



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Irish Language Provisions of the
Northern Ireland Act 1998
(Amendment No 2)**

May 2020

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Summary of Recommendations

The Northern Ireland Human Rights Commission (NIHRC):

- 2.6** advises that legislation is necessary to fulfil human rights obligations. Accordingly, the NIHRC views this Bill as a positive measure that will help protect the rights of members of the Irish language community.
- 2.9** advises that a strategy is a legal requirement, in addition to this Bill, and this will assist in protecting and promoting the human rights in relation to the Irish language.
- 3.7** advises that clarification on the status of the Irish language in tandem with the English language is necessary to ensure legal certainty. The Welsh approach provides a model as to how this can be done.
- 3.12** advises that consideration is given to making express provision for specific language rights within the Bill. A summary of such rights that should be considered are outlined in Appendix 1.
- 4.4** recommends that the primary role of the Irish Language Commissioner in clause 78H is amended to include both a duty to 'enhance and develop' and to 'promote and protect'.
- 4.8** recommends that the Irish Language Commissioner is conferred a similar function as the Ulster Scots/Ulster British Commissioner and the Bill includes that the Irish Language Commissioner has an advisory role in respect of European Charter for Regional or Minority Languages, Framework Convention on National Minorities and the culture provisions in UN CRC.
- 4.9** recommends that the proposed list of human rights treaties to be included in the Bill is expanded to include relevant provisions from the UN ICCPR and UN ICESCR. These treaties are central in the protection of culture (which

include language) at Articles 27 and 15 respectively, as outlined in Appendix 3.

4.11 recommends that the Irish Language Commissioner is required to consult with and take account of advice provided by the NIHRC in respect of the proposed advisory function.

4.16 recommends that the mandate of the Irish Language Commissioner is widened to include, *inter alia*, a general advice function, a promotional function, a reporting and research function and powers to make recommendations. In addition, providing the Irish Language Commissioner with enforcement powers should be considered.

4.21 recommends that further consideration is given to how to ensure the independence of the Irish Language Commissioner. This could involve expressly stating that the Commissioner shall be independent, as in the Official Languages Act 2003. Alternatively, a balance can be struck by ensuring any government direction to the Commissioner takes into account the Commissioner's own advice, as is the case in Wales or by amending the Bill to ensure that Ministerial directions are reasonable, have a legitimate aim and are proportionate.

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

4.31 recommends that clause 78L be strengthened to ensure that public authorities take seriously the findings and recommendations of an investigation conducted by the Commissioner. This could be achieved by adopting the Welsh approach of enabling a Minister to make enforceable directions on the basis of the Commissioner's report.

4.33 advises that consideration should be given to inserting specific remedial provisions within the Bill, such as making

statutory provision for compensation as is the case in Ireland, or providing the Commissioner with powers to support an individual to take legal action or intervene in cases, similar to the situation in Wales.

4.36 recommends that the clause 78L(5) is amended to include safeguards to ensure that the Commissioner's investigation function cannot be exercised unreasonably. An example of this approach is provided in Wales.

4.38 recommends that the Irish Language Commissioner is afforded the power to initiate 'own motion' investigations.

4.40 recommends that provision is included for the Irish Language Commissioner to compel evidence in exercising its investigatory powers.

4.43 advises that the interpretation of 'public authority' within clause 78M is too narrow and recommends that the definition of 'public authorities' should be amended to reflect section 6 of the Human Rights Act 1998.

1.0 Introduction

- 1.1. The Northern Ireland Human Rights Commission (NIHRC), pursuant to Section 69(1) of the Northern Ireland Act 1998, shall keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights. In accordance with this function the following advice is submitted to the Executive Office on the Irish language provisions contained in the Northern Ireland Act 1998 (Amendment No 2).
- 1.2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations systems.¹ The relevant international treaties in this context include:
 - European Convention on Human Rights 1950 (ECHR);²
 - United Nations (UN) International Covenant on Civil and Political Rights 1966 (UN ICCPR);³
 - UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);⁴
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁵
 - European Charter for Regional or Minority Languages 1992;⁶
 - Framework Convention for the Protection of National Minorities 1993;⁷
 - UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD).⁸

¹ The NI Executive is subject to the obligations contained within the specified regional and international treaties by virtue of the United Kingdom (UK) government's ratification. In addition, the NI Act 1998, Section 26(1) provides that "if the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations... [s]he may by order direct that the proposed action shall be taken". The NIHRC further recalls that the NI Act 1998, Section 24(1)(a) states that "a Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act... is incompatible with any of the Convention rights".

² Ratified by the UK in 1951.

³ Ratified by the UK in 1976.

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1991.

⁶ Ratified by the UK in 2001.

⁷ Ratified by the UK in 1998.

⁸ Ratified by the UK in 2009.

1.3. In addition to these treaty standards there exists a body of 'soft law' developed by various human rights bodies. These declarations and principles are non-binding but provide further guidance in respect of specific topic areas. The relevant standards in this context include:

- Organisation for Security and Cooperation in Europe's Copenhagen Document of the Conference on the Human Dimension 1990;⁹
- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992;¹⁰
- Organisation for Security and Cooperation in Europe's Hague Recommendations Regarding the Education Rights of National Minorities 1996;¹¹
- Organisation for Security and Cooperation in Europe's Oslo Recommendations Regarding the Linguistic Rights of National Minorities 1998;¹²
- Organisation for Security and Cooperation in Europe's Lund Recommendations on the Effective Participation of National Minorities in Public Life 1999;¹³
- UN Education Scientific and Cultural Organisation's Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005;¹⁴
- Organisation for Security and Cooperation in Europe's Ljubljana Guidelines on Integration of Diverse Societies 2012.¹⁵

1.4 The NIHRC welcomes the opportunity to provide advice on this Bill. Overall, the NIHRC recognises that the policy objectives underpinning the proposed legislation are progressive. However, the NIHRC makes a number of recommendations to enhance the protection of, and to ensure compliance, with human rights standards.

⁹ Organisation for Security and Cooperation in Europe, 'Copenhagen Document of the Conference on the Human Dimension 1990' (OSCE, 1990), at Part IV.

¹⁰ A/RES/47/135, UN General Assembly, 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities', 3 February 1992.

¹¹ Organisation for Security and Cooperation in Europe, 'The Hague Recommendations Regarding the Education Rights of National Minorities' (OSCE, 1996).

¹² Organisation for Security and Cooperation in Europe, 'The Oslo Recommendations Regarding the Linguistic Rights of National Minorities' (OSCE, 1998).

¹³ Organisation for Security and Cooperation in Europe, 'The Lund Recommendations on the Effective Participation of Nationality Minorities in Public Life' (OSCE, 1999).

¹⁴ Ratified by the UK in 2007.

¹⁵ Organisation for Security and Cooperation in Europe, 'The Ljubljana Guidelines on Integration of Diverse Societies' (OSCE, 2012).

2.0 General Comments on the Bill

- 2.1 The Northern Ireland Act 1998 (Amendment No 2) contains two main provisions. First, it provides official recognition of the status of the Irish language.¹⁶
- 2.2 The NIHRC welcomes the official recognition of the Irish language in statute.
- 2.3 Second, it establishes an Irish Language Commissioner and details the functions, powers and status of this new public office.¹⁷ Complementary provisions found in the NI Act 1998 (Amendment No 1) include the establishment of the Office of Identity and Cultural Expression and the Repeal of the Administration of Justice (Language) Act 1737.
- 2.4 International human rights standards include positive obligations to ensure that minority languages are fully realised.¹⁸ The treaty monitoring bodies concur that legislation is necessary to protect the Irish language in Northern Ireland.¹⁹ It is noted, however, that the monitoring bodies have expressed slightly different views on the form such legislation might take.²⁰

¹⁶ Clause 78F, Northern Ireland Act 1998 (Amendment No 2).

¹⁷ Clauses 78G-78M, Northern Ireland Act 1998 (Amendment No 2).

¹⁸ See Article 27, UN International Covenant on Civil and Political Rights 1966; Article 15, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 30, UN Convention on the Rights of the Child 1989; Article 5, Framework Convention on National Minorities 1993; Article 2, European Charter for Regional or Minority Rights 1992. See also CCPR/C/21/Rev.1/Add.5, 'UN Human Rights Committee General Comment No 23: The Rights of Minorities', 8 April 1994, at para 1; Article 6(2)(b), UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005.

¹⁹ E/C.12/GBR/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 July 2016, at paras 67 and 68; CM/RecChL(2014)3, 'CoE Committee of Ministers Recommendation on the Application of the European Charter for Regional or Minority Languages by the UK', 15 January 2014, at 5 and 29; CM/ResCMN(2018)1, 'CoE Committee of Ministers Resolution on the Implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom', 7 February 2018.

²⁰ For example, while the UN ICESCR Committee expressly recommends the adoption of an Irish Language Act, the European Charter for Regional and Minority Languages' Committee of Ministers recommend that the UK adopts and implements a "comprehensive Irish language policy, preferably through the adopt of legislation providing statutory rights for Irish speakers. The FCNM Committee of Ministers recommend the adoption of "appropriate legislation protection and promoting the Irish language and take measures to ensure progress on language rights of Irish speakers". See: E/C.12/GBR/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 July 2016, at paras 67 and 68; CM/RecChL(2014)3, 'CoE Committee of Ministers Recommendation on the Application of the European Charter for Regional or Minority Languages by the UK', 15 January 2014, at 5 and 29; CM/ResCMN(2018)1, 'CoE Committee of Ministers Resolution on the Implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom', 7 February 2018.

2.5 Domestic commitments to the Irish language are contained in the Belfast (Good Friday) Agreement 1998,²¹ the Joint Declaration of the British and Irish Governments 2003,²² the St Andrews Agreement 2006,²³ the Stormont House Agreement 2014,²⁴ Fresh Start Agreement 2015,²⁵ and most recently, in the New Decade, New Approach deal.²⁶

2.6 The NIHRC advises that legislation is necessary to fulfil human rights obligations. Accordingly, the NIHRC views this Bill as a positive measure that will help protect the rights of members of the Irish language community.

Irish language strategy

2.7 New Decade New Approach commits the NI Executive to publishing a comprehensive timetable for the development and delivery of strategies.²⁷ This includes an Irish language strategy, which must be produced by the NI Executive within 6 months for consultation.

2.8 In 2017, the High Court found that the NI Executive had failed to comply with its language duties under the St Andrews Agreement.²⁸

2.9 The NIHRC advises that a strategy is a legal requirement, in addition to this Bill, and this will assist in protecting and promoting the human rights in relation to the Irish language.

3.0 Purpose of the Bill

Clause 78F - Official recognition of the status of the Irish language

²¹ Belfast (Good Friday) Agreement 1998, at Rights, Safeguards and Equality of Opportunity, para 3. In addition, the Agreement listed eight further specific UK Government commitments in relation to the Irish language, set in the context of the UK's subsequent consideration of the European Charter for Regional or Minority Languages. See para. 4.

²² Joint Declaration by the British and Irish Governments 2003, at para 30.

²³ St Andrews Agreement 2006, at Annex B.

²⁴ The Stormont House Agreement 2014, at para 68.

²⁵ NI Office, 'Fresh Start: Stormont Agreement and Implementation Plan' (NIO, 2015), at para 68.

²⁶ NI Office, 'New Decade New Approach' (NIO, 2020), at Part 2; NI Office, 'New Decade New Approach' (NIO, 2020), at Northern Ireland Executive Formation Agreement, para 27; NI Office, 'New Decade New Approach' (NIO, 2020), at Annex E: Rights, Language and Identity, paras 5.6-5.13.

²⁷ NI Office, 'New Decade New Approach' (NIO, 2020), at Annex D, para 4.6.3.

²⁸ *In the Matter of an Application by Conradh Na Gaeilge* [2017] NIQB 27. The St Andrews Agreement 2006 required the Executive Committee to "adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language". Section 28D(1), Northern Ireland Act 1998 (by virtue of section 15, Northern Ireland (St Andrews (Agreement) Act 2006).

- 3.1 Clause 78F sets out the purpose of this part of the Bill as providing official recognition of the status of the Irish language in Northern Ireland. The measures contained in the Bill are additional to those provided by other statutory provisions:
- a) section 28D of the Northern Ireland Act 1998 [the Irish language strategy];
 - b) the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999;
 - c) the statutory provisions relating to Irish-medium education.²⁹
- 3.2 Clause 78F(2) provides for official recognition of the Irish language. Official recognition of a language is a means by which a State can give effect to the right of minorities to use their own language as required by the international standards³⁰ and as emphasised by treaty monitoring bodies.³¹
- 3.3 The St Andrews Agreement 2006 includes a commitment by the UK Government to “reflect on the experience of Wales and Ireland” when introducing an Irish Language Act.³² Throughout this submission, the NIHRC draws on the Welsh and Irish examples where relevant.
- 3.4 International human rights standards advise that where there is more than one official language, “the equal status or different scope of the use of official languages in various spheres must be clearly determined”.³³
- 3.5 Welsh legislation enshrines the following principles:

²⁹ Clause 78F(1), Northern Ireland Act 1998 (Amendment No 2).

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

³¹ E/C.12/GBR/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 14 July 2016, at paras 67 and 68; CM/RecChL(2014)3, ‘CoE Committee of Ministers Recommendation on the Application of the European Charter for Regional or Minority Languages by the UK’, 15 January 2014, at 5 and 29; CM/ResCMN(2018)1, ‘CoE Committee of Ministers Resolution on the Implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom’, 7 February 2018.

³² St Andrews Agreement, 2006, at Annex B.

³³ Organisation for Security and Cooperation in Europe, ‘The Ljubljana Guidelines on Integration of Diverse Societies’ (OSCE, 2012), at 53.

- the English and Welsh languages should be treated on a basis of equality in the conduct of public business and the administration of justice in Wales;³⁴
- the Welsh language should be treated no less favourably than the English language;³⁵
- persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.³⁶

3.6 Clause 78F(3) states that “nothing in this Part affects the status of the English language”.³⁷ While this provision is welcome,³⁸ the Bill does not expressly outline the status of the Irish language in tandem with the English language.

3.7 The NIHRC advises that clarification on the status of the Irish language in tandem with the English language is necessary to ensure legal certainty. The Welsh approach provides a model as to how this can be done.

3.8 The Bill does not expressly delineate what Irish language rights may now be enjoyed by virtue of this legislation. Nor does the Bill place any duties on the NI Executive except those relating to the establishment of an Irish Language Commissioner. Elsewhere, the Northern Ireland Act 1998 (Amendment No 1) removes the prohibition of Irish being used in courts, but does not place any obligations on the NI Executive to accommodate Irish speakers engaging with the judicial system.

3.9 New Decade, New Approach states that:

the legislation in respect of Irish language will also... make any necessary statutory provision for births, marriages and deaths to be registrable through Irish, and for wills to be validly made in Irish, as an option and matter for individual choice. Irish and other languages will be facilitated when deemed necessary by the courts.³⁹

³⁴ Article 5(2), Welsh Language Act 1993.

³⁵ Sections 3(c) and 3(d), Welsh Language (Wales) Measure 2011.

³⁶ Sections 3(c) and 3(d), Welsh Language (Wales) Measure 2011.

³⁷ Clause 78F(3), Northern Ireland Act 1998 (Amendment No 2).

³⁸ Article 14(2) of the European Charter for Regional or Minority Languages specifies that the provisions of the Charter “shall be implemented without prejudice to the learning of the official language or the teaching in this language”.

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

- 3.10 The NIHRC is concerned that this commitment has not been translated into legislation.
- 3.11 The NIHRC advises that there are a number of specific rights and duties applicable to the Irish language as required by the international standards. These are listed in Appendix 1 and include, *inter alia*, the right of individuals to access public services, education, cultural activities in the Irish language. Individuals also have the right to access an effective remedy if their linguistic rights are violated. For ease of reference, Appendix 2 sets out the measures accepted by the UK under European Charter for Regional or Minority Rights, in respect of the Irish language.
- 3.12 The NIHRC advises that consideration is given to making express provision for specific language rights within the Bill. A summary of such rights that should be considered are outlined in Appendix 1.**

4.0 Irish Language Commissioner

Clauses 78G and 78H – Establishment and functions of Irish Language Commissioner

- 4.1 Clause 78G provides for the establishment of the Irish Language Commissioner.⁴⁰ The Irish Language Commissioner is appointed by the Ministers,⁴¹ defined elsewhere as the First Minister and deputy First Minister acting jointly.⁴² Operational detail on the functioning of the office of the Irish Language Commissioner is found in Schedule 9B.
- 4.2 The main function of the Irish Language Commissioner is to “protect and enhance the development of the use of the Irish language by public authorities in connection with the provision by those authorities of services to the public in Northern Ireland”.⁴³ The Bill specifies four separate functions:

⁴⁰ Clause 78G(1) Northern Ireland Act 1998 (Amendment No 2).

⁴¹ Clause 78G(1) Northern Ireland Act 1998 (Amendment No 2).

⁴² Clause 78N Northern Ireland Act 1998 (Amendment No 2).

⁴³ Clause 78H(1), Northern Ireland Act 1998 (Amendment No 2).

- a) prepare best practice standards for public authorities;
- b) provide support to public authorities in connection with those standards;
- c) monitor the performance of public authorities in meeting those standards;
- d) investigate in accordance with section 78L complaints that a public authority has failed to have due regard to those standards.⁴⁴

4.3 Whereas the function of the Irish Language Commissioner is to 'protect and enhance, the term 'enhance and develop' is found in the Bill that establishes the Ulster Scots/Ulster British Commissioner⁴⁵ and the term 'promote and protect' is found in the international human rights standards. For example, the Vienna Declaration 1993 states that "the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles".⁴⁶ Human rights bodies have consistently reaffirmed the 'promote and protect' principles.⁴⁷

4.4 **The NIHRC recommends that the primary role of the Irish Language Commissioner in clause 78H is amended to include both a duty to 'enhance and develop' and to 'promote and protect'.**

4.5 The Ulster Scots /Ulster British Commissioner established by Northern Ireland Act 1998 (Amendment No 3) has an advisory role in respect of three human rights instruments relating to language and culture. Specifically, the Ulster Scots/Ulster British Commissioner is required to:

provide advice and guidance to public authorities on the effect and implementation so far as affecting the relevant language, arts and literature of –

⁴⁴ Clause 78H(2), Northern Ireland Act 1998 (Amendment No 2).

⁴⁵ Clause 78Q, Northern Ireland Act 1998 (Amendment No 1).

⁴⁶ A/CONF.157/23, 'Vienna Declaration and Programme of Action', 12 July 1993, at para 4.

⁴⁷ UN Human Rights Committee, 'Civil and Political Rights: Fact Sheet No 15 (Rev.1)' (undated); GA Res 53/144, 'UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms', 9 December 1998, Article 2; A/60/L.1, 'UN General Assembly World Summit Outcome 2005', 16 September 2005, at para 12.

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

- 4.6 No similar role is provided for the Irish Language Commissioner. It is unclear why the Ulster Scots/Ulster British Commissioner would have this role whereas the Irish Language Commissioner does not.
- 4.7 Additional provisions that should be added to this list of treaties, however, are the UN ICCPR and UN ICESCR. These treaties are central in the protection of culture at Articles 27 and 15 respectively and are included in Appendix 3.
- 4.8 **The NIHRC recommends that the Irish Language Commissioner is conferred a similar function as the Ulster Scots/Ulster British Commissioner and the Bill includes that the Irish Language Commissioner has an advisory role in respect of European Charter for Regional or Minority Languages, Framework Convention on National Minorities and the culture provisions in UN CRC.**
- 4.9 **The NIHRC recommends that the proposed list of human rights treaties to be included in the Bill is expanded to include relevant provisions from the UN ICCPR and UN ICESCR. These treaties are central in the protection of culture (which include language) at Articles 27 and 15 respectively, as outlined in Appendix 3.**
- 4.10 Conferring on the Irish Language Commissioner an advice function with respect to specified human rights treaties would overlap with the NIHRC's functions set out in section 69 of the Northern Ireland Act 1998. The NIHRC is the established National Human Rights Institution within Northern Ireland, operating in full accordance with the UN Paris Principles. As such, the NIHRC has a recognised mandate to advise on human rights compliance and engage with

the relevant international treaty bodies and the UN Human Rights Council.

4.11 The NIHRC recommends that the Irish Language Commissioner is required to consult with and take account of advice provided by the NIHRC in respect of the proposed advisory function.

4.12 In terms of the advice function as set out in the Bill, the Irish Language Commissioner is limited to drafting advice in the form of best practice standards,⁴⁸ providing support to public authorities,⁴⁹ monitoring the performance of public authorities⁵⁰ and investigating non-compliance.⁵¹

4.13 Article 2(2) of the UN ICCPR requires that the “necessary steps” are taken to “adopt such laws or other measures as may be necessary to give effect to the rights recognised” in this treaty. Examples of how the Bill can be amended to more accurately reflect the UN ICCPR are provided by existing provisions in Wales and Ireland, which adopt a broader approach.

4.14 The Welsh Language Commissioner’s functions include, but are not limited to:

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

⁴⁸ Clause 78H(2)(a), Northern Ireland Act 1998 (Amendment No 2).

⁴⁹ Clause 78H(2)(b), Northern Ireland Act 1998 (Amendment No 2).

⁵⁰ Clause 78H(2)(c), Northern Ireland Act 1998 (Amendment No 2).

⁵¹ Clause 78H(2)(d), Northern Ireland Act 1998 (Amendment No 2).

- giving advice to any person.⁵²

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

- monitor compliance by public bodies with the provisions of this Act;
- take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act;
- carry out investigations, whether on his or her own initiative, on request by the Minister or pursuant to a complaint made to him or her by any person, into any failure by a public body to comply with the provisions of this Act that he or she or, as appropriate, the Minister, considers may have occurred;
- provide, as he or she considers appropriate, advice or other assistance to the public regarding their rights under this Act;
- provide, as he or she considers appropriate, advice or other assistance to public bodies regarding their obligations under this Act; and
- carry out investigations, whether on his or her own initiative, on request by the Minister or pursuant to a complaint made to him or her by any person, to ascertain whether any provision of any other enactment relating to the status or use of an official language was not or is not being complied with.⁵³

4.16 **The NIHRC recommends that the mandate of the Irish Language Commissioner is widened to include, *inter alia*, a general advice function, a promotional function, a reporting and research function and powers to make recommendations. In addition, providing the Irish Language Commissioner with enforcement powers should be considered.**

Clause 78H(4) – Directions given by Ministers

4.17 Under clause 78H(4), the Irish Language Commissioner must “comply with any directions (of a general or specific nature) given by the Ministers as to the exercise of the Commissioner’s functions”. Further, clause 78J(2) requires the Commissioner to “have due regard” to guidance given by Ministers while clause 78J(3) provides

⁵² Sections 4(2)(a)-4(2)(j), Welsh Language (Wales) Measure 2011.

⁵³ Sections 21(a)-21(f), Official Languages Act 2003.

that Ministers have the power to approve and modify the best practice standards.

- 4.18 These provisions subject the Irish Language Commissioner to more government control than the respective language commissioners in Wales and Ireland. The Independent Association of Language Commissioners promotes the principle of independence of language commissioners.⁵⁴ Furthermore, Article 2(2) of the UN ICCPR requires that the “necessary steps” are taken to ensure UN ICCPR rights are effectively fulfilled, respected and protected.
- 4.19 Section 16 of the Welsh Language (Wales) Measure 2011 states that Welsh Ministers “may give directions” to the *Comisiynydd y Gymraeg* except in the context of compliance notices, enforcement of standards and freedom to use Welsh. It is clear that the *Comisiynydd y Gymraeg* “must comply” with these directions. However, it is balanced by section 4(1), which states that “the Commissioner may do anything that he or she thinks appropriate”, and section 4(3) which requires Welsh Ministers to have “due regard” for written correspondence from the Commissioner. Section 20(2) of the Official Languages Act 2003 expressly states that the *An Coimisinéir Te anga* (Irish language) Commissioner “shall be independent in the performance of his or her functions”. There is no express requirement on the *An Coimisinéir Te anga* to comply with Ministerial directions.
- 4.20 As the legislation is currently drafted, it is unclear what checks and balances are in place to ensure decisions by government bodies concerning the Irish Language Commissioner are not unduly interfering with the office’s independence. Independence is of particular importance with regards to the Commissioner’s investigatory functions. To be an effective investigation, the persons responsible for it must be independent.⁵⁵ Amending the Bill to ensure that any directions issued by Ministers are reasonable, have a legitimate aim and are proportionate would provide an important safeguard.

⁵⁴ The Independent Association of Language Commissioners comprises 11 language commissioners (including *Comisiynydd y Gymraeg* and *An Coimisinéir Te anga*) and aims to advance language rights and to support the work of language commissioners, including through identifying best practice. See Language Commissioners, ‘About’. Available at: <http://languagecommissioners.org/about>

⁵⁵ Directorate General Human Rights and Rule of Law, ‘Guide to Good Practice in Respect of Domestic Remedies’ (CoE, 2013), at 33.

4.21 The NIHRC recommends that further consideration is given to how to ensure the independence of the Irish Language Commissioner. This could involve expressly stating that the Commissioner shall be independent, as in the Official Languages Act 2003. Alternatively, a balance can be struck by ensuring any government direction to the Commissioner takes into account the Commissioner’s own advice, as is the case in Wales or by amending the Bill to ensure that Ministerial directions are reasonable, have a legitimate aim and are proportionate.

Clause 78J – Setting of best practice standards

4.22 Clause 78J(3) provides that when preparing the best practice standards, in addition to having regard to any Ministerial guidance, the Irish Language Commissioner is required to “undertake such consultations with public authorities and other persons and bodies as the Commissioner considers appropriate”, one such example being Foras na Gaeilege.

4.23 Clause 78J(5) further provides for the Irish Language Commissioner to devise different best practice standards for “different public authorities or different classes or descriptions of public authorities”. This tiered approach means that public authorities that have greater contact with Irish speakers will be subject to a more comprehensive set of duties than public authorities with less interaction with Irish speakers. This approach is consistent with the Framework Convention on National Minorities and the European Charter for Regional or Minority Languages, which recognise that language duties relate proportionately to numbers, need and demand.⁵⁶

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

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

⁵⁶ Article 14, Framework Convention on National Minorities 1993; Article 8, European Charter for Regional or Minority Languages 1992.

Clause 78L – Investigating complaints

- 4.26 Clause 78L provides a power for the Irish Language Commissioner to investigate complaints. This applies where the Irish Language Commissioner has received a written complaint by a person who claims to have been directly affected within 3 months by the failure of a public authority to have due regard to best practice standards. The Irish Language Commissioner must be satisfied that the public authority has had a reasonable opportunity to consider and respond to the complaint. Having completed an investigation report, clause 78L(5) provides that the Commissioner may issue recommendations for the public authority. It also requires that the Commissioner lays the investigation report before the Assembly.
- 4.27 The NIHRC welcomes the Commissioner’s powers to receive and investigate complaints as a complement to existing legal remedies. However, the NIHRC has a number of reservations about whether the Commissioner has the necessary powers to ensure these duties are properly fulfilled.
- 4.28 Article 2(3)(a) of the UN ICCPR requires that States ensure that persons whose rights are violated have access to an effective remedy. The UN ICCPR is not prescriptive about the form the remedy should take. However, the UN Human Rights Committee has stated that allegations need to be investigated “promptly, thoroughly and effectively” by independent and impartial bodies. Further, remedies must be appropriately adapted so as to take account of the special vulnerability of certain categories of person. The Organisation for Security and Cooperation in Europe’s Oslo Recommendations state that availability of administrative remedies should not replace judicial recourses.
- 4.29 The Bill does not require public authorities to amend their policies and practices in line with the findings and recommendations of an investigation conducted by the Commissioner. In contrast, in Wales, if the public authority does not action the recommendations following an investigation, the *Comisiynydd y Gymraeg’s* recommendations may refer the matter to the Secretary of State,

who can then make enforceable directions to the public authority concerned.⁵⁷

4.30 Furthermore, under sections 27 and 28 of the Official Languages Act 2003, an individual has the ability to apply for compensation or appeal to the High Court on the basis of the *An Coimisinéir Teanga's* findings. In Wales, under section 8 of the Welsh Language (Wales) Measure 2011, the *Comisiynydd y Gymraeg* can institute or intervene in a legal case linked to its functions. No similar provisions are made in this present Bill.

4.31 **The NIHRC recommends that clause 78L be strengthened to ensure that public authorities take seriously the findings and recommendations of an investigation conducted by the Commissioner. This could be achieved by adopting the Welsh approach of enabling a Minister to make enforceable directions on the basis of the Commissioner's report.**

4.32 Both Commissioners in Wales and Ireland have extensive enforcement powers, including powers to issue penalties for public authorities who refuse or fail to co-operate with any statutory investigations.⁵⁸ In Ireland, a person can apply for compensation or appeal to the High Court on the basis of the *An Coimisinéir Teanga's* findings.⁵⁹ In Wales, the *Comisiynydd y Gymraeg* can institute or intervene in a legal case linked to its functions.⁶⁰ No similar provisions are made in this present Bill.

4.33 **The NIHRC advises that consideration should be given to inserting specific remedial provisions within the Bill, such as making statutory provision for compensation as is the case in Ireland, or providing the Commissioner with powers to support an individual to take legal action or intervene in cases, similar to the situation in Wales.**

4.34 Concerns have been raised with the NIHRC that there are no safeguards contained within the Bill to ensure that the investigation

⁵⁷ Section 20, Welsh Language Act.

⁵⁸ In Ireland, the Commissioner has the power to "take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act". See Section 21(b), Official Languages Act 2003. In Wales, the Welsh Language Commissioner has, inter alia, powers of entry and inspection. See Section 5 and Schedule 10, Welsh Language (Wales) Measure 2011.

⁵⁹ Sections 27 and 28 of the Official Languages Act 2003.

⁶⁰ Section 8 of the Welsh Language (Wales) Measure 2011.

function of the Commissioner and the Commissioner is not used unreasonably.

4.35 The Welsh legislation is crafted in a way to ensure that the powers of the *Comisiynydd y Gymraeg* cannot be used where “unreasonable or disproportionate”.⁶¹

4.36 The NIHRC recommends that the clause 78L(5) is amended to include safeguards to ensure that the Commissioner’s investigation function cannot be exercised unreasonably. An example of this approach is provided in Wales.

4.37 While clause 78L includes a power to investigate complaints, the Commissioner does not have the power to undertake own motion investigations. In contrast, in Wales, the *Comisiynydd y Gymraeg* has the power to conduct own motion inquiries⁶² and investigations.⁶³ Likewise, in Ireland, the *An Coimisinéir Teanga* may conduct own motion investigations⁶⁴ and indeed has the power to “take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act”.⁶⁵

4.38 The NIHRC recommends that the Irish Language Commissioner is afforded the power to initiate ‘own motion’ investigations.

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

4.40 The NIHRC recommends that provision is included for the Irish Language Commissioner to compel evidence in exercising its investigatory powers.

Clause 78M – Definition of a public authority

4.41 The Irish Language Commissioner’s role only applies to public authorities. The interpretation of a ‘public authority’ is defined in

⁶¹ Sections 42, 43, 44,45, 55, 56, 57, 58, 60, 63, 95, Welsh Language (Wales) Measures 2011.

⁶² Section 7(1), Welsh Language (Wales) Measures 2011.

⁶³ Section 61 and 62, Welsh Language (Wales) Measures 2011.

⁶⁴ Section 23, Official Languages Act 2003.

⁶⁵ Section 21(b), Official Languages Act 2003.

clause 78M as “anybody or person listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016”.

4.42 The term ‘public authority’ has a wider meaning under section 6 of the Human Rights Act 1998, where it includes “a court or tribunal, and person certain of whose functions are functions of a public nature”.⁶⁶ A key distinction is that the Human Rights Act definition includes private organisations, when they are providing a public service or their service is paid for in whole or part by public money. The definition of a public authority within the Public Services Ombudsman Act does not extend to such circumstances.. Additionally, the use of the term ‘public services’ within Article 10 of the European Charter for Regional or Minority Languages has been interpreted to include services delivered by third parties on behalf of public bodies.⁶⁷

4.43 The NIHRC advises that the interpretation of ‘public authority’ within clause 78M is too narrow and recommends that the definition of ‘public authorities’ should be amended to reflect section 6 of the Human Rights Act 1998.

⁶⁶ Section 6, Human Rights Act 1998.

⁶⁷ Council of Europe, ‘Explanatory Report to the European Charter for Regional or Minority Languages’ (CoE, 1992), at para 102.

Appendix 1 – Irish Language Rights and Duties

Irish language rights and duties derived from human rights standards

Rights of individuals (Users of the Irish language)	Duties of the duty bearer (Northern Ireland Executive)
Civil matters	
<ul style="list-style-type: none"> • The right to communicate orally and in writing with administrative authorities and receive all documents in Irish. NB: The term ‘administrative authorities’ includes local and regional authorities and public services.⁶⁸ • The right to acquire civil documents and certificates in Irish.⁶⁹ • The right to use or adopt family names in the Irish language.⁷⁰ 	<ul style="list-style-type: none"> • Ensure that all public services are available through the medium of Irish. This includes services delivered by third parties on behalf of public bodies.⁷¹ • Ensure that all administrative authorities can communicate in Irish. This includes the provision of the necessary translation and interpretation facilities.⁷² • Ensure that regional / local /public institutions keep civil registers in Irish.⁷³ • Conduct appropriate recruitment and /or training policies and programmes to ensure public services can be delivered in Irish.⁷⁴ • Devise special measures to increase effective participation of Irish speakers in public life and in the civil service.⁷⁵

⁶⁸ Article 10(1)(a), European Charter on Regional or Minority Rights 1992.

⁶⁹ Organisation for Security and Cooperation in Europe, ‘The Oslo Recommendations Regarding the Linguistic Rights of National Minorities’ (OSCE, 1998), at Recommendation 13.

⁷⁰ Article 10(5), European Charter on Regional or Minority Rights 1992.

⁷¹ Article 10(1)(a), European Charter on Regional or Minority Rights 1992.

⁷² Article 10(4), European Charter on Regional or Minority Rights.

⁷³ Organisation for Security and Cooperation in Europe, ‘The Oslo Recommendations Regarding the Linguistic Rights of National Minorities’ (OSCE, 1998), at Recommendation 13.

⁷⁴ Article 10(4), European Charter on Regional or Minority Rights 1992.

⁷⁵ Article 10(4), European Charter on Regional or Minority Rights 1992.

	<ul style="list-style-type: none"> • Ensure that traditional local names, street names and other topographical are available in Irish.⁷⁶ • Ensure that all authorities, organisations and persons concerned are informed of the language rights.⁷⁷
Political	
<ul style="list-style-type: none"> • The right for regional politicians (i.e. MLAs) and local politicians (i.e. Councillors) to use and debate in Irish.⁷⁸ 	<ul style="list-style-type: none"> • Ensure the provision of simultaneous translation and interpretation in the NI Assembly and Council chambers.⁷⁹
Education	
<ul style="list-style-type: none"> • Access to pre-school, primary, secondary, technical/vocational, higher/university education, adult /continuing education in Irish.⁸⁰ 	<ul style="list-style-type: none"> • Provide basic and further training of Irish language teachers to ensure that the Irish education rights can be met.⁸¹
Culture	
<ul style="list-style-type: none"> • The right to access cultural activities such as libraries, video libraries, cultural centres, museums, actives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries and new technologies in Irish language.⁸² 	<ul style="list-style-type: none"> • Encourage cultural activities in Irish.⁸⁴ • Ensure that bodies responsible for organising or supporting cultural activities have access to staff who have full command of Irish language and include direct participation of representatives of the users of the Irish language.⁸⁵

⁷⁶ Article 10(2), European Charter on Regional or Minority Rights 1992.

⁷⁷ Article 6, European Charter on Regional or Minority Rights 1992.

⁷⁸ Article 10(2), European Charter on Regional or Minority Rights 1992.

⁷⁹ Article 10(4), European Charter on Regional or Minority Rights 1992.

⁸⁰ Article 8(1), European Charter on Regional or Minority Rights 1992.

⁸¹ Article 8(1)(h), European Charter on Regional or Minority Rights 1992.

⁸² Article 12(1), European Charter on Regional or Minority Rights 1992.

⁸⁴ Article 12(1), European Charter on Regional or Minority Rights 1992.

⁸⁵ Article 12(1)(e), European Charter on Regional or Minority Rights 1992.

<ul style="list-style-type: none"> • The right to Irish language education (above) includes the associated history and culture.⁸³ 	<ul style="list-style-type: none"> • If necessary, create, promote and finance translation and terminological research services.⁸⁶ • Measures that promote culture abroad should include the Irish language and associated culture.⁸⁷
Justice	
<ul style="list-style-type: none"> • Free access to interpreter throughout judicial processes.⁸⁸ • The right to challenge instances where linguistic rights are not met. Remedies should include judicial routes and access to an ombudsman / commission.⁸⁹ 	<ul style="list-style-type: none"> • Ensure that the use of interpreters and translations in judicial proceedings does not involve extra expense for the persons involved.⁹⁰ • Make available important national statutory texts⁹¹ • Ensure the availability of a remedy for individuals to challenge instances where linguistic rights are not met.⁹² • Consider the possibility of conducting all judicial proceedings in Irish where appropriate.⁹³
Economic and social activities	

⁸³ Article 8(1)(g), European Charter on Regional or Minority Rights 1992.

⁸⁶ The purpose of this is to maintain and develop appropriate administrative, commercial, economic, social, technical or legal terminology in the Irish language. See Article 12(1)(h) European Charter on Regional or Minority Rights 1992.

⁸⁷ Article 12(3) European Charter on Regional or Minority Rights 1992.

⁸⁸ Article 1(a),1(b) European Charter on Regional or Minority Rights 1992.

⁸⁹ Organisation for Security and Cooperation in Europe, 'The Oslo Recommendations Regarding the Linguistic Rights of National Minorities', (OSCE, 1998), at Recommendation 15.

⁹⁰ Article 9(1)(d) European Charter on Regional or Minority Rights 1992.

⁹¹ In 2014, the Committee of Experts concluded that in the absence of any information from the State Party, it presumes that only three statutory texts have been translated into Irish:

The Education Order 1998 (Northern Ireland); The North South Co-operation Order 1999 (Northern Ireland); Chapter 47, The Northern Ireland Act 1998. See ECRML (2014) 1, 'Report of the Committee of Experts on the Charter and Recommendation of the Committee of Ministers of the Council of Europe on the Application of the Charter by the United Kingdom in the Fourth Monitoring Cycle', 15 January 2014, at para 225; ECRML (2004) 1, 'Report of the Committee of Experts of the Charter and Recommendation of the Committee of Ministers of the Council of Europe on the Application of the Charter by the United Kingdom', 24 March 2004, at para 332.

⁹² Organisation for Security and Cooperation in Europe, 'The Oslo Recommendations Regarding the Linguistic Rights of National Minorities', (OSCE, 1998), at Recommendation 15.

⁹³ Article 9(1)(a), (1)(b) European Charter on Regional or Minority Rights 1992.

Persons with disabilities	
	<ul style="list-style-type: none"> • Encourage /facilitate the use of Irish language in economic and social activities.⁹⁴ • Include provisions in financial and banking regulations to allow use of Irish in commercial activities including payment orders.⁹⁵ • In the public sector, to organise activities to promote Irish.⁹⁶ • To ensure that social care facilities such as hospitals, retirement homes and hostels can provide services and treatment in Irish.⁹⁷ • Ensure that safety instructions are available in Irish.⁹⁸ • Ensure that information concerning the rights of consumers is available in Irish.⁹⁹
Persons with disabilities	
<ul style="list-style-type: none"> • The right to education delivered in the most appropriate languages and modes (including sign language).¹⁰⁰ • The right to specific cultural and linguistic identity.¹⁰¹ 	<ul style="list-style-type: none"> • Ensure persons with disabilities can enjoy their specific cultural and linguistic identity and right to education through the most appropriate languages and modes.¹⁰²

⁹⁴ Article 13, European Charter on Regional or Minority Rights 1992.

⁹⁵ Article 13(2)(a) European Charter on Regional or Minority Rights 1992.

⁹⁶ Article 13(2)(b) European Charter on Regional or Minority Rights 1992.

⁹⁷ Article 13(2)(c) European Charter on Regional or Minority Rights 1992.

⁹⁸ Article 13(2)(d) European Charter on Regional or Minority Rights 1992.

⁹⁹ Article 13(2)(e) European Charter on Regional or Minority Rights 1992.

¹⁰⁰ Article 21 (b)(e), UN Convention on the Rights of Persons with Disabilities 2006.

¹⁰¹ Article 30, UN Convention on the Rights of Persons with Disabilities 2006.

¹⁰² Article 21 (b)(e), UN Convention on the Rights of Persons with Disabilities 2006.

Media	
<ul style="list-style-type: none"> • The right to enjoy different forms of media including broadcast and print media in Irish. • Children have a specific right to enjoy media that has regards to their linguistic needs.¹⁰³ 	<ul style="list-style-type: none"> • Mass media should have regard for the linguistic needs of children who are Irish language users.¹⁰⁴ • Encourage/facilitate and apply existing measures for financial assistance for the production and distribution of Irish audio and visual works and encourage, facilitate or maintain at least one Irish language newspaper.¹⁰⁵ • Support for the training of journalists and other staff for media using Irish.¹⁰⁶
UK specific obligations	
	<p>Education</p> <ul style="list-style-type: none"> • Encourage / provision of Irish language in all the appropriate stages of education outside in other territories (i.e. outside of Northern Ireland).¹⁰⁷ <p>Media</p> <ul style="list-style-type: none"> • Make adequate provision for the broadcasting of Irish programmes including radio and television.¹⁰⁸ • Ensure freedom of direct reception of radio and television broadcasts in Irish language from the Ireland and other neighbouring countries.¹⁰⁹

¹⁰³ Article 17, UN Convention on the Rights of the Child 1989.

¹⁰⁴ Article 17, UN Convention on the Rights of the Child 1989.

¹⁰⁵ Article 11(1) European Charter on Regional or Minority Rights 1992.

¹⁰⁶ Article 11(1)(g) European Charter on Regional or Minority Rights 1992.

¹⁰⁷ Article 8(2) European Charter on Regional or Minority Rights 1992.

¹⁰⁸ Article 11(1)(a)(iii), (1)(b)(ii) European Charter on Regional or Minority Rights 1992.

¹⁰⁹ Article 2, European Charter on Regional or Minority Rights 1992.

	<p>Trans frontier exchanges (UK specific)</p> <ul style="list-style-type: none">• Apply bilateral and multilateral agreements with the Ireland to foster contacts between Irish language users in the fields of culture, education, information, vocational training and permanent education. ¹¹⁰• Facilitate /promote cross border co-operation to benefit the Irish language¹¹¹
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¹¹⁰ Article 14(a)(b) European Charter on Regional or Minority Rights 1992.

¹¹¹ Article 14(a)(b) European Charter on Regional or Minority Rights 1992.

Appendix 2 – European Charter for Regional or Minority Languages

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

All of the identified provisions extend to Northern Ireland. The table below identifies which provisions the devolved administration in Northern Ireland has responsibility for implementing and which provisions the UK Government has responsibility for implementing.¹¹²

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

¹¹² CoE, 'Reservations and Declarations for Treaty No 148 – European Charter for Regional or Minority Languages', at United Kingdom. Available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/declarations?p_auth=adpW1NPI

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

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

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

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

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

Appendix 3 – Right to Enjoy Culture

UN International Covenant on Civil and Political Rights

Article 27, UN ICCPR provides:

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

See UN Human Rights Committee 'General Comment No 23: Rights of Minorities'.¹¹³

UN International Covenant on Economic, Social and Cultural Rights

Article 15, UN ICESCR provides:

- 1) The States Parties to the present Covenant recognize the right of everyone:
 - a) to take part in cultural life;
 - b) to enjoy the benefits of scientific progress and its applications;
 - c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
- 2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
- 3) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

¹¹³ CCPR/C/21/Rev.1/Add.5, 'UN Human Rights Committee General Comment No 23: The Rights of Minorities', 8 April 1994.

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

See Committee on Economic, Social and Cultural Rights, 'General Comment No 21: Right of Everyone to Take Part in Cultural Life'.¹¹⁴

¹¹⁴ E/C.12/GC/21, 'UN ICESCR Committee General Comment No 21: Right of Everyone to Take Part in Cultural Life', 21 December 2009.

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