “right to be offended” by another party exercising a right. This is a general principle of freedom of expression (ECHR Article 10) which can be read in conjunction with ECHR Article 14 on non-discrimination on grounds that include language. While, in the instances examined, there is no suggestion of any legislation, policy, etc preventing a public body from using Irish, a measure explicitly preventing the use of Irish (say an ‘English only’ policy) would likely be incompatible with the ECHR and other standards. The Commission drew specific attention to the Charter making it clear that the right to use Irish in private and public life is an inalienable right, its preamble stating:

⁷⁴ Limavady Borough Council, *Extension of the Use of the Council's Bilingual Logo* Equality Impact Assessment, Draft Report for Consultation, January 2009.

Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights [ICCPR], and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms...

89. The Commission has advised that, in general, the promotion of Irish through corporate materials would seem entirely in step with positive human rights obligations. The protection of minority language rights has evolved over time from a more passive formulation, not far removed from the concept of toleration ("minorities shall not be denied the right [...] to use their own language", Article 27, ICCPR) to a requirement that states undertake proactive, positive action to protect and support minority languages within their own territories. The Commission drew attention to Articles within the Charter (as applied by the UK in Northern Ireland) in relation to Irish and the positive duties to base public authorities' policies, legislation and practice on objectives and principles, under Part II, which include taking resolute action to promote Irish and the facilitation of use of Irish in public life. The Commission highlighted that the Charter is not prescriptive in relation to these duties as to what resolute action a local authority should take in regard to its fulfilment, meaning the principles are permissive rather than prescriptive. The Commission also drew attention to the more specific commitments under Part III, Article 10, in relation to local authorities and made clear that the Charter is clear in Article 7(2) that special measures in favour of Irish are not to be considered an act of discrimination against speakers of English.
90. The Commission noted that should objections to the use of Irish or other minority languages be based on intolerance or prejudice against the language, there is a positive duty on the state party to take measures to address this. This should be undertaken through measures that tackle the intolerance, rather than penalising the minority language, for example, through linguistic diversity training. The Commission drew attention to the commitments to promote respect, understanding and tolerance of Irish contained in Article 7(3) of the Charter and the Belfast (Good Friday) Agreement.
91. The legal basis for complaints has been grounded in attempting to equate the promotion of a language with a symbol or an emblem. Symbols such as Union flags or Irish tricolours, portraits of the Queen or of the Irish President, which identify community allegiance have been subject to lawful restriction in

Northern Ireland. It is difficult to see how a language could be seen in this category, not just because of the abovementioned human rights obligations, but also given that a language has to be used in the workplace for communication, any language could be objected to. The section of the Agreement that outlines positive commitments to the Irish language deals separately with the issue of the sensitivity of symbols and emblems for public purposes, establishing that symbols and emblems are to be treated distinctly from languages. In short, the Commission has concluded that promotion of minority languages in logos or corporate materials in Northern Ireland is entirely in step with positive human rights obligations, and that official acknowledgement of a minority language cannot constitute a violation of the rights of those who do not use that language.

The Committee may wish to make clear that the promotion of regional and minority languages cannot constitute an act of discrimination against English speakers.

Media

Broadcasting

92. Among the conclusions of COMEX in the previous monitoring cycles was a recommendation to improve public service TV and private radio broadcasting in Irish.⁷⁵
93. The Irish Language Broadcast Fund (ILBF) was initially funded for four years from 2005 at £12m and subsequently extended by an additional £6m from 2009-2011.⁷⁶ The future of the ILBF after 2011 remains unclear.

The Committee may wish to ask the UK about the future of the Irish Language Broadcast Fund post-2011.

94. The Committee noted in its second monitoring report that the Communications Act 2003 makes reference to minority languages, but only explicitly to Welsh and Scottish Gaelic.⁷⁷

The Committee may wish to seek further clarification from the UK as to the rationale for not including Irish in the Act

⁷⁵ Council of Europe, Application of the Charter in the United Kingdom (ECRML (2007)2), recommendation 5, p 60.

⁷⁶ E/C 12/GBR/Q/5/Add.1 6 (UK Reply) March 2009, para 303.

⁷⁷ Council of Europe, Application of the Charter in the United Kingdom (ECRML (2007)2), para 64.

and if there are plans to legislate for Irish broadcasting, through an Irish Language Act or separate legislation.

Print media

95. Article 11(e)(i) commits the state party to encourage, facilitate or maintain at least one newspaper in Irish. Among the Committee of Ministers' recommendations in the previous monitoring cycles was a recommendation to "increase support for the printed media in Scottish Gaelic and Irish".⁷⁸
96. In 2008, Foras na Gaeilge made a decision to cease the funding of *Lá Nua*, a daily Irish language newspaper, which then ceased publication in December 2008.

The Committee may wish to ask the UK about steps it is now taking to fulfil this commitment.

Cultural, economic and social life, and transfrontier exchanges (Articles 12-14)

97. The Commission has no specific items to bring to the attention of COMEX at present in relation to Articles 12-14. The Commission may provide supplementary information on these and other matters subsequent to the monitoring visit and in light of new information emerging from the state party.

⁷⁸ Council of Europe, Recommendations of the Committee of Ministers RecChL (2007)2, adopted 14 March 2007, recommendation 4.