



## **Response by the Equality Commission for Northern Ireland to the Consultation by the Department of Culture, Arts and Leisure on *Proposals for an Irish Language Bill***

**May 2015**

### **Introduction**

1. The Equality Commission (the Commission) for Northern Ireland welcomes the opportunity to comment on the Department of Culture, Arts and Leisure's consultation on Proposals for an Irish Language Bill.
2. The Commission's statutory duties and functions are not directly or primarily concerned with the promotion of languages and we do not have direct jurisdiction on language issues. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 and the positive disability duties<sup>1</sup>.
3. On the relatively few occasions that language issues have been brought to our attention, it has come about because they were raised in the context of Section 75 of the Northern Ireland Act 1998 and/or the provisions of the anti-discrimination legislation, specifically the Race Relations (NI) Order 1997 and the Fair Employment and Treatment (NI) Order 1998. The Commission's advice to public authorities has been specific to the context presented by the public authority. It has referenced our position on minority languages (as set out below), the public authority's compliance with its Equality Scheme commitments and

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<sup>1</sup> An overview of the Commission's remit is included in Annex 1

the Commission's guidance<sup>2</sup>, as well as the provisions of the relevant anti-discrimination legislation, if appropriate (as set out below).

4. As the Commission does not have direct jurisdiction on language issues, our response should be viewed within the context of our remit and the scope of our advice to date.

## Context

5. The Commission recognises that minority language speakers are entitled to protection of their internationally recognised rights as set out in the Council of Europe Charter for Regional and Minority Languages<sup>3</sup> (the Charter) and the Framework Convention for the Protection of the Rights of National Minorities<sup>4</sup>. We also note the references to language rights in the Belfast Agreement (1998), the Joint Declaration (2003) and the St. Andrews Agreement (2006). The UK Government ratification of the Charter in 2001 recognised obligations, in the Northern Ireland context, to protect and promote both Ulster Scots (in respect of Part 2) and Irish (in respect of Part 3).
6. We also note that the Council of Europe Committee of Ministers recommended in 2007 that the UK "*develop a comprehensive Irish language policy*"<sup>5</sup> and again in 2010 that the authorities "*adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation providing statutory rights for the Irish speakers*"<sup>6</sup>. The Commission is aware that the UN Committee on Economic, Social and Cultural Rights expressed concern at the absence of such legislation in Northern Ireland, in contrast to the protection afforded to the other two main UK minority languages, under the Welsh Language Act 1993 and the Gaelic Language (Scotland) Act 2005. The

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<sup>2</sup> Equality Commission for Northern Ireland (2010): Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities. Available at:

<http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>

<sup>3</sup> Available at: <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>

<sup>4</sup> Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>

<sup>5</sup> Council of Europe, Recommendations of the Committee of Ministers, RecChL (2007)2, adopted 14 March 2007, recommendation 2, page 69. Available at:

[https://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3\\_en.pdf](https://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf).

<sup>6</sup> Council of Europe: Committee of Ministers, Recommendation CM/RecCh (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. Available at:

[http://www.coe.int/t/dg4/education/minlang/Report/default\\_en.asp#United](http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp#United)

Committee recommended “that the State party, or the devolved administration in Northern Ireland, adopt an Irish Language Act with a view to preserving and promoting minority languages and cultural heritage...” (E/C.12/GBR/CO/5, 22 May 2009 (Concluding Observations) paragraph 10).

## Commission Views

7. The Commission has placed on record our view that a specific language statute is an appropriate mechanism of protection for the Irish language<sup>7</sup>. We also set out our view that legislation should be drafted so as to enable the language to be promoted in a way that is proportionate to the language needs of the situation, in a spirit of respect for the freedom of minority language speakers to speak what they consider to be their home language or language of preference.
8. The Commission considers that the use of minority languages, particularly Irish or Ulster Scots languages in Northern Ireland for common or official purposes would normally and objectively be considered to be a neutral act that would not be discriminatory.
9. The Commission also considers that the speaking of any language in Northern Ireland should not be perceived as a threat to any individual or group, nor should it be used in such a manner. We consider that the speaking of Irish or its more general use in the community does not diminish the entitlements of those whose right to their British identity is guaranteed in the Belfast / Good Friday Agreement. Similarly, the Commission considers that the wider use of Ulster Scots does not diminish the entitlements of those whose right to their Irish identity is guaranteed.
10. The Commission however notes the differential context of promoting minority languages in Northern Ireland<sup>8</sup> and we welcome initiatives

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<sup>7</sup> Equality Commission for Northern Ireland (2007): *Response to DCAL Consultation on Proposed Irish Language Legislation*.

<sup>8</sup> Public Attitudes towards the Irish Language in Northern Ireland 2012: Findings from the Northern Ireland Omnibus Survey January 2012. Department of Culture, Arts and Leisure. In Northern Ireland the views of the Protestant and Roman Catholic communities on the use and promotion of the Irish language are distinct e.g.

taken to promote the Irish and the Ulster Scots language to as wide an audience as possible<sup>9</sup>. The Commission also acknowledges the generally reported concerns among some sections of the community regarding the promotion of minority languages, including the reported concern among some sections of the community that the promotion of the Irish language is considered to have a political aim.

11. An important aspect of language policy is the interrelationship between individuals or groups that speak different languages. Any duty placed on public authorities should ensure that the development of provisions to protect and promote the language is viewed within the context of the duty to have due regard to the need to promote equality of opportunity and to have regard to the desirability of promoting good relations within the provision of public services. Public authorities should consider aspects of mutual understanding, co-operation, communication and partnership between different 'language communities', including engagement with relevant communities to seek to explore and take reasonable account of concerns or perceptions about the promotion of minority languages.
12. The Commission welcomes that the proposed legislation will seek to bring about clarity in respect of the level of provisions and protections available within a range of areas, and trusts that the proposed legislation will provide a useful opportunity to afford a more consistent approach across the public sector in the matter of language policy.
13. With regards to proposals regarding specific provisions of the Bill, the Commission recommends that the Department ensures that the

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- A significantly higher proportion of Catholics than Protestants were in favour of Irish language usage (66% and 14% respectively);
  - Around one out of every two Catholics (52%) said Irish was important to their personal identity compared with one out of every twenty Protestants (5%);
  - Almost three-quarters of Catholics (74%) and less than a fifth of Protestants (18%) agreed that the use of Irish should be supported and encouraged throughout Northern Ireland.

Public Views on Ulster Scots Culture, Heritage and Language in Northern Ireland: Findings from the Northern Ireland Omnibus Survey April 2010. Department of Culture, Arts and Leisure. This survey focuses on awareness of and views about Ulster Scots Culture Heritage and Language: showing higher levels of awareness and positive engagement with Ulster Scots Culture Heritage and Language among the Protestant community and older respondents (aged 55-64).

<sup>6</sup> For example, the Liofa 2015 project (Department of Culture, Arts and Leisure).

provisions of the Bill are consistent with those of the European Charter for Regional and Minority Languages.

### **Relevant Areas of Commission Advice**

14. The Commission provides advice to public authorities and other employers on the promotion of equality in the employment context. For example, we advise that, where an ability to speak and / or read a particular language is an objectively justified requirement of a job, then the employer may place an advertisement exclusively in that language<sup>10</sup>. In selecting personnel, either initially or for promotion purposes, the Commission advises that employers may include criteria with regard to knowledge and skills of a certain language; as long as they are satisfied that such criteria and their relative importance are justifiable, appropriate to the job and clearly objective<sup>11</sup>.
15. With regards to proposed provisions set out in Part 5 of the consultation we recommend that the intended meaning of 'affirmative action' is clarified, given that it is a specific provision within fair employment legislation<sup>12</sup>.
16. In relation to the use of languages other than English, for example in corporate logos and communications, the Commission advises that these will not, in general, constitute an infringement of a good and harmonious working environment.<sup>13</sup> However, the Commission also notes that decisions on this must rest with the employer and should be based on relevant policies and procedures that are proportionate, reasonable and appropriate to the context in which the organisation operates. We recommend that employers work to ensure that their premises are a welcoming and harmonious space for all their workers and customers alike.

### **Equality Impact Assessment**

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<sup>10</sup> Recruitment Advertising: A Good Practice Guide for Employers (Equality Commission Guidance)

<sup>11</sup> General advice contained in the Fair Employment Code of Practice: Section 5.3 Good Practice for All Employers – Core Components

<sup>12</sup> Fair employment & Treatment (NI) Order 1998.

<sup>13</sup> Promoting a Good and Harmonious Working Environment: A Guide for Employers and Employees

17. The EQIA reported in the consultation document considers quantitative data from the Census of Population and other surveys on knowledge of the Irish language. The relevance of educational qualifications as well as use of the language will also be important considerations.
18. While the EQIA notes the differences in knowledge of the language between the Protestant and Roman Catholic communities and on the grounds of political opinion, it does not consider the concern among some sections of the community that the promotion of the language is considered to have a political aim. The Commission recommends that the Department fully assesses the potential impacts of the policy, taking account of qualitative and quantitative information, on each of the aims of the policy so that any appropriate mitigation may be identified.

### **Conclusion**

19. The Commission trusts that this submission will be of value to the Department in setting out the Commission's position with regard to minority languages.
20. The Commission will continue to provide advice to public authorities and others to ensure clarity with regard to anti-discrimination law, the Section 75 duties, and our position in relation to the use of minority languages.

**May 2015**

## **Annex 1**

### **The Equality Commission for Northern Ireland**

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
3. The Commission's general duties include:
  - working towards the elimination of discrimination;
  - promoting equality of opportunity and encouraging good practice;
  - promoting positive / affirmative action
  - promoting good relations between people of different racial groups;
  - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
  - keeping the legislation under review;
  - promoting good relations between people of different religious belief and / or political opinion.
4. The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of UNCRPD in Northern Ireland.