

PROTECTION OF MINORITY LANGUAGES IN THE PUBLIC ADMINISTRATION OF NORTHERN IRELAND: IRISH AND ULSTER SCOTS LINGUISTIC LEGISLATION. WHICH AND WHEN?¹

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Abstract

The use of minority languages in the public administration has a high symbolic value, and can therefore promote the status of such languages. This article focuses on analyzing the use of minority languages in the public administration of Northern Ireland with a brief history of the role these languages have played in this country and reference to their demographic situation (2001 and 2011 censuses) before turning to international commitments and legislation, the implementation of legislation (as determined primarily through state reporting in relation to relevant international obligations) and proposals for future legislation regarding the protection of Irish and Ulster Scots in Northern Ireland.

The Irish language is a Celtic language which has historically been spoken in Ireland. It is considered by many people of Northern Ireland a very important part of their cultural heritage. According to the 2001 census, Irish is spoken by 10.4% of the population of Northern Ireland and it was estimated (in the 2001 census there were no questions on Ulster Scots, these were only introduced for the first time in the 2011 census) that Ulster Scots, the other language spoken in Northern Ireland other than English and Irish, was spoken by around 2% of the population. Indeed, according to the 2011 census, the number of people with some ability in Irish and Ulster Scots is similar, 8.08% of the population of Northern Ireland has some ability in Ulster Scots and 10.65% has some ability in Irish. Surprisingly there is not a huge difference between the two percentages.

The Northern Ireland Act 1998 gave the Northern Ireland Assembly significant legislative powers in most policy areas that are relevant to the protection of Irish and Ulster Scots. Generally, however, this power has not been used, largely due to the highly contested nature of language in Northern Ireland, and the stalemate between Nationalist parties, who are broadly supportive of taking legislative action to protect Irish, and the Unionist parties, which oppose such measures, and invoke the protection of Ulster Scots. Northern Irish society is divided, and there are stereotypes which deprive the country of its linguistic heritage. This article focuses especially on the use of Irish and Ulster Scots in the Public Administration of Northern Ireland.

Key words: Irish; Ulster Scots; Public Administration; Language Rights; Devolution; Legislation; Strategy; Religion.

LA PROTECCIÓ DE LES LLENGÜES MINORITÀRIES A L'ADMINISTRACIÓ PÚBLICA D'IRLANDA DEL NORD: LA LEGISLACIÓ LINGÜÍSTICA A FAVOR DE L'IRLANDÈS I DE L'ESCOCÈS DE L'ULSTER. QUINES LLENGÜES SÓN LES PROTEGIDES? QUAN SERAN PROTEGIDES?

Resum

L'ús de llengües minoritàries a l'Administració pública té un alt valor simbòlic i, per tant, això pot facilitar que l'estatus dels idiomes afectats millori. Aquest article se centra en l'anàlisi de l'ús de les llengües minoritàries a l'Administració pública d'Irlanda del Nord. Inclou una breu història del paper que han exercit aquests idiomes al país i un examen de la seva situació demogràfica (els censos de 2001 i 2011), abans d'abordar els compromisos i la legislació internacionals, la posada en marxa de la legislació (determinada principalment pels informes estatals sobre les obligacions internacionals pertinents) i les propostes d'una futura legislació respecte de la protecció de l'irlandès i de l'escocès de l'Ulster a Irlanda del Nord.

L'idioma irlandès és una llengua celta que històricament s'ha parlat a Irlanda. Moltes persones a Irlanda del Nord la consideren una part molt important del seu patrimoni cultural. Segons el cens de 2001, l'irlandès el parla el 10,4% de la població d'Irlanda del Nord i es va calcular (al cens de 2001 no hi havia preguntes sobre l'escocès de l'Ulster, que van ser introduïdes per primera vegada al cens de 2011) que l'escocès de l'Ulster, l'altre idioma parlat a Irlanda del Nord, a part de l'anglès i de l'irlandès, el parlava un 2% de la població. De fet, segons el cens de 2011, el nombre de persones amb algun coneixement d'irlandès i d'escocès de l'Ulster és semblant. Un 8,08% de la població d'Irlanda del Nord es pot comunicar en l'escocès de l'Ulster i el 10,65% té coneixements d'irlandès. És sorprenent que no hi hagi una enorme diferència entre els dos percentatges.

La Llei d'Irlanda del Nord de 1998 va atorgar a l'Assemblea d'Irlanda del Nord unes competències legislatives per a la majoria de les polítiques que són pertinents per a la protecció de l'irlandès i de l'escocès de l'Ulster. No obstant això, parlant a grans trets, aquestes competències no s'han fet valer, per culpa, en gran part, de la naturalesa altament discutida de la llengua a Irlanda del Nord, i al punt mort al qual s'ha arribat entre els partits nacionalistes, que dispensen un ampli suport a les accions legislatives encaminades a protegir l'irlandès, i als partits unionistes, que s'oposen a aquestes mesures i invoquen la protecció de l'escocès de l'Ulster. La societat nord-irlandesa està dividida. I hi ha estereotips que no han permès gaudir de l'herència lingüística d'Irlanda del Nord. Aquest article se centra, doncs, especialment, en l'ús de l'irlandès i de l'escocès de l'Ulster a l'Administració pública d'Irlanda del Nord.

Paraules clau: irlandès; escocès de l'Ulster; Administració pública; drets lingüístics; transferència de competències; legislació; estratègia; religió.

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1 Introduction

At the end of the 20th century and in these fourteen years of the 21st century there has been an ethnic revival in Europe. Lesser used languages gained momentum in the European scenario, after having been maltreated for such a long time and sometimes not considered languages but only dialects of the majority languages. Some of these languages/dialects did not receive recognition despite the high number of speakers and the most problematic sector is the public administration. Use of minority languages in the public administration has a high symbolic value, and can therefore promote the status of such languages.

Public administration is arguably one of the most important areas through which a state can affect the vitality of a minority language community. The use of such a language in the public administration can have a significant symbolic value; it has the potential, for example, to raise the visibility of the language quite considerably, thereby enhancing its prestige. The public administration also plays an important functional role in enhancing the position of a minority language. The use of minority languages in the public administration both creates many additional opportunities for speakers to use the language in their daily lives, and it ensures that the public administration provides a range of minority language services which enhance the perception of the usefulness of the language. This, in turn creates incentives for citizens to learn the minority language.

At the same time, the public administration can sometimes be the most challenging and problematic domain for the use of minority languages. First, the introduction of the language into the public administration has implications for ‘corpus planning’, or the development of the linguistic resources of the language. When it is used in the public administration a technical administrative vocabulary must be developed in order for the language to be used, for example, on bilingual forms. Staff with sufficient language skills to provide minority language services to the public must be recruited. This presents challenges, as the labour pool with the requisite skills may be quite limited in size. Financial resources are necessary in order to afford these activities. Ensuring the presence of a minority language in the public administration often also requires legislative protection, and the implementation of such legislation often faces a number of difficulties.

After the Second World War, many European states sought to build or rebuild a unified, modern nation-state, a “nation”. One consequence was that lesser used languages tended to be neglected, and in some cases they suffered from the perception that they might present a challenge to the unity of the state. Only at the end of the last century (20th) did linguistic rights gain greater consideration within international institutions, in part due to greater levels of attention to linguistic issues in particular and ethnic issues more generally in the wake of the collapse of communism.

International Instruments of the EC/EU and the EC/EU Treaties themselves contain generic provisions with respect to the protection of minority languages; however, these are of only limited relevance to linguistic minorities, although they might prove to be of some use if they were given a broader interpretation than a literal one². Council of Europe Treaties are more specific and the European Charter for Regional or Minority Languages in particular contains very detailed provisions regarding the use of minority languages within the public administration. The regular monitoring rounds of bodies such as the Committee of Experts under the European Charter for Regional or Minority Languages also provide researchers with considerable information about implementation and a framework through which implementation can be scrutinised on an ongoing basis.

In the UK, until recently, the state language policy, has been directed at promoting the acquisition of English; this sometimes leads to assimilation instead of integration.

Great Britain is the home of English but there are also other languages spoken there, including autochthonous languages, such as the Celtic languages (for example Welsh, Scottish Gaelic, Irish and Cornish) and Germanic languages (for example Scots and Ulster Scots). English is the language which is most closely associated with the process of globalisation³.

2 A. VACCA, «A comparative approach between the Council of Europe Treaties and the European Union framework in the legal protection of minority languages» (2010) *Revista de Llengua i Dret*, 53, p. 111.

3 A. VACCA, «Protection of Minority Languages in the UK Public Administration: a comparative study of Wales and Scotland» (2013), *Revista de Llengua i Dret*, 60, p. 50.

The law took a long time to respond to the linguistic diversity which exists in the UK, and even then legislation was not systematic and guided by clear and consistent principles but was *ad hoc*, and created in order to answer contingent political demands⁴. Historically, the policies of the British Government have promoted monolingualism, and English was the only language of public life. The consequence was the marginalization of the other languages⁵.

An important step for the protection of minority languages in UK was the signature and ratification of the European Charter for Regional or Minority Languages (ECRML) in 2001. The United Kingdom signed the European Charter for Regional or Minority Languages on 2 March and ratified it on 27 March 2001. It entered into force on 1 July 2001. There is a significant variation in the extent of the commitments made by the UK regarding the minority languages under the ECRML. Scots, Ulster Scots⁶, Cornish and Manx have been designated under Part II of the ECRML only, while Welsh, Scottish Gaelic and Irish have also been designated under Part III⁷. The UK has bound itself to 52 paragraphs or sub-paragraphs with regard to Welsh as opposed to 39 for Gaelic and only 36 for Irish⁸. Under domestic UK law, international treaty commitments such as those under the ECRML do not automatically become part of domestic UK law, but must be incorporated through further domestic legislation⁹.

The UK's approach to minority language policy is variegated and amorphous. This variegation has increased following legislative devolution which has changed the situation and focused greater attention on issues that could be considered to be 'local' to the devolved jurisdictions, including language issues¹⁰.

This article focuses on analyzing the use of minority languages in the public administration of Northern Ireland with a brief history of the role these languages have played in this country and reference to their demographic situation (2001 census and 2011 census) before turning to international commitments and legislation, implementation of legislation (as determined primarily through state reporting in relation to relevant international obligations) and proposals for future legislation regarding the protection of Irish and Ulster Scots in Northern Ireland. These proposals of legislation have not been adopted until now for several reasons but largely due to the highly contested nature of language in Northern Ireland, and the stalemate between Nationalist parties, who are broadly supportive of taking legislative action to protect Irish, and the Unionist parties, which oppose such measures, and invoke the protection of Ulster Scots. This article has given particular attention to the use of Irish and Ulster Scots in the Public Administration of Northern Ireland.

2.1 History of the role Irish and Ulster Scots have played in Northern Ireland

The Irish language is a Celtic language which has historically been spoken in Ireland; it is closely related to

4 R. DUNBAR, 'Language Legislation and Language Rights in the United Kingdom' (2004) 2 2002/2003 European Yearbook of Minority Issues 95; W Mc LEOD, 'An Opportunity Avoided? The European Charter for Regional or Minority Languages and UK Language Policy' in R DUNBAR, G PARRY and S KLINGE (eds), *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Council of Europe Publishing 2008), 201.

5 A. VACCA, "Protection of Minority Languages in the UK Public Administration: a comparative study of Wales and Scotland" (2013) *Revista de Llengua i Dret* 60, 50.

6 R. DUNBAR, 'Implications of the European Charter for Regional or Minority Languages for British Linguistic Minorities' (2000) 25 *European Law Review*, 56 "(t)he position of Scots and Ulster Scots under the Charter is less clear because of their closeness to English".

7 J. M. WOEHLING, *The European Charter for Regional or Minority Languages, A Critical Commentary* (Council of Europe Publishing 2005), 29. Regarding the difference between Part II and Part III ECRML and the common aims "... in Part II those aims are expressed in general terms, whereas in Part III they are embodied in more concrete measures among which states may choose in order to promote regional or minority languages. The general principles set out in Part II are valid for all languages and for all states. Part III of the Charter offers an array of measures to meet different language circumstances, and states can choose from among them".

8 W. Mc. LEOD, 'An Opportunity Avoided? The European Charter for Regional or Minority Languages and UK Language Policy' in R DUNBAR, G PARRY and S KLINGE (eds), *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Council of Europe Publishing 2008), 201 'The UK's approach to the ECRML has been incoherent, that its decisions have been *ad hoc* and not based on systematic thinking, that policy-makers have generally given little attention to the ECRML, and the Charter has had relatively little impact on the shaping of language policy decisions and on actual provisions for the UK's minority languages. This approach from the UK authorities is better understood as being purposive rather than negligent'.

9 A. VACCA, "Protection of Minority Languages in the UK Public Administration: a comparative study of Wales and Scotland" (2013) *Revista de Llengua i Dret* 60, 50.

10 J WALSH and W McLEOD, 'An Overcoat Wrapped around an Invisible Man? Language Legislation and Language Revitalization in Ireland and Scotland' (2008) 7:21-46 *Language Policy* 22.

Scottish Gaelic and to Manx. It is considered by many people of Northern Ireland a very important part of their cultural heritage¹¹.

The Irish language was the most widely spoken language on the island of Ireland until the 19th century¹². Anglicising tendencies began under the reign of Henry VIII. Integration into the United Kingdom was accomplished solely through the medium of English; Irish became the language associated with the rural peasant population. Its decline was considerably enhanced by the introduction of publicly-funded education in the nineteenth century¹³ from which Irish was effectively excluded, and by the Great Famine of the 1840s which resulted in the death or emigration of huge numbers of Irish speakers. Indeed, the Great Famine of the 1840s struck the predominantly Irish-speaking population of the west of Ireland particularly hard, and enhanced the trend towards anglicisation even amongst the peasantry¹⁴.

In 1921 the island was divided into the Republic of Ireland, independent from the UK, and Northern Ireland. In the Republic of Ireland, significant steps have been taken since independence to support the Irish language, and Irish is recognised in the Constitution of the Republic as both the national and the first official language. In Northern Ireland, by contrast, Irish was considered with suspicion by Unionists who have associated it with Catholicism and with the republican movement¹⁵. Irish was not taught in Protestant schools and was effectively banned from the public life: from 1921 until 1972, the Northern Ireland Parliament, the devolved legislature for Northern Ireland, was controlled by the Ulster Unionist Party which opposed any provision for Irish and a similar policy persisted from 1972 until further devolution in 1998, during which time responsibility for Northern Ireland was solely in the hands of the Westminster Parliament. In the twentieth century the language was only spoken in limited areas. Native speakers within Northern Ireland had mostly disappeared but Irish continued to be taught in Catholic schools and, in the 1960s, some concentrations of adult learners—most notably in West Belfast—began to emerge¹⁶.

From the creation of Northern Ireland as a political jurisdiction in 1921 until 1998, little support was given to Irish and virtually none was given to Ulster Scots. Irish was taught in Catholic schools; in the early 1970s, Irish-medium schools began to be established without any financial support from the state and, in the 1980s, these began to receive some state support. In 1989 the ULTACH Trust¹⁷ was created, aimed to promote Irish as a means of fostering cross-community (Protestant-Catholic) understanding.

According to the 2001 census, Irish is spoken by 10.4% of the population¹⁸ (167,490 speakers¹⁹, most of whom are Catholics). In 1991 there were 142,000 Irish speakers, according to the 1991 census²⁰; thus, the number of speakers has increased in ten years. Irish is also spoken in the neighbouring Republic of Ireland where it is recognized as the first official and national language of the state, according to the Irish Constitution, and benefits from supporting legislation. There are effectively no monolingual speakers of the Celtic languages, and virtually all are fully fluent in English.

The Scots language was brought to Ireland in the seventeenth century. It was estimated that Ulster Scots was spoken by 2%²¹ of the population, most of whom were Protestants (in the 2001 census there were no

11 E. CRAIG, "Irish Language education and the Council of Europe's minority treaties: the monitoring of developments in Northern Ireland" (2007), 58 (2) Northern Ireland Legal Quarterly, 121.

12 <http://www.irishlanguage.net/irish/history.asp>.

13 See about this topic K. MAC KINNON, *Gaelic: A Past and Future Prospect*, (Saltire Society 1991), ch 5; J DAVIES, *The Welsh Language*, (University of Wales Press Western Mail 1999) 53-104. State education, introduced throughout the United Kingdom in the 1870s, created powerful assimilationist tendencies. No instruction through any language other than English was provided for, with the result that students with no knowledge of English were educated only in English.

14 P. Ó RIAGÁIN, 'Irish', in D BRITAIN (ed), *Language in the British Isles*, (Cambridge University Press, 2007), 219-220.

15 <http://www.irishlanguage.net/irish/history.asp>.

16 T. O' HIFERNAIN, 'Irish' in A. O'CORRAIN and S. MACMATHÚNA (eds), *Minority Languages in Scandinavia, Britain and Ireland*, (AUU Studia Celtica Upsaliensia 1998) 200.

17 <http://www.ultach.org/>.

18 <http://www.ultach.dsl.pipex.com/ForLearners/faqs.htm>.

19 http://www.nisra.gov.uk/Census/pdf/standard_tables_section5.pdf.

20 <http://www.reference-global.com/doi/abs/10.1515/9783110245219.118>.

21 In 1999 findings from the Northern Ireland Life and Times Survey reported that 2% of the population was able to speak Ulster Scots.

questions on this language, the same also went for the Continuous Household Survey prior to 2011/12 CHS²²; this estimate (2%) came from the “Northern Ireland Life and Times Survey”²³). As the Protestant community still forms a majority in Northern Ireland, it appeared that a very small percentage of that community have any competence in the Ulster Scots language. In 2007 there was another survey, 4% of the respondents to the Northern Ireland Omnibus survey declared that they had knowledge of Ulster Scots²⁴. The percentages for Ulster Scots speakers are surprisingly different²⁵, according to the 2011 census, which introduced for the first time questions on Ulster Scots: 8.08% of the population of Northern Ireland has some ability in Ulster Scots and 10.65% has some ability in Irish²⁶. Consequently the percentages of speakers of Irish and Ulster Scots are quite similar.

According to the findings from the Continuous Household Survey 2011/12 (knowledge and use of Irish in Northern Ireland) 13% of the population has some knowledge of Irish, 11% can understand spoken Irish, while just 8% can speak, 6% can read and 5% can write it. Some 18% of the population are interested in learning the Irish language. The proportion of Catholics who have knowledge of Irish is 29%, whereas, among Protestants it is just 2%²⁷. The figures of the 2011 Census are slightly different since Census figures relate to those aged 3 and over, while the Continuous Household Survey (CHS) relates to those aged 16 and over. Consequently the 2011 Census found that 11% of the population aged 3 and over have some ability to understand, speak, read or write Irish, while the percentage is 13% for CHS²⁸.

According to the findings from the Continuous Household Survey 2011/12 (knowledge and use of Ulster Scots in Northern Ireland) 15% of the population has some knowledge of Ulster Scots, 14% can understand spoken Ulster Scots while 4% can speak Ulster Scots, 4% can read and 1% can write it. Some 10% of the population are interested in learning more about Ulster Scots. The proportion of Protestants who have knowledge of Ulster Scots is 21%, whereas, among Catholics it is just 8%²⁹. The figures of the 2011 Census are slightly different since Census figures relate to those aged 3 and over, while the Continuous Household Survey (CHS) relates to those aged 16 and over. Consequently the 2011 Census found that 8% of the population aged 3 and over have some ability to understand, speak, read or write Ulster Scots, while the percentage is 15% for CHS³⁰. The lower figures reported by the 2011 Census are related to the fact that it includes responses from those aged 3 and the over. It seems that younger people have less knowledge of Irish and Ulster Scots than older people. The difference between percentages of 2011/12 CHS and 2011 Census is more evident for Ulster Scots than for Irish. Ulster Scots has not been adequately promoted through the education system³¹ and this fact has been a limit for the intergenerational transmission. The Census figure for speaking ability in Ulster Scots was 2%, thus, it is reasonable to assume that the percentage of 15% of people who have some knowledge of Ulster Scots also included those who know just single words.

In 2011 for the first time the Northern Ireland Census included a question on Ulster Scots, however, the impression is that Ulster Scots, which is not transmitted through the school system, is not growing. On the

22 http://www.dcalni.gov.uk/ulster_scots_chs_2011-12_bulletin.pdf, 17.

23 <http://www.ark.ac.uk/nilt/>

24 http://www.dcalni.gov.uk/ulster_scots_chs_2011-12_bulletin.pdf, 17.

25 The figures are different because the questions asked on each occasion were entirely different, for example, the 2007 Omnibus survey asked which language of a list of 26 languages, including Ulster Scots, respondents had knowledge of.

26 http://www.nisra.gov.uk/Census/key_report_2011.pdf; http://www.nisra.gov.uk/Census/key_stats_bulletin_2011.pdf :“Respondents to the 2011 census were asked to indicate their ability to speak, read, write or understand Irish, and, for the first time, Ulster Scots. Among usual residents aged 3 years and over, 11 per cent had some ability in Irish (compared with 10 per cent in 2001), while 8.1 per cent of people had some ability in Ulster Scots. The proportion of people aged 3 years and over who could speak, read, write and understand Irish (3.7 per cent) was higher than that for Ulster Scots 0.9 per cent). Broadly similar proportions said they could understand but not speak, read or write Irish (4.1 per cent) or Ulster Scots (5.3 per cent)”.

27 http://www.dcalni.gov.uk/irish_language_chs_2011-12_bulletin.pdf

28 http://www.dcalni.gov.uk/irish_language_chs_2011-12_bulletin.pdf, 15 “Level of knowledge of Irish: some ability 13% (2011/12 CHS), 11% (2011 Census), can understand only 4% (both), can understand and speak 1% (both), can understand, speak and read 1% (2011/12 CHS), 0% (2011 Census)”.

29 http://www.dcalni.gov.uk/ulster_scots_chs_2011-12_bulletin.pdf

30 http://www.dcalni.gov.uk/ulster_scots_chs_2011-12_bulletin.pdf, 15 “Level of knowledge of Irish: some ability 15% (2011/12 CHS), 8% (2011 Census), can understand only 9% (2011/12 CHS), 5 (2011 Census), can understand and speak 2% (2011/12 CHS), 1% (2011 Census), can understand, speak and read 1% (2011/12 CHS), 0% (2011 Census)”.

31 http://www.scotslanguage.com/Ulster_Scots_in_the_Northern_Ireland_Census.

other hand, Irish is slowly growing, even if it is not growing as expected. There is a similarity: Irish and Ulster Scots have a greater presence in rural areas; the reason is that Ulster Scots is a rural tongue, while Irish is popular in rural areas most likely because there is a majority of Catholics. Northern Ireland's society is divided, there are stereotypes which do not allow for the fulfilment of the linguistic heritage of Northern Ireland³²: Irish speakers are considered Catholic, Nationalist and linked to the Republic of Ireland, whereas, Ulster Scots speakers are considered Protestants and Unionist. Political issues influenced cultural issues jeopardizing the safeguard of Northern Ireland linguistic patrimony.

There are likely to be considerable numbers of speakers of Celtic languages and Ulster Scots or Scots who have moved to England and other parts of the UK outside of the territory with which the languages are associated; however, protection does not extend beyond these jurisdictions.

Ulster Scots in Northern Ireland, as with Scots in Scotland, has received even less protection. For both Irish and Ulster Scots, no provision was made for their use in the public administration, or for most official purposes. There have been improvements for both languages since 1998 thanks, in part, to the Belfast Agreement of Good Friday in 1998 between the Irish and British Governments, the reinstatement of devolved government in Northern Ireland in that same year and as a result of subsequent agreements between the British and Irish governments³³.

The Northern Ireland Act 1998³⁴ gave the Northern Ireland Assembly³⁵ significant legislative powers in most policy areas that are relevant to the protection of Irish and Ulster Scots. Generally, however, this power has not been used, largely due to the highly contested nature of language in Northern Ireland, and the stalemate between Nationalist parties, who are broadly supportive of taking legislative action to protect Irish, and the Unionist parties, which oppose such measures, and invoke the protection of Ulster Scots, a language most associated with rural Unionist communities, in response³⁶.

2.2 Northern Ireland Act 1998, Belfast Agreement 1998

In 1998 the Westminster Parliament adopted the Northern Ireland Act³⁷ in order to restore devolved government in Northern Ireland through the establishment of a Northern Ireland Assembly. Although the legislation said relatively little about language issues, it did lead to the creation of a number of cross-border (i.e. UK-Irish) bodies. This included the North-South Language Body, which was established in 1999 by the North/South Cooperation (Implementation Bodies) (Northern Ireland) Order 1999³⁸, and which is a body with two separate agencies (*Foras na Gaeilge*, the Irish Language Agency, which is responsible for the promotion of the Irish language³⁹, and the *Tha Boord o Ulster-Scotch*⁴⁰, the Ulster Scots Agency, which is responsible for the protection of Ulster Scots). The purpose of this body was to protect minority languages and its creation represented an important achievement of the Government for the promotion of Irish and Ulster Scots⁴¹. However, the body has no power to ensure the greater use of either Irish or Ulster Scots in the public administration in Northern Ireland and that the situation continues whereby there is no provision for the use of either language in law or, indeed, in formal policy terms within devolved institutions. Some councils in which parties of the Nationalist/Catholic community are dominant have taken measures to support the Irish language, although even these generally do not provide many services in Irish.

32 http://www.scotslanguage.com/Ulster_Scots_in_the_Northern_Ireland_Census.

33 The Northern Ireland Act 2000 (Restoration of Devolved Government) Order 2000, Statutory Instrument 2000 No. 1445.

34 1998, c 47 <<http://www.legislation.gov.uk/ukpga/1998/47/contents>>.

35 <http://www.ni-assembly.gov.uk>.

36 H. Ó MURCHÚ, *More Facts About Irish*, (Irish Committee of the European Bureau for Lesser Used Languages, 2008), 321-326.

37 <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

38 J. LECLERC, 'Irlande du Nord' (*L'Aménagement Linguistique dans le Monde: Europe*, Université Laval 2010) <<http://www.tfq.ulaval.ca/axl/etatsnsouverains/irlandenord-lois-diverses.htm#Laccord de Belfast, 1998>>. See http://www.northsouthministerialcouncil.org/index/north-south-implementation-bodies/language_body.htm.

39 <http://www.npld.eu/aboutus/membership/pages/forasnagaeilge.aspx>.

40 <http://www.ulsterscotsagency.com/>.

41 Framework Convention, 2nd Cycle State Report UK 22-02-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 62.

The Belfast Agreement or Good Friday Agreement of 1998, between the Irish and British Governments, is an important step in the devolution and peace process in Northern Ireland. The linguistic issue in Northern Ireland was dealt with in section 6 paragraphs 3 and 4 of the Belfast Agreement⁴².

According to paragraph 3, “all participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster Scots and the languages of the various ethnic communities”. In paragraph 4, the British Government is committed to taking resolute action to promote the language, facilitate and encourage the use of the Irish language in speech and writing in public and private life where there is appropriate demand⁴³. The British Government was committed to promoting Irish in Northern Ireland where the population is keen to use it in relation to culture and the arts, education, mass media, and for public and private purposes.

2.3 St Andrews Agreement 2006

An important agreement between the British and Irish Governments was reached in St. Andrews, Scotland, in 2006 which led to the passing by the British Parliament of the Northern Ireland (St Andrews Agreement) Act 2006. The St. Andrews Agreement⁴⁴ of 13 October 2006 was reached as part of the process in the North of Ireland for the re-establishment of devolution. The devolved Northern Ireland Assembly was suspended in 2002 thus Northern Ireland was, once again and for many years, under direct rule from Westminster.

The St. Andrews Agreement 2006 states that the “[British] Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and will work with the incoming Executive to enhance and protect the development of the Irish language, heritage and culture”⁴⁵. Thus, the St. Andrews Agreement of 2006 committed the UK Government to introduce an Irish Language Act, although on the restoration of devolution on 8 May 2007 the responsibility to legislate on this topic was transferred to the Northern Ireland Assembly⁴⁶. The St Andrews Agreement states also that the UK Government firmly believes in the need to enhance and develop the Ulster Scots language⁴⁷.

Section 28D(1) (2) (3) of the Northern Ireland Act 1998⁴⁸, inserted by section 15 of the Northern Ireland (St Andrews Agreement) Act 2006, places a statutory duty on the Northern Ireland Executive to adopt a strategy to develop the Irish language and Ulster Scots language⁴⁹; thus, the Northern Ireland (St Andrews Agreement) Act 2006 amended the Northern Ireland Act 1998 in order to strengthen the Irish and Ulster Scots languages. However, the St Andrews Agreement does not mention adopting precise strategies in respect of Irish and Ulster Scots but places a duty on the Executive to adopt a strategy to enhance both languages⁵⁰.

In spite of the commitments in the St. Andrews Agreement, with the resumption of devolution in 2007, competence for regional or minority languages became the responsibility of the Northern Ireland Assembly; however, no legislation for the promotion of Irish has been adopted, apparently because there is no consensus

42 http://austenmorgan.com/Assets/PDFs/Belfast_Agreement.pdf.

43 http://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB_980410_Northern%20Ireland%20Agreement.pdf21.

44 St Andrews Agreement, Annex B, 13 October 2006, <http://www.legislation.gov.uk/ukpga/2006/53/contents> and http://www.niassembly.gov.uk/transitional/info_office/Act.pdf.

45 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement-2.pdf, 12.

46 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 16.

47 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement-2.pdf, 12.

48 J Leclerc, ‘Irlande du Nord’ (*L’Aménagement Linguistique dans le Monde: Europe*, Université Laval 2010) <<http://www.tlfg.ulaval.ca/AXL/EtatsNouveaux/irlandenord-lois-diverses.htm>>.

49 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement-2.pdf; <http://www.legislation.gov.uk/ukpga/1998/47/section/28D>.

50 St Andrews Agreement Act 2006, Ch. 53; Framework Convention, 2nd Cycle Comments UK 26-10-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_Com_UK_en.pdf>, 24. The Government made a commitment in the Northern Ireland (St Andrews Agreement) Act 2006 ‘to introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language’, Annex B, St Andrews Agreement; see Framework Convention, 2nd Cycle Opinion UK 06-06-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf>, 34.

between the Nationalist and Unionists parties in the Assembly, who share power there⁵¹.

POBAL⁵², the umbrella organisation for the Irish Language in Northern Ireland, has been calling for an Irish Language Act for Northern Ireland since 2003 and worked with international language legislation experts (Robert Dunbar, Fernand de Varennes, Colin Williams and Wilson McLeod) to develop proposals for such legislation. These proposals include significant commitments for the greatly expanded use of Irish in the public administration. The proposals were set out in a document published in 2006 under the title “The Irish Language Act NI”⁵³ and included a strong rights-based Irish Language Act⁵⁴ which would have created significant obligations in respect of the use of Irish in the public administration. POBAL has also published a Statement of Principles⁵⁵ and a Briefing Paper.

Partly in response to POBAL’s activism and partly due to the commitments in the St. Andrews Agreement, the Northern Ireland Department of Culture, Arts and Leisure held a consultation on the question of language legislation, and the responses obtained demonstrated that most of the respondents were in favour of a rights-based approach set out in legislation⁵⁶, with only a small number against giving any legislative basis for the protection of Irish⁵⁷.

In spite of this, the Department decided not to introduce legislation. A second consultation was launched by the Department in March 2007⁵⁸ and was considered by most activists as unnecessary. Since the restoration of the Irish Assembly in 2007, the promised legislation came to a standstill⁵⁹.

A legislative basis is really important since in Northern Ireland there are political conflicts and legislation can be useful as a means of reconciliation⁶⁰. Furthermore, the Committee of Experts, in the context of its reporting on UK implementation of the European Charter for Regional or Minority Languages, has urged the UK authorities to provide an appropriate legislative basis for the protection and promotion of Irish in Northern Ireland; such legislation might be made by the UK Parliament under its parallel legislative competence (strictly speaking, it is still possible for the Westminster Parliament to legislate in areas which

51 ECRML, 3rd Cycle Committee of Experts’ Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 5.

52 See www.pobal.org; POBAL was established in January 1998 as an independent democratic partnership of about 50 organisations engaged in the north of Ireland in Irish-medium work.

53 The Irish Language Act NI, <http://www.pobal.org/english/irishlanguageact.php>; <http://www.pobal.org/uploads/documents/act/Act.pdf>.

54 See US English Foundation <<http://usefoundation.org/view/633>>, http://www.minelres.lv/mailling_archive/2006-November/004876.html and <http://www.pobal.org/uploads/images/2012.2.18.%20Strategic%20Framework.pdf>; Janet Muller (POBAL) said that ‘there are no domestic legal protections for the Irish language. The North of Ireland is the only place in British Isles where the primary indigenous language is in this position’.

55 See <http://www.orange-order.co.uk/index.php?topic/4487-irish-language-act/> and US English Foundation <<http://usefoundation.org/view/633>>. The Statement of Principles contains basic principles that should be the key element for future proposed legislation, principles such as: the Irish Language Act must make Irish an official language in Northern Ireland, it must be passed at Westminster within an agreed timescale, it must be resourced from Westminster, it must take a rights-based approach, it must outline the Irish language services that government and public bodies must provide and the timescale within which such services must be provided, it must establish the Irish Language Commissioner for Northern Ireland and the *Bòrd um Chearta agus Phleanail na Gaelige* to implement the act and it must contain a list with government and public bodies which have the leading role in providing Irish services.

56 http://www.dcalni.gov.uk/summary_of_2nd_consultation.pdf, 7. A rights-based approach was preferred by respondents also in the second consultation.

57 http://www.dcalni.gov.uk/summary_of_responses_to_1st_consultation_paper_on_proposed_irish_language_legislation_-_13th_december_2006-2.pdf and US English Foundation <<http://usefoundation.org/view/633>>.

58 See http://www.dcalni.gov.uk/summary_of_2nd_consultation.pdf and US English Foundation <<http://usefoundation.org/view/633>>. Janet Muller, from POBAL, said that ‘the Irish speaking community is not opposed to consultation. Indeed, we have engaged with the public consultation process that the British Government initiated in December 2006. The Department of Culture, Art and Leisure’s own figures have shown that 2500 people signed an online petition in favour of a rights-based Irish Language Act, that they received 1200 post-cards and another 800 signatures on a newspaper advertisement. In addition to this, they received 668 substantive written replies to the consultation, 93 percent of which were in favour of a strong rights-based Irish Language Act. Some 5000 people marched to the centre of Belfast in February to show their support for an Irish language Act and to celebrate the contribution that Irish makes to the fabric of our society’.

59 <http://www.pobal.org/english/irishlanguageact.php>, see also <http://www.pobal.org/uploads/documents/act/Act.pdf>.

60 Northern Ireland Human Rights Commission <[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/106/Parallel-report-on-ECRML-\(September-2009\).pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/106/Parallel-report-on-ECRML-(September-2009).pdf)>.

have been devolved) or by the Northern Ireland Assembly⁶¹.

A significant obstacle to legislation for Irish is that some Unionist politicians have argued for parity of treatment between Irish and Ulster Scots, leading to the non-adoption of legislation for either⁶². Simply, the situation of the two languages is different—Irish was thought to be spoken by many more people, and is already present in the public administration in the Republic of Ireland; this means that a technical administrative vocabulary already exists for Irish. As a result, it is difficult to adopt the same range of provisions for both languages (Irish and Ulster Scots). Representatives of Irish speakers reported practical problems of language promotion due to calls for parity of treatment with Ulster Scots.

On the 1st January 2007, Irish became one of the 23 EU official languages. This status of official language of the European Union⁶³ has enhanced its prestige. However, this has not led to any significant changes within Northern Ireland.

Interim guidance for public servants was issued in 2001 and final guidance for Irish and Ulster Scots was issued in 2005. DCAL (Department of Culture, Arts and Leisure) established a controlled Irish translation service and an expert translation advisory committee⁶⁴. However, actual use in the public administration is limited and is not mandated by any law. The former leader of the Democratic Unionist Party (DUP), which is now one of the largest parties in the Northern Ireland Assembly, Ian Paisley, said that his party would not support the creation of an Irish Language Act⁶⁵, and this party has consistently maintained this position to the present.

Despite the inability to create legislation or even a strategy for Irish, the Minister for Culture, Arts and Leisure (DCAL), Carál Ní Chuilín⁶⁶, who is a member of Sinn Féin, the largest Nationalist party and one which is supportive of Irish, intends to adopt a strategy entitled A Strategy for Indigenous or Regional Minority Language⁶⁷, which is intended to be a single strategy for Irish and Ulster Scots⁶⁸. An Irish strategy, according to Jim Allister, leader of the Traditional Unionist Voice Party, would be a disadvantage for Protestants in government jobs since there is a massive imbalance between Protestants and Catholics when it comes to knowledge of the Irish language⁶⁹. Language is a thorny issue because it is a political issue linked with religion. The opposition to any protection of the language has been vigorous amongst the sector of the population who are not associated with the language. In addition, languages in Northern Ireland have been linked to political violence.

2.4 CoE Treaties: Framework Convention for the Protection of National Minorities and European Charter for Regional or Minority Languages

Two Treaties are particularly relevant for the protection of Irish and Ulster Scots in Northern Ireland: the Framework Convention for the Protection of National Minorities⁷⁰ and the European Charter for Regional or Minority Languages (ECRML), both signed and ratified by UK and written under the auspices of the Council of Europe.

61 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 6.

62 *Ibidem*.

63 <http://www.independent.co.uk/news/world/europe/irish-becomes-the-23rd-official-language-of-eu-430615.html>.

64 Framework Convention, 2nd Cycle State Report UK 22-02-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 62.

65 http://www.eire.dk/library/english_section.htm and US English Foundation <<http://usefoundation.org/view/635>>.

66 <http://www.sinnfein.ie/contents/23769>; <http://www.northernireland.gov.uk/news-dcal-090712-irish-language-and>; <http://www.theyworkforyou.com/ni/?id=2014-05-27.3.154>.

67 http://www.dcalni.gov.uk/strategy_for_ulster_scots_language_heritage_and_culture-2.pdf; http://www.dcalni.gov.uk/strategy_for_protecting_and_enhancing_the_development_of_the_irish_language-2.pdf.

68 <http://apo.org.au/source/department-culture-arts-and-leisure-northern-ireland> and ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 7; see also <http://www.pobal.org/uploads/images/tuairisc%20strateise.%2013.1.11.pdf>.

69 <http://www.gaelpoort.com/default.aspx?treeid=37&NewsItemID=8480>; <http://www.newsletter.co.uk/news/regional/irish-law-would-disadvantage-protestants-1-4131178>; V. Ní DHRISCEOIL, "Language conflict in Northern Ireland: revisiting the Irish language rights debate", (2013) 4 Public Law, 700.

70 <http://conventions.coe.int>.

The Framework Convention for the Protection of National Minorities was opened for signature in Strasbourg on 1st February 1995 and came into force on 1st February 1998. It is the first legally binding multilateral instrument concerned with the protection of national minorities.

The Convention promotes the effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture⁷¹.

The Framework Convention has a preamble and it is divided into five sections: Section I contains general provisions, Section II contains a catalogue of specific principles, Section III contains provisions regarding the application of the Framework Convention, Section IV contains provision on the monitoring process, and Section V contains the standard final clauses. The word “framework” in a legally binding Convention recalls soft law and gives a margin of discretion to the States in its implementation⁷². The Framework Convention contains mostly programme-type provisions which are not very specific, leaving to the States discretion in the implementation of the objectives that they want to achieve⁷³ especially the maintenance and further realisation of human rights and fundamental freedoms. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such without disadvantage⁷⁴.

In Section IV it is established that the Committee of Ministers is responsible for monitoring the implementation of the Convention. The first report must be submitted within one year of the entry into force of the Framework Convention. An Advisory Committee has to help the Committee of Ministers in the monitoring process; its members shall have recognised expertise in this area. For transparency purposes the publication of these reports is envisaged⁷⁵.

Art. 10⁷⁶, regarding public services, is particularly important. It recognises the right to use a minority language freely and without interference, in private and public⁷⁷, orally and in writing.

Paragraph 2 ensures the possibility of using the minority language with administrative authorities, in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, as far as possible. The term “administrative authority” does not include, literally, all public authorities. It has been worded very flexibly, leaving parties a wide measure of discretion⁷⁸. In addition, there are financial, administrative and technical difficulties, in particular financial ones which can limit the applicability of these provisions but they are not an excuse for a non-implementation. All this gives discretion on the applicability of the provision because of its vagueness.

71 Framework Convention for the Protection of National Minorities <<http://conventions.coe.int/Treaty/en/Summaries/html/157.htm>>.

72 P. THORNBERRY and M. A. MARTIN ESTEBANEZ, ‘The Framework Convention for the Protection of National Minorities,’ in *Minority Rights in Europe* (Council of Europe Publishing 2004) ch 2, 91.

73 <http://conventions.coe.int/Treaty/en/Reports/Html/157.htm>.

74 Art 3 (1).

75 A. VACCA, “A comparative approach between the Council of Europe Treaties and the European Union framework in the legal protection of minority languages” 2010 *Revista de Llengua i Dret* 53, 111.

76 Art 10, paragraph 1 and 2 are crucial: ‘1) The parties undertake to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language in private and in public, orally and in writing. 2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. 3) The parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter’.

77 A. Vacca, “A comparative approach between the Council of Europe Treaties and the European Union framework in the legal protection of minority languages” 2010 *Revista de Llengua i Dret* 53, 111. It is a strong achievement to use minority languages dealing with the public administration but from the explanatory report it is not clear. It appears that in public means in a public place and not with the public authorities; the Advisory Committee interpreted this provision as if there was not the possibility for the State to prohibit the use of minority languages in signage and to use a specific alphabet. In the X International Conference on minority languages held in Trieste in 2005, the jurist Fernand de Varennes asserted that the Convention was weak but became stronger because of the effort of the body which monitors the implementation of the treaty, the Advisory Committee.

78 Framework Convention for the Protection of National Minorities: Explanatory Report <<http://conventions.coe.int/Treaty/en/Reports/Html/157.htm>>.

Phrases such as “real need” and “as far as possible” make the nature of the obligation unclear⁷⁹. This article is not very detailed and has some weaknesses but the Advisory Committee has strengthened it through their interpretations.

Regarding the UK, the Advisory Committee found that the use of minority languages in private and public and with administrative authorities is much less developed in Northern Ireland than in Wales and Scotland⁸⁰ and also noted that there are problems in relation to the availability of interpretation in health care⁸¹.

A more detailed instrument of the Council of Europe for the protection of minority languages is the European Charter for Regional or Minority Languages (ECRML)⁸² which was adopted by the Committee of Ministers of the Council of Europe on 25 June 1992 and opened for signature in Strasbourg on 5 November 1992. It entered into force on 1 March 1998⁸³.

An explanatory report is appended to the ECRML. The preamble of the Charter states that the right to use a regional or minority language in private and public life is an inalienable right, conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Conventions and having regard to the work of CSCE.

The protection and promotion of regional or minority languages, in the different countries and regions of Europe, represents an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity.

The ECRML comprises twenty-three articles, some of which are subdivided into paragraphs and subparagraphs. It is divided into five parts: Part I with general provisions, included the definition in art. 1 of “regional or minority languages”; Part II, regarding objectives and principles pursued in accordance with art. 2, paragraph 1; Part III regarding measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under art. 2, paragraph 2; Part IV, about the application of the Charter; and Part V, which contains the final provisions.

The European Charter for Regional or Minority Languages not only contains non-discrimination principles but also provides for measures offering active support for regional or minority languages in education and the media and to permit their use in judicial and administrative sectors. Its main purpose is cultural; it is meant to promote regional or minority languages, not linguistic minorities, and it does not establish any individual or collective right for the speakers⁸⁴. The ECRML imposes obligations on States in respect of individual users without requiring the latter to be members of a group. The provisions shall not affect any more favourable treatment. The adoption of special measures in favour of regional or minority languages therefore aims at promoting equality between the users of these languages and the rest of the population. The fact that it takes due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages but it is a sort of compensation for unfavourable conditions of the past⁸⁵.

This treaty deals directly with minority languages and has become the cornerstone for the protection, at the European level, of the lesser used languages and provides an important example for the national legislation that puts this treaty into effect.

79 A. VACCA, “A comparative approach between the Council of Europe Treaties and the European Union framework in the legal protection of minority languages” 2010 *Revista de Llengua i Dret* 53, 111.

80 Framework Convention, 2nd Cycle Opinion UK 06-06-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf>, par 178; Resolution on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom adopted by the Committee of Ministers on 9 July 2009 <<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1324161&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>>.

81 Framework Convention, 1st Cycle Opinion UK <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_UK_en.pdf>, par 74.

82 <http://conventions.coe.int/Treaty/en>. See also J TRIADU VILA-ABADAL, ‘Perspectiva Constitucional I Carta Europea de les Llengües Regionals o Minoritaries’ (September 2002) 37 *Revista de Llengua i Dret* 129.

83 The condition for it to enter into force was to have at least 5 ratifications.

84 European Charter for Regional or Minority Languages: Explanatory Report <<http://conventions.coe.int/Treaty/en/Reports/Html/148.htm>>.

85 A. VACCA, “A comparative approach between the Council of Europe Treaties and the European Union framework in the legal protection of minority languages” 2010 *Revista de Llengua i Dret* 53, 111.

According to art. 7, Part II, the Parties shall base their policies, legislation and practice on the recognition of the regional or minority languages as an expression of cultural wealth, on the need for resolute action to promote regional or minority languages in order to safeguard them, on the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life; thus, also in this article, which belongs to Part II, there is a reference to the public use of minority languages although it is really generic.

The European Charter for Regional or Minority Languages has provisions related to the use of minority languages in several areas including education, the legal system, media as well as by administrative authorities and it makes specific mention of steps which must be taken in this area in order to consolidate the development and use of language beyond guaranteeing the respect for the historic roots, traditions and identity of a community⁸⁶.

Regarding the provisions of Part III, states are free, with some limits, to determine which provisions will apply to each of the languages spoken in their territory, normally aimed at protecting the languages in relation to the territory. The states can name the languages to which they agree this part will be applied and they can determine the provisions which they agree to. Consequently, the states have discretion in the applicability of the ECRML. Each state has to specify in its instrument of ratification the regional or minority language to which Part III has to apply and the paragraphs of Part III chosen for each language⁸⁷. For each regional or minority language, there should be a promotional body responsible for representing the interests of the language at the national level.

Neither the European Charter for Regional or Minority Languages nor the Framework Convention, created a judicial mechanism; individuals cannot make a claim⁸⁸.

Rather, the enforcement of the Charter is under the control of a Committee of Experts; similarly the enforcement of the Framework Convention is under the control of an Advisory Committee.

The Committee of Experts periodically examines reports presented by the parties; they may verify any information submitted by the states concerned and must call on them for further explanations or information. The results will be communicated to the Committee of Ministers⁸⁹. The reports are triennial; however the first report is to be presented within one year of the date when the Charter entered into force for the State. The Committee of Experts can be approached by associations that wish to submit information, but only if they are established in one of the parties. It is possible too to visit the States being monitored. The Committee of Experts can judge, case by case, to what extent the reports should be published, however, in practice, they are always published. The number of members of the Committee of Experts is the same as the number of parties of the Charter and each member must be a person of recognised competence in this field. They enjoy six-year terms. The Committee is not a judicial body but has only to monitor the implementation of the Charter⁹⁰.

Art. 10⁹¹ is of special significance in the context of this paper. This article, regarding administrative authorities

86 S. CARREL, *Language Rights Individual and Collective: the Use of Lesser Used Languages in Public Administration* (EBLUL 20 00).

87 European Charter for Regional or Minority Languages: Explanatory Report <<http://conventions.coe.int/Treaty/en/Reports/Html/148.htm>>.

88 A. VACCA, "A comparative approach between the Council of Europe Treaties and the European Union framework in the legal protection of minority languages" 2010 *Revista de Llengua i Dret* 53, 111.

89 European Charter for Regional or Minority Languages: Summary <<http://conventions.coe.int/Treaty/en/Summaries/html/148.htm>>.

90 A. VACCA, "A comparative approach between the Council of Europe Treaties and the European Union framework in the legal protection of minority languages" 2010 *Revista de Llengua i Dret* 53, 111.

91 Art 10 of the European Charter for Regional or Minority Languages, on Administrative authorities and public services states: '1. Within the administrative districts of the state in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this reasonably possible:

- a) i. to ensure that the administrative authorities use the regional or minority languages; or
- ii. to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or

and public services, is important because the utilisation of such languages with public authorities means that these languages are used beyond the private sphere and can increase their visibility. According to this article, the Parties undertake, as far as is reasonably possible, to ensure that the administrative authorities use the regional or minority languages; to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions; to allow the administrative authorities to draft documents in a regional or minority language. Art. 10 distinguishes three categories of types of action taken by the public authorities of the state: action by administrative authorities of the state, action by local and regional authorities, and action by bodies providing public services. The various obligations are qualified by the limitation that the provision of minority language services occurs only as far as this is reasonably possible; this is in recognition of the fact that, in some circumstances the unlimited application of the provisions could be unrealistic, due to their implications in terms of finance, staffing and training. This article, though it contains detailed provisions, is a little bit vague and discretionary because it could be difficult for a state to recruit officers speaking the minority language especially for financial reasons.

Regarding the UK, the regional or minority languages covered under the ECRML are Welsh, Scottish Gaelic, Irish, Scots, Ulster Scots and Cornish. Manx Gaelic in the Isle of Man is also covered under the Charter⁹².

Welsh, Scottish Gaelic and Irish have been granted protection under Part III of the Charter, as indicated in the instrument of ratification. The responsibility for the practical implementation of the Charter lies within the devolved administrations, with the exception of the Cornish language and those undertakings that lie directly within the competence of the central authorities. The UK has the overall responsibility for the implementation of the Charter. The Committee of Ministers, in their recent Recommendation of 21 April 2010⁹³, considers it a matter of priority to adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation; to ensure that health and social care facilities offer services in Welsh; to adopt a strategy to enhance and develop Ulster Scots, in co-operation with the speakers.

Regarding administrative authorities and public services art. 10 ECRML is the article of most relevance to the subject matter: 14 provisions apply to Welsh, 8 to Scottish Gaelic and 9 to Irish.

The minimal approach of Northern Ireland regarding the provisions chosen for Irish has been criticized by the Northern Ireland Human Rights Commission⁹⁴.

The impact of the ECRML has arguably been stronger in Northern Ireland since there are essentially no significant legislative provisions, as exist in Wales and in Scotland; thus, the ECRML represents a significant development with respect to the position of Irish in law. The recent reports of the Committee of Experts on the ECRML have noted the need for legislation in Northern Ireland in order to properly implement the ECRML Part III commitments in respect of Irish in domestic law and practice⁹⁵.

iii. to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or

iv. to ensure that users of regional or minority languages may submit oral or written applications in these languages; or

v. to ensure that users of regional or minority languages may validly submit a document in these language;

b) to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;

c) to allow the administrative authorities to draft documents in a regional or minority language' ...

92 See also R. DUNBAR, 'The Ratification by the United Kingdom of the European Charter for Regional or Minority Languages' (2003) Mercator Linguistic Rights and Legislation Working Paper no 10 <<http://www.ciemen.org/mercator/index-gb.htm>>.

93 ECRML, 3rd Cycle, Committee of Ministers' Recommendation UK 21-04-2010 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec3_en.pdf>.

94 E. CRAIG, "Irish Language education and the Council of Europe's minority treaties: the monitoring of developments in Northern Ireland" (2007), 58 (2) Northern Ireland Legal Quarterly, 132.

95 R. DUNBAR, 'Implications of the European Charter for Regional or Minority Languages for British Linguistic Minorities' (2000) 25 European Law Review 46.

Both the Framework Convention and the ECRML were mentioned in the Good Friday Agreement and highly influenced proposals for a Bill of Rights⁹⁶ and an Irish Language Act. Monitoring procedures and some overlap of provisions are common to both treaties; however, the European Charter's "à la carte system" has a big advantage: in this way the obligations are more precise than the programme-type provisions contained in the Framework Convention⁹⁷.

2.5 CoE Reports (Advisory Committee and Committee of Experts) on Northern Ireland. Public Administration

The Advisory Committee under the Framework Convention for the Protection of National Minorities found that the use of minority languages in private and in public and with administrative authorities is much less developed in Northern Ireland than in Wales and Scotland⁹⁸. In Northern Ireland, the Advisory Committee found that there is a lack of clarity regarding the language rights of Irish speakers and the situation is even worse with Ulster Scots⁹⁹.

The Advisory Committee, regarding the use of Irish in relation to administrative authorities in Northern Ireland, is aware that the situation varies considerably from council to council¹⁰⁰, that more could be done to promote the use of this language in the public sphere and to seek consensus on the introduction of legislation on the Irish language in Northern Ireland¹⁰¹.

The guidance issued to public servants on how to implement the provisions on Irish under the European Charter for Regional or Minority Languages has been considered a positive development, but its implementation has to be assured.

An Interdepartmental Charter Implementation Group, with representatives from all Government departments, the Northern Ireland Office, Northern Ireland Court Service, Customs and Excise, Inland Revenue and Departmental Solicitors branch was set up to monitor implementation of the European Charter for Regional or Minority Languages, to give advice on the implementation reports and develop guidance for Departments¹⁰². However, according to the umbrella organisation for the Irish speaking community in the north of Ireland, POBAL¹⁰³, the British Government has taken a minimalist approach to the European Charter for Regional or Minority Languages, since they have ratified only the minimum of provisions and, in respect of each provision, they have opted for the least significant clauses¹⁰⁴. Nine paragraphs of article 10 (Administrative authorities and public services) apply for the purposes of Part III of the Charter to Irish: 1a(iv) 1c 2b 2e 2f 2g 3c 4a 5¹⁰⁵.

96 See E. CRAIG, "The Framework Convention for the Protection of National Minorities and the Northern Ireland Bill of Rights Process" (2009), 60 (2) Northern Ireland Legal Quarterly, 201 and E CRAIG "From soft to hard law? Culture, Identity and Language Issues within the Northern Ireland Bill of Rights Process" (2010), 56 Journal of Global and Historical Anthropology, 35.

97 E. CRAIG, "Irish Language education and the Council of Europe's minority treaties: the monitoring of developments in Northern Ireland" (2007), 58 (2) Northern Ireland Legal Quarterly, 128, 139.

98 Framework Convention, 2nd Cycle Comments UK 26-10-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_Com_UK_en.pdf>, 33.

99 Framework Convention, 2nd Cycle Resolution UK 9-07-2008 <<https://wcd.coe.int/ViewDoc.jsp?id=1324161&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>>.

100 Framework Convention, 2nd Cycle Opinion UK 06-06-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf>, 35 para 186.

101 Framework Convention, 4th cycle, Resolution UK, 12-12-2012 <<https://wcd.coe.int/ViewDoc.jsp?id=2014967&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383#>>.

102 Framework Convention, 2nd Cycle State Report UK 22-02-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 62.

103 www.pobal.org.

104 US English Foundation <<http://www.usefoundation.org/view/639>>.

105 "Article 10 Administrative authorities and public services. Paragraph 1 Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible: a... IV to ensure that users of regional or minority languages may submit oral or written applications in these languages; or"; "to allow the administrative authorities to draft documents in a regional or minority languages"; "Paragraph 2 In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage: b. the possibility for users of regional or minority languages to submit oral or written

In the case of Art. 10 of the ECRML¹⁰⁶, relating to the use of Irish in government departments, local councils and public bodies, only half of the clauses ratified have been adopted¹⁰⁷. Another problem is that the ECRML was not incorporated into domestic legislation. The UK's commitments under art. 10 of the European Charter for Regional or Minority Languages fall to the devolved administration in Northern Ireland. However, there are some non-devolved UK Government Departments in Northern Ireland, for example the Northern Ireland Office, HMRC (Her Majesty Revenue and Customs) and Northern Ireland Court Service, which have Codes of Courtesy with guidance for staff on the use of Irish in official business including correspondence, telephone contact and face to face transactions¹⁰⁸. There is a telephone voicemail facility for users who prefer to conduct administrative business in Irish referred to in the Code of Courtesy.

The Committee of Experts, in its second evaluation report, underlined, however, that the telephone voicemail for oral requests and submissions to the Northern Ireland departments had not been functioning very well and authorities were encouraged to establish a system to handle oral and written applications in Irish¹⁰⁹.

The general failure to provide for the use of Irish in the public administration, which has been revealed by the Committee of Experts in monitoring, has also been exposed in other research. For example, POBAL wrote to government departments in Northern Ireland in Irish requesting information. Only one answered in Irish and another three answered in English. A second letter was sent to the seven departments which did not answer the first request and only one answered, in English¹¹⁰. According to POBAL, only one of these departments' websites offered the option to be contacted in Irish.

The Committee of Experts recognises that a systematic approach to handling oral and written applications in Irish has not been introduced across the Northern Ireland administration¹¹¹.

Regarding the documents of administrative authorities available in Irish, in respect of non-devolved departments operating in Northern Ireland, according to the UK authorities the Court service provides a translation service for all its publications and its main user guide is available in Irish on its website and in all courthouses¹¹². A small number of documents, according to POBAL, were available in Irish in June 2008 on four of the eleven departments' websites¹¹³.

Regarding the local and regional authorities and the possibility of submitting oral or written applications in Irish, POBAL wrote to the 26 local councils in Northern Ireland in Irish requesting information in August 2007; only 19 replied, nine in Irish and ten in English¹¹⁴. Six councils employ Irish Language Officers in

applications in these languages;"; "e. the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;"; "f. the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;"; "g. the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages"; "Paragraph 3 With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible: c. to allow users of regional or minority languages to submit a request in these languages"; "Paragraph 4 With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures: a. translation or interpretation as may be required;"; "5 the Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned".

106 On this topic see: A. NOGUEIRA LÓPEZ and E. J. RUIZ VIEYTEZ (eds), *Shaping language rights: commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation*, (Council of Europe Publishing 2012) and J M WOEHRLING, *The European Charter for Regional or Minority Languages, A Critical Commentary* (Council of Europe Publishing 2005).

107 www.pobal.org.

108 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 118.

109 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 51.

110 *Ibidem*.

111 *Ibidem*.

112 *Ibidem*.

113 *Ibidem*.

114 *Ibidem*, 52.

order to translate council documentation into Irish¹¹⁵.

Irish can be used in debates in the Northern Ireland Assembly and its standing orders provide for its use¹¹⁶. Indeed, Irish is used in the Assembly; however, the Committee of Experts was alarmed by a proposal, which had in fact not been accepted, to prohibit Irish in debates¹¹⁷. Furthermore, no simultaneous interpretation exists for those who want to use Irish in the Northern Ireland Assembly, which obviously has negative implications for the development of Irish¹¹⁸ and for its visibility. Regarding the possibility of using Irish in local assemblies, the Committee of Experts is aware that this is possible in some councils but not in others¹¹⁹; thus, there is no general use of Irish and the situation varies from council to council.

The availability of interpretation in Belfast Council, and the employment by certain councils of Irish language officers whose job is to translate documents, is also positive. Regarding the position of Irish in the health care service, the Committee of Experts did not receive any information from Health Trusts¹²⁰. However, there are problems regarding the availability of interpretation in health care; children have to interpret medical matters for their parents, since there are insufficient numbers of qualified interpreters. The Department of Health is sponsoring a strategy for support for minority ethnic groups¹²¹.

In Northern Ireland, the Government Departments have undertaken various measures to make the Irish and Ulster Scots languages more visible, for example by translating some of their documents into these languages and by advertising in newspapers in these languages¹²².

Guidance for public servants in Northern Ireland on implementing the provisions for Irish and Ulster Scots under the European Charter for Regional or Minority Languages was issued in 2005¹²³. However, a problem in respect of the use of Irish in the public administration is that, even if a service is provided, if there is not adequate information, a citizen can find that it is easier to use, for example, a general telephone number which provides service in English and is easily accessible on the website than to ring a dedicated number which is often found in an obscure section of the organisation's website¹²⁴.

In its Recommendation to UK of 21 April 2010¹²⁵, the Committee of Experts recommended that the Northern Ireland Assembly should adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation, and also adopt a strategy to enhance and develop Ulster Scots, in cooperation with the speakers. The situation did not change in the fourth monitoring cycle under the ECRML, and the Committee of Experts did not notice improvements¹²⁶. The greater use of Irish and Ulster Scots in the public

115 *Ibidem*.

116 *Ibidem*.

117 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 52.

118 *Ibidem*, 53.

119 *Ibidem*, 52.

120 *Ibidem*, 52.

121 Framework Convention, 1st Cycle Opinion UK 30-11-2001 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_UK_en.pdf>, 16.

122 R DUNBAR, G PARRY and S KLINGE (eds), *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities*, (Council of Europe Publishing 2008), 30.

123 Framework Convention, 2nd Cycle Opinion UK 06-06-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf>, 34.

124 J. WALSH and W. MCLEOD, 'An Overcoat Wrapped around an Invisible Man? Language Legislation and Language Revitalization in Ireland and Scotland' (2008) 7:21-46 *Language Policy* 22.

125 ECRML, 3rd Cycle Committee of Ministers' Recommendation 21-04-2010 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec3_en.pdf>.

126 Committee of Expert's Evaluation Report, 4th cycle UK, adopted on 21-6-2013 <http://www.coe.int/t/dg4/education/minlang/Report/Default_en.asp>, 31-33. Regarding the fourth monitoring cycle, art. 10 of the ECRML and paragraphs which apply to Irish language: "Article 10 Administrative authorities and public services. Paragraph 1 Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible: a... IV to ensure that users of regional or minority languages may submit oral or written applications in these languages; or" The committee considered that this undertaking was partly fulfilled, however, in most cases even the minimum standards required by the Code of Courtesy on the use of Irish and Ulster Scots were not met. The committee considered that the undertaking: "to allow the administrative authorities to draft

administration is still a long way away, and is still not supported through domestic legislation.

3 Further on Ulster Scots

Ulster Scots speakers live in Northern Ireland. Ulster Scots is protected by the ECRML under part II¹²⁷. There was no census data until recently or other reliable information to indicate the exact number of speakers, although a 'Northern Ireland Life and Times Survey' claimed that approximately 2% of the population of Northern Ireland spoke this language¹²⁸. There was likewise little reliable information on the actual degree of competence in the language of those who claim to speak it. According to the 2011 census¹²⁹, for the first time which included questions regarding Ulster Scots, 8.08% of the population of Northern Ireland has some ability in Ulster Scots. Furthermore, literacy is still low for Ulster Scots speakers. This is related to the lack of codification and/or standardisation of the language and also to its general exclusion from the educational system. All these factors greatly limit the possibility of using the language in the public sphere¹³⁰, and constitute an obstacle to the protection and promotion of the language¹³¹.

Ulster Scots is still largely invisible in public life. The St. Andrews Agreement Act requires the adoption of a strategy to enhance Ulster Scots¹³² but no strategy has yet been developed. However, the establishment of the North/South Language Body with two separate agencies, *Foras na Gaeilge* (Irish Language Agency) and *Tha Boord o Ulstèr-Scotch* (Ulster Scots Agency), was an important achievement of the Government for the promotion of Irish and Ulster Scots¹³³.

documents in a regional or minority language" was only partly fulfilled since representatives of speakers reported that, even if some forms are available in Irish, there is not a consistent, homogeneous and regular use of them. "Paragraph 2 In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage: b. the possibility for users of regional or minority languages to submit oral or written applications in these languages;" This undertaking is also considered only partly fulfilled, with Irish Language NGOs informing the Committee of Experts during the on-the-spot visit that written applications for information in Irish were ignored by 12 of 26 councils asked and just one council was able to answer in Irish to oral communication. "e. the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;" This undertaking was also considered only partly fulfilled since a hostile climate still exists concerning this topic. Irish Language NGOs informed the Committee of Experts that a Member of the Legislative Assembly was accused of speaking in Irish "too long" without giving a translation. For this reason the Committee of Experts encouraged the authorities to introduce a system of simultaneous translation which facilitates the consistent use of Irish in the Northern Ireland Assembly. "f. the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;" No information was provided by the authorities, however, during the on-the-spot visit the Irish language organisations provided some information regarding the use of Irish in council meetings. Irish was confined very often to greetings, however, the Committee of Experts considered this undertaking partly fulfilled. "g. the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages" The Committee of Experts considered the undertaking partly fulfilled and urges the authorities to provide concrete and detailed information regarding the decisions by the Minister for Regional Development not to introduce bilingual signage. "Paragraph 3 With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible: c. to allow users of regional or minority languages to submit a request in these languages". The Committee of Experts considered this undertaking partly fulfilled, however, no information had been provided during the fourth monitoring round even if requested. "Paragraph 4 With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures: a. translation or interpretation as may be required;" The Committee of Experts considered the undertaking not fulfilled with regard to the Northern Ireland Assembly and partly fulfilled in other institutions.

127 J. M. WOEHRLING, *The European Charter for Regional or Minority Languages, A Critical Commentary* (Council of Europe Publishing 2005), 29.

128 <http://dictionary.sensagent.com/ulster-scots/en-en/>.

129 http://www.nisra.gov.uk/Census/key_report_2011.pdf

130 J. MULLER, 'The European Charter for Regional or Minority Languages and the Current Legislative and Policy Contexts in the North of Ireland' in R DUNBAR, G PARRY and S KLINGE (eds.), *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Council of Europe Publishing 2008) 219, 'The daily newspaper The Irish News noted in 2006 that the Ulster Scots Agency advertised two key posts in English alone, because, according to the agency spokesperson, "bilingual advertising is too expensive" and English is the working language of their office since Ulster Scots is not required for any of their posts' (The Irish News, 18 November 2006)'.
131 ECRML, 3rd Cycle State Periodical Report UK 26-05-2009 <http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR3_en.pdf>, 12.

132 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 9.

133 Framework Convention, 2nd Cycle State Report UK 22-02-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/

The *Boord o Ulstèr-Scotch's* statutory function is the promotion of greater awareness of the Ulster Scots culture. Furthermore, guidance for public servants in Northern Ireland on implementing the provisions for Irish and Ulster Scots under the European Charter for Regional or Minority Languages was issued in 2005¹³⁴. The guidance issued by the authorities is a positive initiative but it was not made widely known to the public. In June 2005 the Government set up an Ulster Scots Academy Implementation Group to make recommendations for the establishment of an Ulster Scots Academy¹³⁵.

The Committee of Experts under the European Charter for Regional or Minority Languages recommended strengthening the efforts to improve the position of Ulster Scots¹³⁶. However, there is, at present, no legislative basis for the protection and promotion of Ulster Scots, and in practice little or no use of it is made in the public administration, or in public life more generally.

4.1 Linguistic Legislation in Northern Ireland: which and when?

Promotion of the Irish Language remains a highly contentious issue in Northern Ireland, despite some proposals for an Irish Language Bill; however, these have not led, until now, to any result¹³⁷.

Indeed, a minority languages strategy is not yet finalised to promote Irish, Ulster Scots and languages spoken by foreign nationals. An Irish Language Bill would require cross-party support¹³⁸. Plans for an Irish Language Act did not find consensus for several reasons, for example, because, according to some parties, it would be too expensive to implement laws that would see Irish enshrined in the public life, including road signs, state documents and court proceedings. In addition, budgets are stretched because of the economic crisis and this makes the adoption of an Irish Language Bill more difficult¹³⁹.

Public consultations on strategies for protecting and enhancing the development of the Irish language, and for enhancing and developing the Ulster Scots language, heritage and culture, begun on Wednesday 11 July 2012, and lasted for twenty weeks¹⁴⁰.

POBAL updated proposals for the Irish Language Act and re-issued the 2012 edition of the proposals for legislation. International support for this is reaching boiling point¹⁴¹.

Minority languages can be used as a tool for maintaining a divisive sense of difference. This is the case of Northern Ireland, where speaking Irish was an indicator of being Catholic and nationalist. In Wales and Scotland the public is in support of or indifferent to the indigenous language, whereas, in Northern Ireland, there is still a part of the population strongly against it. In a survey carried out by the Department of Culture, Arts and Leisure, 29 per cent of people were “against” Irish language usage in Northern Ireland, with 17 per cent “strongly against”¹⁴².

The Department of Culture, Arts and Leisure in Northern Ireland conducted a survey on the public's attitude toward the Irish language in the region. The survey showed that the majority of those polled still hold an

[PDF_2nd_SR_UK_en.pdf](#)>, 62.

134 Framework Convention, 2nd Cycle Opinion UK 06-06-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf>, 34.

135 Framework Convention, 2nd Cycle State Report UK 22-02-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_UK_en.pdf>, 62.

136 ECRML, 2nd Cycle, Committee of Ministers' Recommendation UK 14-03-2007 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec2_en.pdf>.

137 ECRML, 4th Cycle Committee of Ministers' Recommendation UK 15-1-2014 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec4_en.pdf>.

138 <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/irish-language-act-to-be-revived-28621123.html>.

139 <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/irish-language-act-to-be-revived-28621123.html>.

140 <http://www.northernireland.gov.uk/print/news-drd-281212-rail-refurbishment-and-2/media-centre/news-departments/news-dcal/news-releases-dcal-july-2012/news-dcal-090712-irish-language-and.htm>.

141 <http://belfastmediagroup.com/international-support-for-irish-language-act-at-%E2%80%98boiling-point%E2%80%99/>. The Advisory Committee of the Council of Europe expressed concern over proposed funding cuts for groups including POBAL, the lack of signage in Irish and the lack of permanent funding for the Irish Language Broadcast Fund.

142 <http://uup.org/news/1221/McGimpsey-Presses-Minister-on-Unnecessary-Irish-Language-Act>.

interest in the Irish language and believe that more options should be available to learn the language. The majority (52 percent) of those surveyed believed it is important that Northern Ireland does not lose its Irish language traditions while 26 percent disagreed and 22 percent neither agreed nor disagreed.¹⁴³

Legislation has to have support of a majority of nationalists and unionists. It is difficult to obtain it in the immediate future because something that supports one identity or culture is therefore seen to be detracting from another. Measures to promote a language often have been seen as a discrimination against other languages¹⁴⁴. Cultural issues in Northern Ireland are politically divisive and demands for increased Irish language rights are highly contested, meaning the Irish language remains “submerged in identity politics”¹⁴⁵. Ethnic conflict in Northern Ireland should not be used for people’s political ambitions¹⁴⁶.

4.2 Conclusions on the protection of minority languages in Northern Ireland

Public administration is arguably one of the most important areas through which a state can affect the vitality of a minority language community. The use of such a language in the public administration can have a significant symbolic value—it has the potential, for example, to raise the visibility of the language quite considerably, thereby enhancing its prestige. The public administration also plays an important functional role in enhancing the position of a minority language. The use of minority languages in the public administration creates many additional opportunities for speakers to use the language in their daily lives and also ensures that the public administration provides a range of minority language services which enhance the perception of the usefulness of the language. This, in turn creates incentives for citizens to learn the minority language.

At the same time, the public administration can sometimes be the most challenging and problematic domain for the use of minority languages. Firstly, the introduction of the language into the public administration has implications for ‘corpus planning’, or the development of the linguistic resources of the language. When it is used in the public administration, a technical administrative vocabulary must be developed in order for the language to be used, for example, on bilingual forms. Staff with sufficient language skills to provide minority language services to the public must be recruited. This presents challenges, as the labour pool with the requisite skills may be quite limited in size. Financial resources are necessary in order to afford these activities which, in this time of financial crisis, can be a problem. Ensuring the presence of a minority language in the public administration often also requires legislative protection, which is absent in Northern Ireland, and even when there is legislation the implementation of such legislation often faces a number of difficulties.

In the UK, the state language policy, until recently, has been directed at promoting the acquisition of English; this leads sometimes to assimilation instead of integration.

Great Britain is the home of English but there are also other languages spoken there, including autochthonous languages, such as the Celtic languages (for example Welsh, Scottish Gaelic, Irish and Cornish) and Germanic languages (for example Scots and Ulster Scots).

The UK’s approach to minority language policy is variegated and amorphous. This variegation has increased following legislative devolution which has changed the situation and focused greater attention to issues that could be considered to be ‘local’ to the devolved jurisdictions, including language issues¹⁴⁷.

Welsh, Scottish Gaelic and Irish are covered by the ECRML under part III; however, the use of minority languages in public and with administrative authorities is much less developed in Northern Ireland than in

143 <http://www.irishcentral.com/news/New-survey-reveals-increased-interest-in-the-Irish-language-in-Northern-Ireland-149993605.html>.

144 Framework Convention, 4th cycle, Opinion UK, 30-06-2012 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_UK_en.pdf.

145 V. NI DHRISCEOIL, “Language conflict in Northern Ireland: revisiting the Irish language rights debate”, (2013) 4 Public Law, 693.

146 <http://uup.org/news/1221/McGimpsey-Presses-Minister-on-Unnecessary-Irish-Language-Act>.

147 J. WALSH and W. MCLEOD, ‘An Overcoat Wrapped around an Invisible Man? Language Legislation and Language Revitalization in Ireland and Scotland’ (2008) 7:21-46 Language Policy 22.

Wales and Scotland¹⁴⁸.

In Northern Ireland, despite the absence of a legal framework, there is a neighbour state, the Republic of Ireland, in which Irish is an official language, and this has been beneficial for the development and sustainability of Irish, particularly within the public administration as significant terminological development, something which is necessary for greater institutionalisation of the language within the administration, has largely taken place¹⁴⁹.

Art. 10 ECRML deals with administrative authorities and public services¹⁵⁰. The actual reality of delivery on commitments made under Art. 10, as well as implementation of domestic obligations, is different among the various protected languages in UK. The United Kingdom declared that Scots and Ulster Scots meet the ECRML's definition of a regional or minority language for the purpose of Part II of the ECRML. It must also be remembered that Part II languages do not benefit from the protection of Art. 10. Among Part III languages, Irish receives much less formal protection and much less extensive provision, in fact, than Gaelic and especially than Welsh. Fourteen sub-paragraphs have been designated under Art. 10 of the ECRML with regard to Welsh, compared with eight for Gaelic and nine for Irish.

Until 2006, the ECRML was the only source of legal protection for Irish in Northern Ireland. The impact of the ECRML has been limited by the minimal number of clauses selected in Part III for Irish¹⁵¹, and by the fact that most of the chosen clauses are the weakest of the available options. In addition, as seen, the ECRML has not been incorporated into the domestic British legislation; thus it is not enforceable in the courts.

In Northern Ireland there is a lack of clarity regarding the language rights of Irish speakers and the situation is even worse with Ulster Scots¹⁵². The request by unionists for parity of treatment between Irish and Ulster Scots has effectively led to a stand-off with regard to the institutionalisation of the two languages, and made the adoption of legislation for either language¹⁵³ highly unlikely.

The situation of Ulster Scots is in some ways similar to that of Scots in Scotland. A precondition to greater institutionalisation of Ulster Scots is its standardisation and codification. There is, however, also a lack of comprehensive planning for, and of concrete measures to protect and promote Ulster Scots language. The impression is that the development of a national language policy in Northern Ireland has come to a standstill¹⁵⁴.

Irish became, on the 1st January 2007, one of the 23 EU official languages. This status of official language of the European Union¹⁵⁵ has arguably enhanced its prestige, although thus far it has resulted in few concrete obligations for Irish in the public administration in Northern Ireland.

Irish is present in the public life. However, a bilingual public administration is not guaranteed and the situation varies from council to council. This is partly due to the lack of a legislative framework and of an overall policy.

148 Framework Convention, 2nd Cycle Comments UK 26-10-2007 <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_Com_UK_en.pdf>, 33.

149 <http://www.pobal.org/uploads/images/tuairisc%20strateise.%2013.1.11.pdf>.

150 On this topic see: A. NOGUEIRA LÓPEZ and E. J. RUIZ VIEYTEZ (eds), *Shaping language rights: commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts' evaluation*, (Council of Europe Publishing 2012) and J. M. WOEHRLING, *The European Charter for Regional or Minority Languages, A Critical Commentary* (Council of Europe Publishing 2005).

151 R. DUNBAR, G. PARRY and S. KLINGE (eds), *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities*, (Council of Europe Publishing 2008), 30 'In its first report on the UK, the Committee of Experts was mysteriously silent on the question of appropriate language legislation for a Part III language even though, in the case of Northern Ireland, there was, and still is, no language legislation for Irish. This is an omission which is all the more surprising due to the presence of legislation in that country for Scottish Gaelic and Welsh, two other Part III languages'.

152 Framework Convention, 2nd Cycle Resolution UK 9-07-2008 <<https://wcd.coe.int/ViewDoc.jsp?id=1324161&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>>.

153 ECRML, 3rd Cycle Committee of Experts' Evaluation Report UK 19-11-2009 <http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML3_en.pdf>, 6.

154 ECRML, 2nd Cycle, Committee of Ministers' Recommendation UK, 14-03-2007 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec2_en.pdf>.

155 <http://www.independent.co.uk/news/world/europe/irish-becomes-the-23rd-official-language-of-eu-430615.html>.

Ulster Scots is still largely invisible in public life; however, the Ulster Scots Agency undertook measures to broaden the use of Ulster Scots in everyday life.

Another problem for all these lesser used languages of Northern Ireland is that, even when public administrative documents are provided in the minority language, the availability of these documents is not normally made publicly known or even easily accessible on the government websites.

In its Recommendation to UK of 21 April 2010, the Committee of Experts recommended that the Northern Ireland Assembly should adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation, and also adopt a strategy to enhance and develop Ulster Scots, in cooperation with the speakers¹⁵⁶. Also in the Recommendation to UK of 15 January 2014 there is the same suggestion recommending the adoption of legislation providing statutory rights for the Irish speakers and measures for teaching Ulster Scots and for strengthening the Ulster Scots Agency, to ensure that the cuts in public spending do not have a disproportionate effect on the protection and promotion of minority languages¹⁵⁷.

In UK, legislation has been adopted for the protection of minority languages in Wales and Scotland. With regard to domestic protection, in Wales the legislation (Welsh Language Act 1993) was stronger than in Scotland even before the Welsh Language Measure 2011. The Welsh Language Act 1993, although enacted by the Westminster Parliament, did not extend to Crown bodies such as central government departments. However, the Government made a commitment when the Act went through Parliament that these bodies would prepare Welsh Language Schemes. Even now, Welsh speakers have only one clearly identifiable language right: an absolute right to speak Welsh in court proceedings. Under the Welsh Language Measure 2011, the Welsh model continued to evolve, arguably towards a more rights based approach (though no new rights were explicitly created)¹⁵⁸. Thus, Wales, at the moment, has the strongest legislation on minority languages in the UK.

The Gaelic Language (Scotland) Act 2005 was adopted by the Scottish Parliament, but as that Parliament is not able to legislate on matters outside of Scotland, the legislation has the potential to reach only those public bodies that operate within Scotland or deal with devolved matters.

The fact that there are different schemes in Wales for each public body is useful since the obligations imposed on each body can be better suited to the real circumstances in which they operate. However, at the same time, too much flexibility can lead to inconsistencies and inequities amongst similarly-placed speakers. Furthermore, the large number of different schemes can create confusion because, if each one differs, people cannot be expected to be fully aware of what they can expect from the public administration. In these circumstances, even if members of the public speak Welsh, they may be reluctant to use it because they have to ask for information for each public administration and this can delay their request. It was partly to address these inconsistencies and inequities that the Welsh Language Measure 2011 was introduced¹⁵⁹. One of the aims of the measure is to promote greater consistency and, with it, greater transparency in terms of Welsh language service provision¹⁶⁰.

The most obvious difference between Welsh and Gaelic is the percentages of people which speak the languages: 19% for Welsh and 1,1% for Gaelic. In these circumstances, it is not surprising that there will generally be different levels of provision of services in the minority language¹⁶¹. In Northern Ireland, according to the 2011 Census, among usual residents aged 3 and over, 11% had some ability in Irish and 8.1% in Ulster Scots. The percentage of people aged 3 and over who could speak, read, write and understand Irish (3.7%) was

156 ECRML, 3rd Cycle Committee of Ministers' Recommendation 21-04-2010 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec3_en.pdf>.

157 ECRML, 4th Cycle Committee of Ministers' Recommendation UK 15-1-2014 <http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec4_en.pdf>.

158 A. VACCA, "Protection of Minority Languages in the UK Public Administration: a comparative study of Wales and Scotland" (2013) *Revista de Llengua i Dret*, 60, 50.

159 A. VACCA, "Welsh Language (Wales) Measure 2011, use of Welsh in the Public Administration: a step forward?" (2013) *Revista de Llengua i Dret* 59, 131.

160 A. VACCA, "Protection of Minority Languages in the UK Public Administration: a comparative study of Wales and Scotland" (2013) *Revista de Llengua i Dret*, 60, 50.

161 R. DUNBAR, 'The Gaelic Language (Scotland) Act' (2005) 9 *Edinburgh Law Rev* 466.

higher than for Ulster Scots (0.9%). Regarding people who are able to understand only, the percentages are 4.1% for Irish and 5.3 for Ulster Scots¹⁶². Despite these numbers domestic legislation has not been adopted until now in Northern Ireland. The Language Act NI has not been adopted due to the vehement opposition of unionist political parties, which have an effective veto on any legislation in favour of Irish. The case of Northern Ireland shows that devolution can be a double-edged sword in respect of legislation for minority languages since devolution of powers to a regional body did not facilitate, in this case, the development and implementation of language legislation, because there has not generally been broad political consensus on the need for and desirability of such legislation.

The Programme for Government 2011-2015 lists a Strategy for the Irish Language and a Strategy for the Ulster Scots Language. The aims of the draft Irish strategy are to create a framework where Irish can be developed, and to protect and support the development of Irish and promote wider understanding of its background. In addition, in 2011, LIOFA was introduced to encourage people to becoming fluent in Irish by 2015¹⁶³. The key aims of the draft Ulster Scots strategy are to create a framework where Ulster Scots can be developed, and to protect and support the development and learning of Ulster Scots and its culture¹⁶⁴.

In Scotland and Wales, though, languages schemes (as they are called under the Welsh Act 1993) or plans (as they are called under the Gaelic Language (Scotland) Act 2005) are particularly useful in order to create services in areas with relatively more speakers; where there are relatively few speakers the level of protection is lower. The Welsh Language Schemes have generally been more detailed than the Gaelic Language Plans created thus far under the Gaelic Language (Scotland) Act. Thus, Northern Ireland has two examples of legislation in UK which did not adopt a rights-based approach; however, the Welsh Language Measure 2011 seems to evolve in this new direction, though no new rights were explicitly created.

Evidence regarding the difficulties in Northern Ireland for the promotion of Irish and Ulster Scots is revealed also in the 4th monitoring round of the Committee of Experts under the ECRML¹⁶⁵. No legislation promoting the Irish language has been adopted and this happened because of the lack of political support and the need to obtain consensus. The Committee of Experts acknowledges that legislation is needed in Northern Ireland for the protection of the Irish language and “strongly urges the authorities to provide an appropriate legislative base for the protection and promotion of Irish in Northern Ireland”¹⁶⁶.

The Committee of Ministers recommends adopting and implementing a comprehensive Irish language policy, preferably through the adoption of legislation providing statutory rights for Irish speakers, strengthening support for the work done by the Ulster Scots Agency and taking measures to establish the teaching of Ulster Scots¹⁶⁷.

162 http://www.nisra.gov.uk/Census/key_stats_bulletin_2011.pdf

http://www.scotslanguage.com/Ulster_Scots_in_the_Northern_Ireland_Census

<http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/general/7013.pdf>

http://www.dcalni.gov.uk/ulster_scots_chs_2011-12_bulletin.pdf

http://www.dcalni.gov.uk/irish_language_chs_2011-12_bulletin.pdf

163 http://www.dcalni.gov.uk/irish_language_chs_2011-12_bulletin.pdf, 4.

164 http://www.dcalni.gov.uk/ulster_scots_chs_2011-12_bulletin.pdf, 4.

165 Committee of Expert's Evaluation Report, 4th cycle UK, adopted on 21-6-2013 <http://www.coe.int/t/dg4/education/minlang/Report/Default_en.asp>. The UK authorities presented their fourth periodical report to the Secretary General of the Council of Europe 10 months after it was due, so for the second time a report was submitted after a substantial delay and again the report lacks information about the situation in Northern Ireland. Information about Irish and Ulster Scots does not include areas which have been devolved to Northern Ireland but just to those areas which are competence of the UK government.

166 Committee of Expert's Evaluation Report, 4th cycle UK, adopted on 21-6-2013 <http://www.coe.int/t/dg4/education/minlang/Report/Default_en.asp>. Until now the promotion of the Irish language is a highly contentious issue in Northern Ireland. DCAL supports an Irish Language Act and there are proposals for an Irish Language Bill. During the on-the-spot visit the Committee of Experts realized that the needs of Irish and Ulster Scots are different and that there is a spirit of mutual tolerance which can be the base in order to build a political consensus. It was impressed by the work done by The Ulster Scots Agency to broaden the use of Ulster Scots.

167 Committee of Ministers' Recommendation, 4th cycle UK, adopted on 15-1-2014 http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec4_en.pdf.

To conclude, the greater use of Irish and Ulster Scots in the Northern Ireland public administration is still a long way away, and is still not supported through domestic legislation.