

Briefing Note on Identity and Language (Northern Ireland) Bill

May 2022

Executive Summary

- The Identity and Language (Northern Ireland) Bill was introduced into the House of Lords on the 25 May 2022. The bill largely reflects draft legislation published alongside the 2020 New Decade New Approach (NDNA) deal, which contained three bills on the Irish language, Ulster Scots/Ulster British Commissioner and a third to establish an Office of Identity and Cultural Expression. This legislation itself was largely based on a DUP-Sinn Féin agreement in 2018.
- Whilst the content of the bill relates to transferred matters, Westminster has an express role under the GFA to legislate for Northern Ireland where necessary to meet the UK's international obligations. This is the case with the Irish language elements of the bill but not strictly speaking the other elements of the bill dealing with Ulster Scots/Ulster British Commissioner and the Office of Identity and Culture.
- There has only ever been public consultation on the Irish language elements of the bill. There has been no consultation on the Ulster Scots or other elements of the bill, despite treaty-based obligations accepted by the UK to consult with Ulster Scots *speakers* on policy that affects them.
- The Secretary of State (SoS) is granted broad powers to direct or take decisions for NI Ministers/ Departments or the new bodies. The background to this is the risk of the DUP thwarting the work of the Irish language Commissioner by, for example, Ministers withholding approval of the appointment of the Commissioner or not signing off on their Irish language standards. The SoS power is drafted broadly and is permanent. Alternative solutions – including removing the unnecessary requirement of Ministerial approval for each Irish language standard – would be preferable.
- The UK government, concurrent with the introduction of the bill, issued a declaration implying that it would now recognise Ulster Scots as an ethnic minority group. This relates to an NDNA side deal, which moves away from existing recognition of Ulster Scots speakers as a linguistic minority. Implications for the bill include the potential for advocates of this position to seek to move the focus of the educational statutory duty in the bill on Ulster Scots away from language.
- The bill contains the repeal of the 1737 Administration of Justice (Ireland) Act that has retained a ban on Irish being used in court documents.
- The main change to the Office of Identity and Cultural Expression is that the bill changes the office to a multi-member commission, rather than a sole office holder model as was envisaged by NDNA. The 'guiding principles' of the duty the Office oversees are also differently framed in the new bill as relating to National and Cultural Identity. This concept is then restricted to three ethnic indicators that exclude language, namely "a person's religious belief, political opinion or racial group." A potentially problematic qualification that expression of identity must take account of the 'sensitivities' of others is also retained in the bill.

- The Irish language act provisions retain the main weakness of NDNA, including an unnecessary role whereby each Irish language standard will be subject to ministerial approval by both the First and deputy First Ministers. This could be amended, beyond granting concurrent powers to the SoS, to prevent frustration of the work of the Commissioner. It should also be noted that whilst the model in the bill represents significant welcome progress, the Committee of Experts (COMEX) on the Council of Europe languages Charter have already assessed it as insufficient to meet the UK's treaty-based obligations which would require further augmentation of the provisions in the Act.
- The Ulster Scots/Ulster British Commissioner role follows NDNA. We continue to have concerns that the inclusion of this provision relates to the optics of a counterweight to Irish rather than something tailored to preservation of the Ulster variant of the Scots language. The remit of the Commissioner does, however, continue to focus on language, arts and literature, ensuring a linguistic focus, rather than the move away from language inherent in the SoS's declaration of recognition Ulster Scots as an ethnic group. A key focus for amendment would be the Human Rights Commission's concerns regarding the conflation of Ulster Scots with the concept of 'Ulster British,' which identifies Ulster Scots speakers, who are drawn from across the community, with a distinct political identity.

The bill, background and legislative competence

1. The Identity and Language (Northern Ireland) Bill was introduced into the UK Parliament on the 25 May 2022.¹ The bill's passage will be 'backwards' starting in the House of Lords and then moving to the House of Commons. The date for the Second Reading (general debate) on the bill in the Lords is scheduled for the 7 June 2022.² Further stages, where amendments could be tabled in either house, will follow.
2. The bill contains three main elements – an Irish language act, provisions to establish an Ulster Scots/Ulster British Commissioner and provisions to establish the Office of Identity of Identity and Cultural Expression.
3. The origins of the bill date back to the UK commitment to introduce an Irish Language Act. The 2006 bilateral (UK-Ireland) St Andrews Agreement committed the British Government to introducing an Irish Language Act “reflecting on the experience of Wales and Ireland.” In addition to the British Government's undertaking in the St Andrews Agreement, the commitment to legislate for the Irish language also engages and flows from the UK's broader international treaty based obligations towards the Irish language. In relation to the fulfilment of UK undertakings under the European Charter for Regional or Minority Languages ('the Charter')³, the Committee of Ministers of the Council of Europe in 2014 had recommended comprehensive Irish

¹ <https://bills.parliament.uk/bills/3168/publications>

² <https://bills.parliament.uk/bills/3168/stages>

³ <https://www.coe.int/en/web/european-charter-regional-or-minority-languages>

language policy for Northern Ireland for which the preferred option was through legislation that provided statutory rights for Irish speakers.⁴

4. Language and culture are transferred issues to the Northern Ireland Executive and Assembly. From St Andrews the UK Government therefore sought the Irish language act to be taken forward through the devolved institutions but did not intervene to legislate for the Act when progress was stifled, despite the treaty-based obligation to do so.
5. Following the 2017 collapse of devolution, in 2018 a deal was briefly reached between the DUP and Sinn Féin for an Irish language act which was to proceed as part of a three-bill legislative package including provisions for Ulster Scots and a broader linguistic and cultural diversity bill. The DUP however quickly withdrew its support, and the legislation was not introduced.⁵
6. Ultimately the British and Irish Governments, with the parties in the NI Executive, negotiated the *New Decade New Approach* (NDNA) deal to re-establish power sharing on the 9th of January 2020. Also published alongside NDNA was combined draft legislation, consisting of three bills building on the 2018 DUP-Sinn Féin agreement, including an Irish language bill.
7. In 2021, the Committee of Experts (COMEX) on the Charter urged the adoption of “*comprehensive law and a strategy on the promotion of Irish in Northern Ireland*” as a recommendation for immediate action. COMEX, whilst welcoming the NDNA commitments, including the proposed legislation, stated that they would only partially fulfil the UK’s undertakings towards the Irish language in Northern Ireland. COMEX stated that, even once the NDNA legislation and other commitments⁶ were taken forward, there would remain “a need for a comprehensive Irish Language Act.”⁷
8. NDNA committed to the three bills being introduced to the NI Assembly, as part of an “integrated package of legislation” that would pass through the Assembly simultaneously. The (unstated) reasoning behind this was to ensure one bill (the Irish language bill) was not blocked whilst the others proceeded.
9. NDNA committed to the three bills (including the Irish language bill) being introduced to the NI Assembly by April 2020.⁸ However, the legislation – which would have required DUP consent – was not introduced despite all parties having signed up to NDNA. In June 2021, the UK Government gave a commitment that, if the Irish language and accompanying legislation was not introduced into the NI Assembly by

⁴ 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.

⁵ For a full journalistic account of these events see: <https://eamonnmallie.com/2018/02/new-light-shone-draft-agreement-eamonn-mallie/>

⁶ With reference to the repeal the Administration of Justice (Language) Act (Ireland) 1737 and commitments 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. NDNA Annex E paragraph 5.13.

⁷ MIN-LANG (2021) 3 COMEX evaluation of the UK, Paragraph 26, recommendation 2a.

⁸ 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.

September 2021, it would introduce the legislation in the UK Parliament by October 2021. By November 2021 this had not happened. The UK Government then faced fresh calls from over 40 Irish language groups to legislate, but also opposition from the DUP.⁹ Into 2022 the UK Government reiterated its commitment to legislate in the UK Parliament but would not then set a timetable to do so.¹⁰

10. There was an Assembly election in early May 2022, but the DUP prevented the appointment of a Speaker and First Ministers, and hence neither the legislature nor Executive are functioning. The Identity and Language (Northern Ireland) Bill follows the NDNA legislation and was ultimately introduced into the House of Lords on the 25 May 2022, a few days after protests from the Irish speaking community attended by around 17,000 people.
11. Under the Good Friday Agreement (GFA), the UK Parliament retains competence, and is under a duty, to legislate in areas devolved to the Northern Ireland Assembly where required in order to meet treaty-based obligations.¹¹
12. Whilst the subject matter of the bill relates to transferred matters, the UK Parliament is acting consistently with the GFA in legislating to introduce the Irish language act as it forms part of the UK's international treaty-based obligations. This is not the case with the Ulster Scots/British and Office of Identity and Culture bills that are part of the current bill. Although from the agreement of the NDNA on, such matters have been part of the same package.

The current bill and consistency with the NDNA draft legislation

13. The current bill remains largely consistent with the draft legislation published with NDNA, with some changes. The Bill is no longer three bills and, as a Westminster Act, has changed structure and is one bill that amends the Northern Ireland Act 1998.

Concurrent powers of direction of Secretary of State

14. The main difference is the addition of concurrent powers, in clause 6, vested in the Secretary of State (SoS), to exercise the functions of Northern Ireland Ministers in relation to the bodies the bill will set up. These include powers of direction over NI Ministers, departments or new bodies to direct them to do or not do anything within their remits. The formulation of the powers is supplemented in clause 7, including provisions to set aside the 'St Andrews Veto' that can be used to prevent NI Ministers from taking certain 'controversial' or 'significant' decisions.
15. The concurrent powers of the SoS have been included in the context whereby the DUP, having blocked the passage of the Irish language bill to date, could continue to block the implementation of the Act once it is passed. The Irish Language Commissioner is to be appointed by the First and deputy First Ministers (FMdFM), the Irish language standards are also to be approved by FMdFM who are also to issue

⁹ <https://www.bbc.co.uk/news/uk-northern-ireland-59306740>

¹⁰ <https://www.independent.co.uk/news/uk/uk-government-northern-ireland-stormont-irish-dup-b1990983.html>

¹¹ 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". The Secretary of State also retains powers to direct an NI Minister to take or refrain from taking action to ensure compliance with the UK's international obligations: <https://www.legislation.gov.uk/ukpga/1998/47/section/26>

guidance. As the DUP is entitled to hold the dFM position, by either declining to nominate a dFM or the dFM declining to sign off on appointments or standards, the role of the Irish language commissioner could be frustrated.

16. The concurrent powers of the SoS could prevent such a scenario with the SoS able to make or direct appointments, approve standards. However, it is notable that the powers are drafted very broadly, are permanent and hand the SoS significant power. A better solution would have been to vest appointments in alternative office holders, and to remove provisions such as the requirement that the Commissioners' Irish language standards must be approved by Ministers. There is no apparent legal reason why FMdFM need to approve the Commissioners' standards, they are not secondary legislation (as in Wales).¹² This would appear to be a political insertion into NDNA that has been retained by the current act.

Repeal of 1737 Act

17. The bill repeals the Administration of Justice (Language) Act (Ireland) 1737 which had the purpose and effect of banning the use of Irish in court documents.
18. The bill simply undertakes a 'straight' repeal of the 1737 Act and does not replace it with any provision. The draft NDNA legislation (s78E(2)) proposed a provision, unhelpful to Irish, of tying the use of languages other than English to "where necessary in the interests of justice."
19. Whilst the removal of this NDNA provision is welcome. A more positive approach would have been to supplement repeal with positive action provisions. These could include, for non-English speakers, a provision that ensured the availability of interpreters in accordance with fair trial rights. In relation to Irish specifically, as a minimum the proposed provisions on the most important statutory texts being made available in Irish in accordance with the UK's undertakings under Article 9(3) of the Council of Europe Charter.¹³

Ulster Scots duty in education, and recognition of Ulster Scots as an ethnic minority

20. The bill would place a statutory duty on the Department of Education to 'encourage and facilitate' the "use and understanding" of "Ulster Scots in the education system".¹⁴
21. The formulation of the duty is consistent with that in the draft NDNA legislation. Further to the GFA there is also a duty to facilitate Irish *Medium* Education¹⁵, and an earlier duty to facilitate Integrated Education, which has recently been augmented through an Assembly Integrated Education NI Act 2022.¹⁶

¹² <https://www.legislation.gov.uk/mwa/2011/1/part/4/enacted>

¹³ Article 9(3) of the Charter as applied to Irish in NI: "The United Kingdom undertakes to make available in Irish the most important national statutory texts and those relating particularly to users of Irish, unless they are otherwise provided."

¹⁴ 89A It shall be the duty of the Department to encourage and facilitate the use and understanding of Ulster Scots in the education system."

¹⁵ Legislated for under s89 Education NI Order 1998:

<https://www.legislation.gov.uk/nisi/1998/1759/article/89/made>

¹⁶ <https://www.legislation.gov.uk/nia/2022/15/contents/enacted>

22. The proposed Ulster Scots statutory duty is not for Ulster Scots *medium* education (which could not presently be delivered in practice), but rather for the teaching of Ulster Scots in schools in general. The language of the proposed statutory duty in reference to the ‘use’ of Ulster Scots refers to language and, whilst open to broader interpretation, an ‘understanding’ of Ulster Scots presumably was also to refer to language. The UK has accepted specific duties on the ‘provision of appropriate forms and means for the teaching’ of Ulster Scots linguistically under Article 7(1)(f-g) of the Charter.
23. Ulster Scots *speakers* have long been recognised as a *linguistic minority* by the UK and Council of Europe under the Charter and the separate Framework Convention on the Protection of National Minorities. However, on the day of the introduction of the present bill, the Secretary of State declared that the UK now recognised Ulster Scots as a ‘national minority’ under the Framework Convention.¹⁷ This appears to recognise an undefined population of ‘Ulster Scots’ as an ethnic minority group. The statement references the same status of Irish, Welsh, Scots, and Cornish¹⁸ who are recognised as ethnic groups under the Framework Convention (specifically as ‘Celtic peoples’.) The Ministerial statement adds the same qualification as it did when recognising Cornish as an ethnic group in 2014,¹⁹ that the UK recognition is without prejudice as to whether Ulster Scots meet the “definition of ‘racial group’ under the Equality Act 2010”²⁰ deferring to the courts to make that determination. It should be noted that the Equality Act 2010 does not apply in Northern Ireland.
24. This move did not relate to the legislation introduced into Parliament but is an outworking of a separate seeming political side deal within NDNA to move away from language in the way the UK recognises Ulster Scots under the Framework Convention. There are a number of issues with this, including the risk of a move away from initiatives to safeguard Scots linguistically in NI. There are also definitional issues in that no consultation has taken place as to whether Ulster Scots speakers wish to self-identify as an ethnic group. There are also questions as to the extent Ulster Scots in this context will be used as a proxy for the tradition of political unionism. The Ulster Scots Agency, for example, in the context of the above NDNA commitment has sought to openly tie Ulster Scots identity to affinity to the Ulster Banner (the flag of the former unionist government at Stormont). A detailed narrative on this issue of the NDNA recognition of Ulster Scots is found in a recent CAJ report to the Framework Convention Committee.²¹

¹⁷ See <https://questions-statements.parliament.uk/written-statements/detail/2022-05-25/hcws56> and <https://www.gov.uk/government/news/uk-government-acts-on-identity-and-language-legislation-for-northern-ireland>

¹⁸ Whilst these terms also refer to respective languages, had Government intended to refer to language the reference would be to Scottish Gaelic.

¹⁹ “The government’s approach to the Framework Convention is to be modified to recognise the unique position of the Cornish as a Celtic people within England. It is without prejudice as to whether the Cornish meet the definition of “racial group” under the Equality Act 2010, as only the courts can rule on that”:
<https://www.gov.uk/government/news/cornish-granted-minority-status-within-the-uk>

²⁰ <https://questions-statements.parliament.uk/written-statements/detail/2022-05-25/hcws56>

²¹ <https://caj.org.uk/2022/04/17/submission-uk-fifth-state-report-fncm/>

25. In relation to the present bill there is therefore a question as to whether the political recognition of Ulster Scots by the UK as an ethnic group has implications for the provisions of the bill. This includes whether the duty on facilitating the ‘understanding’ of Ulster Scots in the education system will in practice be re-interpreted as facilitating and encouraging teaching of particular political perspectives on Ulster Scots as an ethnic group rather than be limited to language (and the attendant culture of language). Whether the statutory duty is only intended to apply to language could be clarified during the passage of the bill.

Office of Identity and Cultural Expression

26. One outworking of this is that the bill is more prominently framed as dealing with “national identity and culture” in relation to the Office of Identity and Cultural Expression. It is not clear if this is intended or not.
27. Clauses 1 and 2 of the bill take forward what were, under the NDNA bill on the Office of Identity and Cultural Expression, a statutory duty on ‘General Principles.’ In the bill, these are renamed as the ‘National and Cultural Identity Principles’. Although framed differently the content of the Principles and duty is the same, but the title provides a greater emphasis on ‘National and Cultural Identity’ than before.
28. Clause 1 (3) of the bill adds an interpretive provision to the concept of “national and cultural identity” by tying it to reference “a person’s religious belief, political opinion or racial group.” These are three ethnic indicators currently used in NI fair employment and racial equality law. Notably “language” is not included as an indicator. This is despite the purpose of the bill and its general principles relating to linguistic diversity which is generally inherent and linked to attendant cultural identity. It is now essentially excluded, unless also linked to religion, political opinion or racial group. As racial discrimination and fair employment legislation are separate in NI racial group however is then also defined in clause 1 (4) in a way that excludes community background in NI.²² The bill drafting therefore appears to exclude (possibly accidentally) the Irish speaking community and also Ulster Scots speakers from the scope of the NDNA General Principles duty.
29. One potentially problematic provision in the bill – that is replicated directly from the NDNA draft bill – relates to a qualification in the National and Cultural Identity Principles’ that the promotion of such an identity must “take account of” the sensitivities” of those with different identities.
30. In our briefing paper on the NDNA bill we flagged this concept of the ‘sensitivities’ of others as subjective, as it would not be compatible with human rights standards if it restricted free expression purely on the basis of the prejudice and intolerance of others to such expression. We argued that a simpler and human rights compliant limitation provision would have been to instead state that national and cultural identity should be expressed “in a manner compatible with the rights of others”.

²² Through deferring to the Race Relations NI Order NI which itself excludes from the scope of racial group ethnic groups defined on basis of religion or political opinion:
<https://www.legislation.gov.uk/nisi/1997/869/article/5/made>

31. The list of Public Authorities is set out in clauses (4) (6) of the bill in a similar way to NDNA. The bill now does exclude the bodies the bill itself will set up from the scope of the duty. The list relates to bodies falling under the remit of the NI Public Services Ombudsman.²³ It does not include UK bodies with functions in NI such as the NIO itself.
32. The aims and functions of the Office of Identity and Cultural Expression ('the Office') are set out in clause 78H(1). These remain consistent with NDNA save that 'respect for diversity' is added in the bill.
33. In relation to functions, the role of the Office in overseeing the "National and Cultural Identity Principles" is strengthened in the bill, a previous permissive power to monitor compliance and report to the Assembly is made mandatory, and a further mandatory duty to promote awareness and compliance with the duty is added (78H2).
34. The bill changes the format of the Office to that of a body corporate (i.e. a multi member commission for the purpose of decision making power), whereas the NDNA legislation had vested all the power of the Office in its Director (corporation sole). Under NDNA there would be a Director as the office holder and officers (staff). Under the current bill this is changed to a Director and five other members (schedule 1 para 2). All are to be appointed by the First and deputy First Ministers.

Irish language bill

35. The provisions on recognising the status of the Irish language in Northern Ireland are largely consistent with NDNA. A more express reference is added relating to the new duty on public authorities to pay due regard to Irish language standards.
36. The functions of the Irish Language Commissioner remain largely consistent with NDNA. The provision of services to the public is augmented by 'or a section of the public'. It is not clear what difference this would make.
37. The powers of Irish Language Commissioner remain vested sole in the office holder (corporation sole).²⁴
38. The strengths and weaknesses in the model remain as per NDNA. The overall assessment in our briefing paper stated:

3.39 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.

3.40 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.

²³ <https://www.legislation.gov.uk/nia/2016/4/schedule/3>

²⁴ The bill refers to employees of the Commissioner as 'staff' rather than 'officers' (NDNA).

3.41 The weakness in the legislation relates to the potential for political interference to frustrate the intended aim and operation of both through the manner in which Ministerial powers have been shaped. Any such practices will inevitably lead to calls, including from treaty compliance bodies, for the strengthening of the independence and powers of the Commissioner and duties around the Standards.

39. The granting of concurrent powers to the SoS may prevent obstruction of the core functions of the Irish Language Commissioner, in relation to appointments, approval of standards, guidance etc. However, this will be dependent on a SoS both having the political will to use the powers and not to engage in any regressive actions themselves (e.g. watering down language standards issuing regressive guidance etc). A preferable solution would be to include provisions which limit the role of ministers in the discharge of functions by the Commissioner.

Ulster Scots

40. The Ulster Scots provisions in the bill also largely replicate NDNA and its weaknesses.²⁵
41. This includes there still being no name for the Commissioner which continues to be referred to as *“The Commissioner for the enhancement and development of the language, arts and literature associated with the Ulster Scots and Ulster British tradition.”*
42. A contextual concern remains that this part of the legislative package is underpinned by the political imperative of providing a ‘counterweight’ to the Irish language, rather than thought-through tailored measures designed to safeguard and develop Ulster Scots. Despite duties to do so under the Charter, there still has been no consultation with Ulster Scots speakers or anyone else regarding the Ulster Scots provisions in the bill.
43. There is a further risk given the direction of travel from the UK, again without any consultation with Ulster Scots speakers, to move away from language and recognise Ulster Scots as an ethnic minority group. This could lead to discontinuation of focus on much needed initiatives to safeguard the Ulster variant of Scots linguistically. The bill does provide some protection to that end insofar as the functions of the Commissioner are expressly tied to ‘language, arts and literature.’ Ulster Scots Services remain defined in the bill as including those provided through the medium of Ulster Scots, and the provisions on complaints to the Commissioner relate specifically to guidance on facilitating the use of Ulster Scots in the provision of services. There remains no clarification in the bill as to whether the Commissioner and staff will actually be required to be a speaker of Scots, leaving open the absurd scenario that a Commissioner for Ulster Scots would actually not be able to speak Scots.
44. A Panel appointed by Department of Communities to advise on an Ulster Scots Strategy recently advocated for a change away from this present formulation of “language, arts and literature” for the Commissioner to instead reflect the formulation of “language, heritage and culture.”²⁶

²⁵ There are some modest drafting differences. The Commissioner is to ‘promote awareness’ of Ulster Scots services, rather than ‘increase awareness and visibility’

²⁶ <https://www.communities-ni.gov.uk/consultations/consultation-expert-advisory-panels-recommendations-report-ulster-scots-language-heritage-culture>

45. The Panel claims that the formulation of ‘language, heritage and culture’ would better reflect the ‘broader human rights framework including the Framework Convention’. It is not set out or otherwise clear how such an assessment has been derived from human rights standards. Rather, whilst unclear, it appears the position of the Panel was grounded in the anticipation that the UK government would amend its recognition of Ulster Scots away from language to recognition of Ulster Scots as an ethnic group. Therefore, the Ulster Scots/Ulster British Commissioner would have a broader remit of promoting the heritage and culture of a particular Ulster Scots/Ulster British ethnic group.²⁷ We caution against this approach. In relation to the remit of the Commissioner, we would be concerned such a move would likely lead to further marginalisation or discontinuation of measures to safeguard the language. As alluded to above, procedurally there are specific duties under Article 7(4) the ECRML to ensure that the needs and wishes of Ulster Scots *speakers* shape Ulster Scots policy. However, the Department for Communities has stated that it does not know if any of the five advisory panel members were Ulster Scots speakers.²⁸
46. There are areas of the bill that are likely to be subject to amendment. The Human Rights Commission has been highly critical of the conflation of Ulster Scots and Ulster Britishness in the proposed bill. With Ulster Scots speakers drawn from across the community, the Commission raised concerns that the extension risked tying Ulster Scots to a particular political affiliation. The Commission warned that whilst Ulster Scots is a recognised linguistic minority:
- ...‘Ulster British’ is not a term or a linguistic/national minority group presently recognised by human rights treaty bodies. It appears that Ulster Scots culture is at risk of being conflated with a distinct political identity. This may have unintended consequences.²⁹
47. The Commission 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 had previously emphasised that: “*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*”.³⁰ In order to meet the concerns of the Human Rights Commission, the bill could be amended to remove the ‘Ulster British’ reference.

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²⁷ Panel Report, page 25.

²⁸ Response to CAJ email, treated as an FoI request DFC/2022-0042, 23 March 2022.

²⁹ NIHRC ‘Ulster Scots/Ulster British Provisions of the Northern Ireland Act 1998 (Amendment No 3)’, May 2020, paragraph 2.14.

³⁰ As above paragraphs 2.15-6.

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