

**CAJ's Submission no. S410**

**CAJ's submission to the Council of Europe Committee of  
Experts (COMEX) on the European Charter for Regional  
and Minority languages on the 4<sup>th</sup> Periodic Report**

**May 2013**

## About CAJ

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**Submission from the Committee on the Administration of Justice  
(CAJ) to the Council of Europe Committee of Experts on the  
European Charter for Regional and Minority Languages  
on the 4<sup>th</sup> UK Periodic Report**

**May 2013**

1. The Committee on the Administration of Justice (“CAJ”) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and 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 welcomes the opportunity to provide a written submission to the Committee of Experts (COMEX) on the UKs compliance with its duties under the Charter. CAJ also welcomed the opportunity to meet and present oral evidence to the delegation from COMEX when it conducted its recent visit to Belfast.
3. In relation to Northern Ireland the UK has registered the Irish and the Ulster variant of Scots under Part II of the Charter and Irish is also registered under a range of specific commitments under Part III of the Charter. Our submission will largely focus on providing evidence on the two areas discussed with the delegation on its visit, namely the monolingual signage funding policy of the Northern Ireland Tourist Board and the impact of the misapplication of a ‘good (community) relations’ duty in public authority policy appraisal which has had a direct detrimental impact on initiatives to fulfil Charter obligations. Both of these matters, among other provisions, engage matters relevant to the non-discrimination clause in Article 7(2) of the Charter. Article 7(2), which applies both to Irish and Ulster Scots, reads:

The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

4. Before providing further commentary on both of these policy areas this submission will first address a number of overarching issues in relation to:

treaty reporting obligations; the Irish Language Act; the Irish Language Strategy; the Ulster Scots Strategy and the funding of Irish language organisations.

## Charter Compliance: overarching issues

### Reporting

5. CAJ notes that the 4<sup>th</sup> UK Periodic Report contains no information in relation to Irish and Ulster Scots insofar as they relate to matters within the competence of the Northern Ireland Executive. This also occurred in the 3<sup>rd</sup> UK Periodic Report as the power-sharing Executive in Northern Ireland was unable to agree its input to the report. On that occasion COMEX reminded the UK government it was its duty under the Charter to submit a complete report on time in conformity with duties under Article 15 of the Charter.<sup>1</sup> CAJ would like to draw to the attention of COMEX that the UK Government, under section 26 of the Northern Ireland Act 1998, does have a power to direct by order Northern Ireland Ministers to take action to comply with ‘international obligations.’ This should include obligations under Article 15 of the Charter.<sup>2</sup>

### Irish Language Act

6. In its previous monitoring report COMEX urged the UK authorities to legislate to promote and protect Irish in Northern Ireland. COMEX observed as things stood at the time the Northern Ireland Assembly was unlikely to pass such legislation but the UK Parliament could legislate on the matter given its parallel legislative competence. CAJ observes that although the new Culture Minister is now in favour of an Act, the Act was not included in the Executive’s Programme for Government, and could be blocked at the Northern Ireland Executive in the absence of cross-party agreement.<sup>3</sup> Such agreement would also be required for any bill to progress through the legislature (Northern Ireland Assembly). There is at present no prospect of cross party agreement. Given the UK commitment to the Irish Language Act constitute an international obligation,<sup>4</sup> and it is not being discharged by the regional legislature, the obligation should fall to the UK Parliament.

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<sup>1</sup> Council of Europe, (UK Third Monitoring Report) Report of the Committee of Experts on the Charter ECRML 2010(4), Paragraph 12.

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1998/47/section/26> [accessed May 2013]

<sup>3</sup> See s20(4) Northern Ireland Act 1998 (as amended by the Northern Ireland (St Andrews Agreement) Act 2006) <http://www.legislation.gov.uk/ukpga/1998/47/section/20>.

<sup>4</sup> By virtue of the commitment to legislate for the Irish Language Act being contained in the UK-Ireland St Andrews Agreement 2006, and its interface with UN and Council of Europe treaties.

## Strategies for Irish and Ulster Scots

7. There is a statutory duty on the Northern Ireland Executive to introduce a strategy to ‘enhance and protect’ Irish and a strategy to ‘enhance and develop’ Ulster Scots.<sup>5</sup> The draft strategies have now been consulted on and await implementation. In its previous monitoring report COMEX expressed concern about inappropriate claims for parity of treatment for Irish and Ulster Scots and urged each be treated in accordance with its own situation. COMEX specifically commented on reports the then Minister intended to merge the strategies into one in order to ‘strive for parity’ between Irish and Ulster Scots and COMEX warned that such a move would hold back the development of both.<sup>6</sup> It is welcome that following the Committee’s intervention such an approach is no longer being pursued in relation to the strategies. CAJ awaits the final strategies and hopes that they will lead to appropriate measures for both Irish and Ulster Scots respectively.

## Funding for Irish Language Organisations

8. During the monitoring period the Irish language agency (*Foras na Gaeilge*) consulted on a new funding model for Irish language organisations to which CAJ responded.<sup>7</sup> CAJ drew attention to the provisions of the Belfast/Good Friday Agreement to take resolute action to promote the Irish language and the consequent implementation treaty which sets out the role of *Foras na Gaeilge* as a primary vehicle for promoting the Irish language, including the function of grant aiding bodies.<sup>8</sup> CAJ also drew attention to the provisions of the Charter as including “the need for resolute action to promote regional or minority languages in order to safeguard them”<sup>9</sup> and duties that official bodies “shall take into consideration the needs and wishes expressed by the groups which use such languages.”<sup>10</sup>
9. CAJ stated that we understood from Irish language organisations that, in effect, the proposals would end sustainable core funding for Irish language organisations and replace them with short term project funding. CAJ cautioned a move in this direction would appear to be a serious retrogressive step in relation to the development of the Irish language. Concerns had also been expressed by the Framework Convention for National Minorities (FCNM) Advisory Committee:

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<sup>5</sup> s28d Northern Ireland Act 1998 (as amended by the Northern Ireland (St Andrews Agreement) Act 2006).

<sup>6</sup> UK Third Monitoring Report, paragraphs 16 and 57.

<sup>7</sup> CAJ correspondence to *Foras na Gaeilge* 2 April 2013.

<sup>8</sup> Irish treaty series 2000 no 28, UK treaty no 51(2000) cm 4706.

<sup>9</sup> ECRML Article 7(1)(c).

<sup>10</sup> Article 7(4).

The Advisory Committee is concerned by plans that have been under preparation since 2009 by the North South Ministerial Council relating to Northern Ireland to reconfigure core support for activities aimed at preserving and promoting the Irish language and culture, including funds distributed so far through the Irish Language Agency (*Foras na Gaeilge*)<sup>11</sup>

10. The FCNM Advisory Committee, in addition to calling for careful evaluation of budgetary cuts on the preservation and promotion of minority languages in close cooperation with representatives of groups concerned, also called for the development and implementation, based on adequate needs analysis, of measures to promote Irish. This is in the context of one of only three “issues for immediate action” the FCNM Committee advocated being to:

Develop comprehensive legislation on the Irish language in Northern Ireland and take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.<sup>12</sup>

11. CAJ advised that it would seem in conflict with the Advisory Committees’ recommendations to move forward and implement regardless the funding model it has already criticised, in particular in advance of the legislation and strategy for the Irish language committed to under the (UK-Ireland) St Andrews Agreement 2006 having been put in place. CAJ understands at the time of writing there is yet to be implementation of any new funding model.

### **Northern Ireland Tourist Board signage funding policy**

12. The Northern Ireland Tourist Board is the public authority in Northern Ireland who provide public monies to the owners of visitor attractions (buildings, historical sites, walking trails etc) to erect signage and ‘interpretation panels’ (i.e. information boards giving members of public detail about the visitor attraction). In response to projects wishing for signage to be bilingual (often from local authorities in pursuance of Irish-English bilingual policies they have adopted further to the Charter) the Tourist Board has however added an unwritten condition to its funding criteria that signs be in English only. The sole exception is when a visitor attraction is known in Irish (e.g. *Culturlánn*).
13. CAJ regards this condition as discriminatory on grounds of language as well as not meeting the requirements of legal certainty when rights are engaged under the European Convention on Human Rights. CAJ also views the ‘policy approach’ as incompatible with the duties under the Charter to end unjustified

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<sup>11</sup> Advisory Committee on the Framework Convention for National Minorities, Third Opinion on the UK, June 2011, ACFC/OP/III(2011)006 Paragraph 77.

<sup>12</sup> As above page 42.

distinctions, take resolute action to promote Irish and to encourage or allow the original forms of place names in Irish.

14. The Tourist Board is a government agency under the Northern Ireland tourism ministry (The Department of Enterprise, Trade and Investment – hereafter the Ministry). The Board is a public body in its own right and is bound to operate within the law, including international treaty commitments such as the Charter.
15. The impact of the policy has been highlighted on the investigative journalist website *The Detail*,<sup>13</sup> and Irish language site *Meon Eile*.<sup>14</sup> As reported in *The Detail* the issue recently came to prominence when a local authority, Down District Council, seeking funding for six new signage projects including a walking trail, agreed to an English-only condition ‘under duress’ to secure the release of over 200,000 Euro of funding from the Tourist Board. Later denials by the Minister in response to a question in the Northern Ireland Assembly that the Tourist Board had refused to provide multilingual signage for the project has prompted the Council to reopen the issue.<sup>15</sup>
16. The Tourist Board has tried to justify the policy arguing that bilingual signs would not improve the ‘visitor experience’ or even that bilingual signs would be a road safety hazard. The main reason for the ban on Irish however would appear to be political.
17. Information released to CAJ, after considerable delay, by the Tourist Board under the Freedom of Information Act 2000 shines some light on the origins and extent of the Tourist Board policy and the engagement with its parent Ministry. E-mails from late 2010 on outline the ‘policy approach’ of only permitting funding for monolingual tourist signage. Tourist Board documents also confirm this policy also applies to interpretation panels. It appears the policy criterion was only added *in response* to a funding applicant (likely to be a local Council with an English-Irish bilingualism policy), in the Tourist Board’s words, ‘unilateral deciding’ its signs for a walking trail would be bilingual.<sup>16</sup>
18. In response to a Tourist Board e-mail outlining its monolingualism policy the Ministry, on the 11 January 2011, ‘instructs’ the Tourist Board to ‘adhere to the policy’ and that it ‘should not consider funding bilingual signage outside of it’.<sup>17</sup> It was after this on the 26 January 2011, the Tourist Board’s own Board endorsed the policy ‘approach’. An official paper records that the Tourist Board ‘has informed [Down and Newry and Mourne] Councils that funding for

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<sup>13</sup> <http://www.thedetail.tv/issues/170/bilingual-signs/why-is-irish-being-banned-from-tourism-signs-here--2> [May 2013]

<sup>14</sup> <http://www.meoneile.ie/ailt/c%C3%A9n-f%C3%A1th-a-bhfuil-cosc-ar-an-ghaeilge-ar-chomhartha%C3%AD-turas%C3%B3ireachta-anseo> [May 2013]

<sup>15</sup> Northern Ireland Assembly Official Record, AQW 19980/11-15.

<sup>16</sup> E-mail string between Tourist Board (NITB) and Ministry (DETI) ending 11 January 2013.

<sup>17</sup> As above, policy also outlined in Tourist Board correspondence on Down District Council signage 17 January 2011.

the interpretation at each site is dependent upon their agreement to this approach.<sup>18</sup> Tourist Board documents also allege that the Ministry subsequently advised the Tourist Board to: ‘Do not formalise a policy, but stand over the current approach’. There is dispute between the two bodies as to who is liable for the policy.<sup>19</sup>

19. CAJ has appealed a decision by the Tourist Board to withhold five documents (largely Ministerial memos and correspondence) and on a number of redactions to the information provided. Copies of relevant information released under freedom of information and referred to above are provided as an appendix to this submission.

**The Committee may wish to provide its own assessment as to whether the Tourist Board’s policy constitutes an unjustified distinction under Article 7(2) of the Charter.**

### **Misapplication of duties to promote good (community) relations: impact on Irish language initiatives in pursuance of the Charter**

20. In addition to the obligations under the Charter, under Section 75 of the Northern Ireland Act 1998 there are duties to promote equality of opportunity on nine grounds (not including language) as well as ‘good relations’ between ethnic groups, including the two main communities in Northern Ireland (often characterised under indicators of religion – Protestant / Catholic- or ‘political opinion’– (British) unionist/(Irish) nationalist). Under the duties when introducing or amending policies public authorities can be required to undertake an ‘Equality Impact Assessment’ of the policy whereby they assess whether any proposed policy would have an ‘adverse impact’ (i.e. be discriminatory, even if not reaching threshold of unlawfulness) on equality (or

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<sup>18</sup> Tourist Board Paper to Board Meeting , 26th January 2011, on Bi-lingual Signage;

<sup>19</sup> In correspondence between the Tourist Board and Ministry of the 17 and 22 October. This highlights a different take from the two public bodies on the status of Ministerial representations and role of the Minister. In response to a letter from CAJ challenging the lawfulness of the policy the Tourist Board wrote to the ministry describing what it received from them on 11 January 2011 as a ‘Ministerial Direction’ and the ministry correspondence on not formalising a policy as a ‘Departmental Direction’. *The Detail* reports that “Ministerial directions are always written and are requested by the most senior civil servant in a department when they disagree with a minister’s decision so strongly that they refuse to be accountable for it. Such ministerial orders are rare and signify an irresolvable dispute between a minister and his or her most senior civil servant.” Notably the response from the Ministry to the Tourist Board concedes that the Department gave ‘advice’ but denies either were formal ‘Directions’.

good relations) grounds. If so there can be obligations to consider alternative policies and/or mitigating measures.<sup>20</sup>

21. In the UK unincorporated treaties do not form direct part of domestic law, but it has been established as a principle of legal policy that, where possible, legislation should be interpreted compatibly with international obligations.<sup>21</sup> It therefore follows that both the Section 75 duties and indeed workplace anti-discrimination legislation should be interpreted compatibly with treaty commitments, including those contained in the Charter.
22. In its previous monitoring report COMEX raised reports whereby Irish language initiatives had not been preceded with due to concerns they may contravene Section 75. The Committee advised that special measures which are compatible with the Charter are NOT to be considered discriminatory (i.e. an 'adverse impact' in Section 75 terms):

The Committee of Experts has been informed about several instances, especially within local councils, where it was decided not to promote or use the Irish language as it may contravene section 75 of the Northern Ireland Act... The Committee of Experts emphasises that the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not to be considered an act of discrimination against the users of more widely used languages.<sup>22</sup>

23. The Advisory Committee Framework Convention for National Minorities (FCNM) has also made similar observations:

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... It also reiterates that [...] implementation of minority rights protected under the Framework Convention are not be considered as discriminating against other persons.<sup>23</sup>

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<sup>20</sup> Under the Northern Ireland Act 1998 the impact assessment obligations and consequent duties to consider alternative policies and mitigating measures are on grounds of 'equality of opportunity' only. However the Equality Commission currently recommends such impact assessments are also undertaken on grounds of 'good relations'.

<sup>21</sup> *R v Lyons* [2002] UKHL 44 §27 (Lord Hoffman) See also: *A v Secretary of State for the Home Department (No.2)* [2005] UKHL 71, [2006] 2 AC 221 at §27 (Lord Bingham); *R v Secretary of State for the Home Department, Ex p Brind* [1991] 1 AC 696, 747.

<sup>22</sup> UK Third Monitoring report, paragraph 123.

<sup>23</sup> 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), paragraph 28,.

24. The Advisory Committee further held that “It is regrettable that measures to promote the visibility and use of this language have often been opposed with the justification that they constitute discrimination against other groups of the population.”<sup>24</sup> The treaty-body directly addressed use of the ‘good relations’ duty in preventing positive action on the Irish language, singling out bilingual signage, given the specific cultural patrimony duties under the FCNM to promote place names in their original languages:

The Advisory Committee has been informed that, in some instances, the need for keeping good relations has been used as justification for not implementing provisions in favour of persons belonging to minorities, such as the erection of bilingual signs.... Additionally, it finds it problematic that the official policy is to limit the erection of such signs to certain areas where the issue would not raise controversies. The Advisory Committee is concerned that this approach is not in line with the spirit of the Framework Convention ... the aim of which is to value the use of minority languages... with a view to promoting more tolerance and intercultural dialogue in society.<sup>25</sup>

25. CAJ has conducted research, shortly to be published, into the interpretation of the section 75 duties on a number of policy areas – including Irish language policy. We have identified patterns of measures for Irish, such as bilingual (English-Irish) logos, being characterised as an ‘adverse impact’ on good relations grounds and which has then prompted alternative policies to be pursued. The reason given for the alleged ‘adverse impact’ is often no more than fewer persons from the Protestant/unionist community are likely to speak Irish than those from the Catholic/nationalist community. The context of such decisions is also one of political opposition to the Irish language and hence the matter being seen as detrimental to community relations.
26. The national equality body – the Equality Commission for Northern Ireland, although it has no competency in language matters does have a statutory advisory role in relation to the Section 75 good relations duties. It is of concern that the Commission itself in a number of pieces of formal advice to public authorities has endorsed the view that policy to promote Irish (e.g. through bilingual logos) constitutes an ‘adverse impact’ which then requires alternative policies or mitigating measures to be pursued.
27. In its previous submission to COMEX the umbrella NGO for the Irish language POBAL raised concerns about the Equality Commission’s interpretation of ‘good relations’ in advice on Irish language policy and urged the Commission to undertake a ‘comprehensive review’ of the section 75 advice it offers to public authorities on Irish:

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<sup>24</sup> As above, paragraph 21.

<sup>25</sup> As above paragraphs 126 and 158.,  
2nd Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Generally, Irish speakers believe that the Irish language should be available to all. However, since demographically, Irish speakers tend to belong to the Catholic community, and since Irish is not taught in Protestant schools in the north [of Ireland], Section 75 is being widely interpreted to mean that provision for Irish speakers constitutes discrimination against Protestants. (Irish speakers reject this interpretation, and also note that paradoxically, the failure to provide services for Irish speakers does not appear to be interpreted as discrimination against Catholics.) This confusion at a policy level impact upon practice and compounds the tendency to refer issues pertaining to the Irish language through ‘Good Relations’ departments and units, thus defining the language in a context which may tend to encourage either the vetoing of provision for Irish on the grounds that it might be ‘divisive’ or to set it in the context of a quid-pro-quo approach.<sup>26</sup>

28. One example of Equality Commission policy is a submission to Limavady Council on a proposed extension of the council’s English-Irish bilingual logo.<sup>27</sup> This submission, save a passing reference misquoting its name, is not grounded in interpreting the legislation in accordance with the framework the Charter. Rather the Commission cites that the Equality Impact Assessment (EQIA) concludes that there ‘may’ be adverse impacts on persons from a Protestant / unionist background given personal beliefs regarding the Irish language. In effect the Equality Commission goes on to endorse rather than challenge the view that the policy does constitute an ‘adverse impact’. Beyond reiterating data in the EQIA that more Irish speakers fall into the Catholic, nationalist and young categories, no evidence is presented as to how the threshold of ‘adverse impact’ has been determined. Having endorsed the notion of ‘adverse impact’ the submission then accordingly contains specific focus on mitigating measures, considering alternative policies and stating that a system ‘must’ be established to monitor the impact of the policies. Such measures are only to be considered under the legislation if a policy actually constitutes discriminatory detriment (an ‘adverse impact’).
29. In relation to measures for both Irish and Ulster Scots being tailored for the specific circumstances of each, as recommended by COMEX and the Northern Ireland Human Rights Commission, a different position is taken in some Equality Commission EQIA advice. In EQIA advice to Derry City Council the ECNI essentially endorses a parity

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<sup>26</sup> An Chairt Eorpach do Theangacha Réigiúnacha nó Mionlaigh Feidhmiú na Cairte i leith na Gaeilge 2005-08, Pobal 2009, Paragraphs 4.4 and 5.05.

<sup>27</sup> Equality Commission, 3 April 2009. ‘Equality Impact Assessment: Extension of the [Limavady] Council’s Bilingual Logo’.  
2nd Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – info@caj.org.uk  
Web – www.caj.org.uk

approach between Irish and Ulster-Scots in expressing concern and questioning differential treatment for Ulster-Scots in relation to Irish, recommending the Council provide a detailed rationale for this and “consider the relevance of the good relations duty to the differential provision for Ulster-Scots”.<sup>28</sup>

30. An Equality Commission response to the roads ministry (DRD) in 2010 in relation to proposals for bilingual traffic signs does make reference to relevant international duties on minority language rights, including the Charter. However, the framework provided by such instruments is not reflected in the practical advice given. Firstly there is little to no practical congruence given in the advice to the rights of the Irish speaking minority. Instead the only practical reference to minority rights is in effect when the Equality Commission urges the ministry to ‘fully consider’ that, in relation to road signs inclusive of the Irish language, there might be ‘chill factors’ within district council areas where unionists are minority and introduce measures to mitigate against this as an ‘adverse impact’. The Equality Commission goes as far as urging ‘screening’ (i.e. a policy appraisal exercise to assess equality and good relations impacts) of each and every decision to put up an individual bilingual sign.<sup>29</sup> Ultimately this policy to erect bilingual road traffic signs was not proceeded with.

In light of the above the Committee wish to call on:

- **The Department of Culture, Arts and Leisure (DCAL) to revise its guidance on the Charter to deal directly with the good relations duty and make clear special measures for Irish consistent with the Charter are not to be considered as discriminatory;**
- **The Equality Commission for Northern Ireland to review its advice to public authorities on ‘good relations’ when it engages matters protected by the Charter.**

**May 2013**

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<sup>28</sup> Equality Commission, 2008, ‘Response to EQIA by Derry City Council on Proposed Ulster Scots Policy’, paras.5.3-4,6.7.

<sup>29</sup> ECNI advice to the Department for Regional Development (DRD), consultation on bilingual traffic signs 2010, paragraph 13, 14 and 24.