

CAJ submission to the Committee of Experts (COMEX) on the UK response to the 5th COMEX Report on UK compliance with the European Charter for Regional or Minority Languages (ECRML)

January 2021

1. The Committee on the Administration of Justice (“CAJ”) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and is a member of the International Federation of Human Rights (FIDH).
2. CAJ regularly engages with Council of Europe and United Nations treaty bodies and welcomes the opportunity to provide comment to COMEX on the UK response of 5 January 2021¹ to the 5th COMEX evaluation report on the UK of July 2020.²
3. This response is limited to commentary on the UK’s commitments in Northern Ireland (NI) under the ECRML, namely to Irish and Ulster Scots.

Constitutional framework for delivery of ECRML in NI

4. The constitutional framework in NI flows from the 1998 Belfast /Good Friday Agreement (GFA), although core commitments in the GFA have yet to be implemented by the UK. This includes the UK commitment to legislate in the UK Parliament for a Bill of Rights for NI, which on the advice of the NHRI would have incorporated the ECRML, making its provisions directly enforceable in the NI courts.
5. Under the GFA there is a power sharing Executive, currently consisting of five parties and led by the largest (British) unionist party, the DUP, and the largest (Irish) nationalist party, Sinn Féin, represented by joint First and deputy First Ministers respectively. The GFA provided for both Executive and Legislative power to be constrained by mandatory compliance with the ECHR and Bill of Rights, however only the former has been implemented. The DUP, who opposed the GFA, obtained changes to the GFA before taking up the First Ministers position that expanded the role of the NI Executive, to consider certain individual ministerial decisions deemed ‘controversial’ or ‘significant’.³ In practice, this provides a veto over initiatives to progress the ECRML measures for Irish language, even when these initiatives are taken by ministers from other parties supportive of minority language rights.
6. Under the GFA, the UK Parliament retains competence to legislate in areas devolved to the NI Assembly where required in order to meet treaty-based obligations.⁴ The UK Minister for NI also retains powers to direct an NI minister

¹ MIN-LANG (2021) IRIA 1, <https://rm.coe.int/ukiria5rev-en/1680a0eef6>

² CM(2019)84-final, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680948544

³ For further detail on this procedure and its legislative basis see the briefing note by the Equality Coalition here: <https://caj.org.uk/2020/11/18/stormonts-vetoes-in-the-context-of-a-pandemic-an-equality-coalition-briefing-note/>

⁴ Paragraph 33(b), Strand 1 GFA, providing that the UK Parliament will: “legislate as necessary to ensure the United Kingdom’s international obligations are met in respect of Northern Ireland”.

to take or refrain from taking action to ensure compliance with the UKs international obligations. Such directions are through legally binding Orders.⁵

The UK response to COMEX

7. The information provided in the UK response on Irish and Ulster Scots is very limited, consisting of four paragraphs (173-176) in the 39-page document that begin with the word 'DISCLAIMER' (emphasis in original).
8. The UK response then seeks to attribute the lack of progress against COMEX & Committee of Ministers (CM) recommendations in recent years to the 2017-2020 collapse of the Northern Ireland Executive.
9. What this account omits to reference is that failures by both the UK Government to implement previous commitments to legislate in the UK Parliament to protect the Irish language (in line with the CM recommendations), and that a series of decisions by DUP ministers that regressed the implementation of the ECRML were instrumental in causing the collapse of the devolved institutions, and in the failure to reach agreement as to their restoration until January 2020.
10. The ministerial decisions in question, detailed later in this submission, include DUP ministers adopting 'single language' (i.e., English only) policies in their Departments, in contravention of Article 7 and other provisions of the ECRML.
11. A decision taken on the eve of Christmas 2016 by the DUP Communities Minister Paul Givan MLA to cut the modest (around €60k) and much commended Líofo bursary scheme (that allowed the children of low-income families to attend summer schemes in the Irish-speaking Gaeltacht to further language acquisition), was a significant factor in the collapse of the NI institutions. The decision itself was reversed under the threat of legal challenge.⁶ The devolved institutions had, however, fallen into a collapse that would last three years, ostensibly over the allocation of public resources in a renewable energy scheme, but also over the failure to deliver core rights obligations, including most notably those relating to the Irish language.
12. The transfer of the language function to the new Department for Communities in 2016 led to other acts of regression. Detailed official Guidance on compliance

⁵ S26 Northern Ireland Act 1998: <https://www.legislation.gov.uk/ukpga/1998/47/section/26>

⁶ A full account of this is provided in the Equality Coalition report "Sectarianism: Key Facts" <https://caj.org.uk/2020/02/17/sectarianism-the-key-facts/> as follows: "the Líofo bursaries [...] scheme had previously been the responsibility of the former Department of Culture, Arts and Leisure (DCAL), but switched to the Department for Communities (DfC) in 2016 with the restructuring of the departments. Funding was made available annually in each of the four years from 2012 to 2016. A decision on the scheme in 2017 was then to be made by the Minister for Communities Paul Givan MLA... The bursary was described by officials to the Minister in a submission on its continuing funding as aiming "to help adults and young people from disadvantaged backgrounds across communities to access summer courses in the Irish language that they could not otherwise afford to attend". This submission to the Minister and his Special Advisor was an options paper, which presented the positive impacts of Líofo Bursaries scheme in the past and set out the adverse impacts of discontinuing the scheme. The paper set out how maintaining the scheme would contribute towards several Programme for Government targets and maintained that "the advantages of running the Gaeltacht bursary scheme are many" (DfC Submission paper to the Minister, 13 December 2016). Despite this advice, the Minister in an email on 18 December 2016 limited his response to 'no scheme', a decision communicated publicly on 23 December 2016. The outcry following the decision focused on sectarianism in decision-making and was a significant factor in the collapse of devolved government."

with the ECRML mysteriously disappeared from the departmental website. The Guidance was only reinstated in August 2020.⁷

13. Until 2016, making progress on implementing the ECRML had been coordinated in NI by the Interdepartmental Charter Implementation Group. This coordinating group, however, ceased meeting all together following the transfer of the function to the Department for Communities. The UK response to COMEX makes reference (at paragraph 174) to the Interdepartmental Charter Implementation Group not having met for several years, and seeks to attribute this to resourcing issues. It should be noted, however, that the group did not control a significant budget line.
14. Active regression of compliance with the ECRML has not been limited to NI Executive Departments, there have also been significant issues with some NI councils. The most significant example has been the actions of Antrim and Newtownabbey Council in relation to bilingual street signage. In February 2018, the Council reintroduced a blanket ban on bilingual street signage that had been repealed as part of the peace process⁸, and in July 2019 threatened to prosecute an 85 year old woman for having a small Irish sign on her property, using legislative powers designed to regulate commercial advertisements. The Council maintained its blanket ban until it rescinded it in light of a judicial review taken by an Irish speaker, whose court costs the Council agreed to pay. The Council then took a year to propose an alternative policy. This proposed policy would have constituted a *de facto* ban on signage, requiring a two-third majority for a request to be even considered, with any residents not returning a survey assumed to oppose bilingual signage. This proposed policy added that any sign in Irish (or any other language) must have the “size of the lettering” smaller than English apparently “to avoid any risk of confusion to the emergency services”. Following an intervention from CAJ and Conradh na Gaeilge (an NGO representing the Irish speaking community) querying the lawfulness of the policy, the council dropped the proposal to consult on the policy, but to date has not adopted an alternative. The NI Department for Communities does have a power to intervene to direct Councils to comply with international obligations, such as the ECRML.⁹ However, the exercise of this power itself could be subject to the aforementioned veto over ‘controversial’ decisions by NI Ministers.
15. As COMEX will be aware the duties under the Charter, whilst binding on a range of public authorities including delivery by local and regional authorities, remain ultimately the responsibility of the State Party. This includes the reporting duties under Article 15. The UK has, however, not exercised any of its parallel powers of competence to oblige compliance with the ECRML by NI departments.

⁷ <https://www.communities-ni.gov.uk/publications/guidance-european-charter-regional-or-minority-languages>

⁸ The legislation, from 1949, which legally bound councils to put up street signs in ‘English only’ was consequently repealed by the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995

⁹ S107, Local Government (NI) Act 2014 <https://www.legislation.gov.uk/nia/2014/8/section/107>

CM recommendations & the NDNA draft legislation

16. The UK response to COMEX is limited to focusing on the three CM recommendations for immediate action, which are as follows:
 - Adopt a comprehensive law and strategy on the promotion of Irish in Northern Ireland.
 - Provide the basic and further training of a sufficient number of teachers teaching in Irish.
 - Adopt a strategy to promote Ulster Scots in education and other areas of public life.
17. The 2006 (UK-Ireland) St Andrews Agreement committed the British Government to an Irish Language Act “reflecting on the experience of Wales and Ireland.” The CM had recommended comprehensive Irish language policy for NI for which the CM preferred option was through legislation that provided statutory rights for Irish speakers.¹⁰ The St Andrews commitment to the Irish language act (Acht Na Gaeilge) could have delivered this CM recommendation. The failure to discharge this commitment to legislate to protect the Irish language became a touchstone issue in relation to negotiations to re-establish the NI institutions. There were regular mass mobilisations by the Irish speaking community, particularly young persons, organised by the An Dream Dearg group calling for the Acht na Gaeilge Anois (Irish Language Act now).
18. Ultimately the British and Irish Governments, with the NI Parties, negotiated the *New Decade New Approach* (NDNA) deal to re-establish power sharing on the 9th January 2020. Also published alongside NDNA was combined draft legislation, consisting of three bills, the second of which was an Irish language act, the third of which dealt with Ulster Scots and the first to ‘establish the Office of Identity and Cultural Expression’.
19. CAJ produced a detailed narrative and critique of the three bills that sets out their provisions, that is included as an appendix to this submission.¹¹
20. NDNA commits to the three bills being introduced to the NI Assembly by April 2020, as part of an “integrated package of legislation” that will pass through the Assembly simultaneously. The (unstated) reasoning behind this was to ensure one bill (the Irish language bill) is not blocked whilst the others proceed.
21. Whilst there was some understandable initial delay to this timeframe due to the onset of the Covid-19 pandemic, over a year has passed and the legislation has not been introduced. In late November 2020, the deputy First Minister told the NI Assembly that preparatory work had been undertaken and the intention was to progress the bills during the 2020-21 mandate.¹² Into 2021 there is however no progress or timetable to date. We are concerned that the bills may now be obstructed.

¹⁰ Recommendation CM/RecChL(2014)3 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by the United Kingdom, (Adopted by the Committee of Ministers on 15 January 2014), recommendation 2.

¹¹ Analysis of the draft Legislation published with the New Decade, New Approach document – CAJ January 2020 <https://caj.org.uk/2020/02/04/analysis-of-the-new-decade-new-approach-agreement/>

¹² <http://aims.niassembly.gov.uk/questions/oralsearchresults.aspx?&qf=0&qfv=1&ref=AQ0%201201/17-22>

The NDNA Irish language bill

22. The Irish language bill provided for as part of NDNA would establish an Irish Language Commissioner and takes a 'Standards-based' approach, whereby the Commissioner issues Irish Language Standards to NI public authorities.
23. In our view this, in principle, is a solid model for progress and is similar to the model in Wales, however the framework is much weaker. The Irish language standards are not binding, NI public authorities are only to take them into account (have 'due regard'). Whilst the Commissioner is to be an independent body, Ministers will have a significant role, including a requirement on the First and deputy First Ministers to both approve any standards before they are issued.
24. Our analysis concluded that the bill would "establish an institutional framework that can function effectively to promote and safeguard the Irish language if it is not frustrated." Specifically, we stated in our analysis:

It is clear that the Irish language bill is more limited than the commitment in the St Andrews Agreement to an Irish Language Act shaped by the legal framework in Wales and the Irish State. The bill also falls short of the Council of Europe Committee of Ministers preferred option for their recommendation on comprehensive Irish language policy for NI, namely that it be taken forward through legislation that provided statutory rights for Irish speakers.¹³

However, the legislation provides a strong and robust institutional model in making provision for a Commissioner and Best Practice Language Standards. The bill therefore provides an appropriate structure which could be effective if not actively frustrated. There is however a long track record of political obstruction of Irish language measures by the DUP in particular and the provision will test whether there is a 'new approach' in this new decade.

25. The proposed legislative package would also progress other areas, including issues previously highlighted by COMEX as incompatible with the ECRML. The first bill would repeal the Administration of Justice (Language) Act (Ireland) 1737 which had the purpose and effect of preventing the use of Irish in any court documents. It would be replaced by a limited provision placing a duty on a court (i.e., in the hands of a judge) "to the extent necessary in the interests of justice" to facilitate the use by a person of a language other than English.¹⁴ NDNA also commits 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.¹⁵

The NDNA Ulster Scots / Ulster British bill and education duty

¹³ Recommendation CM/RecChL(2014)3 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by the United Kingdom, (Adopted by the Committee of Ministers on 15 January 2014), recommendation 2.

¹⁴ Repeal of Administration of Justice (Language) Act 1737 78E.—(1) The Administration of Justice (Language) Act (Ireland) 1737 is repealed.(2) A court must, to the extent necessary in the interests of justice, ensure that appropriate arrangements are made to facilitate the use by a person in proceedings before the court of a language other than English."

¹⁵ NDNA Annex E paragraph 5.13,

26. The third bill would make provision for an Ulster Scots / Ulster British Commissioner with the main function being “...to enhance and develop the language, arts and literature associated with the Ulster Scots and Ulster British tradition in Northern Ireland.”
27. Within this bill there is a clause that would place a statutory duty on the NI Department of Education to “to encourage and facilitate the use and understanding of Ulster Scots in the education system.” This provision could assist in progressing duties under Article 7(1)(f-g) of ECRML and the CM recommendation.
28. In relation to the Commissioner, its functions would be to increase awareness of Ulster Scots services; provide advice/guidance to NI public authorities on language arts and literature within its remit, along with advice on the effect of the ECRML, FCNM and UN CRC. This latter function appears to overlap considerably with the role of the NHRI, the Northern Ireland Human Rights Commission (NIHRC).
29. The NIHRC for its part is critical of the conflation of Ulster Scots and ‘Ulster British’ within the mandate of the proposed Commissioner. In summary, the concern of the NIHRC is that such a conflation risks sectarianising Ulster Scots in an association with the national identity of one side of the community when representatives of the Ulster Scots speaking community have long emphasised that Scots is spoken by persons from all sides of the community. The NIHRC advice to the NI Executive on the bill states that “*whilst Ulster Scots language may be commonly associated with the Unionist/Protestant community*” it should not be assumed that all Ulster Scots speakers may associate with Ulster Britishness. The Commission highlights that the Ulster Scots Agency emphasises “*Ulster-Scots language is spoken in different areas of Ireland by both Protestants and Roman Catholics alike*” and that the “*Ulster-Scots Language Society highlights that its constitution stipulates that it is ‘non-political and non-sectarian’.*” The Commission grounds its concerns that conflating Ulster Scots and Ulster British in the context of the proposed Commissioner “*could undermine developments in respect of Ulster Scots language and culture*”.¹⁶

NDNA UK commitment to recognise Ulster Scots as a national minority

30. Separate to the language bills, in a different section of NDNA on UK commitments, there is an undertaking made that the British government will:

Recognise Ulster Scots as a national minority under the Framework Convention for the Protection of National Minorities.¹⁷
31. From the outset this may seem an odd statement to COMEX as Scots (including Ulster Scots) speakers have already long been recognised as a linguistic minority

¹⁶ NIHRC ‘Advice on the Ulster Scots/Ulster British Provisions of the Northern Ireland Act 1998 (Amendment No 3), May 2020, paragraph 2.14-6. <https://www.nihrc.org/publication/detail/ulster-scots-ulster-british-provisions-of-the-northern-ireland-act-1998-amendment-no-3>

¹⁷ NDNA, Annex A: UK Government Commitments to Northern Ireland, paragraph 24.

by the UK not least through UK registration in the ECRML, but also as such with the FCNM.¹⁸

32. As the Committee will be aware the concept of minority under international human rights law refers to an *ethnic, religious or linguistic minority*. The general UK interpretation of the scope of national minority has been to any group defined by “*colour, nationality, ethnic or national origins*”.¹⁹ The UK has generally accordingly applied the FCNM to minority ethnic groups, but has also recognised linguistic and religious minorities. Prior to NDNA the most recent UK recognition under the Framework Convention was of Cornish as an ethnic group (specifically as ‘a Celtic People’, alongside Scots, Irish and Welsh in the UK).²⁰
33. Whilst the NDNA commitment could be read as a reiteration of the existing recognition of Ulster Scots speakers as a linguistic minority, it would of course be odd to do this without also recognising other Scots speakers in Scotland in the same vein.
34. An alternative reading of the commitment is that the UK intends to now recognise Ulster Scots as an ethnic group. There are a number of implications if this is the case. First, it is notable that the commitment has come out of the blue. There have been no previous representations from the Ulster Scots community to the FCNM to seek identification as an ethnic group, nor has there been any official consultation with Ulster Scots speakers prior or subsequent to the commitment being made as to whether they would wish to self-identify as such. An FoI request to the UK department progressing the commitment has revealed that not a single document on the issue was held by them prior to the NDNA commitment being made.²¹ Rather, the UK commitment seems to have resulted from a political side-deal in NDNA.
35. A particular issue that arises in this context is that the community encompassed by recognition of Ulster Scots as an *ethnic group* would likely be different to that of *Ulster Scots speakers*. Speakers are drawn from across the community in areas of NI where Scots is spoken. The parameters of Ulster Scots as an ethnic group are likely to encompass ethnic indicators of British nationality and national identity along with ethnic and national origin of Scottish descent and of Protestant religion. This would hence align Ulster Scots to a section of the community in a way that is not presently the case. Whilst language can also be an ethnic indicator, the above indicators would encompass persons who are not Ulster Scots speakers.
36. In this context, the recognition of Ulster Scots as an ethnic group risks a differential with Ulster Scots speakers that could divert support and attention away from resolute action to promote Ulster Scots linguistically in order to

¹⁸ See for example ACFC/OP/IV(2016)005 4th Opinion on the UK (adopted on 25 May 2016) paragraph 103 and ACFC/SR/IV(2015)004 rev (4th Report by UK) Framework Convention, 2015, Page 40.

¹⁹ ACFC/SR/IV(2015)004 rev (4th UK State Report to FCNM), March 2015, Article 3, paragraph 1 (scope of application)

²⁰ As above. See also: <https://www.gov.uk/government/news/cornish-granted-minority-status-within-the-uk>

²¹ NIO FOI/20/89, 16 June 2020. In the first instance the NIO relied upon the FOI exemption under section 35(1)(a) relating to the formulation of government policy. On appeal (AP/20/04, of 16 July 2020) the NIO clarified that no documents were held for the period of NDNA negotiations from April 2019-January 2020, beyond one internal email string.

safeguard it, an ECRML commitment that on the basis of the most recent COMEX report is already ‘unfulfilled’. A switch of focus away from Ulster Scots linguistically may also make it more difficult to progress the current COMEX recommendation on Ulster Scots to “Establish cultural relations with other linguistic groups.”²²

37. Whilst early correspondence on the issue received a response that the form of recognition was still under consideration there has been no further public statement from the UK as to its intentions.

Strategies – for Irish and Ulster Scots

38. The CM recommendations also engage the issue of strategies for Irish and Ulster Scots. In 2006 the NI Executive (“The Executive Committee”) was placed under a statutory duty to adopt and keep under review separate strategies for Irish and Ulster Scots in the following terms:
- The Executive Committee shall adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language.
 - The Executive Committee shall adopt a strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture.²³
39. As covered in previous reporting cycles, the first NI Executive mandate following these duties saw an approach from DCAL Ministers to instead merge the two strategies into one to seek artificial parity between Irish and Ulster Scots. COMEX raised concerns that such a ‘parity’ approach in the context of the ‘quite different’ situations of both would therefore not serve the needs of either the Irish-Speakers or the Ulster-Scots speakers and will hold back the development of both languages.”²⁴ This led to this approach being duly abandoned.
40. In the subsequent mandate, in 2012 the new DCAL Minister did develop and put out for public consultation Irish and Ulster Scots strategies. Following the closure of public consultation in 2013, and then again in 2014, the strategies were issued to all Ministers in the NI Executive for comment, however only some Ministers responded. The Strategies were then published and formally launched in January 2015, both cover the period of 2015-2035 and are available on Department for Communities website.²⁵
41. The two strategies did not ultimately come before the NI Executive for adoption until March 2016, where a vote to adopt them was not carried. There had been previous attempts to include the strategies on the agenda of the meeting but these had not been successful.²⁶ Under the Ministerial code the inclusion of items from a Minister on the agenda usually requires agreement between the First and

²² CM(2019)84-final, para 2.6.2

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680948544

²³ <https://www.legislation.gov.uk/ukpga/1998/47/section/28D>

²⁴ COMEX, Application of the Charter in the UK, 3rd monitoring round ECRML (2010), 16, 17, 20, see also paragraph 57 and Finding D.

²⁵ Ulster Scots: <https://www.communities-ni.gov.uk/publications/ulster-scots-language-heritage-and-culture-strategy-2015-2035> Irish: <https://www.communities-ni.gov.uk/publications/irish-language-strategy-2015-2035>

²⁶ See paragraph 16 of Application by [Conradh Na Gaeilge for Judicial Review](#), [2017] NIQB 27.

deputy First Minister.²⁷ In March 2017, further to a judicial review application by Conradh Na Gaeilge, the NI High Court found that the NI Executive had acted unlawfully in not adopting an Irish language strategy.²⁸

42. Whilst there was no NI Executive between 2017-2020 to adopt a strategy, the forming of an Executive in January 2020 placed this duty with the Department of Communities. The UK report to COMEX states that a proposed timeline for delivering both the Irish and Ulster Scots Strategies has been issued to the NI Executive but that the NI Executive has not agreed yet to include it on its agenda for consideration. This may mean that its inclusion is currently being blocked.²⁹ The Department of Communities website states, “There is a commitment under New Decade New Approach to adopt the key principals and practice of citizen and community engagement to co-design and co-production of the development and delivery of an Irish Language Strategy and an Ulster Scots Language, Heritage and Culture Strategy.”³⁰ The UK response states that the proposed timeline for publication is the end of 2021, but this will be subject to NI Executive approval.

Broader compliance with other provisions of ECRML identified by COMEX

43. In relation to compliance with other provisions under ECRML, progress has been limited with some significant areas of regression depending on which party a minister belongs to, in particular through the adoption of ‘single language’ (i.e. English only) policies in some Departments, including in the Department of Education.
44. The COMEX report found that obligations under the ECRML (Article 7.1.c) to take “resolute action to promote Irish” were “not fulfilled”, and obligations (Article 10.2.g) on the use of place names in Irish (alongside English) were only partially fulfilled. The issue of bilingual street signs (competence of local government) and road signage (competence of NI Department of Infrastructure) have remained an area of focus.
45. In relation to street signage, in the absence of legislation providing a uniform and ECRML compatible approach the level of provision tends to follow the political makeup of the Council. There are examples of both good and bad practice. In 2016, one year on from the reorganisation of local government in NI, CAJ and Conradh Na Gaeilge issued a joint report into compliance at that point.³¹ More recently Belfast City Council adopted a progressive draft policy on Street Signage, albeit not without having to first overcome considerable resistance.³² The new policy for a bilingual sign can be triggered by a single resident with a subsequent threshold of 15% support from residents of the street to require approval. This threshold has been set in line with UN and Council of Europe recommendations,

²⁷ See paragraph 2.11 of the Ministerial Code: <https://www.northernireland.gov.uk/topics/your-executive/ministerial-code>

²⁸ Application by Conradh Na Gaeilge for Judicial Review, [2017] NIQB 27.

²⁹ MIN-LANG (2021) IRIA 1, paragraph 176.

³⁰ <https://www.communities-ni.gov.uk/topics/languages/language-policy-and-strategy>

³¹ <https://caj.org.uk/2019/03/15/local-councils-obligations-and-the-irish-language-a-framework-for-compliance/>

³² <https://www.bbc.co.uk/news/uk-northern-ireland-55580803>

some other Councils may follow, with the second city in NI, Derry and Strabane Council recently voting to also adopt a 15% threshold.³³

46. In relation to roads signage there continues to be no provision for bilingual signage. In terms of place names there remains an 'English only' policy for road signs despite the vast majority of NI placenames deriving from Irish, and some from Ulster Scots. In practice this means that most road signs display a placename that is an English transliteration of the original placename in Irish. The Department last consulted on a change of policy in 2011, proposing a limited scheme for Irish and Ulster Scots to be added to some road signs. This proposal was ultimately not proceeded with, in part as it faced legally untenable claims that such signs would constitute 'discrimination' or an 'adverse impact' on 'good [community] relations'. These claims received heavy criticism from the FCNM Advisory Committee.³⁴ CAJ recently met with the current Infrastructure Minister who was agreeable to progressing the matter. A further barrier may be however if other Ministers oppose the inclusion of Irish placenames, designate the decision as 'controversial' and seek to veto it at the full NI Executive.
47. In relation to the adoption of 'single language policies' the following account is provided in the aforementioned Equality Coalition report:³⁵

Following the [1998] GFA, the DE [Department of Education] adopted trilingual branding inclusive of English, Irish and Ulster Scots. Prior to the incoming Executive of 2016, DE had an Irish language policy, which had been last revised in 2009, and contained extensive measures for promotion and bilingual provision, in accordance with international standards.³⁶

A DUP MLA, Peter Weir, then took up office as Education Minister on 25 May 2016. In June 2016, the Irish language policy was subject to review and an entirely new draft 'languages policy' had been produced. No consultation or equality screening took place, nor does there appear to have been any engagement with Irish language speakers or advisory bodies. No records were kept as to what prompted the sudden review and re-writing of the policy. As regards to purpose, the DE stated that the new policy changed the language for the administration of the department's functions from English and Irish, to 'English only'. It also led to a monolingual logo being adopted.

The June 'review' of the policy was somewhat speedy with what is referred to as "the revised policy to make English the principle language for the administration of the Departments business" being drafted by the beginning of July. The Minister then approved the new policy on 25 July 2016, subject to an amendment removing a

³³ <https://www.derrynow.com/news/news/605657/unionists-criticise-decision-by-derry-city-and-strabane-district-council-to-reduce-threshold-for-bilingual-street-signs.html>

³⁴ Relevant extracts from FCNM are cited in: <https://www.communities-ni.gov.uk/publications/guidance-european-charter-regional-or-minority-languages>

³⁵ <https://caj.org.uk/2020/02/17/sectarianism-the-key-facts/>

³⁶ Among other matters, the policy commits to bilingual DE signage [5.1]; receiving and responding to correspondence / submissions in Irish [5.3]; inclusion of Irish in logos/letterheads; bilingual school circulars and consultation documents; bilingual press releases; bilingual DE schools/parent correspondence; promotional materials; bilingual Inspectorate reports/materials when sent to Irish medium schools [5.5]; bilingual advertisements [5.6]; the use of Irish in ministerial business [5.7]; provision for telephone communication / meeting in Irish. The policy also references employment of two Irish language officers [5.9/5.10]. (*Polasaí Gaeilge Na Roinne Oideachais/ Department of Education Language Policy for Irish*).

provision that had committed to DE to ‘considering’ producing translations of executive summaries of key documents. Although the new policy had then been approved, a further amendment was then made at the instigation of the Minister’s Special Advisor in late August. The further amendment was to remove a commitment (referencing the statutory duty to promote Irish medium education) for certain official documents to be provided to Irish medium schools in Irish.³⁷ Consequently a DE email states that material that had already been translated into Irish for Irish medium schools (the school omnibus survey)– would now have ‘to go in English only now’ due to the new policy.³⁸ The policy was again approved and published in early September 2016.

Around the same time the Education Authority dispensed with its multilingual logo, which had included Irish, to adopt instead ‘English only’ branding policy. CAJ sought clarification of what had prompted this change and was initially told in September 2018 that it had been on the basis of a ministerial instruction.³⁹ This was understood as a verbal ‘instruction’ as no record of it was disclosed. Subsequently the EA changed its position and argued that the “the Chief Executive made an operational decision to use the mono-lingual option in line with the DE practice at the time”.⁴⁰ This does not of course mean that the Minister did not make representations to the EA to adopt a monolingual logo, rather it clarifies that the decision was for EA to make, as there was no formal Ministerial Direction issued. No records however appear to exist of this representation, or otherwise reason for the decision.

Such practices of summary adaptation of ‘English only’ language policies were not limited to DE. In the Department of Environment, Agriculture and Rural Affairs (DEARA), the DUP Minister Michelle McIlveen MLA managed to inform the Assembly in September 2016 that her department ‘adopts a single language policy’ before any such policy had in fact been produced.⁴¹ The Minister made this statement in response to a question as to why she had changed the name of a fisheries protection vessel from Irish to English. While DAERA initially refused to release documents to CAJ, the Information Commissioner ultimately ordered their disclosure.⁴² The documents revealed that a policy had not in fact been adopted and a submission to the Minister had only been made in November 2016, two months after the Minister had announced a ‘single language policy’ had been adopted. DEARA were unable to confirm if a draft document predated November 2016. The DEARA submission to the Minister set out legal and broader advice as to why the Department could not adopt a ‘single language policy’ and instead set out a policy which would meet minimum legal requirements to the Irish language. Notably however, the Minister did not sign off on this before leaving office.⁴³

³⁷ DE Submission to Minister 2 September 2016.

³⁸ DE internal email 23 August 2016.

³⁹ EA correspondence to CAJ 25 September 2018.

⁴⁰ EA correspondence to CAJ 16 November 2018.

⁴¹ Assembly Question AQW 2327/16-21.

⁴² Information Commissioner Decision Notice FS50698484 (CAJ v DEARA).

⁴³ ‘DUP Minister informed of language obligations by Department Officials’ *Irish News* 19 March 2018

48. We consider that all of these issues above – and many other examples- underpin the need for Irish language legislation that protects the rights of speakers, and that fulfils the requirements of the ECRML as all the more urgent.

January 2021