



EQUALITY COMMISSION FOR NORTHERN IRELAND

Submission to the Committee of Experts on the European Charter for Regional or Minority Languages

May 2018

1 Overview

- 1.1 The Equality Commission (the Commission) for Northern Ireland welcomes the opportunity to submit this response to the Committee of Experts on the European Charter for Regional and Minority Languages (the Committee).
- 1.2 The Commission's statutory duties and functions are neither directly nor primarily concerned with the promotion of languages. 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.
- 1.3 We provide this submission to the Committee should it be of assistance with regards to the scope, coverage and relevance of the statutory duties on public authorities; the anti-discrimination legislation; and our general advice on regional and minority language-related matters.

2 Remit and Responsibilities of the Equality Commission for Northern Ireland

- 2.1 The Equality Commission (the Commission) for Northern Ireland is responsible for implementing the legislation on fair employment, sex

discrimination and equal pay, race relations, sexual orientation, disability and age.

2.2 The Commission's remit also includes overseeing 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 duties¹. The Commission's statutory duties and functions are neither directly nor primarily concerned with the promotion of languages.

3 Section 75 of the Northern Ireland Act

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3.1 Designated public authorities, such as the Northern Ireland Departments and local government bodies are bound by the statutory duties of Section 75(1) and (2) of the Northern Ireland Act 1998.

3.2 Section 75 (1) provides that designated public authorities, in carrying out their functions in Northern Ireland, are required to have due regard to the need to promote equality of opportunity between:

- persons of different religious belief; political opinion; racial group; age; marital status; sexual orientation; and
- between men and women generally; and
- between persons with a disability and persons without; and
- between persons with dependents and persons without.

3.3 S75 (2) requires public authorities to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

3.4 Essentially, public authorities are required to give appropriate consideration to the statutory goals when carrying out their functions, such as when they develop new policies.

¹ An overview of the Commission's remit is included in Annex 1

3.5 The two statutory goals are:

- (a) the **need** to promote equality of opportunity and
- (b) the **desirability** of promoting good relations between persons of different religious belief, political opinion and racial group.

3.6 Section 75 does not oblige public authorities to adopt, or to refrain from adopting, policies that are aimed at achieving a particular policy outcome.

3.7 Each public authority has an Equality Scheme which sets out their arrangements for complying with their Section 75 duties and which demonstrates how consideration has been given. The arrangements in the public authority's equality scheme provide the way to consider, present and consult upon the appropriate and proportionate balance of the statutory goals. The assessment and consultation will inform final decisions on the policy.

3.8 It is clear that policies on the use of languages will and do engage the Section 75 duties. It is also clear they do not oblige public authorities either to develop or to refrain from developing policies which aim to promote the Irish or Ulster Scots languages.

3.9 The Commission's advice to public authorities has been specific to the context presented by each public authority. It has referenced our high-level position on minority languages (as set out below – section 4); the public authority's compliance with its Equality Scheme commitments; and the Commission's guidance², as well as the provisions of the relevant anti-discrimination legislation, if appropriate (as set out further below – section 5).

4 Commission position on regional and minority language-related matters

4.1 The Commission recognises that minority language speakers are entitled to protection of their rights as set out in the Council of Europe

² 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>

Charter for Regional and Minority Languages (the Charter) and the Framework Convention for the Protection of the Rights of National Minorities. We also note the references to language rights in the Belfast Agreement (1998), the Joint Declaration (2003) and the St. Andrews Agreement (2006).

- 4.2 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).
- 4.3 The Commission has placed on record our view that a specific language statute is an appropriate mechanism of protection for the Irish language in our 2007 response to the Department of Culture Arts and Leisure's (DCAL)³ Consultation on Proposed Irish Language Legislation⁴.
- 4.4 Our response had made the point that any notion that providing equality or protection for one group limits their availability for another group is both unfounded in itself and acts to the detriment of all who seek to live in a society that is fair and equitable and should be avoided in the drafting of public policy. DCAL's Summary of responses noted that our response was particularly helpful and commented that the *"Government subscribes to this view and wants to ensure that the debate on Irish language legislation in Northern Ireland is understood and conducted on this basis."*
- 4.5 The Commission also recommended in response to the consultation that such legislation should be drafted 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 their home language or language of preference.
- 4.6 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.

³ The language rights related functions of the Department of Culture, Arts and Leisure have since been subsumed within the Department for Communities following from re-organisation of Government Departments in Northern Ireland. See: <https://www.nidirect.gov.uk/articles/changes-government-departments>

⁴ Equality Commission for Northern Ireland (2007): *Response to DCAL Consultation on Proposed Irish Language Legislation*.

- 4.7 We believe 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 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.
- 4.8 The Commission notes the context of promoting minority languages in Northern Ireland⁵ and we welcome initiatives taken to promote the Irish and the Ulster Scots language to as wide an audience as possible.

5 Anti-Discrimination Legislation

- 5.1 The Commission also provides general advice to public authorities on the use of languages other than English 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 language⁶.
- 5.2 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 objective⁷.
- 5.3 In relation to the use of languages other than English, for example in corporate logos and communications, the Commission advises that

⁵ In Northern Ireland the views of the Protestant and Roman Catholic communities on the use and interest in learning Irish language and Ulster-Scots are distinct. Findings from the Continuous Household Survey 2015/16 on Knowledge of Irish and Ulster-Scots suggest that a higher proportion of Catholics (28%) were interested in learning Irish than Protestants (11%) and those with other or no religion (18%). With regards to Ulster-Scots, similar proportions of Protestants and those who gave their religious background as other or no religion (both 8%) were interested in learning or improving Ulster-Scots. A slightly lower proportion of Catholics (5%) were interested in learning Ulster-Scots

In 2015/16, a higher proportion of Catholics (29%) had knowledge of Irish than both those with other or no religion (10%) and Protestants (3%). A higher proportion of Protestants (22%) and those with other or no religion (13%) had knowledge of Ulster-Scots than Catholics (7%).

(Sources: DfC (2017) [Knowledge and use of Ulster-Scots in Northern Ireland: Findings from the Continuous Household Survey 2015/16](#); DfC (2017) [Knowledge and use of Irish in Northern Ireland: Findings from the Continuous Household Survey 2015/16](#))

⁶ Recruitment Advertising: A Good Practice Guide for Employers (Equality Commission Guidance)

⁷ General advice contained in the Fair Employment Code of Practice: Section 5.3 Good Practice for All Employers – Core Components

these will not, in general, constitute an infringement of a good and harmonious working environment.⁸ 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.

- 5.4 We recommend that employers work to ensure that their premises are a welcoming and harmonious space for their workers and customers alike.
- 5.5 The Commission also stresses that it is important to remember that on matters of discrimination in the workplace employers may be held liable for the discriminatory impact of their actions, even where this is not their intention. When faced with the difficult challenge of balancing individual rights in the workplace, consideration has to be given to the scope which exists in any specific situation for unlawful discrimination.

6 Conclusion

- 6.1 The Commission hopes that this submission will be of value to the Committee in providing an overview of the Section 75 duties on public authorities; the anti-discrimination legislation; and our general advice on regional and minority language-related matters.
- 6.2 We would, of course, be happy to provide further information, if this would be helpful.
- 6.3 The Commission will continue to provide advice to public authorities and others to ensure clarity with regard to the Section 75 duties and our position in relation to the use of minority languages.

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⁸ Promoting a Good and Harmonious Working Environment: A Guide for Employers and Employees

7 Annex 1: The Equality Commission for Northern Ireland

7.1 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.

7.2 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.

7.3 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.

7.4 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.