FRAMEWORK CONVENTION ON NATIONAL MINORITIES

Parallel Report to the Advisory Committee on the Third Monitoring Report of the United Kingdom

February 2011

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

Tel: (028) 9024 3987
Fax: (028) 9024 7844
Textphone: (028) 9024 9066
SMS Text: 07786 202075
Email: information@nihrc.org
Online: nihrc.org ■ twitter.com/nihrc
facebook.com/nihrc ■ youtube.com/nihrc
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>Paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td></td>
</tr>
<tr>
<td>The Northern Ireland Human Rights Commission</td>
<td>1-2</td>
</tr>
<tr>
<td>Constitutional framework for implementation</td>
<td>3-8</td>
</tr>
<tr>
<td>The monitoring process (Article 25)</td>
<td>9-11</td>
</tr>
<tr>
<td><strong>Article 3: National minorities</strong></td>
<td></td>
</tr>
<tr>
<td>Scope of application</td>
<td>12-13</td>
</tr>
<tr>
<td>Data collection and the principle of self-identification</td>
<td>14-18</td>
</tr>
<tr>
<td><strong>Article 4(1): Equality and equal protection before the law</strong></td>
<td></td>
</tr>
<tr>
<td>Legislative developments in combating discrimination</td>
<td>19-23</td>
</tr>
<tr>
<td>Ethnic profiling</td>
<td>24-31</td>
</tr>
<tr>
<td>Situation of destitute migrants</td>
<td>32-37</td>
</tr>
<tr>
<td><strong>Article 4(2): Measures to promote full and effective equality</strong></td>
<td></td>
</tr>
<tr>
<td>Situation of Irish Travellers (accommodation)</td>
<td>38-51</td>
</tr>
<tr>
<td>Situation of migrants (medical care)</td>
<td>52-54</td>
</tr>
<tr>
<td><strong>Article 5: Promote conditions to maintain culture</strong></td>
<td></td>
</tr>
<tr>
<td>Support for the preservation and development of the identity, cultures and languages of national minorities</td>
<td>55-57</td>
</tr>
<tr>
<td><strong>Article 6(1): Tolerance and intercultural dialogue</strong></td>
<td></td>
</tr>
<tr>
<td>Promotion of tolerance and intercultural dialogue</td>
<td>58-62</td>
</tr>
<tr>
<td><strong>Article 6(2): Protection against discrimination, hostility, and violence</strong></td>
<td></td>
</tr>
<tr>
<td>Ethnically motivated incidents</td>
<td>63-80</td>
</tr>
</tbody>
</table>
Article 8: Expression of religion or belief

Religious education 81-83

Article 10: Minority languages rights

Legislative framework for the use of the Irish language 84-85
Use of minority languages in legal proceedings 86-88

Article 11: Traditional names

Bilingual signposting 89-91

Article 12: Education

Intercultural education 92-93

Article 15: Conditions necessary for participation in social and economic life

Legal framework – discrimination and inequality 94-97
Participation in administrative/law enforcement agencies 98-103

Article 18: Bilateral agreements

Bill of Rights for Northern Ireland 104-108

Other Articles 109
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 1998.¹ The Commission is accredited with ‘A’ status by the UN International Co-ordinating Committee of NHRIs.²

2. 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. The Commission provides parallel reports to the supervisory bodies under the major treaties, and the present report is its second contribution to the periodic monitoring of the Framework Convention for the Protection of National Minorities (FCNM).

Constitutional framework for implementation

3. The Belfast (Good Friday) Agreement 1998 introduced major changes to the governance of Northern Ireland, designed to help resolve the long-running conflict over its constitutional status by, inter alia, providing a framework for the sharing of executive power between the two largest ethnic communities, the British unionist, mainly Protestant, majority and the Irish nationalist, mainly Catholic minority. The Agreement followed multiparty negotiations,³ and was endorsed by referendum and by treaty between the UK and Ireland.⁴ Among the UK’s commitments under the Agreement were: the incorporation of the European Convention on Human

¹ The Commission’s powers were modified by the Justice and Security (Northern Ireland) Act 2007.
² 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, also accredited with ‘A’ status. The present submission is solely on behalf of the Northern Ireland Human Rights Commission.
³ Agreement reached at Multi-Party talks (Good Friday Agreement) done at Belfast on 10 April 1998.
⁴ Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on 10 April 1998 (also referred to as the UK-Ireland Agreement or British-Irish Agreement).
Rights (ECHR) into domestic law; a statutory duty on public authorities to promote equality of opportunity on grounds including race, religion and ‘political opinion’; the establishment of the Human Rights Commission; the establishment of an Equality Commission; a strategy to tackle the problems of a divided society and promote social cohesion; commitments to strengthen anti-discrimination legislation, combat unemployment and eliminate the employment differential between the two largest ethnic groups; recognition of linguistic diversity and a number of specific commitments to the Irish language in the context of the UK’s subsequent ratification of the European Charter for Regional or Minority Languages (ECRML). The Agreement also provided that the Human Rights Commission should advise on the scope for a Bill of Rights for Northern Ireland, and committed the Irish government to reciprocating UK ratification of the Framework Convention. The British and Irish governments also affirmed that:

...whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities...\(^5\)

4. The 1998 Agreement led to the devolution of powers from the UK Parliament and government to the Northern Ireland Assembly (the unicameral regional legislature) and its Executive (the regional government). On assuming office, Members of the Legislative Assembly (MLAs) are required to designate themselves unionist, nationalist or ‘other’.\(^6\) Positions in the Executive are allocated in proportion to party strengths in the Assembly,\(^7\) and involve mandatory power sharing between unionists and the nationalist minority. A joint office consisting of a First Minister and deputy First Minister elected by ‘parallel consent’ (requiring a majority among unionists and among nationalists as well as an overall majority) leads the Executive Committee, consisting of Ministers appointed in approximate proportion to the strength of each party in the

---

\(^5\) Article 1(v), British-Irish Agreement 1998.
\(^6\) The Agreement provides text that can be drawn on to provide definitions of political affiliation indicators defining the Irish nationalist minority 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”; the British unionist majority can be similarly defined as people who wish to maintain Northern Ireland as part of the United Kingdom through the Union with Great Britain; Constitutional issues 1(i-iii).
\(^7\) Under the D'Hondt system (highest average method).
Assembly. Under a special procedure, if 30 or more MLAs sign a ‘Petition of Concern’ on any matter to be voted on by the Assembly, the vote will then require ‘cross-community support’ to pass.8

5. The Agreement and subsequent legislation also entrenched the consultative role of the government of the Republic of Ireland (the state of which most members of the minority are citizens) in Northern Ireland matters; made provision as to citizenship rights; and established a number of UK-Ireland (or ‘East-West’) and cross-border (‘North-South’) institutions to develop and implement common policy on matters of shared interest. As noted below, these developments, although not explicitly designed as minority protections, will be relevant to the Committee’s consideration of Article 18.

6. Although the Assembly and Executive have at times been suspended, the institutions were restored in May 2007 following the St Andrews Agreement 2006, a treaty between the UK and Ireland.9 In the most recent Assembly election in March 2007, unionist parties took 57 seats, nationalists 44 and others10 nine. Further elections are scheduled for 5 May 2011. The St Andrews Agreement 2006 also committed the UK government to establish a forum on the Bill of Rights, introduce an Irish Language Act and work to prepare for a single equality bill to be taken forward by the Northern Ireland Executive.

7. After the February 2010 Agreement at Hillsborough Castle between the largest political parties in Northern Ireland, the (British unionist) Democratic Unionist Party and (Irish nationalist) Sinn Féin, the UK devolved policing and justice powers to Northern Ireland in April 2010.11 Other matters devolved to the Assembly include racial equality, housing, culture, education, employment, health and economic development. Under the 1998 Agreement the UK Parliament and government retain jurisdiction over matters including taxation, treaties, citizenship, immigration policy and national security; the arrangements in place for allocating funding

---

8 Section 42 Northern Ireland Act 1998; ‘cross-community support’ defined as: (a) the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or (b) the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting.

9 Agreement at St Andrews (UK-Ireland) (St Andrews Agreement), done at St Andrews on 13 October 2006.

10 ‘Others’ largely relates to MLAs of the cross-community Alliance party. No seats are reserved for minority representatives.

11 Agreement at Hillsborough Castle (Hillsborough Agreement) 5 February 2010.
to the devolved administration mean that in social security, nominally devolved, Northern Ireland is in practical terms obliged to replicate most decisions made by the central government.

8. Two key policy documents in relation to the FCNM, the *Racial Equality Strategy for Northern Ireland 2005-2010* and *A Shared Future - Policy and Strategic Framework for Good Relations in Northern Ireland* were adopted by the UK government in 2005, during a lengthy period of suspension of the Northern Ireland Assembly. The aims of the Racial Equality Strategy, which was subsequently endorsed by the Assembly on 3 July 2007, were to tackle racial inequalities, eradicate racism and, along with *A Shared Future*, to initiate actions to promote good race relations. In 2010, the devolved administration issued a draft *Programme for Cohesion, Sharing and Integration* (CSI Strategy) to replace *A Shared Future*. The aim of the CSI Strategy is “to build a strong community where everyone, regardless of race, colour, religious or political opinion, age, gender, disability or sexual orientation can live, work and socialise in a context of fairness, equality, rights, responsibilities and respect”. While there is interaction between the two, CSI as the higher-level strategy provides for the retention of the Racial Equality Strategy whose aims will be refreshed and timescale extended.

**The monitoring process (Article 25)**

9. 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 Advisory Committee on the Framework Convention. In addition to parallel reporting, and in accordance with its 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). Accordingly the Commission, in November 2009, provided comments to the UK on a draft of its Monitoring Report. The Commission provides such advice and critique from a wholly independent position and has no responsibility for the content of the state report.

10. There have been recent problems with information related to the devolved functions in Northern Ireland being provided in UK Treaty Reports. For example, under the European Charter for Regional or Minority Languages, the UK on 26 May 2009 submitted its Third Periodical Report, which had been due on 1 July 2008, without information in relation to devolved matters in Northern Ireland.
That Report indicated that this information would be provided subsequently in a supplementary report from the devolved administration. The Culture Minister for Northern Ireland cited lack of agreement on its content by the coalition partners in the Northern Ireland Executive as the reason for the delay. In its report on the application of the Charter, the Committee of Experts (COMEX), noting that no supplementary report had been received and citing the lack of agreement in the Northern Ireland Executive on content, reminded the UK government that it was its duty to submit a complete report under the Charter. In 2009, similar problems arose during the UN examination of UK compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

11. The Commission notes that the present UK Third Monitoring Report on the Framework Convention is also missing information in relation to Northern Ireland. Where Northern Ireland information is provided, this largely relates to matters such as broadcasting, counter-terrorism, policing and criminal justice, which were under the jurisdiction of the central UK government during the monitoring period.

The Advisory Committee may wish to explore further with the UK the delivery of its reporting duties under Article 25 of the Framework Convention.

---

15 Policing and justice powers were subsequently transferred to the Northern Ireland Assembly in April 2010.
ARTICLE 3: NATIONAL MINORITIES

Scope of application

12. The UK has emphasised that it ratified the Framework Convention on the “understanding that it would be applied with reference to ‘racial groups’ within the meaning of Section 3(1) of the Race Relations Act 1976,\textsuperscript{16} which is to say any groups defined by ‘colour, race, nationality (including citizenship) or national or ethnic origins’ – providing of course that they are also in a minority in the UK”. This non-static application encompasses ethnic groups such as ‘Irish’, ‘Travellers’, new migrant communities, ‘Sikhs’, ‘Jews’ and also ‘Muslims’, albeit the latter only where there is intersectionality with another ethnic indicator, a matter which the Advisory Committee called on the UK to address in its Second Opinion.

13. In relation specifically to Northern Ireland, it is welcome that both the UK and the Advisory Committee in their reports have dealt with themes in Northern Ireland inclusive of the substantive Irish nationalist minority but also numerically smaller minority groups.

Data collection and the principle of self-identification

14. The Advisory Committee in its second opinion raised concerns that the 2001 UK Census categories, which relied largely on ethnic group categories that omitted a range of known minority identities, would not capture many persons from new migrant groups likely to identify under the “white” category and hence be indistinguishable from “white” members of the majority population. The Advisory Committee also urged the UK to regularly review the authorisation given to employers to allocate a “community background” when employees did not self-identify as Protestant or Catholic. In relation to consistency with Article 3, the Committee noted that in the particular circumstances of Northern Ireland such a policy should only be used in anonymised form for the purposes of combating discrimination.\textsuperscript{17}

\textsuperscript{16} This legislation, which extends to Great Britain, has now been superseded by the (single) Equality Act 2010.
\textsuperscript{17} Paras 42 and 49.
15. In Northern Ireland the 2001 Census recorded 0.85% of the population (around 15,000 persons) as belonging to ethnic groups other than the “White” category. This in Northern Ireland included an “Irish Traveller” category (0.1%, around 1,700 persons). The “Country of Birth” criteria also recorded 26,659 (1.8%) persons who were born outside of the UK and Ireland. The figures were contested by minority ethnic NGOs at the time as being an underestimate and the minority ethnic population has increased substantially in the intervening period, particularly due to inward migration from the expanded European Union.

16. The divide between the two largest ethnic groups in Northern Ireland is often characterised on the basis of religion (Protestant/Catholic) but it is manifest also in nationality (British/Irish). This was accepted by the British and Irish States in the Belfast (Good Friday) Agreement, with the adoption of a pluralist approach to British and Irish nationality, both in terms of citizenship and national identity. The Agreement states:

[the UK and Ireland] recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.

17. Despite this, religious belief is still often relied upon as the ethnic indicator for “community background”, although the category of “political opinion” (unionist/nationalist) is also used in anti-discrimination legislation. While like all ethnic boundaries “community background” in Northern Ireland is not rigid and immutable, there are correlations and inter-sectionality between all of the above indicators of ethnicity (religion, political affiliation, national identity and citizenship). The 2001 Census recorded 53 per cent of the population as Protestant, 44 per cent as Catholic and 3 per cent ‘other’ in relation to community background based on religion as an ethnic indicator. The questionable reliability of using ‘religious belief’ as an indicator regardless of the actual personal religious belief of the individual is highlighted by 14 per cent of respondents who did not

---

18 In the absence of progress on single equality legislation in Northern Ireland separate anti-discrimination is in place with the Fair Employment and Treatment Order 1998 (as amended) providing protection on grounds of ‘religious belief’ and ‘political opinion’ and the Race Relations (Northern Ireland) Order 1997 (as amended) providing protection on ‘racial grounds’ defined as ‘colour, race, nationality or ethnic or national origins’ but specifically exempting the grounds of “political opinion or religious belief” from the definition (article 5).
self-indicate a religion in the 2001 census.\textsuperscript{19} Given that a similar situation had arisen in the previous 1991 census, respondents in the 2001 census who indicated that they did not regard themselves as belonging to any particular religion were directed to respond a question as to which religion they were brought up in, which was then used to determine Protestant or Catholic ‘community background’. However 44 per cent of persons directed to this question declined to answer and had a ‘community background’ imputed to them from other information provided on the form.\textsuperscript{20}

18. The 2011 census could mitigate the potential for imposing, or failing to acknowledge, ethnic identities, as additional questions have been included in the 2011 census in relation to citizenship and national identity.\textsuperscript{21} These therefore have the potential both to provide more reliable ethnicity data, in particular in relation to capturing new migrant communities, as well as providing alternative ethnic indicators for ‘community background’. Despite the existence of these broader indicators, the Northern Ireland Statistics and Research Agency has indicated that it intends to continue its approach in relation to determining and assigning religious identity for the purposes of ‘community background’.\textsuperscript{22}

The Advisory Committee may wish to explore further the approach taken regarding self-identification and the 2011 Census in Northern Ireland.

\textsuperscript{19} See Key tables KS07a and KS07b 2001 Census, Northern Ireland Statistics and Research Agency.
\textsuperscript{20} Northern Ireland Statistics and Research Agency, \textit{The Methodological Approach to the 2001 Census}, Appendix B, Paras 8-10. Ethnicity could also be assigned from other data on the form.
\textsuperscript{21} The Census Order (Northern Ireland) 2010, schedule 2.
\textsuperscript{22} NISRA response to Executive Racial Equality Panel, 18 February 2011.
ARTICLE 4(1): EQUALITY/EQUAL PROTECTION BEFORE THE LAW

Legislative developments in combating discrimination

Single Equality Bill

19. Provision was made to take forward a Single Equality Bill for Northern Ireland in the St Andrews Agreement 2006 between the UK and Ireland, consolidating the variety of statutes that currently apply, with considerable inconsistencies, across the various protected categories. As well as Article 4, this matter therefore also engages Article 18 of the Framework Convention relating to bilateral agreements with other States which strengthen protections for national minorities. In the State’s Second Monitoring Report to the Advisory Committee the UK stated:

The SEB [Single Equality Bill] is a key legislative priority for 2007. As part of the St Andrews agreement a commitment was given ‘rapidly’ to progress a SEB for Northern Ireland in line with a potential restoration of the devolved administration in March 2007 and in practice this has meant advancing Northern Ireland plans ahead of the Great Britain timetable.

20. However, despite this commitment and an outstanding UN treaty body recommendation regarding the need for such legislation in Northern Ireland, progress has not been made on single equality legislation for Northern Ireland. Consolidated equality legislation has now been put in place in Great Britain under the Equality Act 2010. Legislative competence in such matters is largely devolved to Northern Ireland, but the Bill was not included in the Northern Ireland Executive’s Programme for Government 2008-10.

21. When recently asked if they intended to introduce legislation on the lines of the Equality Act 2010, the First and deputy First Ministers responded that they were currently considering the options for legislative reform. Citing religious freedom, the largest political party in the Assembly – the Democratic Unionist Party – has opposed discrimination protections on grounds of sexual

23 “The Government believes in a Single Equality Bill and will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date”: St Andrews Agreement 2006, Annex B.
24 Para 41.
26 Northern Ireland Assembly, Written Answers (AQW 3035/11) 7 January 2011.
Therefore, there is now potential that any legislation to strengthen protections on other grounds may be introduced on individual grounds rather than as a single overarching bill.

22. The absence of single equality legislation leads to a number of weaknesses in the legislative framework for groups protected by the Framework Convention. In addition to such legislation having the potential to strengthen protections, the existence of an array of laws rather than one coherent and upwardly harmonised Act could, among other matters, prevent redress for combined discrimination based on several protected grounds. In its Second Opinion on the UK, the Advisory Committee called for “a more extensive prohibition of discrimination in Northern Ireland’s race equality legislation”, urged that inconsistencies in anti-discrimination legislation be removed by the Single Equality Bill for Northern Ireland and further noted that Northern Ireland equality legislation required most employers to monitor workforce composition in relation to religious belief and political opinion, but not ethnicity.28

23. A further problem is that, apart from the duties on public authorities under the Human Rights Act 1998 which incorporated the European Convention on Human Rights into domestic law, there is no direct protection on grounds of ‘language’ in anti-discrimination law. There is no direct protection against, for example, a private-sector employer banning employees from using their minority language in private communication at work. The only recourse for victims is therefore claims of indirect discrimination on other grounds, such as racial group or ‘community background’. Racial discrimination legislation can provide some indirect protection against discrimination or harassment for minority ethnic languages. In the case of the Irish language as an indigenous minority language, establishing such indirect grounds is more complex.29

---

27 See, for example: Assembly Motion 11 December 2006 calling on the UK to withdraw the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.
28 Paras 62, 63 and 73 respectively.
29 For example: in Northern Ireland there are more people in the Irish, Catholic or nationalist categories who speak Irish than in the British, Protestant or unionist categories. This is not straightforward, however, as Irish speakers are in fact a minority within all three of the Irish, Catholic and nationalist categories, and Irish speakers are by no means found exclusively within these three categories. Nevertheless, in the absence of direct protection against discrimination on the grounds of language, indirect discrimination protections have been harnessed to protect victims. For example, Aodhán Connolly v Botanic Inns; Equality Commission for Northern Ireland, Decisions and Settlements Review 2005-6, p45.
The Advisory Committee may wish to seek clarification from the Northern Ireland administration on how it intends to legislate to enhance protection against discrimination.

**Ethnic profiling**

**Immigration exemption**

24. Moves to strengthen legislative protection against racial discrimination could also address the present ‘immigration exemption’ in Article 20C of the Race Relations (Northern Ireland) Order 1997 (as amended). This provision has already been heavily criticised as non-human rights compliant. The UN Committee on the Elimination of Racial Discrimination described the application of provisions making it “lawful for immigration officers to ‘discriminate’ on the basis of nationality or ethnic origin provided that it is authorised by a minister” as “incompatible with the very principle of non-discrimination”, and urged their reformulation or repeal.

25. Recently, the UK Immigration Minister Damien Green MP issued a Ministerial Authorisation under the Order. This permits UK Border Agency immigration officers to, by reason of nationality, “subject the person to a more rigorous examination then other persons in the same circumstances” when conducting border control checks (‘examinations’). The authorisation also applies to Transit Visa, Entry Clearance, Leave to Enter and Removal Directions. The nationalities for which discrimination is permitted are to be provided on a list approved personally by the Minister. These nationalities are not set out in the Authorisation, but criteria are provided. However, these criteria substantively relate back to other initial decisions made by immigration officials (for example, visa refusals or other adverse decisions relating to a particular nationality) which may in themselves contain bias.

**The Advisory Committee may wish to ask the UK government for its justification for ‘immigration exemption’ authorisations which permit discrimination on grounds of ethnic or national origin.**

---

30 By the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003.
31 CERD/C/63/CO/11 (Concluding Observations) 10 December 2003, para 16.
32 Race Relations (Northern Ireland) (Transit Visa, Entry Clearance, Leave to Enter, Examination of Passengers and Removal Directions) Authorisation 2011 (in operation on 10 February 2011); a Ministerial Authorisation was also made for Great Britain under paragraph 17(4)(a) of schedule 3 of the Equality Act 2010.
33 As above, para 5(2)(b).
34 As above, paras 7 and 8.
Internal immigration control and ethnic profiling

26. The Commission, in 2009, published *Our Hidden Borders*, a report on its investigation into the UK Border Agency’s (UKBA) powers of detention in Northern Ireland. Since 2005, the Commission had become increasingly concerned about the way in which the UKBA authorised deprivation of liberty in the context of immigration control in the jurisdiction. In particular, the Commission had serious questions as to the legal basis and conduct of ‘Operation Gull’ – a form of internal immigration control at Northern Ireland ports and airports, on passengers travelling within the UK and the Common Travel Area (the passport-free zone comprising, principally, the UK and Ireland). ‘Operation Gull’ results in a considerable number of individuals being detained and later removed from the UK as “immigration offenders”. The investigators’ observation of ‘Operation Gull’ at Belfast City Airport and interviews with immigration detainees raised “serious concerns in relation to racial profiling”, and the report provides a number of accounts of persons who had been singled out on the basis of ethnicity. Among the Commission’s recommendations following the investigation was that the “practice of singling out particular nationalities and people visibly from a minority ethnic background should be ceased immediately”. Despite this, ‘Operation Gull’ continues and the frequency of scheduled operations, and the number of people detained and removed, may even have increased since 2009. However, no detailed statistics or other information exists to enable further assessment. The report also referenced the lack of legal certainty as regards the powers deployed for examinations under “Operation Gull”. The UKBA has argued that examinations take place on a “voluntary basis” rather than with recourse to the power of examination.

27. The UKBA powers of examination (passport controls) cannot be exercised on internal journeys between the UK and Republic of Ireland by virtue of the Common Travel Area (CTA). Section 1(3) of the Immigration Act 1971 provides that arrival or departure in the UK from elsewhere in the CTA cannot be subject to passport control. In 2009, however, the UK government sought to legislate

36 Above, p65.
37 Above, p89.
38 See *Application for judicial Review by Fyneface Boma Emmanson* [2008] NIQB 38, para 39.
39 The CTA was given full statutory recognition in the UK under the Immigration Act 1971 and Immigration (Control of Entry through the Republic of Ireland) Order 1972 (as amended). The CTA is not a bilateral treaty-based commitment but is referenced in the EU Amsterdam treaty.
to remove this provision and planned to introduce, on the land border between Northern Ireland and the Republic of Ireland, mobile “ad hoc immigration checks on vehicles to target non-CTA nationals” (that is, non-British or Irish citizens). The reforms would not introduce ‘fixed’ document requirements for crossing the land border. The Commission raised concerns as regards the risks of ethnic profiling in relation to such checks with the question being, in the context of ethnic diversity, how those policing the land border were going to be able to tell who was a British or Irish citizen and who was not. The Commission also asked who, on indicating that they were not carrying any documents (and they may have no obligation to do so), would be allowed to proceed, and who would be subject to further examination and even arrest and detention until identity was verified.

28. The Home Office initially dismissed concerns by stating as fact that “Passengers will not be (and are never) targeted on the basis of racial profiling”. However, this statement was made despite examples to the contrary in Northern Ireland air and sea ports and a ruling by the UK’s highest court finding unlawful practices of ethnic profiling of Roma by UK immigration officers based at Prague Airport which had resulted in “striking” differences in treatment, with the outcome of Roma being 400 times more likely than non-Roma to be refused permission.

---

40 Strengthening the Common Travel Area consultation paper, UKBA, 24 July 2008, para 2.6.
42 For example, a column in the Belfast Telegraph newspaper detailed the case of Jamiu Omikunle, a Nigerian student resident in England, who had been visiting Belfast to attend a christening. He was awarded £20,000 for having been unlawfully detained at Belfast International Airport after being stopped by an immigration officer and taken and held in a detention centre in Scotland for nine days. Mr Omikunle was quoted as saying, “I was conscious it was only black people who were being stopped. I was very uncomfortable about this”. The report referred to a number of other cases. ‘Why some deportations are a black and white issue’, Belfast Telegraph 12 February 2009.
43 R v Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants) [2004] UKHL 55. The case centred on immigration operations aimed at preventing asylum seekers travelling to the UK, in which officers subjected passengers from the Roma ethnicity to more intrusive and sceptical questioning than non-Roma, and set a much higher threshold for substantiating evidence. These practices were not pursued under the aforementioned ‘immigration exemption’, with the Home Office basing its defence on the assertion there had been no discrimination, rather than asserting the discrimination had been lawful (para 80 of judgment). The judgment noted that the Home Office made no attempt to guard against discrimination, nor had it sought to explain the “striking difference” in treatment which resulted in Roma being 400 times more likely than non-Roma to be refused permission (para 34). The court did not contest that it was indeed the case that there was a higher likelihood of Roma claiming asylum, given that they were a disadvantaged ethnic minority. However,
concerns regarding ethnic profiling were referenced by legislators and the CTA reform clause was defeated in the UK Parliament and removed from what became the Borders, Citizenship and Immigration Act 2009. Whilst the then UK government indicated that the CTA reforms would be pursued through an alternative legislative vehicle, the Commission has now received correspondence from the present UK government which confirms the discontinuation of the CTA legislative reforms.\textsuperscript{44} There are of course, as referenced above, a number of existing in-country UK Border Agency practices of concern to the Commission, which the UKBA seeks to justify under existing powers and which the Minister indicates are to continue. There are also risks that powers to gather passenger data from carriers could also be used for forms of internal immigration control.

The Committee may wish to ask the UK Government for further information regarding ‘Operation Gull’ and safeguards to prevent ethnic profiling in immigration control.

\textsuperscript{44} Correspondence from UK Immigration Minister Damien Green MP to Chief Commissioner, Professor Monica McWilliams, 3 December 2010.

the court reiterated that racial stereotyping was unacceptable, even if the stereotype had a basis, with Baroness Hale stating: “The whole point of the law is to require suppliers to treat each person as an individual, not as a member of a group. The individual should not be assumed to hold the characteristics which the supplier associates with the group, whether or not most members of the group do indeed have such characteristics, a process sometimes referred to as stereotyping. Even if, for example, most women are less strong than most men, it must not be assumed that the individual woman who has applied for the job does not have the strength to do it” (para 74). Baroness Hale further quoted from Laws LJ in the Court of Appeal, who stated, “it seems to me inescapable that the reality is that the officer treated the Roma less favourably because Roma are (for very well understood reasons) more likely to wish to seek asylum and thus, more likely to put forward a false claim to enter as a visitor. The officer has applied a stereotype; though one which may very likely be true. That is not permissible”; thus affirming that even in the extreme circumstance of there being a high likelihood of a member of a group engaging in particular behaviour, racial profiling was still unacceptable and unlawful.
Stop and search counter-terrorism powers

29. In July 2010, the European Court of Human Rights gave its final judgment in Gillan and Quinton v the UK (App no 4158/05). This examined the stop and search powers contained in section 44 of the Terrorism Act 2000 (TACT) which allow police to randomly search persons without a requirement for individual reasonable suspicion. The Commission and other human rights bodies have raised concerns that the presence of such an unfettered power can lead to its arbitrary exercise and/or its deployment in a discriminatory manner. In Gillan and Quinton, the Court found that the power failed the legal certainty test under ECHR Article 8 (the right to respect for private life).

30. Following the final ruling of the Grand Chamber, the UK Home Secretary suspended use of section 44 in July 2010. In the quarter prior to suspension 6,922 persons were stopped and searched under Section 44 by the Police Service of Northern Ireland (PSNI). In addition, section 21 of the Justice and Security Act 2007 (JSA 2007), specific to Northern Ireland, contains a counter-terrorism power permitting police and the military to “stop and question” persons without reasonable suspicion as to their identity and movements, along with, under section 24, a search power. The most recent quarterly PSNI statistics indicate that 5,535 persons were stopped and searched under the combined provisions of the JSA 2007. On 11 February 2011, the Protection of Freedoms Bill was introduced into the UK Parliament. This provides for the repeal of section 44 powers under the Terrorism Act 2000. The Bill would introduce a replacement power authorising stop and search, without individual suspicion, in a designated area where there is reasonable suspicion that an act of terrorism will take place. The Bill would also amend JSA 2007 stop and search provisions in Northern Ireland.

31. From April 2010, the Police Service of Northern Ireland has monitored stop and search on the basis of the twelve ‘ethnic group’ categories contained within the Census, but has discontinued carrying ethnicity information in its quarterly reports. Prior to 2010, seven ethnic grounds were monitored and included in the reports.

---

45 Section 45 of TACT allows the s44 power to be used only to search for articles that could be used in connection with terrorism; search powers also arise under ss41 and 43 of TACT.) S44 searches can take place following the designation of an area when a designation is considered ‘expedient’ for the prevention of acts of terrorism.
46 Police Service of Northern Ireland, Stop and Search Statistics Quarter 3, 2010-11, 1 October to 31 December 2010.
47 Clauses 58-62 and schedule 6 in Bill as introduced.
The categorisation can be undertaken by the police officer rather than self-identification by the individual stopped. No data has been gathered on the grounds of religious belief or political opinion.

The Advisory Committee may wish to seek further information from the Northern Ireland administration in relation to monitoring and publication of stop and search data.

Situation of destitute migrants

32. The UK restricts the access to social protection (most social security benefits and homelessness assistance) of non-EEA48 nationals with temporary residency. The UK also introduced transitional controls limiting access to social protection to nationals of most states that joined the European Union (EU) in 2004 and 2007.49 In addition, rather than reform the system to provide some safety net for migrants, government legislated, under an ‘earned citizenship’ policy, to extend from five to up to ten years the length of time non-EEA migrant workers must spend before being eligible for permanent residency (and during which they are without access to social protection).50

33. In response to growing concerns about destitution, the Human Rights Commission conducted a formal investigation into homelessness among migrants with limited access to social protection. This found the legislation to be unduly restrictive and noted particular impacts on victims of exploitation, refugees, asylum seekers, victims of domestic violence, persons with ill health or disability and victims of racist intimidation.51

34. The UK has not set out a reasonable and objective basis to justify this differential treatment on grounds of nationality and migration status in accessing essential social protection. In relation to the ‘earned citizenship’ reforms the UK, rather than detailing such a case, instead argued that migrants should ‘earn’ rights to social protection. The Commission regarded the ‘earned citizenship’

48 EEA: European Economic Area; that is, the 27 European Union states plus Iceland, Liechtenstein and Norway. Those affected by this limitation are referred to as persons subject to immigration control with ‘No Recourse to Public Funds’.
49 The ‘Workers Registration Scheme’ limited access to social protection to the nationals of eight countries which joined the European Union in May 2004 (and under the terms of accession has to be discontinued in May 2011), and the Worker Authorisation Scheme to nationals of Romania and Bulgaria in 2007.
reforms, insofar as they restricted access to social protection, as likely to be incompatible with ECHR Article 1 Protocol 1 (benefits as property) with Article 14 (non-discrimination). It is welcome therefore that the new UK government has decided not to commence the 'earned citizenship' reforms (scheduled for July 2011) and to repeal them.\footnote{UK Border Agency Circular, Deputy Director (Permanent Migration), 11 November 2010.} The ‘Workers Registration Scheme’ will also have to be discontinued on 1 May 2011, when seven years will have passed since the EU accession. However, the problems caused by other existing restrictions on social protection relating to ‘No Recourse to Public Funds’ and the ‘Worker Authorisation Scheme’ remain. The UK government is also still considering reform to ‘break the link’ between temporary and permanent residence for non-EEA migrants, which would also have the practical effect of restricting access to social protection.

The Advisory Committee may wish to ask the UK government how it justifies the lack of protection against destitution on citizenship and migration status.

35. NGOs and the Commission have called for the establishment of a migrant crisis fund to plug gaps in welfare provision. There have been a number of high profile incidents of destitution in Northern Ireland. This includes the case of a young Ukrainian woman on a work permit, Oksana Sukhanova, who lost her job and hence accommodation and legal status in December 2004. She ended up having to sleep rough, contracted frostbite and had to have both legs amputated from the knee, to considerable public outcry. On Christmas Eve 2009, a Polish man, Robert Kowalski, died of exposure during bitterly cold conditions, his body being found behind a church in a Belfast suburb.\footnote{‘Call for Migrants Crisis Fund’, \textit{Belfast Telegraph}, 30 December 2009.} In 2010, statutory agencies also faced considerable barriers in supporting 110 Roma who had been intimidated from their homes in south Belfast, with support largely limited to assisting affected families and individuals to return to Romania.

36. The Commission welcomed the explicit recognition in the devolved administration’s draft Programme for Cohesion, Sharing and Integration document that, while immigration and asylum legislation are matters reserved to the UK government, there are duties on the Northern Ireland Executive towards the migrant population in the jurisdiction. The document specifically addressed the issue of destitution:

---

52 UK Border Agency Circular, Deputy Director (Permanent Migration), 11 November 2010.
A key issue exists for those individuals who are here but have "no recourse to public funds". Concerns about foreign nationals who "slip through the safety net" have been around for some time and these concerns are growing. Individuals working here legally may, through no fault of their own… find themselves destitute and in need of short-term or bridging support. Within the context of the UK legislation, we are determined to examine what support we can give to people who, through no fault of their own, fall into difficulty. In many of these cases, quick and early intervention could prevent the escalation of an incident or a family’s difficulties.  

37. The Commission has pressed for urgent movement to address the needs of persons left destitute with ‘no recourse to public funds’ or due to transitional restrictions on EU migrant workers. While the Racial Equality Panel led by the Office of the First Minister and deputy First Minister (OFMdFM) has scoped out the legal basis for a migrant ‘crisis fund’, to date the fund has not been put in place. In the meantime there have recently been two incidents of homeless Polish migrants being jailed. A 29-year-old man was sentenced to six months’ imprisonment for squatting in an apartment during the freezing winter of 2010, and a 58-year-old man was jailed for a week when he was unable to pay a fine levied for begging.

The Advisory Committee may wish to press the Northern Ireland administration about the establishment of a migrant crisis fund to prevent destitution.

---

55 ‘Homeless man jailed for Xmas squatting’, UTV News Online, 29 December 2010 (the sentence was reduced on appeal to three months, and was suspended); ‘Homeless man jailed for begging’, UTV News Online, 19 February 2011.
ARTICLE 4(2): MEASURES TO PROMOTE FULL AND EFFECTIVE EQUALITY

Situation of Irish Travellers (accommodation)

38. Serious and persistent disadvantage faces the Irish Traveller community in Northern Ireland in all walks of life, from health care and education to employment and housing. Among the present strategic priorities of the Commission has been examining the accommodation needs of the Irish Traveller community, and this issue has also been highlighted by United Nations and Council of Europe experts, including the FCNM Advisory Committee.

39. In 2009, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) raised concerns regarding the present situation of Travellers and urged the provision of sufficient, adequate and secure sites. The Committee also commented on the discriminatory effect of the Unauthorised Encampments (Northern Ireland) Order 2005 and urged its review.56

40. The Advisory Committee’s Second Opinion on the UK also singled out the accommodation situation of Irish Travellers. The UK government’s response to the Opinion was to state that in Northern Ireland there was adequate funding for accommodation for Travellers, but it conceded that there were ‘constraints’ in obtaining the suitable sites needed. The UK argued that this problem was being actively addressed by the Department for Social Development (the relevant Northern Ireland ministry) and the Northern Ireland Housing Executive (the regional housing authority).57 Subsequently, the Committee of Ministers resolution in relation to the UK’s compliance with the FCNM included among its issues of concern:

    Hostility among some people within the local population and the resistance of certain local authorities to improving the availability of authorised sites have contributed to the fact that a number of Gypsies and Travellers continue to live on unauthorised sites and may face eviction orders.58

---

56 Committee on Economic, Social and Cultural Rights (22 May 2009), Concluding Observations on the United Kingdom, UN Document number E/C 12/GBR/CO/5, para 36.
Caravans legislation

41. A positive development during the monitoring cycle has been the successful passage of the Caravans Bill through the Northern Ireland Assembly. This Private Members Bill, introduced by John McCallister MLA, provides security of tenure for permanent caravan dwellers, and other protections for persons living in caravans on temporary sites. The Bill completed its passage through the Assembly on 15 February 2011 and, after formally becoming an Act, will commence in six months.

42. While the original intention of the Bill had been to protect permanent caravan dwellers in ‘park home’ sites (mainly non-Travellers living in caravans, often as retirement homes) and temporary dwellers on holiday sites, the Bill was drafted and amended in such a way as to ensure that it would also afford protection to Travellers on serviced (permanent) sites and temporary (transit/halting) sites. The intention that the Bill should cover Traveller sites was put on the record and secured by the drafting of the Bill. The Bill provides permanent security of tenure, and related rights, to caravan dwellers on protected sites with tenancy entitlements of over 12 months, which the NIHE confirmed includes all serviced Traveller sites. The situation of transit sites is different given the particular purpose, namely the facilitation of a nomadic lifestyle, and occupants of such sites are afforded similar protections as other temporary caravan dwellers.

43. The Commission also highlighted the potential for the Bill to fulfil, for Northern Ireland, obligations on the UK flowing from the European Court of Human Rights judgment in Connors v UK. In Connors, the lack of protection against eviction afforded to Traveller sites in England, which contrasted unfavourably with the levels of protection afforded to other tenants, was found to breach Article 8 of the ECHR. The UK is yet to satisfactorily discharge the measures that it needs to take to implement the judgment.

59 Application no 66746/01, 40 EHRR 9.
60 In England and Wales legislation was introduced in 2008 to amend the definition of a “protected site” in the Mobile Homes Act 1983, to cover local authority Gypsy and Traveller sites. This provision was still awaiting commencement when the Committee of Ministers last examined the execution of the judgment. The Committee of Ministers will resume consideration at its 1108th meeting (March 2011).
Provision of adequate number of sites for Travellers

44. The Northern Ireland Housing Executive is under a legal duty to provide such caravan sites as appear to be appropriate for the accommodation of caravans of members of the Irish Traveller community, through Article 28A of the Housing (Northern Ireland) Order 1981 as amended by the Housing (Northern Ireland) Order 2003. The 2003 amendment transferred duties to provide Traveller sites to the Housing Executive. Prior to this, until 1 December 2003, the power to provide sites had rested with local government.

45. The Commission considers that the Northern Ireland authorities have failed to discharge their legal duty to provide such caravan sites as appear to be appropriate for the Irish Traveller community. The Housing Executive itself carried out two needs assessments in 2002 and 2008, which showed a net shortfall between what the Executive considered to be appropriate provision of sites for Irish Travellers and actual site provision. The Housing Executive’s Traveller Accommodation Programme 2003-2008 failed to result in sufficient provision of Irish Traveller accommodation, and, in its response to a report commissioned by the Equality Commission, the Housing Executive accepted that there had been an undersupply of Traveller-specific accommodation and delays in the development of sites. The Commission does not regard the Housing Executive’s Traveller Accommodation Programme 2009-2014, which in large part carries forward outstanding proposals from the previous programme, as being capable of discharging the statutory duty of providing sufficient sites. The Housing Executive does not appear to have exercised, for example, its powers to acquire land for the purposes of site provision, nor has it proceeded with relevant planning applications in order to achieve sufficient sites. The Commission is therefore actively preparing a legal challenge against the Housing Executive for failing to discharge its duty to provide sites, and this will proceed unless the Housing Executive adopts a revised proposal with a timetabled schedule of work to provide sufficient Traveller-specific accommodation to meet need.

The Committee may wish to press the UK on what steps it is taking to provide sufficient sites for Irish Travellers. Hostility and further legislative barriers faced by Travellers.

---

61 Northern Ireland Housing Executive ‘Travellers’ Accommodation: Needs Assessment in Northern Ireland’.
46. The Advisory Committee in its Second Opinion addressed the potential for adverse impact on Travellers of the Unauthorised Encampments (Northern Ireland) Order 2005 in the context of limitations on alternative provision. As the purpose of the Caravans Bill included due-process protections against eviction, the Commission urged consideration of the repeal of the 2005 Order through the legislation. However, the Social Development Minister, while noting the representation, took the view that “the Caravans Bill would not be the appropriate vehicle nor have the legislative scope, for taking forward a change of such magnitude”. The Minister also stated that such a change would require specific consultation, and no amendment was introduced to repeal the 2005 Order.

47. A further potential barrier, apparently stemming from a legislative anomaly, is the ongoing requirement for the Housing Executive to obtain a site licence from local Councils for Traveller sites. Under the Caravans Act (Northern Ireland) 1963, Traveller sites had always been among a number of categories of caravan sites exempt from licensing requirements, but no consequential amendment was made to the legislation when the power to provide Traveller sites was transferred from local councils to the Housing Executive. Thus, the Housing Executive, in addition to its own statutory requirements, can still be required to apply for a site licence. Not only does this appear to defeat the purpose of transferring these powers, it may also constitute, or could be used as, an unnecessary additional impediment to the Housing Executive discharging its function to provide sites. While it appears that many councils do not apply this provision, an MLA has argued that some councils, singling out Craigavon Borough Council, have used the provision as a ‘blocking mechanism’ against the provision of Traveller sites. The Commission had recommended that a clause be added to the Bill to exempt the Housing Executive, alongside district councils,

---

63 Paras 102 and 106. Under the Order, a police officer is empowered to direct a person to leave land and to remove any vehicle or other property from that land. The Order creates an offence of non-compliance with the officer’s directions and empowers the officer to seize the belongings of the persons being directed to leave. The maximum penalty for non-compliance is three months’ imprisonment, a fine of £2,500, or both. There is no question that the primary impact of this Order has been on the Irish Traveller community, as the only indigenous minority with a traditionally nomadic or partly nomadic lifestyle.

64 The Order is under the competency of the Department of Social Development.

65 Correspondence from Social Development Minister Alex Attwood MLA to Chief Commissioner, Professor Monica McWilliams, 3 October 2010.

from the site licence requirement. This matter is within the competency of the Department of the Environment. The Housing Executive supported the proposed change as did, at the time, the Minister for the Environment.

48. Subsequently, an amendment was tabled to the Bill by Sinn Féin, Social Democratic and Labour Party (SDLP) and Alliance MLAs to add Housing Executive Traveller sites to the list of exempted categories of sites which do not require a site licence from local Councils. By then, however, the Democratic Unionist Party strongly opposed the amendment and tabled a ‘petition of concern’ in order to ensure it would ultimately be defeated.

49. While the requirement therefore remains, the lengthy and heated debate in the Assembly chamber provides an evidence base as regards political attitudes to Travellers and their accommodation needs. On the positive side, within the debate, the Bill sponsor, John McCallister MLA, accepted and drew attention to the poor track record of the UK on Travellers’ rights, with another member, Anna Lo MLA, drawing attention to the UN and Council of Europe views on the matter. A number of members proposing and supporting the amendment also spoke in support of Traveller rights. Proposer, Fra McCann MLA, speaking to the purpose of the amendment, argued:

Many councils regard Travellers as burdensome, problematic and, in many cases, antisocial. In the past, I have listened to downright racist comments and speeches made by councillors in a number of councils, not least Belfast.

50. Those opposing the amendment argued that there had been no consultation and that even exempting public authority sites for Travellers while requiring a private site for non-Travellers to have a licence would be “discriminating” or a “blow to the principle of equality”. The main argument used by opponents, however, was that it would bypass local democracy and hence local ‘sensitivities’. Roy Beggs MLA argued:

There is great potential to exacerbate the community tensions that can arise, particularly if such a site were dropped into a community without appropriate consultation or respect for the views of local people. [...]

67 Through amendment to para 11 of Schedule 1 of the Caravans Act 1963.
68 A ‘petition of concern’ requires a vote to be taken with both the support of Unionists and Nationalists; see above, para 4.
70 As above, p266.
71 As above, Simon Hamilton MLA, p271; Sidney Anderson MLA, p273.
I declare an interest as a local councillor. The reason for my comments is that there would be great concern if such sites were placed in Larne, Carrickfergus or parts of Newtownabbey in my constituency, where there is no tradition of a Travelling community. [... ]

I am just thinking about how my constituents would react were an outside body to override the wishes of the local council and position a site in an area where there is no tradition of that happening and no perceived need for it to happen. That would usurp local democracy and go against the direction of trying to devolve more responsibility to a local level.72

51. On being challenged to visit Traveller sites, the same MLA, alluding to earlier remarks about a visit to a Women’s Centre near a Traveller site in another area (Craigavon) stated:

I can honestly say that I would not wish for such a [Traveller] site anywhere in my constituency: where skips are provided free by the council, but are not used; where rubbish is being spread around widely; and where socks were stolen — I will not go into detail, but they were used for something for which they were not meant to be used — from the garden of a women’s centre that tries to help disadvantaged members of the community, and desecration occurred at the side of the building. I can assure you that I do not want that anywhere in my constituency.73

The Advisory Committee may wish to ask the devolved administration in Northern Ireland which steps it intends to take to combat racism and hostility against Travellers.

Situation of migrants (medical care)

52. The Commission has recently completed research into human rights compliance of the current circumstances of entitlement to access publically funded medical care based on residency status in Northern Ireland.74 Medical services are funded through taxation, are generally free at the point of use in Northern Ireland, and are used by the vast majority of persons. However, with some exceptions, entitlement to access the full range of publicly funded hospital services is restricted to Northern Ireland residents

72 As above, p273.
73 As above, p277-8.
74 NIHRC (January 2011) Access Denied or Paying When you Shouldn’t? Access to Free Medical Care: Residency, Visitors and non-British/Irish Citizens, Belfast.
ordinarily resident’)\(^{75}\) and a range of categories of non-residents (‘visitors’) in a similar manner to elsewhere in the UK.

53. In relation to primary care services (General Practitioners), however, the situation is different to the rest of the UK. The health ministry (DHSSPS) has set out that its ongoing policy intention has been, outside immediately necessary treatment, to maintain a link between ‘ordinary residence’ and access to publicly funded GP services. The Commission has questioned both the proportionality and the legal certainty of this requirement, the latter given considerable inconsistencies in the legal and policy framework. The stated aim of the policy is to restrict persons resident in the Republic of Ireland from registering with Northern Ireland GPs, although assurances are also given that EEA rights will be respected. The impact of the restriction goes well beyond its aim as many persons who are living short term in Northern Ireland (but do not yet qualify as ordinarily resident) are also prevented from being included on a GP’s list, which further questions its proportionality.

54. The Commission has recommended that the DHSSPS review its position in relation to primary care with a view to revoking the policy link to ordinary residence, and allowing GP discretion. The Commission has argued that if a restriction is maintained the DHSSPS should produce an evidence base, beyond the anecdotal, to demonstrate whether there is sufficient substantiation to justify the policy rationale; the criteria for meeting the policy aim should be revised to ensure respect for the EEA rights of residents of the Republic of Ireland; and that other groups of persons living short term in Northern Ireland are not inadvertently caught by the measure.

The Advisory Committee may wish to ask the Northern Ireland administration how it justifies this restrictive approach to publicly funded medical care.

\(^{75}\) A common-law concept, set out in *Shah v Barnet London Borough Council* (1983) 1 All ER 226.
ARTICLE 5: PROMOTE CONDITIONS TO MAINTAIN CULTURE

Support for the preservation and development of the identity, cultures and languages of national minorities

55. The racial equality work of NGOs has been supported for a number of years by the Minority Ethnic Development Fund administered by the Northern Ireland Executive. There are understandable concerns that in the present fiscal climate, the resourcing of the fund could be under threat in coming years. The Racial Equality Panel (an implementation mechanism for the Racial Equality Strategy) was recently told that the fund would be in place for the coming year with similar resources as in previous periods. This would be a welcome development. The future beyond the coming year is, however, less certain.

The Advisory Committee may wish to ask the Northern Ireland administration about the future of the minority ethnic fund.

56. In relation to the funding of Irish language organisations, the picture appears bleaker in the short term. Funding is delivered through Foras na Gaeilge, a statutory agency under the auspices of the North-South Ministerial Council, a body set up under the Belfast (Good Friday) Agreement composed of Ministers from Northern Ireland and the Republic of Ireland. In December 2009, Foras na Gaeilge was directed by the North-South Ministerial Council to restructure funding schemes for core-funded Irish language groups. A deadline of 30 June 2010 was set and recommendations were delivered in advance of that, which the agency, drawing attention to limited resources, stated would “undoubtedly involve restructuring of a radical nature, especially for the core funded organisations”.76 The most recent Joint Communiqué notes progress on implementation of approved interim funding to existing core funded groups only until the end of May 2011.77 The Commission understands that groups were subsequently invited to apply for funding until December 2011, but shortly before the application deadline were then informed of an initial 10 per cent cut (with

---

77 North South Ministerial Council, North South Language Body Sectoral Format, 3 November 2010, Joint Communiqué.
further reductions to follow) on the funding budget. A review has also been conducted into core funded Ulster Scots organisations.

57. The issue of resourcing for the Irish language cannot be detached from the failure to discharge a legal duty to introduce a strategy to “enhance and protect the development of the Irish language”. \(^{78}\) This duty arose following the 2006 St Andrews Agreement, which also incorporated a separate legal duty to adopt a strategy to “enhance and develop the Ulster Scots” language, heritage and culture. To date, despite the passage of time, the Culture Minister has not introduced either strategy. The Minister has indicated that he will not bring forward an Irish language strategy, but will bring forward a combined strategy, most recently referred to as the “Regional or Minority Languages Strategy”, incorporating both duties. \(^{80}\) The Commission does not normally take a view on the administrative vehicle by which duties are implemented, but did voice concerns at Ministerial statements that the development of a single strategy was designed to generate an artificial parity between the Irish language and the Ulster variant of Scots. \(^{81}\) Given there are objectively very different levels of need and development this would involve a substantial diversion of resources from the former to the latter which would not reflect either demand or the specific situation of each. In assessing compliance with the European Charter for Regional or Minority Languages the Council of Europe monitoring committee, recalling its previous observations on “inappropriate claims for parity of treatment between Irish and Ulster Scots” and reiterating that the Charter provides that each should be treated in accordance with its own specific situation, noted the intention that the strategy would “strive towards parity... including an equal amount of funding”, and warned against this approach:

---

\(^{78}\) Section 15, Northern Ireland (St Andrews Agreement) Act 2006, which inserts section 28D to the Northern Ireland Act 1998 (as amended).

\(^{79}\) Ulster-Scots is a regional type or variant of Scots. Scots is from the Germanic language group and is closely related to English. The main geographical areas in Northern Ireland where Ulster-Scots is spoken are north Down, parts of Antrim and east Derry/Londonderry, although words and idioms from Ulster-Scots are used elsewhere in the jurisdiction.

\(^{80}\) Minister of Culture, Arts and Leisure, Nelson McCausland MLA: Assembly Question (AQW 3034/11).

...The Committee of Experts is concerned that the strategy will strive towards parity between the two languages and therefore not serve the needs of either Irish-speakers or UlsterScots-speakers and will hold back the development of both languages.82

The Advisory Committee may wish to seek assurances that there will be no deliberate retrogression in funding for the Irish language sector and that resourcing frameworks for Irish and Ulster Scots will be developed in a manner consistent with human rights commitments.

82 Council of Europe, Application of the Charter in the United Kingdom, ECRML 2010(4), paragraph 20; see also paras 16-17 and 57.
ARTICLE 6(1): TOLERANCE AND INTERCULTURAL DIALOGUE

Promotion of tolerance and intercultural dialogue

Strategic policy in Northern Ireland

58. As referenced in the introduction to this report, the Northern Ireland Executive plans to supersede the UK government’s ‘Shared Future’ strategy for Northern Ireland with the Programme for Cohesion, Sharing and Integration (CSI strategy) which has been published in draft. The Racial Equality Strategy (RES) will also remain, and the interface between the two strategies is not yet entirely clear. While there have been questions about the intended scope of the CSI strategy, its remit was set out by the Junior Minister Robin Newton MLA, who in response to a question on whether CSI will deal with rights for sexual minorities, indicated to the contrary stating:

The [CSI] strategy is designed to tackle racism and sectarianism.83

59. The Commission highlighted that a conceptual problem with the CSI document was that it appeared to continue to treat sectarianism in Northern Ireland as something other than a particular form of racism. This does not mean that sectarianism should not continue to be individually named and singled out just as other particular forms of racism are, for example, anti-Semitism or Islamophobia. However, it is the Commission’s view that policy presenting sectarianism as a concept entirely separate from racism problematically places it outside the well-developed discourse of commitments, analysis and practice reflected in international human rights standards. Many of these standards are binding on the UK and provide a comprehensive framework for CSI. Seeking to locate ‘sectarianism’ outside their scope risks non-human rights compliant approaches, and not applying well developed normative tools to promote tolerance and interculturalism.

60. In contrast to the Racial Equality Strategy, the draft CSI programme does not make any reference to any binding human rights standards to which the UK is party. The Commission argued that CSI should incorporate the duties that such standards entail, and draw on the guidance provided by the regional and global human rights systems in translating international experience to local context.

83 Hansard, 27 September, Oral Questions OFMdFM AQO 121/11.
The Advisory Committee may wish to recommend that the framework of the CSI Strategy be underpinned by relevant human rights standards, duties and actions, including those from the Framework Convention.

Good relations

61. The CSI strategy makes reference to ‘good relations’ some seventy times and it is one of the underpinning concepts of the programme, perhaps the main one. However, definition or interpretation of the term is not elaborated on in any part of the document. This could lead to a range of interpretations including some not compatible with human rights and equality duties. A good relations duty is contained within section 75(2) of the Northern Ireland Act 1998. This sets out a duty on most public authorities, subordinate to the need to promote equality of opportunity, to “have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group”. The term ‘good relations’ is not defined in the legislation. A definition of the term is found in the good relations duty in the Equality Act 2010, but this does not apply to Northern Ireland. In the Equality Act 2010, the duty to foster good relations (in Great Britain) involves:

...having due regard, in particular, to the need to... tackle prejudice, and... promote understanding.

62. In Northern Ireland, the Commission has had cause to raise concerns regarding the misinterpretation of the good relations duty in a manner that has actually run contrary to human rights duties. One example is in relation to incidents whereby local authorities seeking to discharge positive human rights duties to promote the Irish language were met with ‘good relations’ challenges that sought to restrict use of the language. The Council of Europe Committee of Experts which monitors compliance with the European Charter for Minority Languages has directly addressed interpretation of the section 75 duty in this context:

---

84 Under schedule 9(1)(b) of the Northern Ireland Act 1998 the Equality Commission has a statutory duty to provide guidance on the ‘good relations’ duty in Section 75(2) and it has produced several publications.

85 A duty on district councils to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups, is also contained within Article 67 of the Race Relations (Northern Ireland) Order 1997.

86 Equality Act 2010, Section 149(5).

87 Under the Human Rights Act 1998, the interpretation of legislation and actions of public authorities, including under the section 75(2) ‘good relations’ duty, must be in a manner compatible with ECHR rights.
The Committee of Experts has been informed about several instances, especially within local councils, where it was decided not to promote or use the Irish language as it may contravene section 75 of the Northern Ireland Act... The Committee of Experts emphasises that the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not to be considered an act of discrimination against the users of more widely used languages.  

The Advisory Committee may wish to urge the Northern Ireland administration to develop and apply a human rights-compliant definition of ‘good relations’ for the CSI Strategy.

---

ARTICLE 6(2): PROTECTION AGAINST DISCRIMINATION, HOSTILITY OR VIOLENCE

Ethnically motivated incidents

Legislative framework

63. The Criminal Justice (No 2) (Northern Ireland) Order 2004, commonly referred to as ‘hate crimes’ legislation, allows the Courts to treat motivation by hostility on racial, religious, sexual orientation or disability grounds as an aggravating factor increasing the seriousness of the offence. This is hostility around the time of offence towards the victim due to their membership (or perceived membership) of a protected group, or when the offence was motivated wholly or partly by hostility on a protected ground.89

64. Northern Ireland is a small jurisdiction with a population of around 1.7 million. The magnitude of hate as a social phenomenon is at least partially reflected in PSNI statistics which record 3,148 (victim-perceived)90 hate incidents in the 2009-10 financial year, just over 2,000 of which were classified as crimes. Sectarian incidents at 1,840 constituted the single largest number (1,264 crimes), with 1,038 other racist incidents (712 crimes).91 Clearly not all offences will be reported to police. The detection rate (that is, those that the police regard as ‘cleared up’) is around 16-17 per cent. The PSNI was unable to provide a breakdown indicating the ethnicity of victims of racist incidents. Figures were supplied for sectarian incidents but were unreliable as around two-thirds of victim background data was categorised as “missing”. The PSNI also no longer publishes, nor can presently supply, figures indicating a breakdown of the types of crimes to which the above figures relate.92

90 The PSNI defines a hate incident as “Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate”; a hate crime is an incident which is indictable or triable-either-way.
91 Police Service of Northern Ireland, Annual Statistical Report: Report No. 3 Hate Incidents and Crimes, 1st April 2009 – 31st March 2010. The figure of 2,901 also includes 23 incidents on ‘faith/religion’ grounds, where intersectionality is likely to be with other indicators of ethnicity; 175 homophobic, 58 disability and 14 transphobic incidents were also recorded.
92 Correspondence with PSNI Central Statistics Unit, October 2010.
65. In the same year, 2009-10, prosecutors considered 655 persons who were involved in crimes considered to have been aggravated by racial or religious hostility. Of these, 156 did not pass the evidential test and no prosecution was pursued, 177 led to diversions (cautions, informed warnings or youth conference) and 332 defendants were prosecuted. The Public Prosecution Service (PPS) was also not able to provide a breakdown of ethnicity or ‘community background’ of victims. However, the PPS was able to provide the Commission with a breakdown of the primary offence (the most serious charge in the particular case). These figures included 26 cases related to murder/attempted murder; 196 to physical assaults; 40 to sexual offences (including 6 to rape); 14 to arson (including petrol bombings); 69 to criminal damage; 206 to rioting and related disturbances, and 11 to harassment (defined under generic rather than discriminatory harassment legislation).\(^93\)

66. Alarmingly, however, the most recent official statistics indicate that in the (calendar) year 2009, there was just one conviction recorded for aggravated sentencing under the 2004 Order. For 2008, the figure was six and, from March-December 2007, four. Before this, figures were not even collated.\(^94\)

67. The Advisory Committee in its Second Opinion reported criticism of police response to racist incidents and urged greater priority into prosecuting hate crime.\(^95\) A 2010 follow-up report into hate crimes by Criminal Justice Inspection Northern Ireland noted that while the PSNI had implemented recommendations aimed at it, other recommendations (hate crime strategy, improving the management information on recording and prosecution, in particular from the prosecution service to courts) had not been fully discharged.\(^96\) Since then, the PPS has issued a Hate Crime Policy.\(^97\)

68. While unsurprisingly, the CSI strategy contains significant reference to the need to tackle hate crime, there is no critique of the capacity, capability or effectiveness of institutions of the state, such as the police and prosecution service, in tackling hate crime. There are no proposals to take steps to build capacity and reform such institutions to ensure they are fit for purpose, notably in securing

---

\(^93\) Data supplied by PPS on ‘Hate Crimes - Cases Considered by a PPS Prosecutor to have been Aggravated by Hostility Decisions Issued between 1/4/09 and 31/3/10 (Note: includes prosecutions, diversions and no prosecutions)’.

\(^94\) Official Report, Northern Ireland Assembly, Written Answers, Minister for Justice, David Ford MLA, 8 October 2010, AQW 710/11.

\(^95\) Paras 129-130.

\(^96\) Criminal Justice Inspectorate (July 2010) *Hate Crime: A Follow-up Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland.*

\(^97\) Public Prosecution Service for Northern Ireland, Hate Crime Policy, December 2010.
the successful prosecution of perpetrators of hate crimes, nor reference to ensuring implementation of the Criminal Justice Inspection recommendation.

69. The 2010 Criminal Justice Inspection report also highlighted a number of recent “critical incidents” in Northern Ireland:

   In the past 12 months there have been three critical incidents which projected a negative image of Northern Ireland on a world stage. They were: the intimidation of Polish and Eastern European residents in the ‘Village’ area of South Belfast following the behaviour of football supporters attending the Northern Ireland vs. Poland football match in Belfast; a sectarian murder in Coleraine; and the intimidation of Roma families in South Belfast and the exodus of some 100 Roma back to Romania.98

70. Within the CSI strategy there are no proposals for more proactive measures to monitor and address the existence and ideology of groups behind many such attacks, and other sectarian and otherwise racist intimidation.99 There is also the context of the involvement of illegal paramilitary groups, with evidence having emerged that orchestrated racist attacks have involved elements of Loyalist paramilitarism (Loyalist refers to loyalty to the British Crown). It is a matter of concern that this context is only intermittently referred to in official policy and strategy. The matter was referenced in statements by the Independent Monitoring Commission (IMC) set up by the British and Irish Governments to monitor paramilitary ceasefires ‘with a view to promoting the transition to a peaceful society and stable and inclusive devolved government in Northern Ireland’.100 In this context, in a report published by the UK Parliament, the IMC stated that an “important step would be for loyalist paramilitaries, including the UDA, to stop targeting nationalists and members of ethnic minorities”.101

98 Criminal Justice Inspectorate (July 2010) Hate Crime: A Follow-up Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland, p3.
99 See, for example: statements by Independent Monitoring Commission (IMC): that it would be an important step for Loyalist paramilitaries “to stop targeting nationalists and members of ethnic minorities”: Eighth Report of the Independent Monitoring Commission, 2006 HC 870 paras 3.32-5.
100 Article 3 of the International Agreement (UK-Ireland) establishing the Independent Monitoring Commission.
The Advisory Committee may wish to ask the Northern Ireland administration what steps it intends to take to ensure more effective implementation of the 2004 ‘hate crimes’ legislation, the availability of more comprehensive PSNI data, and specific steps taken to combat Loyalist paramilitary involvement.

Incitement to hatred

71. The legislative provision in Northern Ireland providing a level of protection against incitement to hatred is the Public Order (Northern Ireland) Order 1987 (as amended). Part III covers offences of stirring up hatred or arousing fear against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins. Offences include (subject to qualification) threatening, abusive or insulting words or behaviour, or displaying written material which either intends to stir up hatred or arouse fear (on one of the above grounds), or which, having regard to all the circumstances, is likely to have that effect.\(^{102}\)

72. The Minister of Justice for Northern Ireland has recently indicated that he has no plans to review the 1987 Order, which constitutes a high threshold.\(^{103}\) The police were not able to indicate to the Commission how often charges have been brought under the legislation. The Public Prosecution Service was able to provide figures relating to the above data on the 665 ‘hate crimes’ listed above. In the case of only five persons the primary offence was of stirring up hatred or arousing fear under the 1987 Order.

73. The Minister has introduced a Justice Bill which would criminalise chanting at major sporting events in Northern Ireland if it included threatening, abusive or insulting material on grounds of colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability.\(^{104}\) At present, sectarian chanting is only unlawful if it reaches the threshold of

---

\(^{102}\) There are further similar offences of publishing or distributing written material; distributing, showing or playing a recording; broadcasting, including in a cable programme service; and possession of matter intended or likely to stir up hatred or arouse fear. Offences under Part III on summary conviction (that is, conviction in a lower court) can carry a prison term of up to six months and/or a fine; and on conviction on indictment (after trial in a Crown Court) up to seven years’ imprisonment and/or a fine.

\(^{103}\) Minister of Justice, David Ford MLA, Official Report, Northern Ireland Assembly, written answer 22 October 2010 (AQW 1240/11).

\(^{104}\) Clause 38, Justice Bill, as introduced to Northern Ireland Assembly 2010.
stirring up hatred or arousing fear, or otherwise violates public order or other general legislation. The absence of criminal sanctions does not of course preclude nor take away from alternative action being pursued by sporting bodies.\textsuperscript{105}

The Advisory Committee may wish to ask the Northern Ireland administration about the effectiveness of the present legal and institutional framework to protect against advocacy of hatred.

Robert Hamill inquiry

74. A judge-led inquiry into the conduct of the RUC (Royal Ulster Constabulary – the predecessor police force to the PSNI) in relation to the sectarian murder of Robert Hamill is due to conclude in February 2011. Robert Hamill, a Catholic, who had been walking home following an evening with relatives, was attacked by a Loyalist crowd in Portadown, County Armagh in 1997. Mr Hamill subsequently died from his injuries. It is alleged that RUC officers present at the time could have prevented the attack and there are also allegations of RUC obstruction of the subsequent investigation.\textsuperscript{106} The inquiry was established in 2004.

75. The publication of the inquiry’s final report has been delayed by the UK government following the decision by the Public Prosecution Service in light of a review of evidence, including that given to the Hamill Tribunal, to instigate prosecutions relating to perverting the course of justice against three people. The government has stated its intention to publish the report as soon as possible after the conclusion of legal proceedings.\textsuperscript{107}

Should further information become available in the time frame, the Advisory Committee may wish to address this matter in its report.

\textsuperscript{105} For example: the soccer governing body has pledged to impose a lifetime ban on a football fan who was among supporters singing sectarian songs at a recent international match. BBC News Online, ‘Irish FA to ban Northern Ireland fan after chants’, 18 February 2011.
\textsuperscript{106} The Inquiry’s Terms of Reference were: “To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether the attempts were made to do so; whether such act or omission was intentional or negligent; and to make recommendations”.
\textsuperscript{107} Secretary of State for Northern Ireland, Owen Paterson MP, Written Ministerial Statement, 31 January 2011.
Regulation of parading and sectarian harassment

76. Northern Ireland has particular experience in the interplay of issues of freedom of assembly and sectarianism. The Human Rights Commission has a significant body of work in relation to the regulation of parading in Northern Ireland, particularly in relation to legislative and policy reform and practice. Parading, that is, organised marches through public thoroughfares, has cultural and religious dimensions as well as being a form of political expression. The issue of parading and its legitimate or illegitimate restriction within a human rights framework is one of the most high profile political issues within Northern Ireland. This issue, particularly in the 1990s, led to repeated and sometimes violent confrontations, at times threatening to collapse the peace process.

77. Paramount in this have been the approximately 2,500 annual parades by Protestant Loyal Orders in Northern Ireland, the largest of which is the Orange Order, and protests against such parades, particularly when they seek to pass through districts inhabited by the Irish Catholic minority. Significant public discourse on this issue centres on whether the more contentious parades are an expression of sectarianism. In this context a human rights-based approach, drawing on the standards relating to racism, places obligations on the state to maintain a regulatory regime that balances considerations of freedom of assembly and expression against the protection of the rights of others. Within the legal framework in Northern Ireland there has been a conceptual shift away from restrictions on parade-related freedom of expression and assembly being based exclusively on public order grounds, to one beginning to place limitations more explicitly on the basis of evidence of incitement to hatred and discrimination (through the prism of the European Convention on Human Rights, Articles 10 and 11 ‘rights of others’ limitations).

78. The Public Order (Northern Ireland) Order 1987 provided police powers to impose restrictions on parades when there was a risk of serious disorder, damage or disruption, or when the purpose was intimidation. Following a UK government review in 1997108 (after the ‘marching season’ of 1996 when related disturbances left two people dead, 350 injured and 600 intimidated out of homes), these powers to restrict parades were taken from police and vested in an independent Parades Commission under the Public Processions (Northern Ireland) Act 1998.109 That Act was in part designed to

---

109 Since amended by the Public Processions (Amendment) (Northern Ireland) Order 2005 (SI 2005/857), which among other matters extended powers to impose restrictions to cover protests against parades.
move away from primacy of decision-making on public order grounds, and included among the factors to which the Parades Commission could have regard when imposing conditions, considerations of “any disruption to the life of the community which the procession may cause” and “any impact which the procession may have on relationships within the community”. Both criteria have since been prominent in Parades Commission decisions. However, this was challenged as not directly relating to any of the permitted grounds of restriction under Article 11(2) ECHR. As a result, the potential detrimental impact on community relationships has increasingly been addressed in terms of its indirect impact on public order, thus placing the criteria back within the public order prism.\(^{110}\) Although Parades Commission determinations often cite ECHR ‘rights of others’ and sectarian expression in their determinations, this is not directly provided for in the Public Processions Act, albeit that the Act (in accordance with the Human Rights Act 1998) must be interpreted and given effect in a manner compatible with ECHR rights.

79. There have been initiatives to reform the Parades Commission and its decision-making framework, including moves to incorporate into the framework a right to ‘freedom from sectarian harassment’ – a concept contained in the Belfast (Good Friday) Agreement), which can be consistent with ECHR Articles 10 and 11 provision for limitations based on ‘the rights of others’. Such a framework was set out in the Interim Report of the 2007 Strategic Review of Parading (the Ashdown Review).\(^{111}\) The Ashdown Review regarded the protection of the right to freedom from sectarian harassment as meeting the ‘indisputable imperative’ criterion indicated in Strasbourg jurisprudence as the threshold for including non-ECHR rights within the ‘rights of others’.\(^{112}\) Although the Review Body was stood down and did not publish a final report, the 2010 Hillsborough Agreement between the largest British unionist and Irish nationalist parties contained a commitment to build on the review to produce a ‘new and improved’ framework for parades regulation.\(^{113}\) Hillsborough set out that this would include:

> Respect for the rights of those who parade, and respect for the rights of those who live in areas through which they seek to parade. This includes the right for everyone to be free from sectarian harassment.

---


\(^{112}\) Chassagnou v France (1999) 29 EHRR 615, 687, para 113.

\(^{113}\) Agreement at Hillsborough Castle, 5 February 2010, section 2 parades.
80. The Hillsborough Agreement led to the publication of a draft Public Assemblies, Parades and Protests Bill in the summer of 2010. The Human Rights Commission had concerns about the draft Bill. This included the proposal to extend the tight regulatory regime for parades to most other forms of public assembly, despite the lack of evidence that the same ‘rights of others’ issues arose. The draft Bill was also vague on the human rights framework that would be applied to decision-making. The Northern Ireland government responded by dropping the extension to public assemblies and setting out that the final Bill would detail a human rights framework based around the ECHR. Following objections to the Bill from the Orange Order (the largest of the parading organisations), it was not introduced into the Northern Ireland Assembly and the 1998 law has been retained. The potential for reforming the broader process and adjudication mechanisms for making determinations on parades seems unlikely to arise in the near future. However, given the apparent consensus on the matter, there may be potential to amend the decision-making framework in the Public Processions Act 1998 to more closely align it with a framework based on ECHR Articles 10 and 11 and their ‘rights of others’ limitations, including sectarian expression.

The Advisory Committee may wish to raise with the Northern Ireland Administration and UK the potential for bringing the decision-making criteria on parades in the 1998 Act more closely in line with the ECHR framework.
ARTICLE 8: EXPRESSION OF RELIGION OR BELIEF

Religious education

81. At present in Northern Ireland all schools by law must have a Christian ethos, and there only exists a parental right to ‘opt out’ from religious education and collective worship.114 For persons who are in a minority religion in the school, have no religion, or otherwise do not wish to partake in doctrinal religious instruction and collective worship, there is only that parental opt-out rather than a framework mandating the provision of adequate alternatives for those who do not share the religious ethos of a school.

82. Pluralistic religious education can be used as a vehicle through which to pursue policy to “eradicate prejudices and conceptions incompatible with freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief”.115 The present basis of the core curriculum for religious education in Northern Ireland is Christian-centred, with minorities (if the opt-out is adequately explained) likely not to be in the classroom. An alternative approach has been put forward by the UN Special Rapporteur on Religion and Belief who urged governments to “pay specific attention to the contents of syllabuses on religious education, which ideally should aim to be all-embracing”.116 Research into the present circumstances in Northern Ireland has concluded that pupils are often not even aware of their opt-out rights from doctrinal instruction. The research, on which this Commission advised, recommends that schools make every effort to provide alternative educational activities and that the core syllabus for religious education in Northern Ireland be redrafted.117

116 UN General Assembly (20 August 2007), Interim Report of the Special Rapporteur on freedom of religion or belief, UN Doc A/62/280, para 78.
83. The Department of Education recently consulted on a new Community Relations, Equality and Diversity (CRED) policy. The Commission drew the Department’s attention to the above matters, which were not addressed in the draft policy.

The Advisory Committee may wish to suggest that the Department of Education deals with religious education and pluralism in developing its CRED policy.
ARTICLE 10: MINORITY LANGUAGE RIGHTS

Legislative framework for the use of the Irish language

84. Under the St Andrews Agreement 2006, the UK government committed to introducing “an Irish Language Act reflecting on the experience of Wales and Ireland” but is yet to legislate to discharge the commitment. This was addressed in the Second Opinion of the FCNM Advisory Committee:

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.118

85. In 2009, the UN Committee on Economic, Social and Cultural Rights expressed concern that there was still no Irish Language Act in Northern Ireland, advocating that the UK or devolved administration adopt the legislation.119 The UK government transferred responsibility for the Act to the Northern Ireland Assembly; however, successive Culture Ministers have not introduced legislation. Most recently, in response to Commission correspondence relating to the recommendations of the ECRML Committee of Experts (COMEX), the Minister replied: “I wish to state explicitly as Minister for Culture, Arts and Leisure that Irish Language Legislation will not be introduced”.120 The Commission has consistently made it clear that, should the Assembly agree on an approach that contravened the international standards, or fail to agree on any approach, this Commission would look to the UK government to bring forward proposals for Parliament to fulfil the commitments entered into by the state in the international agreement at St Andrews in 2006, and treaty-based obligations in the UN and Council of Europe human rights systems. Although legislation can be introduced into the UK Parliament, government has continued to indicate that the Northern Ireland Assembly should introduce the legislation.121 In its 2010 report on the UK’s compliance with the Charter, COMEX recommended that with regard to the Irish Language “a legislative basis is even more important in

---

119 As above, para 37.
120 Minister for Culture, Arts and Leisure Nelson McCausland MLA, correspondence of 14 July 2010.
121 Minister for State for Northern Ireland, Hugo Swire MP, 6 July 2010.
the environment of political conflict, as a means of achieving reconciliation”. It noted that the legislation was unlikely to be taken forward by the Northern Ireland Assembly. As one of its main recommendations, COMEX therefore urged the UK government to introduce the legislation.

The Committee may wish to ask the UK government how it will take forward its commitments to legislate for the Irish language in Northern Ireland.

Use of minority languages in legal proceedings

86. The Northern Ireland Courts and Tribunal Service states “Under the Administration of Justice (Language) Act (Ireland) 1737, languages other than English are not permitted to be used in courts, except where a party can’t speak or understand English”, and has further interpreted the 1737 Act as requiring that “all court proceedings in Northern Ireland, including any documentation relating to those proceedings, must be in English, except where an individual does not speak or understand English”.

87. The 1737 Act and its interpretation in policy therefore effectively prevent the use of the Irish language in the Courts. The Committee of Experts that monitors implementation of the European Charter for Regional and Minority Languages stated in 2010 that the 1737 Act constitutes an “unjustified distinction” (that is, discriminatory) and does not comply with Article 7(2) of the Charter. The continued existence of the 1737 Act is therefore clearly at odds with a treaty commitment into which the UK has entered. While the Minister of Justice has indicated that his department will deal with the matter in the context of the Northern Ireland Executive’s strategy to enhance and protect the development of the Irish language, this strategy has not been introduced. The Commission has argued that such a remedy could be referenced in, but need not await, the strategy.

122 Northern Ireland Courts and Tribunals Service (21 January 2011) Consultation on the Provision of In-Court Interpretation Services: Summary of Responses and Way Forward, para 3.52.
123 Northern Ireland Courts and Tribunals Service (February 2010) Consultation on the Provision of In-Court Interpretation Services.
88. In relation to the Northern Ireland Courts and Tribunal Service’s interpretation of the legislation, it is notable that the 1737 Act can be read differently as preventing the use of a range of written documents in Court proceedings in languages other than English, but not preventing the use of spoken Irish in the Courts. Notably the Attorney General has now publicly stated that this is his own reading of the 1737 Act.\textsuperscript{125}

The Advisory Committee may wish to press the Northern Ireland Justice Minister in relation to the 1737 Act, and seek further information from the Courts and Tribunals Service for the basis of its interpretation of the legislation.

\textsuperscript{125} Presentation of John Larkin QC, Attorney General for Northern Ireland, to Pobal Seminar ‘Usaid na Gaeilge sna Cuirteanna i dTÉ’ (The Use of Irish in the Courts), 3 December 2010.
ARTICLE 11: TRADITIONAL NAMES

Bilingual signposting

89. Article 11(3) of the Framework Convention commits state parties to provide by law, in areas traditionally inhabited by national minorities, the public display of traditional local names and street names in the minority language, where there is demand and in accordance with the specific circumstances of the language. Across Northern Ireland the vast majority of place names are derived from the Irish language (for example, Belfast - Béal Feirste), with smaller proportions coming from English (e.g. Newmills) and Scots (for example, Braid), and a few from Latin, Old French and Old Norse. The UK, under Article 10(2)(g) of the European Charter for Regional or Minority Languages, has committed to permitting the use or adoption of place names in Irish. This undertaking is presently considered as only partly fulfilled. The monitoring report cites restrictions on the legal powers to provide signage and reported instances where particular local authorities had resisted or refused the use of place names despite popular support.126

90. An earlier legislative ban on street signs in languages other than English was repealed by the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995. This permits local government to erect bilingual (or transliterated) street signage in English and any other language. Monolingual signage in traditional and correct forms of place names is not permitted under the 1995 Order, nor is the provision qualified so as to require the traditional and correct form of the original place name along with its translation/transliteration into English. In relation to erecting such signage local councils are to have regard to “any views” expressed on the matter by residents in the street.127

91. 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, but has not done so.128 Instead, DRD recently issued a consultation document on proposals to facilitate the introduction of a limited number of bilingual traffic signs (in English, and either Irish or Ulster-Scots) through policy. The proposals do not cover all road signs and are limited to town/village place names, certain tourist attractions and

---

128 Email correspondence to Commission, 11 September 2009.
some standard warning signs (for example, school). The policy does not require the traditional and correct form of the place name in question in its original language. The policy was designed to “confine the use of bilingual traffic signing to discrete areas where there is confirmed overall support”, which is presented in the context that the proposals may have a “negative impact on good relations”. This again indicates a misinterpretation of the ‘good relations’ duty conflicting with human rights standards.

The Advisory Committee may wish to assess the present provision for minority language signage against the requirements of Article 11.

---

130 See commentary on Article 6(1) above.
ARTICLE 12: EDUCATION

Intercultural education

92. The Department of Education issued a draft Community Relations, Equality and Diversity in Education policy for consultation in September 2010. The policy aims to replace the Departmental Community Relations policy which is 20 years old.

93. In its response, the Commission welcomed the focus on human rights within the draft policy and the commitment that the policy will be premised on human rights and underpinned by international standards, including the Convention on the Rights of the Child. The Commission drew attention to, and screened the proposals against, other relevant human rights instruments and ‘soft law’ standards, including the Framework Convention. The Commission also sought further information on curriculum content and materials; measures for dealing with racist (including sectarian) incidents; and the interface and gaps between this policy and those for ‘newcomer’ (migrant) and Traveller pupils.

The Advisory Committee may wish to seek further information on the Community Relations, Equality and Diversity in Education policy.
ARTICLE 15: CONDITIONS NECESSARY FOR PARTICIPATION IN SOCIAL AND ECONOMIC LIFE

Legal framework – discrimination and inequality

94. One of the striking features of the Cohesion, Sharing and Integration (CSI) Strategy document is the virtual absence of any reference to discrimination. The word ‘discrimination’ is only used once in the body of the document.\(^{131}\) The Racial Equality Strategy uses the term ‘discrimination’ 45 times and explicitly includes the elimination of discrimination as its first ‘shared aim’.\(^{132}\) By contrast, neither the legacy of sectarian discrimination nor its ongoing manifestations are dealt with by the CSI strategy. This misses opportunities to advance reconciliation by naming and addressing present-day inequalities.

95. Despite the evidence base relating to differentials in Northern Ireland, there can still be an environment whereby raising the issue of sectarian discrimination and inequality between the two main communities can be characterised as ‘divisive’ and therefore bad for ‘good relations’. Such an approach gives primacy to a particular interpretation of ‘good relations’ above the need to tackle inequality. Despite the statements in the draft CSI document that this will not be the approach taken, the programme itself does not appear to bear this out, above all in that it does not deal with sectarian discrimination, and redressing its outcomes appears to be outside the remit of the strategy.\(^{133}\)

96. Taking the example of housing, CSI references matters such as ‘encouraging and supporting’ shared housing and screening new-build housing for ‘shared potential’. However, there is no reference to tackling inequalities in housing. As recently as 2009, a UN human rights committee examining the UK’s compliance with treaty commitments singled out the situation of Catholic families in North Belfast in this context.\(^{134}\) This is not dealt with in CSI and, therefore, shared housing is to be promoted seemingly without tackling underlying inequalities in housing provision.

\(^{131}\) The one use of the word ‘discrimination’ in the body of the CSI document is in the statement: “we already have in place robust anti-discrimination and equality legislation”, para 3.9. Outside the main body of text the word ‘discrimination’ occurs on a second occasion in reference to the work of an NGO.


\(^{133}\) CSI proposes to adopt the Shared Future good relations indicators which do not deal with differentials in matters such as employment, poverty and housing.

97. In its response, the Commission also drew attention to UK human rights commitments, including the Framework Convention, going beyond ‘equality of opportunity’ referenced in CSI to more substantive models of equality.

The Advisory Committee may wish to raise the absence of any reference to sectarian discrimination and inequality as a significant omission from the draft CSI programme, and urge the underpinning of CSI by substantive equality duties in relation to economic and social rights.

Participation in administrative and law enforcement agencies

Police Service of Northern Ireland

98. The UK government has recently consulted on temporary special measures applied to recruitment to the Police Service of Northern Ireland (PSNI) with a view to ending their application. The temporary provisions designed to redress under-representation of Irish Catholics flowed from a recommendation of the Independent Commission on Policing for Northern Ireland, 1998-99 (“the Patten review”) set up as a result to the Belfast (Good Friday) Agreement. Seeking to provide a police force more representative of the community in Northern Ireland, the measures provide for ‘50:50’ recruitment of qualified Catholic and non-Catholic applicants to positions as police trainees and police support staff, as well as providing for the targeted recruitment of Catholic officers from other police forces.135

99. In respect of recruitment of trainee police officers, there is evidence of the effectiveness of the 50:50 recruitment process to date in increasing the proportion of Catholic applicants to a level approaching the 45 per cent Catholic participation in the overall workforce (averaging 37 per cent of applications in 2001-10), and also in increasing the proportion of Catholics actually employed as police officers.

---

135 In the Police (Northern Ireland) Act 2000 (“the 2000 Act”), sections 44(5) to (7) and 46; article 40A of the Race Relations (Northern Ireland) Order 1997 (as amended); and article 71A of the Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended). Additionally, s45 of the 2000 Act provides for the ‘lateral entry’ (targeted recruitment) of Catholic officers from other constabularies. The EU Council Directive 2000/78/EC of 27 November 2000 (establishing a general framework for equal treatment in employment and occupation) at the request of the UK government makes an exception for the temporary special measures (Article 15(1)).
police officers to 29.4 per cent (Protestant 68.4 per cent, not determined 2.2 per cent). This compares with 8.3 per cent of Catholics in the Royal Ulster Constabulary when the provisions were introduced. The policy assumption in Patten was that 30 per cent met the level representing a ‘tipping point’ at which prospective recruits from the Catholic population would feel confident in the PSNI as an employer and that, following this point, the Catholic participation would continue to rise towards the proportion in the overall workforce in Northern Ireland.

100. Among police support staff, the proportion of Catholics has only increased from 12 per cent in 1999 to 17.9 per cent (Protestant 78.4 per cent, not determined 3.6 per cent). It would thus appear that the 50:50 measure has been effective in respect of regular officers, but ineffective or insufficiently effective in respect of support staff. The consultation document offers almost no explanation of the limited impact of the temporary provisions in changing the composition of the support staff; there is no discussion of whether the restriction to exercises involving six or more staff positions has impaired the effectiveness of the scheme, indeed no account of the percentages of Catholic applicants or appointees to vacancies either by competition rounds (as is provided for the police) or on an annualised basis.

101. The UK government has indicated that it is minded to allow all the temporary provisions to expire on 28 March 2011. Rather than discontinuing 50:50 recruitment for support staff, the Commission believes that government should extend that measure for several years, and consider introducing additional measures to accelerate progress towards fair participation rates. The Commission has also stressed the importance of ongoing monitoring to ensure that the composition of the police service is representative of society, and that temporary special measures should be reintroduced if the proportion of police officers from a Catholic community background shows signs of regression. The Commission also noted the low representation of ethnic minorities in the PSNI, accounting for only 0.46 per cent of police (32 officers) and 0.4 per cent of support staff, and urged that consideration be given to affirmative action measures that might increase the representation of ethnic minorities within the Service.

137 The Patten Report described its 29-33 per cent target as “the range of ‘critical mass’... needed to ensure that a minority does not find itself submerged within a majority organisational culture”: Independent Commission for Policing in Northern Ireland (1999) A New Beginning: Policing in Northern Ireland, para 14.10.
138 As above.
The Advisory Committee may wish to assess the UK government’s plans to end temporary special measures in the PSNI.

Northern Ireland Civil Service

102. The Commission draws attention to the need to reform longstanding discriminatory civil service nationality requirements. These restrictions on ‘Crown employment’ date back to the 1700 Act of Settlement and the Aliens Restriction (Amendment) Act 1919, and mean that most civil service posts are largely reserved for British, EEA nationals, and Commonwealth citizens. There is a smaller set of ‘reserved’ or ‘public service’ civil service posts which are largely reserved for British citizens. In relation to this latter set of posts, there has been a long-standing issue in Northern Ireland that in the context of the Belfast (Good Friday) Agreement these posts should be opened also to Irish citizens.

103. There have been a number of commitments to reform these restrictions, notably in the St Andrews Agreement 2006.139 Most recently, a government-supported amendment was inserted into the Constitutional Reform and Governance Bill in 2009. This was to repeal the restrictive legislation, including sections of the 1700 and 1919 Acts, and replace them with a new power for the Secretary of State to re-designate nationality requirements for reserved posts by statutory instrument.140 However, much of this Bill, including these provisions, fell due to the UK General Election in 2010.

The Committee may wish to draw attention to reform of civil service nationality requirements.

---

139 Annex B: “We will bring forward separate legislation before the end of 2006 to reform entry requirements to ensure access for EU nationals to posts in the Civil Service”.

140 Clauses 21-23 of the Constitutional Reform and Governance Bill, as amended in Committee, Bill 68 of 2008-9.
ARTICLE 18: BILATERAL AGREEMENTS

Bill of Rights for Northern Ireland

104. The Belfast (Good Friday) Agreement 1998, a treaty between the UK and Republic of Ireland, although not explicitly constructed for that purpose, can be said to come within the scope of what Article 18 terms: “bilateral... agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned”; and, as outlined above ( Paras 3-5, 56, etc.), it led to a significant expansion of transfrontier co-operation, including in linguistic matters.

105. The Agreement also envisaged the development of a Bill of Rights for Northern Ireland, and the Human Rights Commission was tasked to advise on the scope for such an instrument. In accordance with its own mandate set out in the Agreement and under domestic legislation,141 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. The advice recommended freestanding equality and non-discrimination provisions on protected grounds, which included a number relevant to the Framework Convention.142 The ‘Identity and Culture’ section of the advice, in addition to including rights to British or Irish identity and citizenship, provided that:

3. Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others.
4. Everyone belonging to a national, ethnic, religious, linguistic or cultural minority in Northern Ireland has the right, individually and in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public.
5. No one exercising these rights may do so in a manner inconsistent with the rights and freedoms of others. Public authorities must encourage a spirit of tolerance and dialogue, taking effective measures to promote mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of those persons’ race, ethnicity, language, religion or political opinion.143

---

142 Including race, membership of the Irish Traveller community, colour, ethnicity, descent, language, religion or belief, political or other opinion, birth, national or social origin, nationality, association with a national minority.
106. The UK government did not issue a consultation paper on taking the Bill of Rights forward until November 2009. The Bill of Rights for Northern Ireland was to be legislated for in the UK Parliament but, to date, legislation has not been introduced.

The Advisory Committee may wish to ask the UK government about progress on a Bill of Rights for Northern Ireland.

107. Under the 2006 St Andrews Agreement the UK government established a Bill of Rights Forum to formulate recommendations to the Commission in relation to the latter’s advice. The Forum, which was composed of 28 representatives, 14 from the main political parties and 14 from civil society, with an independent international chairperson, Professor Chris Sidoti, handed its final report to the Commission on 31 March 2008.

108. Among the proposals considered by the Forum was a provision for the law in Northern Ireland to give effect to the Framework Convention. However, the proposal also explicitly provided for extending the definition of ‘national minority’ beyond minorities to also cover all cultural, ethnic, linguistic and religious majority communities. This approach was favoured by unionist parties but opposed by nationalist parties and most civil society organisations. The two unionist parties jointly stated that their support for the proposal “as more reflective of the provisions of the FCNM and noted their grave disappointment at the approach taken by other parties (on the Forum) to the FCNM”. Sinn Féin, the largest nationalist party, whilst supportive of incorporation of the FCNM, stated: “we are not satisfied that this section... could not be used prejudicially to protect the rights of majorities over the rights of minorities, in a manner that distorts the legal intent of the international instruments on which many of the provisions are based...”.

In the context of the proposal to apply the protections of the Framework Convention to the majority community, the Advisory Committee may wish to outline further the purpose of the Convention’s application to minorities.

---

109. The Commission has not provided commentary in relation to Articles 9 and 15. However, we would draw attention to the recent Committee of Experts (COMEX) report on compliance with the European Charter for Regional and Minority Languages, in which the issues of Irish-medium broadcasting and education were covered in some detail.\textsuperscript{146}

\textsuperscript{146} Council of Europe, Report of the Committee of Experts on the Charter, UK 3\textsuperscript{rd} Monitoring Cycle, ECRML (21 April 2010).