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# Guidance on the European Charter for Regional or Minority Languages

The evolving authoritative interpretation of provisions

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# Introduction

The European Charter for Regional or Minority Languages (the Charter) is a Council of Europe Treaty signed, further to a commitment in the Belfast/Good Friday Agreement, by the UK on 2 March 2000 and ratified on 27 March 2001. The Charter came into force on 1 July 2001. The UK subscribed to commitments for Irish and Ulster Scots under Part II of the Charter, and a number of provisions for Irish under Part III of the Charter.

The lead department for Charter implementation has been the Department for Communities (DfC). A Circular entitled ‘Guidance on Meeting UK Government Commitments in Respect of Irish and Ulster Scots’ was issued by the Department, first in 2004 and again in August 2005.

We are currently in a significant period of administrative reorganisation; eleven new Councils commenced last year and are currently considering, devising or implementing language policies and shortly Executive Departments will be reorganised. Article 7(1) b of the Charter provides a commitment that new administrative divisions do not constitute an obstacle to the promotion of the regional minority language in question (in our case Irish and Ulster Scots). In the ten years since the Guidance was issued the Council of Europe

treaty-body which monitors compliance with the Charter, the Committee of Experts (or COMEX) has provided significant commentary and authoritative interpretation of the implications of the Charter. This relates both to our local compliance but also the situation of other State parties.

In light of this, and of the assistance of the growing jurisprudence of the Charter in clarifying how it is to be implemented, the following supplementary guidance is issued which summarises how COMEX has interpreted the Charter in seven key areas, namely:

- 1. The nature of obligations under the Charter**
- 2. Objectives and principles when developing policy and practice**
- 3. Language policy and the rights of others**
- 4. Bilingual signage**
- 5. Non-discrimination: prohibition on unjustified distinctions**
- 6. Differential treatment for Irish and Ulster Scots, and engagement between speakers**
- 7. Non-retrogression: local government reform**

# 1. Nature of obligations under the Charter

The Charter is binding on the UK. As set out in the current guidance the Charter is not framed to establish individual or collective rights for speakers, rather it is framed to oblige public authorities to take positive action without speakers having to invoke such rights. The Committee of Experts (COMEX) has clarified:

An important feature of the Charter is that it does not as such set out individual rights for speakers of minority languages

whose implementation would largely depend on whether or not the speakers invoke such rights. Rather, the Charter places legal obligations on its States Parties which need to be implemented in practice, taking account of the situation of each language. Implementation of the Charter's legal obligations thus requires that its States Parties take positive measures, on their own initiative, with a view to protecting and promoting the minority languages.<sup>1</sup>

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<sup>1</sup> Paragraph 26, Report of the Committee of Experts on the Application of the Charter to Bosnia Herzegovina ECRML (2013)5

## 2. Objectives and principles when developing policy and practice

Article 7(1) of the Charter applies to both Irish and Ulster Scots and provides that public authorities shall base their “policies, legislation and practice” on a number of enumerated objectives and principles. This provision is qualified to applying to territories where the languages are used and in accordance with the specific situation of the language.

### Meaning of “Resolute Action”

One of the objectives and principles, under this Article is the “**...the need for resolute action to promote (Irish and Ulster Scots) in order to safeguard them;**” (Article 7(1) c).

The Committee of Experts has elaborated on the interpretation of ‘resolute action’ as including three key elements:

Resolute action to promote regional or minority languages in order to safeguard them covers several aspects. These include the creation of a legal framework for the promotion of regional or minority

languages, the establishment of bodies which are responsible for the promotion of these languages and, provision of adequate financial resources.<sup>2</sup>

The creation of a ‘legal framework’ has been interpreted by the treaty body as relating not just to legislation but to policy, both at NI and local government levels.

In relation to the second explicitly identified element of Article 7(1) c – “the establishment of bodies which are responsible for the promotion of these languages” Foras na Gaeilge and the Ulster Scots Agency have been established to this end.

### Development of policies impacting on Irish and Ulster Scots

In relation to the above provision regarding duties to develop language policies, and other policies which concern Irish or Ulster Scots, attention is drawn to Article 7(4) of the Charter which provides that:

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<sup>2</sup> Paragraph 41, Fourth report of the Committee of Experts in respect of Slovenia, CM(2014)36 16 April 2014.

In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.<sup>3</sup>

The treaty body has elaborated that this undertaking to take into consideration needs and wishes of speakers places a duty on Councils, government departments and other public authorities to consult with representatives of users of Irish and Ulster Scots when developing policy impacting on them. COMEX states that this provision:

...requires the authorities to consult with representatives of users of regional or minority languages, when minority language policy is determined. The Committee of Experts considers this undertaking to be

of great importance in creating, maintaining and enhancing a constructive dialogue between the authorities (local, regional and national) and the speakers of the languages in question.<sup>4</sup>

The provision for the establishment of bodies to advise public authorities on all matters pertaining to Irish and Ulster Scots has been taken forward by the aforementioned establishment of Foras na Gaeilge and the Ulster Scots Agency. Foras na Gaeilge has produced a Specific Guidance document on Irish language services in the Councils.<sup>5</sup>

The Northern Ireland Human Rights Commission also has a specific remit in relation to promoting compliance with human rights treaties including the Charter.<sup>6</sup> The Human Rights Commission has issued a specific Briefing Paper on the implications of the Charter, the European Convention on Human Rights and other instruments in relation to the Irish language and Ulster Scots.<sup>7</sup>

<sup>3</sup> In relation to Irish under Article 7(1)c in their Third Monitoring Report in 2010 COMEX dealt with a previous Committee of Ministers recommendation to ‘develop comprehensive Irish language policy, including measures to meet the increasing demand for Irish medium education.’ RecChL(2007)2. The Committee of Ministers subsequently recommended ‘the adoption of comprehensive Irish language policy, preferably through the adoption of legislation’ RecChL(2010)4. This recommendation was repeated in 2014, specifically advocating that the legislation provide statutory rights for Irish speakers (CM/RecChL(2014)3). In relation to Scots and Ulster Scots the Committee of Ministers had recommended in 2007 a strengthening of “the efforts to improve the position of Scots and Ulster Scots” RecChL(2007)2 and COMEX makes reference, under Article 7(1)c, to the strategy to enhance and develop Ulster Scots further to the St Andrews Agreement, and the Committee of Ministers subsequently recommends the adoption of such a strategy in co-operation with speakers of Ulster Scots. In relation to Scots in Scotland COMEX also makes reference to a proposed strategy and duties for language plans on local authorities, provisions on Scottish Gaelic and Cornish also reference strategies and policy at the level of local councils.

<sup>4</sup> Application of the Charter in the UK, 1st monitoring cycle, paragraph 89 (MIN-LANG/PR (2002) 5).

<sup>5</sup> Foras na Gaeilge ‘Guidance Document: ‘Irish Language Services in the new Councils’ December 2015.

<sup>6</sup> “The Commission, as the National Human Rights Institution for Northern Ireland, has a formal role in relation to monitoring and promoting compliance with human rights treaty-based obligations. These include the UK’s commitments under the European Charter for Regional or Minority Languages (‘the Charter’)” NIHR ‘Minority Language Rights: The Irish language and Ulster Scots, Briefing paper on the implications of the European Charter for Regional or Minority Languages, European Convention on Human Rights and other instruments’ (June 2010), page 5.

<sup>7</sup> NIHR ‘Minority Language Rights: The Irish language and Ulster Scots, Briefing paper on the implications of the European Charter for Regional or Minority Languages, European Convention on Human Rights and other instruments’ (June 2010).

### 3. Language policy and the rights of others

COMEX and its sister committee, the Advisory Committee on the Framework Convention for National Minorities have dealt with a number of instances where it has been alleged that Irish language policy or provision is 'discriminatory', otherwise interferes with the rights of others, or that such provision breaches duties under section 75 of the Northern Ireland Act 1998. In response COMEX has stated:

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, which states that public authorities should take due regard to the need to promote equality of opportunity, among others between persons of different religious belief and political opinion.

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.<sup>8</sup>

The treaty body to the Council of Europe's Framework Convention for National Minorities (FCNM) has stated:

The Advisory Committee was disconcerted to hear that some representatives of the authorities consider that promoting the use of the Irish language is discriminating against persons belonging to the majority population. Such statements are not in line with the principles of the Framework Convention, and in particular with the provisions of Article 10. It also reiterates that, in line with Article 4.2 and Article 4.3<sup>9</sup> of the Framework Convention, implementation of minority rights

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<sup>8</sup> Council of Europe (2010) Report of the Committee of Experts on the Charter (UK 3rd Monitoring Cycle) ECRML (21 April 2010) 4, para 123.

<sup>9</sup> Framework Convention for National Minorities: Article 4(1) The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. (2) The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. (3) The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination; Article 10 (1) The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. (2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. (3) The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.



protected under the Framework Convention are not be (sic) considered as discriminating against other persons.<sup>10</sup>

The Committee held again in relation to Irish that: “It is regrettable that measures to promote the visibility and use of this language have often been opposed with the justification that they constitute discrimination against other groups of the population.”<sup>11</sup> In relation to the good relations duty the Advisory Committee stated:

...The Advisory Committee has been informed that, in some instances, the need for keeping good relations has been used as justification for not implementing provisions in favour of persons belonging to minorities, such as the erection of bilingual signs...<sup>12</sup>

In Northern Ireland, the Advisory Committee regrets that only limited progress has been made regarding the erection of bilingual signposting and topographical indications, particularly road signs, despite the fact that there is, reportedly, a demand for this in a number of municipalities. Additionally, it finds it problematic that the official policy is to limit the erection of such signs to certain areas where the issue would not raise controversies. The Advisory Committee regrets the decision by Belfast City Council to reject in March 2011 a proposal to erect bilingual signs in this city (in English and Irish or Ulster Scots). The Advisory Committee is concerned that this approach is not in line with the spirit of the Framework Convention and, in particular, the provisions of Article 11,<sup>13</sup> the aim of which is to value the use of minority languages, including through the setting up of bilingual signposting, with a view to promoting more tolerance and intercultural dialogue in society.

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<sup>10</sup> Council of Europe (2011) Advisory Committee on the Framework Convention for National Minorities (Third Opinion on the UK) ACFC/OP/III(2011)006 (adopted 30 June 2011), paragraph 147.

<sup>11</sup> As above, paragraph 21.

<sup>12</sup> As above, paragraph 126.

<sup>13</sup> “Article 11 (1) The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system. (2) The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public. (3) In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.”

It is of the opinion that comprehensive legislation on the use of the Irish language, including on signposting and other topographical indications, could improve the situation by providing clear legal guarantees on the use of minority languages.<sup>14</sup>

The Northern Ireland Human Rights Commission in its aforementioned briefing paper states:

The Commission has on several occasions been asked to provide advice when organisations in fulfilling commitments to promote the Irish language, through for example bilingual policies, have subsequently received a complaint alleging that obliging staff to promote Irish violates their rights. One of these instances relates to local government – when the Council of Limavady/Léim a’ Mhadaidh consulted over the extension of the Council’s bilingual logo in early 2009. The Commission concluded that promotion of minority languages in logos or corporate materials in Northern Ireland is entirely in step with the positive human rights obligations of the United Kingdom, and that official acknowledgement of a minority language cannot constitute a violation of the rights of those who do not use that language.

The Commission has advised that from a human rights perspective it is difficult to see any legitimate grounds for objecting to the Irish language being promoted by an employer or, more generally, a public authority.<sup>15</sup>

The Human Rights Commission also addresses the issue of engagement with the rights of others:

... the Commission has drawn attention to the fact that there is no “right to be (sic) offended” by another party exercising a right. This is a general principle of freedom of expression (European Convention on Human Rights -ECHR Article 10, which must be read in conjunction with ECHR Article 14 on non-discrimination on grounds that include language). The Commission is aware of arguments that there are ‘sensitivities’ regarding the Irish language. Indeed the UK government within the Belfast (Good Friday) Agreement encourages the Assembly to sustain commitments to the Irish language in a manner that ‘takes account of the desires and sensitivities of the community’ (albeit it is not clear if this refers to the Irish-speaking or English-speaking community.) In general restricting use or promotion of Irish to accommodate the ‘sensitivities’ of others would be incompatible with freedom of expression. However, both (European Court of Human Rights) jurisprudence and

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<sup>14</sup> As above, paragraph 158.

<sup>15</sup> NIHRC, Minority Language Rights, The Irish language and Ulster Scots, Briefing paper on the implications of the European Charter for Regional or Minority Languages, European Convention on Human Rights and other instruments, June 2010, page 25.

the Charter provide a clear indication of how the sensitivities of non-speakers can be accommodated, namely through the prevention of monolingualism in the minority language. The promotion of linguistic pluralism implicit in (ECHR) jurisprudence is reflected in and explicitly codified into the Charter. For example the UK's commitment to allow Irish to be used in debates in the Assembly and Council chambers stands alongside an explicit provision that this has to be done without excluding the use of English. The same principle indicates that the sensitivities of non-Irish speakers could be met by ensuring that English is not excluded from appearing alongside Irish in corporate identities.<sup>16</sup>

The Equality Commission has set out that it has no specific jurisdiction in relation to language issues.<sup>17</sup> The Commission does advise on equality and anti-discrimination legislation, which presently does not cover the grounds of language. In relation to the use of minority languages the Equality Commission guidance on harmonious workplaces states:

The use of languages other than English, for example in corporate logos and communications, will not, in general, constitute an infringement of a good and harmonious working environment.<sup>18</sup>

The Equality Commission has also issued Advice on Good Relations on Local Councils. In a section on Definition of Good Relations, in addition to drawing attention to previous definitions, the Commission sets out elements of the duty and the definition of good relations in law in Great Britain to provide direction to public authorities on compliance:

The Commission has indicated that there are a number of elements that would be helpful in the formulation of such a definition. Good relations could be said to exist where there is:

- a high level of dignity, respect and mutual understanding
- an absence of prejudice, hatred, hostility or harassment
- a fair level of participation in society

The definition contained in Section 149 of the Equality Act 2010 in Great Britain is also useful in that it provides public authorities there with direction on how they should comply with their duty to have due regard to the need to foster good relations, as follows:

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) tackle prejudice, and
- b) promote understanding<sup>19</sup>

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<sup>16</sup> As above, page 26.

<sup>17</sup> In ECNI submissions, for example Response to Limavady Council on the Extension of the use of the Councils Bilingual Logo.

<sup>18</sup> 'Promoting a Good and Harmonious Working Environment, A Guide for Employers and Employees', Equality Commission, October 2009, page 9.

<sup>19</sup> Equality Commission advice on Good Relations in Local Councils, September 2015.

## 4. Bilingual signage

The Council of Europe has supported the use of minority language signage as a way of enhancing the visibility of a minority language:

...Council of Europe reiterates that the use of minority languages in official signage is a promotional measure with a considerable positive effect for the prestige and public awareness of a minority language. This position is supported by the Committee of Ministers of the Council of Europe, which in recent years adopted several recommendations calling on states to use minority languages on public signs.<sup>20</sup>

Under Part III of the Charter there is a particular duty to allow and/or encourage (alongside English if necessary), the traditional and correct forms of place names in Irish (Article 10(2)g). The Framework Convention for National Minorities also commits the UK to endeavour “to display traditional local names, street names and other topographical indications intended for the public also in the minority language” in areas where there

are speakers of minority languages, taking into account the specific conditions of the language, and demand (Article 11(3)).<sup>21</sup>

There are also links between bilingual signage and other provisions in the Charter. This includes the duties to promote tolerance and awareness of minority languages under Article 7(3). For example In April 2015 the Committee of Ministers recommended, in relation to Croatia and duties on local authorities including the use of traditional and correct forms of place names, that the “authorities continue their efforts to promote awareness and tolerance vis-à-vis the minority languages, in all aspects, including usage of signs and traditional local names with inscriptions in Cyrillic script...”<sup>22</sup>

The Council of Europe has expressed concerns when municipal authorities take regressive steps in relation to bilingual signage, and sought in such circumstances full compliance with the Charter:

<sup>20</sup> in ‘Council of Europe supports use of minority languages in official signage’ Press Release: [https://www.coe.int/en/web/portal/home/-/asset\\_publisher/CWAEcQDHgT3y/content/council-of-europe-supports-use-of-minority-languages-in-public-signs?inheritRedirect=false](https://www.coe.int/en/web/portal/home/-/asset_publisher/CWAEcQDHgT3y/content/council-of-europe-supports-use-of-minority-languages-in-public-signs?inheritRedirect=false) also citing: CM/RecChI2013(1) concerning the Czech Republic, CM/RecChI2013(3) concerning Serbia, CM/RecChI2013(6) concerning Bosnia and Herzegovina, CM/RecChI2014(1) concerning Ukraine.

<sup>21</sup> Article 11(3) “In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.”

<sup>22</sup> Recommendation CM/RecChL(2015)2 on the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Croatia (adopted by the Committee of Ministers on 15 April 2015 at the 1225th meeting of the Ministers’ Deputies).



The Council of Europe notes with regret that on 17 August 2015, the City Council of Vukovar / Bykovar (Croatia), where Serbs constitute a significant proportion of the population, decided to amend the city statute in such a way as not to provide bilingual signs in Latin and Cyrillic scripts at official town buildings, institutions, squares and streets...

...The Council of Europe therefore strongly regrets the removal of signs in minority languages through vandalism or pursuant to formal decisions aiming at limiting the presence of minority languages in the public and urges all relevant public authorities in all States Parties to fully implement the provisions of the European Charter for Regional or Minority Languages (ECRML).<sup>23</sup>

The treaty body has also dealt with the issues of ‘tensions’ in relation to the use of signage, again in the context of duties to promote the traditional and correct forms of place names. COMEX has indicated that there is an obligation upon public authorities to remove any legal or practical obstacles to the use of minority language place names.

185. The Committee of Experts has been informed by the representatives of the Polish speakers that there are still problems with respect to the bilingual signs and these often create tensions. The situation differs in each municipality and in some cases no steps have been

taken to set up bilingual signs. Furthermore, bilingual signs are often destroyed and are not always replaced, partly due to funding problems. Moreover, funds from the state budget are provided with delays, causing problems in the municipal budget and further hesitation from the authorities in approving the bilingual signs. As to the railway stations, no further bilingual signs have been installed on the new corridor, in stations such as Třinec-Konska and Ropice. Where Polish signboards have been installed, these remain switched off. Problems have been indicated as well at the railway stations in Třinec and Vendryně.

186. The authorities are aware that bilingual signs have been destroyed and the former Minister for Human Rights and Government Commissioner for Human Rights has publicly protested against such actions. Furthermore, the authorities explain that bilingual signs are a sensitive issue and the majority population is reserved in this respect.

187. As to the legislation, the authorities have informed the Committee of Experts that an amendment to the relevant legislation has been prepared, which is expected to enter into force in the near future. The amendment maintains the 10% threshold and foresees that an application for bilingual signs can also be submitted by a civic association which represents the interests of the minority in question and has been present on the

<sup>23</sup> Press Release: [https://www.coe.int/en/web/portal/home/-/asset\\_publisher/CWAECqDHgT3y/content/council-of-europe-supports-use-of-minority-languages-in-public-signs?inheritRedirect=false](https://www.coe.int/en/web/portal/home/-/asset_publisher/CWAECqDHgT3y/content/council-of-europe-supports-use-of-minority-languages-in-public-signs?inheritRedirect=false)

territory of the municipality for at least five years. The authorities explain that the request of the representatives of the national minorities through the committee for national minorities would remain the main method, while the application submitted by an association would be an exceptional solution in cases where the committee does not properly fulfil its role. The amendment has been prepared by the Committee for Co-operation with Local Authorities of the Government Council for National Minorities, the Secretariat of this Council and the Ministry of the Interior.

**The Committee of Experts urges the Czech authorities to remove the legal and practical obstacles to the use of Polish place names and topographical signs in accordance with the Charter.<sup>24</sup>**

In relation to the issue of ‘quotas’ or thresholds for bilingual signage COMEX has stated:

During the on-the-spot visit, the Committee of Experts was informed of a civic initiative to hold a referendum with a view to replacing the current threshold of over one third with a 50% threshold. Representatives of the Serbian and Hungarian speakers voiced strong concern with regard to this

initiative, which had been taken against the background of controversies relating to the presence of Serbian (Cyrillic) signage in Vukovar. At the request of the Croatian Parliament, the Constitutional Court examined the question of holding a referendum and concluded in August 2014 that a referendum would violate the constitution. As the matter does not seem to have been resolved politically, the Committee of Experts would like to underline that limiting the application of Charter provisions to local self-government units where more than 50% of the population belong to a national minority would lead to a legal set-up incompatible with the obligations under the Charter and deprive minority languages of protection accorded to them. With this in mind, however, **the Committee of Experts would like to point to its standing interpretation of the Charter with regard to 20% thresholds in other States Parties, which, taken alone, has always been perceived as being too high.** A 50% threshold is, in any case, too high as it would deprive minority languages of full protection under the Charter in any place where a 50% threshold is not reached.<sup>25</sup>

<sup>24</sup> Application of the Charter in the Czech Republic 2nd monitoring cycle, paragraphs 185-7 (ECRML (2013) 2).

<sup>25</sup> Application of the Charter in Croatia, fifth monitoring cycle, paragraph 25, (ECRML (2015) 2))

## 5. Non-discrimination: prohibition on unjustified distinctions

Under Article 7(2) all public authorities in Northern Ireland, in relation to Irish and Ulster Scots, are obliged to:

...eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. 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 considered to be an act of discrimination against the users of more widely-used languages.

On a number of occasions COMEX has pointed to provisions in Northern Ireland which appear incompatible with Article 7(2), namely: the NI Tourist Board's policy on funding bilingual signage<sup>26</sup> and the Administration of Justice Act (Ireland) 1737.<sup>27</sup>

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<sup>26</sup> COMEX, Application of the Charter in the UK, 4th monitoring round ECRML (2014) para 245

<sup>27</sup> COMEX, Application of the Charter in the UK, 3rd monitoring round ECRML (2010) para 121

## 6. Differential treatment for Irish and Ulster Scots, and engagement between speakers

The Charter is clear that Irish and Ulster Scots should not be treated on the basis of parity, which would be to the detriment of both, but should each be treated in accordance with their own specific situation. The Committee of Experts in 2010 stated:

In the previous evaluation report... the Committee of Experts observed that inappropriate claims for parity of treatment between Irish and Ulster Scots in a number of instances led to the result that no measures were taken for either language, since it was not practically possible to apply the same measures to Ulster Scots. The Committee of Experts encountered similar issues in the current monitoring round, in particular in the general support of the languages. For instance, the opinion was even presented to the Committee of Experts that before any further steps were taken to promote Irish, the Ulster Scots language should be brought into the same position.

The Charter is based on treating each regional or minority language in accordance with its specific situation. The situation of the two languages is quite different, and language measures specifically directed

towards each language are needed.

That is the only way that both languages can be protected and promoted according to their specific needs.

The St Andrews Agreement Act 2006 places a statutory duty on the NI Executive to adopt a strategy to enhance and protect the Irish language. So far no strategy has been adopted. However the Minister for Culture Arts and Leisure (DCAL) intends to bring forward one strategy entitled “A Strategy for Indigenous or Regional Minority Languages”, which is intended to be a single strategy for Irish and Ulster Scots. 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 the Irish-Speakers or the Ulster-Scots speakers and will hold back the development of both languages.<sup>28</sup>

Under Article 7(1)(e) there is a specific duty, encompassing Irish and Ulster Scots but also in relation to other languages to establish cultural relations between groups using different languages. In 2014 the Committee of Experts stated:

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<sup>28</sup> COMEX, Application of the Charter in the UK, 3rd monitoring round ECRML (2010), 16, 17, 20, see also paragraph 57 and Finding D.



During the on-the-spot visit the Committee of Experts observed that amongst speakers there was a spirit of mutual understanding between those wishing to promote the Irish language and the promotion of Ulster Scots. There was a realisation that the situation and needs of the two languages were different.

The Committee of Experts was particularly encouraged by initiatives taken by the Minister for the Department of Culture, Arts and Leisure (DCAL) to bring the two language communities together. This spirit of mutual tolerance and understanding appears to the Committee of Experts to be a valuable platform on which to build a political consensus.<sup>29</sup>

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<sup>29</sup> COMEX, Application of the Charter in the UK, 4th monitoring round ECRML (2014) 1 Paragraph 15.

## 7. Non-Retrogression: local government reform

Article 7(1)b of the Charter provides for the “...respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question.”

The 2014 COMEX Report specifically addresses concerns which exist where new council boundaries may have an impact on the protection of the Irish language:

NGOs expressed their concerns to the Committee of Experts that the changing of local council areas and amalgamating

of some councils with others is likely to impact on Irish language provisions and policies, including in the existing council areas where Irish Language Officers are currently employed... The Committee of Experts therefore reiterates its concern and urges the authorities to ensure that the new administrative divisions will not be less favourable to the existing minority language protection.<sup>30</sup>

COMEX has therefore stated that in accordance with Article 7(1) b the creation of the 11 Councils established in 2015 should not lead to less favourable treatment.

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<sup>30</sup> COMEX, Application of the Charter in the UK, 3rd monitoring round ECRML (2010), 16, 17, 20, see also paragraph 57 and Finding D.



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