

Submission from the Committee on the Administration of Justice (CAJ) to the Department for Communities consultation on the Expert Advisory Panel's Recommendations Report for an Ulster-Scots Language, Heritage & Culture Strategy

April 2022

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations.
2. CAJ is the UK member of the International Federation of Human Rights (FIDH) and is co-convenor, alongside the trade union UNISON, of the Equality Coalition which is a network of over 100 equality NGOs and trade unions campaigning for equality in Northern Ireland (NI).
3. Further to the 2006 St Andrews Agreement s28D of the Northern Ireland Act 1998 (as amended) places a statutory duty on the Northern Ireland Executive to “*adopt a strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture.*”
4. The first publicly available document on the Ulster Scots Strategy in the Assembly mandate from 2020 is an Expert Advisory Panel Report (‘The Panel Report’) opened for consultation by the Department for Communities (DfC) in March-April 2022.¹ This submission is a response to this consultation on the Panel Report.

Background Context of Ulster Scots

5. Ulster Scots speakers have been recognised as a linguistic minority for over 30 years both by the UK and Council of Europe treaty bodies, relating to the European Charter for Regional or Minority Languages (ECRML) and Framework Convention for National Minorities (FCNM). (The concept of national minority in international law covers ethnic minorities, linguistic minorities and/or religious minorities.)²

¹ <https://www.communities-ni.gov.uk/consultations/consultation-expert-advisory-panels-recommendations-report-ulster-scots-language-heritage-culture>

² At the time of the formulation of what would become the Framework Convention in 1995, the Council of Europe’s European Commission for Democracy through Law (the Venice Commission) noted whilst there was no generally accepted definition of the concept of a minority noted that some elements had certainly been identified including “*the standard if not universal classification of minorities into three groups: ethnic minorities, linguistic minorities, and religious minorities; any of these three criteria may be present or, more often, they may be in part cumulative.*” Report on the replies to the questionnaire on the rights of minorities, in: “The protection of minorities”, Collection Science and Technique of Democracy, no. 9, 1994, p. 45 cited in CDL-PI(2018)002 European Commission for Democracy Through Law (Venice Commission) Compilation of Venice Commission Opinions and Reports Concerning The Protection Of National Minorities (Strasbourg, 11 November 2017).

6. The primary interest of CAJ as a human rights organisation relates to how the Ulster Scots Strategy can progress compliance with these treaty-based human rights standards.
7. The UK recognised Ulster Scots in the linguistic diversity provisions of the Good Friday Agreement (GFA). The GFA implementation treaty for the North South Ministerial Council included the establishment of a Language Body with two agencies, the second of which was the Ulster-Scots Agency (Tha Boord O Ulstèr-Scotch). This bilateral treaty defines Ulster Scots as “*the variety of the Scots language traditionally found in parts of Northern Ireland and Donegal*”.³
8. The Northern Ireland Human Rights Commission has set out that Scots, including the Ulster variant, is a largely spoken language from the Germanic language group that is on a linguistic continuum with English. There is some level of mutual comprehension with English, save in more maximally differentiated forms. The Commission notes that Ulster Scots is mainly found in certain parts of Northern Ireland where there was Scottish settlement, but that “*its use is not confined to those of Scottish descent, and it is spoken by both Catholics and Protestants.*”⁴ Research by the Ulster Scots Academy maps four distinct dialect areas in the north of Ireland where Ulster Scots is spoken today.⁵
9. Following the GFA the UK registered Scots for Scotland and Ulster Scots for Northern Ireland under Part II of the ECRML. The Committee of Experts (COMEX – who oversee compliance with the Charter) questioned the separate registration of Scots and Ulster Scots, when they are the same language.⁶
10. The Advisory Committee to the Framework Convention on National Minorities (as well as the UK authorities) has long recognised that Ulster Scots speakers as a linguistic minority are within the scope of the Framework Convention. In the First Opinion on the UK back in 2002 the Advisory Committee referred to representations from Ulster Scots speakers and to Scots and Ulster Scots. These covered matters such as broadcasting in Ulster Scots, use of the language in

³ [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing implementation bodies](#), Part 5: 1.7.

⁴ 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, paragraph 1.3.

⁵ The Mapping of Ulster-Scots, Philip Robinson: “The colonisation of Ulster was undertaken by the English and by lowland Scots settlers in a competitive manner which often enabled the two groups to retain their national identities in different districts. The spread of Presbyterianism in Ulster had by the late 17th century resulted in the formation of many Presbyterian congregations throughout the major areas of Scottish settlement. The distribution of these earliest congregations conforms closely to the notion that there were four core areas where Scottish settlers were dominant (and even equate to the four distinct dialect areas of spoken Ulster-Scots today): north Down, east and mid Antrim, the ‘Route’ area of north Antrim and north-east Londonderry, and the ‘Laggan’ area of the Foyle basin in north-east Donegal and north-west Tyrone.”

<http://www.ulsterscotsacademy.com/research/gregg/mapping-ulster-scots.php>

⁶ See Santiago-José Castella Surribas and Miquel Strubell ‘The Catalan language and monitoring the ECRML in Spain’ in *The ECRML: Legal Challenges and Opportunities* (Council of Europe publishing Regional or Minority Languages No 5), page 144.

private and public, teaching Ulster Scots language and literature and the inclusion of Ulster Scots within the census languages question.⁷

11. In its Resolution on the Third Opinion on the UK, the Council of Europe Committee of Ministers (as well as commenting on the Scots language in Scotland) urged the continued design and implementation of measures to encourage Ulster Scots speakers to use their languages in the public sphere and in relations with local administrative authorities in Northern Ireland.⁸
12. The Ulster Scots Strategy as well as being a domestic legal obligation also engages these UK treaty based human rights obligations. The most recent Fourth Opinion on the UK from the Framework Convention Committee referred to the Ulster Scots strategy.⁹
13. The Ulster Scots Strategy has also long been dealt with in relation to compliance with the ECRML. In 2009 the Council of Europe Committee of Ministers recommended that as a matter of priority a “strategy to enhance and develop Ulster Scots” be adopted “in co-operation with the speakers” (of Ulster Scots).¹⁰ In its most recent evaluation COMEX specifically recommended an Ulster Scots strategy to promote the language “in education and other areas of public life” and to establish “cultural relations with other linguistic groups.”¹¹
14. At present there is no reference in the Panel Report to the Ulster Scots recommendations that have emerged from the treaty bodies. This is despite the above recommendations relating directly to the content of Ulster Scots Strategy itself, and the need to develop it in co-operation with speakers of Ulster Scots.
15. Until 2016 compliance with the ECRML across Stormont Departments was overseen by the Interdepartmental Charter Implementation Group (ICIG), led by the Department of Culture Arts and Leisure (DCAL). When the function was transferred to the Department of Communities (DfC) under Minister Paul Givan MLA in 2016 the group ICIG disappeared in uncertain circumstances. The Panel Report appears to welcome this flippantly stating that “*It says much about the effectiveness of the ICIG that no-one noticed when it ceased to function.*”¹² The Panel Report does not propose reinstating the ICIG but rather each Department appointing an Ulster Scots Champion.
16. 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, DfC has stated that it does not know if any of the five advisory panel members who produced the Panel Report are Ulster Scots speakers.¹³

⁷ ACFC/INF/OP/I(2002)6 (First Opinion on the UK) paragraphs 18, 38, 67-8, 70-2, 92 & 118.

⁸ [CM/ResCMN\(2012\)22](#) on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom (*Adopted by the Committee of Ministers on 12 December 2012*).

⁹ See 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.

¹⁰ *Recommendation CM/RecChL(2010)4 of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by the United Kingdom*, 21 April 2010.

¹¹ Fifth report of the Committee of Experts in respect of the United Kingdom, CM(2019)84-final

¹² Panel Report, p72.

¹³ Response to CAJ email, treated as an FoI request DFC/2022-0042, 23 March 2022.

17. The Panel Report also thanks those who made submissions to the Panel, however, there was no open process to do so we are aware of and the material is not available.¹⁴
18. It is evident that the specific circumstances for the Scots language (including the Ulster variant of Scots) differ from that of the Irish language (or Welsh) given the linguistic continuum with English and level of mutual comprehension. Specific tailored measures are needed to protect and safeguard Ulster Scots linguistically.
19. From the point of view of international standards, where there has been a period of assimilation of a linguistic group and there has been significant loss of language and fluency, there can still be the maintenance of distinct cultural activities linked to the original language. Whilst attendant culture is implicit in language the formulation of the Ulster Scots strategy also extends to heritage and culture, and expressly encompasses such links.
20. Nevertheless, we are conscious of the duty to ensure the wishes and needs of persons who are Ulster Scots speakers are duly taken into account in shaping Ulster Scots policy including most notably the current Strategy. We would therefore like to stress the importance of DfC consultation with speakers. We make this observation in the broader context of there being examples whereby political or other advocates of Ulster Scots (who presumably are not speakers) have advocated against the promotion of linguistic diversity and for measures that have held back the development of Ulster Scots.¹⁵ Whilst the Panel Report completed its work in English and there is a written translation of the document into Ulster Scots this is unlikely to be the most effective method of communication in what is largely a spoken language.

Background to the Ulster Scots strategy

21. Further to the (UK-Ireland) 2006 St Andrews Agreement, which ended the then suspension of the power sharing institutions, legislation placed a domestic legal obligation on the Northern Ireland Executive to adopt an Ulster Scots Strategy.
22. The scope of this statutory duty is not actually set out in the Panel Report. It is that *“The Executive Committee shall adopt a strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture.”*¹⁶
23. To date no Ulster Scots strategy has ever been formally adopted.

¹⁴ Panel Report p4.

¹⁵ See paragraphs 23-27 relating to initial political direction on the Strategy itself. For a further example a report on local government naming dealing with bilingualism cites objections to bilingual signage from one group of Ulster-Scots community representatives arguing for English-only signage in Council facilities. Whilst inclusion in internal signage may not be the most effective way of promoting Ulster Scots the reason recorded in this instance to the objection is that the “primary purpose of all signage should be communication and that no one ‘needs’ Irish or Ulster-Scots to communicate.” (Report of the Assistant Local Government Boundaries Commissioner for the Proposed District of Belfast City, Brendan Patterson, Assistant Local Boundaries Commissioner, November 2021.)

¹⁶ Section 28D(2) Northern Ireland Act 1998 inserted (8.5.2007) by Northern Ireland (St Andrews Agreement) Act 2006 (c. 53), ss. 2(2), 15, 27(4)(5)

Fate of the Ulster Scots Strategy in the first mandate 2007-11

24. Initially the commitment fell to DUP culture ministers, including Nelson McCausland, the former director of the Ulster-Scots Heritage Council (whose work has influenced to the Panel Report). The implementation of the Ulster Scots Strategy was then held back by a Ministerial intention to instead merge the Ulster Scots strategy with the counterpart strategy for the Irish language with the express purpose of seeking artificial parity for Ulster Scots with Irish. COMEX were highly critical of this approach stating that:

... 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.¹⁷

25. COMEX had previously raised concerns 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."* COMEX reiterated that each be treated in accordance with its own 'quite different' specific situation and calling for measures 'specifically directed towards each language' to ensure protection and promotion in accordance with their specific needs.¹⁸
26. Around the same time, the FCNM Advisory Committee also raised concerns that 'some representatives of the authorities' [erroneously] considered that promoting the Irish language discriminated against persons belonging to the majority population.¹⁹
27. The Northern Ireland Human Rights Commission also raised concerns that the logic of the proposed approach by the DCAL minister "will not be to treat the Irish language and Ulster-Scots on the basis of genuine needs of speakers." The Commission were also critical of the approach in not being human rights compliant, asserting that resources should be allocated on an 'objective, fair and

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

¹⁸ As above, with reference to both the 3rd and 2nd monitoring round.

¹⁹ "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 4.39 of the Framework Convention, implementation of minority rights protected under the Framework Convention are not be [sic] considered as discriminating against other persons. 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), para. 147.

rational basis' in accordance to the levels of demand and linguistic situation of each language.²⁰

28. Following these interventions by the Human Rights Commission and treaty bodies the proposals for such a merged single strategy were dropped.

The Ulster Scots Strategy in the mandate 2011-16 to present

29. In the subsequent mandate, in 2012, the new Sinn Féin Culture Minister did develop and put out for public consultation separate Irish and Ulster Scots strategies. Following the 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.²¹ The *Strategy to Enhance and Develop the Ulster Scots Language, Heritage and Culture 2015 – 2035* was then published and formally launched in January 2015 (alongside the Irish language strategy).²²
30. Opposition to formally adopting an Irish language strategy in the mandate, led to the Ulster Scots strategy falling. Following publication in 2015 the strategies were prevented from being placed on agenda of the NI Executive until 2016 when they were voted down.²³
31. The NI Executive then collapsed in 2017. It did not resume until the New Decade New Approach (NDNA) deal in early 2020. A UK report to COMEX in 2021 stated that a proposed timeline for delivering both the Irish and Ulster Scots Strategies had been issued by the DfC Minister to the NI Executive but that the NI Executive has not agreed yet to include it on its agenda for consideration (either the First or deputy First Minister can block items from the Executive Agenda).²⁴
32. The Panel Report was therefore the first and only public document from the outgoing mandate on the Ulster Scots Strategy. It opened for consultation in March 2022.²⁵ In contrast to the counterpart report on the Irish language strategy²⁶ the present Panel Report does not build on and contains only limited and passing reference to the previous 2015-2035 Ulster Scots Strategy, which drew on international standards including reference to the UNESCO Language Vitality Assessment.²⁷ Whilst reference is made to the previous strategy not being implemented no reasoning is set out for the departure from its approach in the Panel Report.

²⁰ NIHRC Parallel Report to the Committee of Experts on the Third Periodical Report of the United Kingdom Paragraphs 47-50.

²¹ See paragraph 16 of Application by [Conradh Na Gaeilge for Judicial Review](#), [2017] NIQB 27.

²² 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>

²³ See paragraph 16 of Application by [Conradh Na Gaeilge for Judicial Review](#), [2017] NIQB 27.

²⁴ MIN-LANG (2021) IRIA 1, paragraph 176.

²⁵ <https://www.communities-ni.gov.uk/consultations/consultation-expert-advisory-panels-recommendations-report-ulster-scots-language-heritage-culture>

²⁶ "The Department of Culture, Arts and Leisure (DCAL) and the DCAL Minister have published a draft 20-year Strategy for Protecting and Enhancing the Development of the Irish Language (2015-2035). The majority of the recommendations made in that strategy have been included here or have been updated to reflect current circumstances in the sector and some of the changes that have taken place in the area of language revitalisation in the meantime."

²⁷ Strategy to Enhance and Develop the Ulster Scots Language, Heritage and Culture 2015 – 2035, p17-18.

New Decade New Approach (NDNA) legislation and Ulster Scots Commissioner

33. As a result of NDNA and previous negotiations between the parties, one of the bills in the NDNA draft legislation package 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.”
34. The function of the Commissioner would be to increase awareness of Ulster Scots services and provide advice/guidance to NI public authorities on language arts and literature within its remit. There would be some overlap with the Ulster Scots Agency in this work. The Ulster Scots/ Ulster British Commissioner would also provide advice on application of certain human rights treaties, including the Framework Convention (also the ECRML and UN CRC), for which there is some overlap with the Human Rights Commission. CAJ produced a detailed narrative and critique of the three NDNA bills.²⁸
35. A contextual concern was that the presentation of the legislative package is underpinned by the political imperative of providing a ‘counterweight’ to the Irish language bill, rather than thought-through tailored measures designed to safeguard and develop Ulster Scots.
36. Unlike the Irish language bill there was no prior official consultation on the proposal for an Ulster Scots and Ulster British Commissioner that Ulster Scots speakers could input into. At their request CAJ delivered information sessions to a range of Ulster Scots groups who had been unsighted on the proposals until their publication in NDNA.
37. 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
38. 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

²⁸ 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/>

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

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

39. In the Panel Report the Panel appears largely supportive of the Ulster Scots elements of NDNA, including the establishment of the Ulster Scots/Ulster British Commissioner. In contrast to the Human Rights Commission the Panel raises no issue with the conflation of Ulster Scots and Ulster Britishness.
40. The Panel Report does advocate a change in the remit of the Ulster Scots/Ulster British commissioner to move it away from the present formulation of “language, arts and literature”, to instead reflect the formulation of “language, heritage and culture” that is the basis for the Ulster Scots Strategy. The 2021 COMEX report considers issues in the alignment of the mandates of the Irish language and Ulster Scots/Ulster British Commissioner, but does not address this issue.³¹
41. The Panel Report 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. Whilst unclear, it appears the position of the Panel Report is grounded in the anticipation that the UK government will 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 therefore promoting the heritage and culture of a particular Ulster Scots/Ulster British ethnic group.³² As covered in a later section of this submission in general, we caution against this approach to the Framework Convention. 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.
42. Following the blocking of the introduction of the NDNA legislation into the Northern Ireland Assembly (due to opposition to the Irish language provisions rather than the Ulster Scots), the UK Government made (and then reneged on) a number of commitments to taking the NDNA legislative package through the UK Parliament. A media report suggests part of the delay in doing so relates to the question of whether the UK Government will follow the recommendation of the Human Rights Commission and remove the linking of Ulster Scots to ‘Ulster British.’ According to a BBC report (*Irish and Ulster Scots: DUP and Sinn Féin row*

³⁰ As above paragraphs 2.15-6.

³¹ The 2021 COMEX report considers issues relating to the mandates of the Irish language and Ulster Scots/Ulster British Commissioner. This can be traced back to the submission by the Human Rights Commission and relates to two issues. The first is that the mandate of the Irish language Commissioner is to “protect and enhance” compared to the duty to “enhance and develop” given to the Ulster Scots/British Commissioner. The Human Rights Commission recommends alignment of a “promote and protect” formulation for both. The second is that the Human Rights Commission queries why the Ulster Scots Commissioner function of advising on the Framework Convention and other treaties is not also vested in the Irish language commissioner. NIHRC [Submission to the Committee of Experts on the European Charter for Regional and Minority Languages on the Interim Report of the United Kingdom of Great Britain and Northern Ireland February 2021](#), paragraphs 19-22.

³² Panel Report, page 25.

delays legislation)³³ there is agreement from Sinn Féin for the Commissioner only to focus on Ulster Scots, whereas the DUP wish to instead name the office as the Ulster British Commissioner. More recently it seems more likely that opposition to taking forward the Irish language legislative provisions is primarily behind a political decision by the NIO not to progress the NDNA legislation. At the time of writing the NIO has now said it will not introduce the legislation before the 5th May 2022 Assembly election and has declined to set a timetable to do so.

NDNA UK commitment to recognise Ulster Scots as a National Minority

43. Separate to the NDNA bills, in a different section of NDNA on UK commitments, the British government undertakes to: *Recognise Ulster Scots as a national minority under the Framework Convention for the Protection of National Minorities*.³⁴
44. At face value this may seem an odd statement as Ulster Scots speakers have long been recognised by the UK as falling under the scope of the Framework Convention as a minority from the first monitoring cycle. Whilst formal recognition is not a requirement of the Framework Convention it may assist where a state party has previously contended a group does not fall under the Framework Convention, as was the case with the UK 2014 statement recognising Cornish as an ethnic group (specifically a ‘Celtic people’).³⁵
45. A formal statement could of course reinforce the status of Ulster Scots speakers as falling under the protections from the Framework Convention. It could help improve visibility and prompt further protections. It would be difficult, however, to justify a distinction in doing this for Ulster Scots and not Scots in Scotland.
71. Given that the concept of minority under international human rights law encompasses elements of an ethnic, religious or linguistic minority, an alternative reading of the UK commitment would be an intention to change the form of recognition of Ulster Scots away from language to that of recognition of an ethnic minority group. Unlike the lengthy dialogue over Cornish, there is no reference to or dialogue on this issue in previous Advisory Committee or UK state reports.
72. The published ‘*Strategy to Enhance and Develop the Ulster Scots Language, Heritage and Culture 2015 – 2035*’ also makes no reference to this issue.
73. There has not been any official consultation with Ulster Scots speakers or others with Ulster Scots affinity prior or subsequent to the NDNA commitment as to whether they would wish to self-identify as such.
74. The UK commitment on recognition is separate to the commitments in NDNA regarding the legislation establishing the Commissioner that relates to Ulster Scots. The NDNA recognition commitment appears to be the result of a political side deal with the DUP, for which no background information at all is available.³⁶

³³ <https://www.bbc.co.uk/news/uk-northern-ireland-60317736>

³⁴ NDNA, Annex A: UK Government Commitments to Northern Ireland, paragraph 24.

³⁵ As above. See also: <https://www.gov.uk/government/news/cornish-granted-minority-status-within-the-uk>

³⁶ In response to a Freedom of Information request the competent UK government department stated that it did not hold a single document on the issue prior to the NDNA commitment 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

75. Records from the Ulster Scots Agency disclosed under freedom of information set out an understanding that the original ‘political intent’ of the NDNA commitment was to move away from recognition of Ulster Scots as a language. The head of the Ulster Scots Agency indicates an initial preference to designate Ulster Scots as an ethnic minority group.³⁷
76. Shortly after NDNA, a Parliamentary Question from a DUP MP indicated that the UK intended to implement the commitment ‘before the end of 2020’.³⁸ The UK did not elaborate on what form this would take. CAJ in August 2020 provided a detailed working paper on the implications of the UK’s NDNA commitment to recognise Ulster Scots as a national minority.³⁹ The UK authorities appear to have done further work on the matter in 2020 and records from the Ulster Scots Agency in March 2021 show that according to officials in DfC the UK Government had taken the position that Ulster Scots designation under the Framework Convention only applied to language.⁴⁰
77. In May 2021, a further question on the NDNA commitment to the UK Parliament from the Alliance party sought confirmation that it remained UK Government policy to continue to recognise Ulster Scots speakers as a linguistic minority. The response from the UK Minister was limited to stating that Government was continuing to work on delivering the NDNA commitment.⁴¹
78. The most recent (2021) UK State Report to the Advisory Committee on the Framework Convention makes no reference to the NDNA commitment on Framework Convention Recognition. In relation to Ulster Scots, references in the UK State Report are limited to other elements of the NDNA package and aspects of UK Government support to Ulster Scots linguistically.⁴²
79. As alluded to above however the present Panel Report revives this issue and interprets the NDNA commitment as moving beyond recognition of Ulster Scots as a linguistic minority to what would be recognition of Ulster Scots as an ethnic group (whilst not using that term). Two members of the five strong panel, (including the current head of the Ulster Scots Agency) are former DUP elected representatives and served as special advisors to DUP Ministers and may therefore have particular insight into the original political intent of the NDNA commitment.
80. The Panel Report refers to the commitment in a manner conceptualised as one of ethnicity whereby the UK will now recognise the ‘Ulster Scots Community’ as a national minority. More frequently and confusingly the Panel Report makes a number of references to Ulster Scots ‘identity’ being recognised as a national

government policy. On appeal (AP/20/04, of 16 July 2020) the NIO clarified that no information was held for the period of NDNA negotiations from April 2019-January 2020, beyond one internal email string.

³⁷ Ulster Scots Agency note of meeting with NIHRC, 21 March 2021.

³⁸ WPQ HC 48671 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-05-18/48671/>

³⁹ <https://caj.org.uk/2021/02/08/submission-responding-to-uk-ecrml-update/>

⁴⁰ Note of Ulster Scots Agency Meeting with NIHRC, 8 March 2021.

⁴¹ <https://questions-statements.parliament.uk/written-questions/detail/2021-05-11/555>

⁴² ACFC/SR/V(2021)009 Fifth Report submitted by the United Kingdom Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities. 4 November 2021.

minority. Cultural identity per se does not constitute a national minority in international law– there must be some element of an ethnic (though this is intimately connected to culture), religious or linguistic minority nature to be considered a national minority. If this was not the case the concept of national minority would be stretched to encompass, for example, followers of particular genres of music. This is not the intention of the concept of national minority, which is to protect those ethnic, linguistic and religious minorities that have faced discrimination and marginalisation.

81. It is not clear if the Panel is aware that Ulster Scots speakers have already long been recognised as a national minority under the Framework Convention. In one place reference is made to the NDNA commitment as one of recognition of Ulster Scots “identity in its entirety (not just limited to language)”, elsewhere references to the commitment read as if the Panel considers there is no present recognition.
82. The Panel Report also states that recognition of Ulster Scots as a national minority in the UK (as an ethnic group rather than a language) was first raised by “Ulster Scots Groups in the 1990s”. The Panel Report also refers to “*nearly 30-year-old demand for recognition of the Ulster-Scots as a national minority within the United Kingdom.*”⁴³ There is no reference as to what this refers to. We sought clarification on this matter from DfC who have stated that this refers to “*lobbying of the government by the Ulster Scotch Heirskip Council/Ulster Scots Heritage Council.*”⁴⁴
83. We have not been able to locate online any information on this lobbying or on the NDNA commitment. It is not clear if there was any advocacy on this position between the original request in the 1990s and NDNA in 2020, despite members of the Heirskip Council subsequently holding high political office in the relevant area during this time. We can only stress minority identity cannot be externally imposed but is to relate to self-identification and other objective criteria.
84. A particular issue that arises is that the community encompassed by recognition of Ulster Scots as an *ethnic group* would likely be different to that of *Ulster Scots speakers*. As referenced above, speakers are drawn from across the community in areas where Scots is spoken. It is likely to be advocated that the parameters of Ulster Scots as an ethnic group encompass indicators of British nationality and national identity along with ethnic and national origin of Scottish descent and of Protestant religion. This would align Ulster Scots to a particular section of the community in a way that is not presently the case with Ulster Scots speakers, and also link to majority identity.
85. This is compounded by post-NDNA ‘cultural markers’ tentatively developed by the Ulster Scots Agency for Ulster Scots recognition as a national minority under the Framework Convention having an openly political element to them. The markers include ‘political outlook’ as an indicator of Ulster Scots as well as elements more conventionally associated with indicators of ethnicity and attendant culture.⁴⁵

⁴³ Panel report page 30.

⁴⁴ Some information on the Council is here <https://cain.ulster.ac.uk/ccru/research/directory/ushc.htm>

⁴⁵ The full list is: Scottish Origin; Language/Literature; Religion; Philosophy and Political Outlook; Festivals; Music; Dance; Sport and Food. *Minutes of Board Meeting of the Ulster Scots Agency, 30 June 2020, item 9.*

86. The tying of Ulster Scots to a particular political constituency of unionism and loyalism is most notable in the Ulster Scots Agency agreeing that affinity to the Ulster Banner (the flag adopted by the former 1921-1972 unionist government) should be included as a ‘cultural marker’ of Ulster Scots. The Minutes of the meeting record a proposal from the chair that:
- “...in light of the significance of the Ulster Banner to the Ulster-Scots community and the extent to which we proposed to rely on it and the Arms of the NI Parliament from which it is derived in the marking of the NI Centenary, that it should be included on the list of cultural markers [for an Ulster Scot]. This was unanimously agreed.”⁴⁶
87. Tying Ulster Scots to unionism politically and moving away from language, would link Ulster Scots to what has been the majority community. This also arises with the connection to Britishness. We would be concerned if the existing recognition of Ulster Scots speakers under the Framework Convention was put at risk in linking Ulster Scots to majority identity in this way.
88. The Ulster Scots Agency initially declined to release the above information to CAJ under Freedom of Information legislation. A special board meeting of the Agency was held to consider the request. Concerns were expressed about sharing the above information with a third party organisation “*ahead of concluding a consultation exercise with the wider Ulster-Scots community.*” Reference was made to “*difficult conversations which had already been had amongst the Board on this matter and the need to have similarly frank discussions within the community in order to reach a broad consensus.*”⁴⁷ The information was released on appeal. In the context of obligations under equality law the Agency did then agree it would have to conduct a public rather than closed consultation. By December 2021 the Agency appeared however to have abandoned the exercise.⁴⁸
89. In addition to the issues of self-identification and the tying of Ulster Scots to a distinct political identity, we are also concerned that a rush to push Ulster Scots recognition away from language (and its attendant culture) could divert support and attention away from required resolute action to safeguard Ulster Scots linguistically, in a context where many of the existing commitments to Ulster Scots speakers under the ECRML remain unfulfilled.
90. The Panel Report recommends that the UK implement the NDNA commitment within six months.⁴⁹ There is no further elaboration as to the suggested form this recognition should take.
91. The UK has not indicated any intention of moving away from its present recognition of Ulster Scots speakers as a linguistic minority, and the issue is not mentioned at all in the current UK State Report to the FCNM Committee. To date there has been no consultation with either Ulster Scots speakers or those with

⁴⁶ Minutes of Board Meeting of the Ulster Scots Agency, 30 June 2020, item 9.

⁴⁷ Ulster Scots Agency Board - Special Meeting to consider Freedom of Information Request 11/05/21

⁴⁸ Email to CAJ 9/12/22 from Ulster Scots Agency which confirms “Work has not been progressed in this area due other business pressures”

⁴⁹ Recommendations for an Ulster-Scots Language, Heritage & Culture Strategy // Report of the Expert Advisory Panel, February 2022, p 58-59, 63.

broader Ulster Scots identity as to whether they would wish to instead self-identify as an ethnic group. We have broader concerns that any such move would damage initiatives to support and safeguard Ulster Scots linguistically, and that the tying of Ulster Scots to majority identities could place at risk the minority protections enjoyed by Ulster Scots speakers.

NDNA, ‘parity’ and the Panel Report approach to funding Ulster Scots

46. A leak to the media revealed that during the negotiations that led to NDNA a submission was made by the head of the Ulster Scots Agency seeking an additional £140 million in funding for Ulster Scots (see Sam McBride *‘Leak shows DUP man’s proposal for £140m in Ulster Scots funding’*).⁵⁰ The detailed proposal was described as covering funding “for everything from Highland dance to public art and marching bands.” The proposals included seeking core funding for activities that were expressly associated with unionist culture, rather than specifically with Ulster Scots.⁵¹
47. The funding bid reportedly grounded its request on the contention that there had been ‘discrimination’ in public funding of Ulster Scots when compared to the Irish language. The £140 million sought reflected a calculation of the amount previously spent on Irish. However, the vast majority of the money spent on the Irish language relates to the provision of Irish-medium education. This is a false cost analysis concerning the public purse, in the sense that the same children if not educated through Irish would be going to school anyway at the same or similar costs through the medium of English.
48. It is not clear if the current Panel Report has drawn at all on this costed bid. The head of the Ulster Scots Agency is a panel member, but no reference is made to it.
49. The actions section of the Executive Summary of the Panel Report (pages 7-11) advocates for over 30 new and augmented funding streams and grants programmes. None have indicative costs; few are related to Ulster Scots linguistically. Some are quite vague – for example in the human rights section a ‘legal fund’ is sought without any further elaboration. There are also specific core and grant funding pots suggested where the links with Ulster Scots are less clear. It is stated for example that the 500 Presbyterian congregations of various denominations in Northern Ireland ‘could identify as an Ulster-Scots community’ with a specific grants programme proposed for faith communities. Specific resourcing is sought for the marching band community, whose identity may not exclusively be Ulster Scots.⁵²

⁵⁰ <https://inews.co.uk/news/uk/leak-shows-dup-proposal-140m-ulster-scots-funding-86475>

⁵¹ For example 2.2 million is in relation to marching bands to allow the Ulster Scots Agency to provide core funding to the Confederation of Ulster Bands (which [describes itself](#) as “an umbrella body comprised of bands forums from across Ulster, emanating from the Protestant, Unionist or Loyalist traditions”) and for the Ulster Scots Agency to take over the administration from the Department of Communities of an annual marching bands fund.

⁵² See for example statement by Order Grand Secretary Mervyn Gibson on NDNA legislative package: “As British citizens living in the United Kingdom, we have a complex and multi-layered identity which in many areas is wider than simply Ulster-Scots. We remain unconvinced that the cultural traditions and identity of the Orange family will be meaningfully promoted or safeguarded by these proposal.”
<https://belfastmedia.com/orange-order-says-no-to-new-decade-new-approach-deal>

50. How funding be allocated to Ulster Scots is dealt with in detail in a section that again appears to advocate a ‘parity’ approach, but on this occasion through a viewpoint that there are three main communities in Northern Ireland: English, Scottish and Irish and that the latter two should be considered national minorities.
51. At present there are numerous ethnic minority communities recognised under the Framework Convention but whilst the Framework Convention has generally been applied in Northern Ireland to date neither the nationalist community nor unionist community have been considered ‘national minorities’ per se. The nationalist community is historically a minority in NI but generally do not self-identify as such due to affinity to the whole (island of) Ireland, where Irishness is the majority identity. (Irish are recognised as an ethnic minority group in the UK as a whole). The unionist community have historically been a dominant majority in NI, and have affinity to Britishness, the majority identity of the State.
52. There have been past unsuccessful attempts in the Bill of Rights process to redefine the unionist community as a ‘national minority’ by seeking to extending minority rights to communities rather than minorities.⁵³ This was opposed by civil society representatives as in conflict with minority rights.⁵⁴ There has been no questioning of the fact that Ulster Scots speakers constitute a linguistic minority.
53. The Panel Report however presents and advocates an alternative viewpoint of a ‘three traditions model’ for Northern Ireland of Scottish, Irish and English groups. The Panel Report draws on an Ulster Cultural Charter, produced by the Ulster-Scots Heritage Council (USHC), to this end. The Panel Report links the three-traditions model to both religion and language but more broadly grounds it in ethnicity with reference to separate communities. The Panel Report then asserts that both the Irish and Ulster-Scots communities ‘can be considered and recognised as national minorities in the UK’ but that the ‘predominance of

⁵³ These issues played out in relation to debates on the GFA-mandated Bill of Rights for NI, with proposals supported by unionist parties that FCNM provisions be incorporated for ‘communities’ rather than ‘minorities’, against the counter-argument that this would be out with the purpose of, and run into conflict with, minority rights. (For a detailed narrative see: Christopher McCrudden ‘Consociationalism, Equality and Minorities in the Northern Ireland Bill of Rights Debate: The Inglorious Role of the OSCE High Commissioner for National Minorities’ in *Judges, Transition, and Human Rights* (John Morison, Kieran McEvoy, Gordon Anthony (Eds)) Oxford 2007 and Elizabeth Craig ‘The Framework Convention for the Protection of National Minorities and the Northern Ireland Bill of Rights process’ NILQ NILQ 60(2): 201–11.)

⁵⁴ The proposal at the Bill of Rights forum was not supported by civil society representatives on the Forum (from the human rights, children and young people, disability, ethnic minority, older persons, sexual orientation, trade union and women’s sectors). The human rights sector, represented by CAJ, expressed ‘fundamental reservations’ about “the rights of a minority being treated as synonymous with rights of a community”. CAJ drew attention to the term minorities having a particular connotation in international human rights law to provide for specific provision for minorities; that the attachment of minority rights to dominant groups did not figure in international standards and raised concerns that the proposal would ‘undermine any of the rights that minority communities have as a result of the Framework Convention’. The ethnic minority sector in similar terms opposed the use of the term ‘community’ to replace ‘minority’ on grounds that “The use of “community” undermines the minority protection under international law and distorts the entire section of the recommendations”. Bill of Rights Forum Final Report: Recommendations to the Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland (31 March 2008), pages 70-3.

Englishness within Britishness has meant that Ulster-English did not fully develop as a conscious community'.⁵⁵

54. Our understanding is the community divide in what became Northern Ireland was cultivated over centuries of colonial policy. It was also exacerbated during the period following partition by the structures and practice of the Stormont Parliament. Perceived religion (Protestant/Catholic) and political opinion (unionist / nationalist) have long been used as ethnic indicators for NI community background and 'fair employment' and other equality legislation, as have recently British/Irish national identity and citizenship. The Panel Report in the alternative appears to argue that the conceptualisation of their being two main communities or traditions in Northern Ireland was primarily 'propagated' in the late 1980s by a 'Cultural Traditions Group'. There are no references or further details provided to support this assertion.⁵⁶
55. The Panel Report builds on its 'Three-Traditions' conceptualisation to draw on specified community relations ideology⁵⁷ to argue there should therefore be equity of funding for each of the three cultural traditions. The Panel Report states "*Where public resources are being allocated, then each of our cultural traditions should be treated on the basis of equity...*" It elaborates that this is 'about more than money' advocating that 'as well public funding' access to the media and education system should also be on the basis of 'equity'. Whilst somewhat unclear it appears therefore an artificial parity approach is now being advocated for English, Irish and Scottish by way of a 33% split. As has been well previously rehearsed such an approach is not human rights compliant, misconstrues the conceptualisation of the protection of minority rights and is likely to be damaging to the enhancement of and development of Ulster Scots.⁵⁸

Measures to enhance and develop Ulster Scots linguistically

56. There is a specific language section on pages 31-32 of the Panel Report.
57. Elsewhere in the document the Panel do rightly stress that the language has suffered neglect. It is argued in general terms that development of culture and heritage will assist in creating the environment for language revival, the Panel Report stating that Ulster Scots linguistically:

"...is like a shoal of fish trying to survive in a shrinking and polluted lake. Without expanding and restoring the lake then the fish will not flourish. The development of our culture and heritage will clean the water, refill the lake and our work on the language will restock and return the shoal to full size. The impact of this work will not be limited to Ulster-Scots – the

⁵⁵ Panel Report p15-16.

⁵⁶ Panel Report p15-16.

⁵⁷ Namely the INCORE Equity, Diversity, and Interdependence model.

⁵⁸ Recommendations for an Ulster-Scots Language, Heritage & Culture Strategy // Report of the Expert Advisory Panel, February 2022, p17. "Where public resources are being allocated, then each of our cultural traditions should be treated on the basis of equity and this is about more than money. As well as public funding, it is about such things as access to the media and inclusion in the education system because education and the media are especially important in affirming and promoting cultural traditions."

restoration of the lake will mean Ulster-Scots' value is recognised beyond it and contributes to the broader societal and cultural 'ecosystem'⁵⁹

58. The Panel Report also proposes the establishment of a 'Language Institution'. There is little detail on this as regards proposed format, location and remit. In general it is stated the Language Institution will "*take forward the language research and language development programme with an associated publishing programme.*"⁶⁰ In terms of the research another section of the Panel Report includes a line that there should be speaker-driven research on Ulster-Scots language corpus and language planning. We cannot find further reference to the proposed language development programme.
59. The languages section itself does not elaborate on the remit of the proposed language institution. Rather, it starts by arguing that standardisation of spelling in Ulster-Scots should not be a prerequisite to it being included in the curriculum.
60. The main focus of this languages section is then on significant differences regarding how language measures should be progressed. The Panel Report makes reference to 'distrust and relationships' between Ulster Scots groups being 'deeply harmed by past events and behaviour.' This is quite cryptic as there is no elaboration as to what these issues are. The Panel Report states that "The Panel is convinced that to allow this situation to remain would be an act of self-harm" and proposes a 'formal professional mediation process', for six months with unnamed individuals and organisations 'to take the language institution forward'.
61. The Panel Report however also seems to pre-determine the outcome of the process. The Panel states that in the absence of a 'successful outcome' to mediation the proposed language institution work will progress regardless. In quite odd language for an officially commissioned report the Panel Report elaborates that "*The Panel does not believe it needs to waste a lot of time for no reason on what needs done.*" and argues that "*The issues identified in the Ulster-Scots Language Strategy (July 2000) remain the same. The plans developed by the Ulster-Scots Academy Implementation Group (and then prevented from progressing) are what must be advanced.*"⁶¹
62. As is common with other sections of the report no references or links to documents are provided to the Academy Implementation plan or the strategy and neither appears available online. It is therefore impossible to make a meaningful assessment of these proposals against the statutory aims of the strategy to enhance and develop Ulster Scots and human rights standards.
63. The Panel Report also states: "The belief that the Frisian Academy model is the most appropriate for Ulster-Scots remains true". The sole footnote in the Panel Report is then provided for this which sets out what the Frisian Academy is, but no further information is provided as to what this model is, nor is there any reference or link to any assessment as to why it is argued to be the most appropriate model to safeguard Ulster Scots.

⁵⁹ Panel Report, page 20.

⁶⁰ Panel Report, page 27 and other places.

⁶¹ Panel Report, p31-2.

64. We are aware of different views on advancing Ulster Scots linguistically in the past. This has included unorthodox positions that Ulster Scots was not related to Scots itself or that the two should diverge. This position appeared grounded more in political than language preservation considerations. The separate development or even intentional divergence of the Ulster variant of Scots from Scots risks damaging the safeguarding of Ulster Scots. Enhancing and developing Ulster Scots constitutes a more difficult challenge when done in isolation from the broader body of work on Scots *per se*. There have been concerns that some Ulster Scots initiatives have not integrated with broader developments by Scots or even have sought separate development. There have also been observations that written forms of Ulster Scots have diverged from spoken variants in a rush to standardise a distinct written form.⁶²
65. The framework of the ECRML and FCNM provide for resolute action to safeguard and develop minoritised languages. Such objectives can be adversely affected by any artificial separation of the Ulster variant from Scots in general.

NDNA statutory duty on education

66. The NDNA bill would place a statutory duty on the NI Department of Education “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 Committee of Ministers recommendation, provided it ultimately relates to the teaching of Scots *as a language*.
67. The implication of the understanding in the Panel Report however opens the possibility the Panel is advocating that the educational duty should this move away from teaching Ulster Scots *linguistically* to teaching around a specific *ethnic group* and its culture and traditions.
68. This would raise a number of issues. First it may lead to significant neglect to language teaching which is vital to the safeguarding of Ulster Scots, with intergenerational transmission vital to the survival of minority languages. Secondly it would create an odd situation whereby the *only* duty to teach about an ethnic group in NI relates to Ulster Scots, which, unless there is an objective basis for the same, could constitute an unjustified distinction. This will be particularly contrary to minority rights provisions if Ulster Scots is defined with reference to the majority community. As it is not clear if there is ‘buy-in’ (in human rights terms ‘self identification’) to the conceptualisation of Ulster Scots as an ethnic group, its application is likely to be contested and complex.

⁶² There is some related discussion on this issue in relation to the Ulster Scots Roadmap Ulster Scots Academy Implementation Group Partnership Board developed to seek the acceleration of Ulster Scots to Part III status under the ECRML, but not supported by government departments. See NIHRC ‘ECRML: Supplementary memorandum to the Commission’s Parallel Report to the Committee of Experts on the Third Periodical Report of the United Kingdom’ (October 2009) paragraph 7 citing Correspondence from Linda Wilson, Chair of ICIG to Dr Philip Robinson, Chair USAIG Partnership Board, 5 Nov 2008; Ulster-Scots roadmap and assessment; Ulster-Scots and Part III of the ECRML: Ó Riagáin, Dónall, *A response to the Assessment of the Paper presented to the ICIG and the USAIG*, April 2008. See also: Dunbar, Robert ‘Implications of the European Charter for Regional or Minority Languages for British linguistic minorities’ (2000) 25 Supp (Human rights survey) European Law Review 46-69; and MacPóilin, Aodán ‘Language, Identity and Politics in Northern Ireland’ (1999) 45 Ulster Folk Life 1-4.

Human rights section

69. There is a specific section on the Panel Report on Ulster Scots human rights work. This is premised on a misunderstanding of the human rights context that confuses the concept of 'Ulster Scots Identity' with the concept of a national minority.
70. There are presently numerous rights deficits faced by Ulster Scots speakers. This includes gaps in implementing key provisions under the Framework Convention. For example, the core obligation under Article 4 of the Framework Convention to protect national minorities against discrimination has not been realised in relation to linguistic minorities. There is presently no anti-discrimination legislation covering 'language' as a protected characteristic, save for limited protection under the domestic incorporation of the ECHR.⁶³
71. The human rights section of Panel Report however makes no reference or assessment to this or any other specific rights deficits relevant to Ulster Scots. This section seeks dedicated funding to ensure 'Ulster Scots views' are represented in human rights forums. This does not appear to be a reference to Ulster Scots speakers as rights holders.
72. This section of the Panel Report misrepresents the position of CAJ. It states: "We have also seen the peculiar circumstances of a local human rights group criticising Ulster-Scots recognition as a national minority." This is incorrect CAJ has long supported the recognition of Ulster Scots speakers as a linguistic minority. For the reasons set out above we have queried a switch in recognition to Ulster Scots as an ethnic group. In making this statement the Panel has either misunderstood the CAJ position, is misrepresenting it or misunderstands the concept of national minority in the Framework Convention.
73. The Panel Report also criticises "civil society" for showing the same "attitudes to Ulster-Scots as public bodies and government shows." No evidence is presented to support this assertion. Whilst it is unclear to who or what this refers it would be wrong to argue that groups are 'anti-Ulster Scots' simply on the basis that they do not share the perspectives of members of the Panel as to how Ulster Scots should be progressed.

CAJ, April 2022

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⁶³ The domestic incorporation of the ECHR in NI law is provided for through the (UK) Human Rights Act 1998, with Article 14 ECHR encompassing non-discrimination on grounds language, but when parasitic on other ECHR rights. The UK is not party to Protocol 12 ECHR and the free standing right to non discrimination. Whilst the UK has argued that language can be implicit in 'racial group' in anti-discrimination law, this category would not cover Irish and Ulster Scots speakers in NI.