

**COMMISSION ON FLAGS,
IDENTITY, CULTURE AND
TRADITION**

FINAL REPORT

CONTENTS

	PAGE
OVERVIEW	2
SECTION 1 CULTURE, CONFLICT AND RIGHTS	
Chapter 1 The Commission’s Remit and Approach	4
Chapter 2 Cultural Identity and its Expression	8
Chapter 3 Cultural Rights	15
Chapter 4 Leadership for a Shared Society	30
SECTION 2 CULTURAL IDENTITY AND SOCIETY	
Chapter 5 Education	39
Chapter 6 Media	49
Chapter 7 Sport	60
Chapter 8 Language, Culture and Heritage	67
SECTION 3 CULTURAL IDENTITY IN PUBLIC SPACE	
Chapter 9 Public Space, the Public Good and the Arts in the Public Space	77
Chapter 10 Symbols and Emblems, Conflict and Cohesion	89
Chapter 11 Flying of Flags on Street Furniture	91
Chapter 12 Flying of Flags on Public Buildings	107
Chapter 13 Bonfires	115
Chapter 14 Murals	126
Chapter 15 Memorials, Remembrance and Commemoration	133
SECTION 4 – IMPLEMENTATION AND CONCLUSION	
Chapter 16 Implementation and Oversight	143
Chapter 17 Conclusion	145
ANNEXES	

Overview

This report contains the findings of the Commission on Flags Identity Culture and Tradition. The Commission hopes that the recommendations can aid in a process where issues of Flags, Identity, Culture and Tradition are no longer contested and contentious, but become a means by which we foster, develop and embed respect, a key outcome in the Programme for Government.

The Commission was tasked with a programme of work including:

- scoping the range, extent and nature of issues relating to flags, identity, culture and tradition;
- mapping the benefits and opportunities in terms of flags related issues whilst highlighting where challenges remain; and
- producing a report and recommendations on the way forward.

The Commission comprised seven representatives from the five main political parties (two DUP, two Sinn Féin, one SDLP, one UUP, one Alliance) and eight independent members. The Commission engaged in extensive deliberations based on information gained in public consultations and drawn from oral and written submissions and desk research. A list of those who engaged with the Commission is attached as Annex C. Although the Commission had mechanisms for voting it always worked by trying to reach consensus. We reached consensus on recommendations in many areas and where this was not possible, this has been highlighted as 'where challenges remain'. To enable others to progress potential solutions the Commission has provided details and options.

The Commission has listed the recommendations and 'where challenges remain' in Annex A and B respectively, but it hopes that people read the background from which these recommendations were reached. In the first section of this report the Commission provides a brief outline of the context examining culture, cultural identity, cultural rights and some of the principles for a diverse and shared society. In the second section of the report the Commission explores the broader environment in which cultural identity is learned and expressed, examining issues in education, in the media, in sport and in the use of language and broader issues of cultural heritage. In the third section of the report

the Commission examines the broad issue of public space, shared space, the use of the arts and why symbols are important for people's cultural identity. In this section the Commission looks at the key issues of flags, bonfires, murals and memorials. Whilst there are remaining challenges in this section, the Commission hopes that the work undertaken provides positive ways forward in these areas.

The Commission notes the desire of the members of the public that it engaged with to participate in further discussions on important matters of cultural identity and expression.

Changes in the political, economic and social context have also meant that since the Commission commenced its work, some of the issues within our purview are now being advanced and addressed through other channels. In January 2020, whilst finishing this report The Northern Ireland Executive and the Assembly, which had not been meeting for three years, returned to work. This coincided with the publication of the New Decade, New Approach document put forward by the Irish and British Governments. The document contains several proposals that were very relevant for the Commission's work, particularly around language and cultural identity, and it has tried to identify those proposals at the relevant points throughout this report. This in turn has also influenced its potential to reach unequivocal agreement and consensus within the Commission's recommendations. Some of the areas within the Commission's programme of work have been superseded by the contents of the New Decade, New Approach document.

The Commission has made specific recommendations for how leadership on these matters can make a more positive impact within the fields of media, arts and heritage, sport and community development and how these might be advanced through new or amended legislation, within the education system and through departmental and local government's policy developments. Consequently, the recommendations are primarily aimed at the Northern Ireland Executive, as well as the offices, departments, arm's length bodies and community stakeholders also vested in the Commission's work. However, this report provides a basis for all of us, citizens and neighbours, elected or unelected community representatives, to work towards an improved society, for the common good of all.

SECTION 1

CULTURE, CONFLICT AND RIGHTS

Chapter 1 The Commission's Remit and Approach

The Commission's Remit

- 1.1. The Commission on Flags, Identity, Culture and Tradition was formally launched by the First Minister and deputy First Minister on 20 June 2016 as part of commitments made under the Stormont House and Fresh Start Agreements.
- 1.2 As set out within the Stormont House Agreement¹, the Commission's remit was to *"focus on flags and emblems and, as required, broader issues of identity, culture and tradition, and seek to identify maximum consensus on their application. In its work, it will be guided by the principles of the existing Agreements including parity of esteem."*
- 1.3 Further detail on its remit was outlined in the Fresh Start Agreement², in which the Commission was tasked with *a programme of work which will include:*
- *scoping the range, extent and nature of issues relating to flags, identity, culture and tradition;*
 - *mapping the benefits and opportunities in terms of flags and related issues whilst also highlighting where challenges remain; and*
 - *producing a report and recommendations on the way forward.*

As part of its role the Commission will:

- *identify and acknowledge the opportunities presented by having a rich diverse community in which cultural expression can be celebrated;*
- *consult with the established and new elements of our community;*
- *identify key areas of commonality as well as difference;*
- *consult with the UK and Irish Governments as appropriate, should its work touch on the expression of sovereignty, national identity and political allegiance in a divided society; and*

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf

² https://www.northernireland.gov.uk/sites/default/files/publications/nigov/a-fresh-start-stormont-agreement_0.pdf

- *encourage shared learning, active listening and understanding in a meaningful way across traditional boundaries.*
- *It will also examine and seek to co-design with all sections of our community innovative solutions to address:*
 - *the divisive nature of displays and expression of identity;*
 - *specific contentious instances-events;*
 - *sources of conflict which arise in displays and expression of cultural identity and in some cases sovereignty, national identity and allegiance and which compound the reality of living in a contested society;*
 - *an agreed protocol around public flag displays; and*
 - *displays and expressions of identity, or objection to such displays and expressions being used to provoke.*

1.4. The Commission comprised 15 members, seven of whom were appointed by the leaders of the five largest political parties and were as follows:

Mr. Doug Beattie MC MLA / Mr Stephen Barr* – Ulster Unionist

Mr. Richard Good – Alliance

Mr. Tom Hartley – Sinn Féin

Mr. Donncha MacNiallais – Sinn Féin

Mr. Nelson McCausland – DUP

Mr. Ian McCrea – DUP

Mr. Carl Whyte – SDLP

*replaced Mr. Doug Beattie MC MLA in March 2020.

1.5. Eight independent members were appointed by way of a public competition and were as follows:

Mr Neville Armstrong (Joint Chair)

Prof Dominic Bryan (Joint Chair)

Mr Ian Crozier

Prof Thomas Hennessey

Dr David Hume MBE

Dr Katy Radford MBE

Mr David Robinson

Mr Mukesh Sharma MBE DL

The Commission's Approach

- 1.6. The Commission undertook an extensive and prolonged engagement and information gathering process. In order to fulfil its remit, and reflecting its determination to involve as many different sectors and geographical areas of our community as possible, the Commission sought to provide opportunities for everyone to engage with it.

- 1.7. The Commission undertook an extensive stakeholder engagement to gauge the views and opinions of people in order to inform its work. There were 12 public meetings which were held in Ballymena, Ballycarry, Belfast (2), Enniskillen, Londonderry/Derry, Magherafelt, Newtownards, Newry, Omagh, Portadown and Portavogie. The Commission also met with a wide range of groups and individuals and received many requests for meetings. Where possible, the Commission facilitated these. In total the Commission has held 162 meetings with stakeholders. Details of the groups the Commission engaged with can be found at **Annex C**. More than 1000 people were engaged either as individuals or representatives of organisations.

- 1.8. The Commission also sought submissions based around a questionnaire which is attached at **Annex D**. The Commission received 37 written submissions and a further 44 documents, and reviewed an extensive range of other material. The Commission would like to thank those individuals and organisations who engaged with us as part of this process.

- 1.9. Part of the Commission's remit was to encourage shared learning, active listening and understanding in a meaningful way across traditional boundaries. The engagement process sought to facilitate this and the Commission was struck by the number of people who saw this as being, in itself, a worthwhile exercise. Some people stated that this was the first time that they felt able and comfortable to have such conversations with others from a different background, in a public space. Members of the Commission felt privileged to be included within those conversations.

- 1.10 The Commission undertook an extensive programme of work as a result of its public engagement process.
- 1.11 Subsequently, the Commission worked through all of the issues that had been raised in its engagement programme. The Commission engaged with a range of sectors, community organisations, statutory agencies and at public meetings. As part of this process, the Commission received legal opinion on some proposals, as well as having its findings sense checked by a range of actors.
- 1.12 Since its launch in June 2016, the Commission has had a total of 287 meetings, including plenary meetings, public meetings and meetings with stakeholders and sub-groups. These meetings have been critical in enabling the Commission to inform and shape its thinking and in turn this report.
- 1.13 The Commission was in the middle of its public engagement exercise in early 2017 when the Executive collapsed. In December 2018, taking into account the political environment, the Commission decided to defer its plenary meetings. The Commission believed this was necessary as it required a more positive political context within which to conclude its work and bring forward a final report. The Commission met a total of three times during 2019, in June, September and October to assess the political environment and its impact on the Commission completing its work.
- 1.14. In January 2020 the New Decade, New Approach, document combined with the return of the Executive and the NI Assembly, provided the changed political context necessary for the Commission to progress to a final report.

Chapter 2 Cultural Identity and its Expression

How History has Shaped our Cultural Identities and the way we Express Them in the Public Space

Introduction

- 2.1 In writing this report the Commission acknowledges that it is difficult to have agreed definitions for terms such as community, paramilitary, combatant and victim.
- 2.2 The Commission wanted to make some simple definitions clear in order to create greater understanding in our report. For the purposes of this report the Commission takes the term *culture* to refer to everything we learn and acquire to form our familiar and habitual sense of being as individuals and to become interdependent in groups with others. As such, the Commission draws on often quoted definition of culture from Edward Tylor (1871) 'The complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.'
- 2.3 In our society, culture is influenced by a complex range of contemporary processes. A more individualised world, with economic pressures and insecurities; a globalised media, travel and migration; changes in relationships between genders and generations; and new forms of communication all impact on who we are and the groups of which we feel part.
- 2.4 There are of course many aspects of culture through which we define ourselves as different from each other. The Commission will refer to this as our *cultural identity*. Whilst we might share lots of *culture* in common, we may well have significantly different *cultural identities*.
- 2.5 Our cultural identities and the ways by which we express them is an important part of our social life. In this report we are particularly interested in the public expression of cultural identities in all sorts of different contexts such as festivals, ceremonies, parades, commemorations, sporting events, concerts, religious

occasions when we gather and share experiences. They help to inform and reflect who we are. The Commission acknowledges the importance of such events, and the contribution that many people make to enable them to happen.

Far More Than “Two Traditions”

- 2.6 In our society, cultural identity is too often presented as being neatly divided into two opposed identities. Such an analysis ignores the rich and complex identities and cultural heritages that we share, and that this is further enriched by a wide range of ethnic and faith communities who add to the cultural wealth of society.
- 2.7 It has long been recognised that there are three principal cultural identities in the province of Ulster, and therefore in Northern Ireland – epitomised by a junction in Downpatrick where English Street, Irish Street and Scotch Street meet. This indigenous diversity is what made the historic province of Ulster different from both the rest of Ireland and Great Britain. The cultural confluence of Irish, English and Scots that can be seen in language, music, dance and other forms of expression, makes our society much more than the ‘two traditions’, or political identities, of ‘Unionist’ and ‘Nationalist’.
- 2.8 The “two identities” analysis also ignores the complex, fluid and multi-layered nature of history and contemporary social forces within particular traditions. The United Irishmen spoke of “Catholic, Protestant and Dissenter”; many Presbyterians played a key part in the 1798 rebellion against the British Crown; many Catholic Nationalists served in the British Army during the First World War.

A Historic Overview

- 2.9 The Province of Ulster has a deep historical, linguistic and cultural lineage. It bears the cultural marks of pre-Gaelic society, and the important influence of Gaelic culture. It reflects the influence of the Vikings, Anglo-Normans, 17th Century plantation settlers from England and Scotland, as well as migrants from other parts of Ireland and Europe. Contemporary Ulster has been influenced by centuries of immigration and emigration. Its place on the island of Ireland, and its closeness to Scotland and England has significantly influenced our cultural make-up.

- 2.10 Within Ireland in the 19th century and early 20th century, Ulster stood out for its industrialisation and global trade, and, while impacted by the famine and emigration, urban areas also attracted people through industry and trade.
- 2.11 Major social, political and religious upheaval throughout that period served to galvanise people's cultural identities often fused political and culture identities together, and shaped the political developments that followed, some of which occurred through violent conflict.
- 2.12 Partition in the last century left disaffected minorities on both sides of the new border. Political and cultural identities were redefined in what became Northern Ireland. It had its own regionally devolved Parliament, which was unique within the United Kingdom at that time.
- 2.13 Identity and cultural expression took on a different dynamic in the new Northern Ireland with Nationalism and Unionism evolving in opposition to, but also in relationship with, each other. Much is shared and influenced by a common context. Nationalists did not assume a British identity but were inevitably influenced by living in the new state within the UK. A civil rights movement in the late 1960s, in part, appealed to British values of rights and democracy. Within the new Northern State, organisations such as the Orange Order and most of the Protestant churches continued to operate on an Ireland-wide basis. Cultural spheres, such as academia, sport, art, music, media and language all show influences from both the UK and the island of Ireland.
- 2.14 Public spaces also reflect these relationships. Many place names, townlands and roads have Gaelic roots and many streets, buildings and bridges were named after moments, people and places from British history and the British Empire. Public memorialisation reflected the trauma of the two World Wars. Within the new Northern State, the Orange Order assumed a central role in the cultural, political and religious identity of many Unionists and Protestants and in 1926, the Twelfth of July was made a public holiday.

- 2.15 The development of Northern Ireland impacted Irish Nationalism and Republicanism. South of the border, Republicanism had gone through the trauma of the Civil War with the pro-treaty side winning and going about the business of state building in unfavourable economic conditions. While independent of each other, the Irish Free State and the UK were also as economically and culturally connected as any two countries in the world. Nationalists in the north were in a different position, often viewed as a threat to the State by their fellow citizens.
- 2.16 In the 1950s and 1960s, against the backdrop of the IRA's Border campaign, the struggle over identity manifested itself through incidents over the carrying of the Irish national flag and some disputes over parades. New Public Order legislation in 1952 and legislation on Flags in 1954 underpinned the prominence of Unionism and Britishness. Expressions of Irishness, including use of the Irish language were seen as a threat, and displays of the Irish national flag were effectively criminalised. By the second half of the 1960s civil rights marches and parades by the loyal orders became subject to restrictions and disorder increased division between communities.
- 2.17 From 1969 up until the 1994 ceasefires, our society and other parts of these islands experienced violent conflict with terrible consequences. It is hard to agree on a common narrative around the causes of the conflict, but what is beyond question is that during the conflict, violence dominated. British and Irish national identities alongside religious labels became more prominent and also came to be reinforced, particularly by the media. Identity politics, through opposition to unionism or to nationalism, commonly referred to as a 'them and us' construct, or 'two tribes', eclipsed the more nuanced cultural reality that had previously existed. Differences were now bound by fear, mistrust and antagonism, all fuelled by violence. The perceived group to which people belonged also marked them as a potential target for violence. Many people suffered physical and mental trauma, and loss. We have yet to come to terms with those years and many victims and survivors have yet to receive truth or justice.
- 2.18 The conflict also impacts our physical environment, including the design of streets, the location of housing, the building of interface barriers and the location and

duplication of some public services. The picture of division also appears as murals, flags, on memorials, through commemorative activity, and in the memories and stories that we pass onto the next generation.

- 2.19 Examination of the history of the last century helps us begin to identify and understand how our society expresses itself in the public space. This includes how parading has developed, the nature of band culture, the development of murals, the use of indigenous languages, the use of flags, how bonfires have evolved and changes to the built environment. It also helps to explain why the opportunity for people from different sections of society to participate in shared cultural activities reduced.
- 2.20 The impact of political interventions, particularly around the time of the Anglo-Irish Agreement³ in 1985, helped to create a sense of uncertainty within some sections of our community, with their sense of identity being challenged. Changes in political relationships in the 1990s further impacted expressions of cultural identity. While political agreement appeared to be getting closer, for some, divisions seemed to get worse, manifested through disputes over parades or the flying of flags. There was an increase in the number of memorials and commemorative events, and a change in the type of murals being painted.
- 2.21 The Belfast/Good Friday Agreement⁴, endorsed and approved by referenda in both jurisdictions on the island, heralded a new political journey within Northern Ireland, between both parts of the island and between Britain and Ireland. New political structures were created across the island, Articles 2 and 3 of the Irish constitution were amended and the principle of consent was enshrined within Irish law.
- 2.22 In Northern Ireland police underwent structural and symbolic reform, prisoners were released and a set of new political relationships emerged. The Northern

³ <https://cain.ulster.ac.uk/hms0/aia.htm>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

Ireland Act 1998⁵ placed equality and good relations duties upon all public bodies. The St Andrews Agreement in 2006⁶ led to an unprecedented working political environment, including agreement on policing.

- 2.23 The political agreements underpinned wider efforts to address the divisions that had developed over decades, as political leaders sought policy interventions to reduce the sense of ‘them and us’. Beyond politics, many people and organisations have grappled with the challenges of division, reflecting genuine efforts to transcend differences in difficult circumstances. Many community groups have worked hard over many years to develop initiatives to build good relations within and between communities.
- 2.24 Despite these efforts, and even as political agreements were being made, with new institutions and equality and human rights legislation being developed, conflict over political and cultural identity remained prominent. How identity was expressed and marked reflected how communities became more, or less, confident in their political and cultural position within society. Despite the protection that a society based on rights, equality and diversity should have offered people, insecurities around cultural identities still dominated.
- 2.25 While the people in our society share much in common, certain cultural practices arising out of our history lead people to divide themselves and others into different social, political and cultural groups, usually based on where people were born, grew up or live, and their perceived political opinion or religious background. Designating a person or a place as ‘Nationalist’ or ‘Unionist’, ‘republican’ or ‘loyalist’ – or the even more binary labelling of people, places and identities as “CNR” or “PUL” - is used to aid commentary by the media, politicians, or at times of tension. This reinforces a binary view of our society. It exaggerates the sense that our society is composed of two distinct and homogenous blocks of people and ignores the complexity and diversity of identities, beliefs and attitudes.

⁵ <http://www.legislation.gov.uk/ukpga/1998/47/contents>

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement-2.pdf

- 2.26 The reality however is that our common heritage is diverse, rich and multi-faceted. The influence of English, Irish and Scots on our language, culture and heritage should be allowed to act as connections rather than barriers. And while these influences inform who we are, they are only a part of the wider diversity that exists within our society. This diversity and complexity of culture and tradition, which includes the rich heritage of our migrant and minority ethnic communities, defies placing people and whole sections of our community in boxes marked 'Orange' and 'Green'.
- 2.27 This brief outline of our history sets the context in which the Commission on Flags, Identity, Culture and Tradition was established. As people, we share much in common, but we clearly have political and cultural identities which divide us and at times result in significant challenges. It reflects the reality that we continue to be a divided society, in which events and the use of symbols that inform our cultural identity can bring people together, but they can also communicate exclusion, or fear to others. The challenge given to the Commission, and which it seeks to respond to in this report, is to make recommendations that will enhance cultural identity and its expression for the common good within our society.

Chapter 3 Cultural Rights

Cultural Identity Within an International Human Rights Framework

- 3.1 The Commission considered the rights available to people in relation to participation in, and expression of, cultural identity in the public space. In so doing it considered people's access to rights and how that relates to diversity and Good Relations.
- 3.2 Human Rights formed the core of the 1998 Belfast/Good Friday Agreement, in which the parties affirmed their commitment to mutual respect and the civil and religious liberties of everyone. These rights were reaffirmed when the Human Rights Act⁷ came into force across the United Kingdom in 2000. By incorporating the European Convention into domestic law, a citizen can take a rights based case to a British court. The Act also requires that all public bodies respect those rights and that Parliaments and Assemblies make sure that new legislation is compatible with these rights. The work of the Commission therefore must be guided by this human rights framework.
- 3.3 It is important to examine both the rights and responsibilities that derive from the European Convention and the Human Rights Act but also to look at broader conventions and how they might impact upon people's rights to culture.

Universal Declaration of Human Rights

- 3.4 Many of the rights enshrined in international and national conventions and legislation flow from the 1948 Universal Declaration of Human Rights⁸. The Commission particularly notes Article 27, Paragraph 1, of that Declaration which states that '*everyone has the right freely to participate in the cultural life of the community*'. In 1966 the UN built on this and adopted two legally binding Covenants, namely, the International Covenant on Civil and Political Rights⁹ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights¹⁰

⁷ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

⁸ <https://archives.un.org/sites/archives.un.org/files/UDHR/udhr.pdf>

⁹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

¹⁰ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

(ICESCR). Both Covenants explicitly included culture and language as a protected ground against discrimination.

Council of Europe’s Framework Convention on the Value of Cultural Heritage for Society 2005

- 3.5 The Council of Europe’s Framework Convention on the Value of Cultural Heritage for Society (2005)¹¹, which came into force in 2011, recognises in Article 1(a) that *‘rights relating to cultural heritage are inherent in the right to participate in cultural life as defined in the Universal Declaration of Human Rights.’*
- 3.6 Article 2 defines a cultural heritage as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. A heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations.
- 3.7 Articles 2 and 3 link cultural heritage to evolving ideas, principles and values while Article 4 stipulates that the exercise of the right to benefit from cultural heritage and to contribute to its enrichment *‘may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others.’*
- 3.8 The State’s ‘minimum core obligations’ are to:
- take legislative and other necessary measures to guarantee non-discrimination and gender equality in the enjoyment of the right;
 - respect for the right to self-identify and the right to change their choice;
 - to respect and protect the right of everyone to engage in their own cultural rights while respecting human rights;
 - eliminating barriers and obstacles that restrict access to a person’s own culture or to other cultures; and

¹¹ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680083746>

- allow and encourage the participation of members of different minority groups and communities in the design and implementation of law and policies that affect them.

UN Committee on Economic, Social and Cultural Rights' General Comment on the Right of Everyone to Take Part in Cultural Life (2009)

3.9 The UN Committee on Economic, Social and Cultural Rights' General Comment on the Right of Everyone to Take Part in Cultural Life (2009)¹² defines cultural life as “broad, inclusive... encompassing all manifestations of human existence. The expression 'cultural life' is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.” Article 15 confers specific legal obligations to respect, protect and fulfil the right in question with a focus on availability, accessibility, acceptability, adaptability and appropriateness. Measures adopted require formulation and implementation” *in such a way as to be acceptable to the individuals and communities involved*”.

European Convention on Human Rights

3.10 Following the incorporation of the European Convention on Human Rights (ECHR)¹³ into domestic UK law the decisions of the European Court of Human Rights became binding on the UK. While the ECHR does not explicitly protect cultural rights the provisions most often invoked in relation to cultural rights are the Article 8 right to respect for private and family life. This article supports arguments for the right to lead one's life in accordance with a cultural identity and the right to choose freely a cultural identity. Article 9 cites the right to freedom of thought, conscience and religion – supporting arguments for the right to a religious identity. Article 10 protects the right to freedom of expression and Article 11 protects the right to the freedom of association with a cultural purpose. In addition, Article 14 suggests the enjoyment of the rights and freedoms set forth in that Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

¹²[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/iGeneralcommentNo21Rightofeveryonetotakepartinculturallife\(article15,para1\(a\),oftheInternationalCovenantonEconomic,Sociala.aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/iGeneralcommentNo21Rightofeveryonetotakepartinculturallife(article15,para1(a),oftheInternationalCovenantonEconomic,Sociala.aspx)

¹³https://www.echr.coe.int/Documents/Convention_ENG.pdf

Mandla (Sewa Singh) and another v Dowell Lee and others [1983]¹⁴

3.11 In 1983 the House of Lords reached a landmark judgement in relation to the Race Relation Act 1976¹⁵, in which it held that ‘ethnic origins’ in the context of what constituted an ethnic group “meant a group which was a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past... in that it was that combination which gave them an historically determined social identity in their own eyes and in those outside the group.”

The Northern Ireland Act 1998

3.12 Article 14 of the ECHR is underpinned in our society by Section 75, paragraph 1, of the Northern Ireland Act 1998, the first duty of which is the *Equality of Opportunity* duty, which requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between the nine equality categories of persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without.

UN Human Rights Council Resolution on Cultural Rights and the Protection of Cultural Heritage (2016)

3.13 The UN Human Rights Council Resolution 33/20¹⁶, recognised that “*the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights, in particular the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage.*(P1)”

3.14 It pointed out that “*addressing the destruction of tangible and intangible cultural heritage needs to be holistic, encompassing all regions, contemplating both prevention and accountability, focusing on acts by State and non-State actors in*

¹⁴ <https://www.casemine.com/judgement/uk/5a8ff8c960d03e7f57ecd6d7>

¹⁵ <http://www.legislation.gov.uk/ukpga/1976/74/enacted>

¹⁶ <https://undocs.org/A/HRC/RES/33/20>

both conflict and non-conflict situations...” and called for the development of “partnerships between competent national authorities and civil society, in particular grass-roots institutions, with the aim of enhancing the protection of cultural rights and promoting the right of everyone to participate in cultural life, including the ability to access and enjoy cultural heritage...[and] for the identification of innovative ways and best practices, at the national, regional and international levels, for the prevention of violations and abuses of cultural rights, and for the prevention and mitigation of damage caused to cultural heritage, both tangible or intangible...(P1)”

Implications for Expressions of Cultural Identity in our Society

3.15 As a consequence of the above, the Commission contends that everyone in our society should be entitled to the following:

- To enjoy their own culture, to profess and practise their own religion, or to use their own language.
- To access their own culture, as well as that of others.
- To discover and forge their own sense of identity and, in turn, contribute to the stimulation and sustainability of cultural life and traditional arts.
- To benefit from their cultural heritage and to contribute to its enrichment, subject only to those restrictions established by law which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others.
- To self-identify their own cultural identity and the right to change their choice
- To cultural assembly (subject to the rule of law)
- To pursue cultural rights in a manner appropriate for the common good in a society emerging from conflict.

3.16 These entitlements can be read in relation to others including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁷ and the United Nations Convention on the Rights of the Child¹⁸ and the Framework Convention for the Protection of National Minorities¹⁹.

¹⁷ <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

¹⁸ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁹ <https://www.coe.int/en/web/minorities/>

- 3.17 The Commission recognises that human rights instruments provide the framework for building a shared society and protecting diverse cultural identities. It also recognises that the ability to access these rights is often dependent on the capacity and resources available. In developing a rights-based society, individuals and groups must feel that those rights are equally held by everyone. Through its public engagement process the Commission heard that different sections of our community are at different stages along this journey and recognises that there is a disparity in capacity.
- 3.18 The historical reasons for this disparity are complex but the Commission recognises that it needs to be addressed. Our society can only benefit from all its citizens viewing rights as belonging to everyone and understanding the responsibilities that come with those rights. Raising the capacity of groups and individuals to consider rights issues and, where necessary, to use legal means to secure and protect their rights, is an important aspect of developing a rights-based society
- 3.19 There is a need for ongoing work among community groups that are less well resourced and experienced across our society, particularly for groups whose cultural identity is linked to unionist traditions, such as the Ulster-Scots Community Network, around education and the development of capacity and skills. The Commission notes a range of commitments within the New Decade, New Approach document including the establishment of Shared History Fund, of the Castlereagh Foundation and a Culture and Community Fund.

Human Rights in a Diverse and (at times) Divided Society

- 3.20 Our society is not the only one in which public expressions of diverse cultural identities have been associated with disputes and challenges. International experiences were reflected in a set of Guidelines from the Council of Europe Human Rights in Culturally Diverse Societies²⁰, published in 2016, which declare that “*full and equal enjoyment of human rights and fundamental freedoms by all*

²⁰ https://www.coe.int/en/web/cm/news/-/asset_publisher/hwwluK1RCEJo/content/human-rights-in-culturally-diverse-societies-new-guidelines/16695

members of democratic and culturally diverse societies directly contributes to peace and stability and may help to prevent intolerance potentially leading to violence and conflicts (p.10)". They stress that "*social cohesion and inclusion help to ensure the welfare of all members of society, minimise disparities and avoid polarisation (p.10)*". In other words, one of the key ways by which our political divisions can be managed and reduced is by making our society more cohesive.

- 3.21 It is important however to stress that the cohesion that these Guidelines advocate does not aim to reduce diversity. Rather, the Guidelines state that:

"Member States should strive to ensure conditions that enable individuals and groups to live together in their diversity and allow the expression of pluralism, tolerance and broadmindedness that are hallmarks of a democratic society. This protection of "living together" can be linked to the legitimate aim of protecting the rights and freedoms of others. In this respect, although sometimes it is necessary for individual interests to be subordinated to those of a group, democracy does not simply mean that the views of a majority shall always prevail: a balance should be achieved which ensures the fair treatment of the majority and the minority. Pluralism and democracy should also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups which are justified in order to maintain and promote the ideals and values of a democratic society. (P12)"

- 3.22 The Council of Europe is arguing that while everyone's rights must be recognised and protected, democracy and pluralism also requires dialogue and compromise. As our history has shown this is not, of course, always easy to achieve. In 2008 the Council of Europe produced a White Paper on Interculturalism called '*Living Together as Equals in Dignity*'²¹, in which they advocated "*intercultural dialogue*" as a means of promoting mutual understanding and safeguarding and developing human rights, democracy and the rule of law.

²¹ https://www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf

3.23 The report defines intercultural dialogue:

“as an open and respectful exchange of views between individuals, groups with different ethnic, cultural, religious and linguistic backgrounds and heritage on the basis of mutual understanding and respect. It requires the freedom and ability to express oneself, as well as the willingness and capacity to listen to the views of others. Intercultural dialogue contributes to political, social, cultural and economic integration and the cohesion of culturally diverse societies. It fosters equality, human dignity and a sense of common purpose. It aims to develop a deeper understanding of diverse world views and practices, to increase co-operation and participation (or the freedom to make choices), to allow personal growth and transformation, and to promote tolerance and respect for the other.

“Intercultural dialogue may serve several purposes, within the overriding objective to promote full respect for human rights, democracy and the rule of law. It is an essential feature of inclusive societies, which leave no one marginalised or defined as outsiders. It is a powerful instrument of mediation and reconciliation: through critical and constructive engagement across cultural fault-lines, it addresses real concerns about social fragmentation and insecurity while fostering integration and social cohesion. Freedom of choice, freedom of expression, equality, tolerance and mutual respect for human dignity are among the guiding principles in this context. Successful intercultural dialogue requires many of the attitudes fostered by a democratic culture – including open-mindedness, willingness to engage in dialogue and allow others to express their point, a capacity to resolve conflicts by peaceful means and a recognition of the well-founded arguments of others. It contributes to strengthening democratic stability and to the fight against prejudice and stereotypes in public life and political discourse, and to facilitating coalition-building across diverse cultural and religious communities, and can thereby help to prevent or de-escalate conflicts – including in situations of post conflict and “frozen conflicts.” (section 3.1, p.17)

3.24 This approach is already part of the NI Executive's *Racial Equality Strategy 2015-2025*²².

"We are aiming rather for an approach that has been described as "intercultural" where we have pride in our particular identity or identities, but also where people have the intercultural education which gives them the competence and confidence to relate to people who are different to themselves and to see others as an opportunity to learn and develop, rather than as a threat. We want to see people of mixed race, faith and nationality valued on an equal basis to those who claim a single identity (paragraph 1.8)".

"Part of the vision must be for open communities, in which people are able to live within shared spaces – schools, communities and workplaces. This does not mean creating environments where groups lose their culture or heritage but rather seeking to avoid segregated environments and promoting good relations and shared spaces (paragraph 1.9)".

Human Rights, Equality and Good Relations

3.25 As noted above, Section 75 (1) of the Northern Ireland Act 1998 requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between the nine equality categories.

3.26 Section 75 (2) of that Act states that *"without prejudice to its obligations under subsection (1) to the need to promote equality of opportunity, a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group."*

3.27 There is however no definition in Northern Ireland as to what constitutes 'Good Relations'. Section 149 of the Equality Act 2010²³ defines Good Relations in law

²² <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm/racial-equality-strategy-2015-2025.pdf>

²³ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

relating to England and Wales (but does not extend to Northern Ireland), imposing a duty, known as the public sector equality duty, that commits public bodies to:

- (a) tackle prejudice,
- (b) promote understanding, and
- (c) fostering good relations between people who share a protected characteristic and people who do not share it.’

Section 149 (5) states:

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) tackle prejudice, and
- (b) promote understanding.

The protected characteristics referred to in the GB Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

3.28 In its submission to the Commission, the Equality Commission for Northern Ireland acknowledges that the definition contained in section 149 of the Equality Act 2010 in Great Britain is useful in that it provides public authorities there with direction on how they should comply with their statutory good relations duty.

3.29 The Executive’s ‘Together: Building a United Community Strategy (T:BUC)’²⁴ outlines a vision of *“a united community, based on equality of opportunity, the desirability of good relations and reconciliation - one which is strengthened by its diversity, where cultural expression is celebrated and embraced and where everyone can live, learn, work and socialise together, free from prejudice, hate and intolerance.”* (P3)

²⁴ https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm_dev/together-building-a-united-community-strategy.pdf

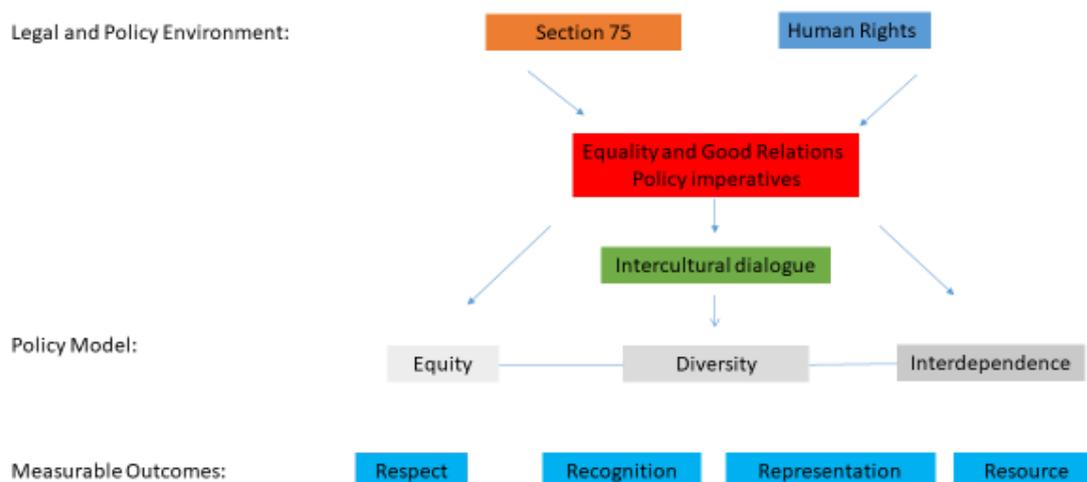
- 3.30 The Commission notes the T:BUC Shared Aim of Cultural Expression *“to create a community which promotes mutual respect and understanding, is strengthened by its diversity, and where cultural expression is celebrated and embraced.”*(P6)
- 3.31 The T:BUC Strategy concludes that *“we cannot build a united community unless the fundamental issues of division and intolerance are specifically tackled. This cannot be achieved without tackling the underlying prejudices and behaviours caused by sectarianism. For the purposes of this Strategy, sectarianism is defined as: threatening, abusive or insulting behaviour or attitudes towards a person by reason of that person’s religious belief or political opinion; or to an individual as a member of such a group.”* (Para1.36)
- 3.32 Equality and Good Relations are interdependent of each other and both are essential to building a shared, peaceful and equal society. The Commission wishes to reassert what was recognised in section 75, and contend that the resources and policies required to create a more shared, peaceful and equal society need to have Equality and Good Relations outcomes at their core. In such an approach to policy aims and programme delivery, the Commission discussed a number of models including Equity, Diversity and Interdependence.
- Within an approach that has Equality as the key policy driver, **Equity** is here understood as ensuring that all sections of society have equal opportunities to participate in cultural life through making reasonable adjustments and redressing inequalities that arise independently of people’s choices. Equity is related to equality but recognises that not all outcomes must be equal: it is about ensuring that policy is based on justice and fairness. It recognises that, for the common good, some communities may need more assistance to grow in cultural confidence.
 - **Diversity** is here understood as acknowledging how our cultural differences as individual human beings and as members of groups can improve the quality people’s lives. It also recognises that diversity in all areas of social life is a strength.

- **Interdependence** is here understood as recognising that we are shaped by our cultural relationships, and that our potential as human beings and as a society is dependent on the quality of our relationships with one another. In Northern Ireland, as it emerges from conflict, this means our interdependence is expressed in a manner appropriate for the common good.

3.33 The Commission believes that everyone in our society has the right to determine their own cultural identity and to have it recognised. Moreover those cultural traditions should be recognised across our cultural infrastructure. In affirming those cultural traditions, the progressive realisation of cultural rights within our society should be a goal of all in our society and should be pursued equitably.

3.34 **Respect** for, and **resourcing** of different cultural identities should be our ambition. Resourcing includes access to and the provision of goods and services, funding and physical infrastructure.

3.35 Our public bodies are intended to be **representative** of wider society and as far as possible cultural bodies should reflect the cultural make-up of our society.



Recommendations

- 3.36 The Commission recommends that the NI Human Rights Commission, Equality Commission and other appropriate agencies and NGOs continue to work on the development of a culture of rights within our society. Awareness of rights related issues should also be encouraged through the education system.
- 3.37 The Commission recommends that the Human Rights Commission and the Equality Commission bring forward recommendations to the Executive for publicly funded measures to assist the development of capacity within groups who have not previously availed of a rights-based framework.
- 3.38 The Commission recommends that the legal duty of Good Relations should be clearly defined in law.
- 3.39 The Commission recommends that the delivery of Good Relations interventions, has reductions of sectarian and race hate incidents as key outcomes.

Where Challenges Remain

- 3.40 The Commission discussed how to measure Equity, Diversity and Interdependence (EDI) within our society. However, the model of assessing EDI through respect, recognition, representation and resources was not one that the Commission could reach consensus on.
- 3.41 Two proposals that were discussed but could not be agreed were:
- That the policy outcome of Equity, Diversity and Interdependence should be reflected in terms of respect for the cultural identity of all minorities in our society; appropriate representation in public life and adequate resourcing of the cultural practices.
 - That public authorities be audited for Good Relations, including how they have promoted and implemented the principles of Equity, Diversity and Interdependence and how they have catered for the cultural expression of minorities within their area of responsibility.

New Decade, New Approach

3.42 The Commission notes the approach to cultural rights taken in the New Decade, New Approach document²⁵, in particular Annex E on Rights, language and identity. Paragraph 5.1 states: *The First Minister and deputy First Minister, supported by Junior Ministers in The Executive Office, will sponsor and oversee a new framework both recognizing and celebrating Northern Ireland's diversity of identities and culture and accommodating cultural difference. This framework will be underpinned by the birthright of all the people of Northern Ireland to identify themselves and be fully accepted as Irish or British, or both, as they may so choose, while fully acknowledging and accommodating those within our community who define themselves as 'other' and those from our ethnic communities and newcomer communities.*

3.43 It goes on to state that a new Office of Identity and Cultural Expression will be established as the central point for giving effect to new legislation. This new Office will have responsibility for ensuring that our society and our public bodies uphold:

- (a) the need to respect the freedom of all persons in Northern Ireland to choose, affirm, maintain and develop their national and cultural identity and to celebrate and express that identity in a manner which takes into account the sensitivities of those with different national or cultural identities and respects the rule of law;*
- (b) the need to encourage and promote reconciliation, tolerance and meaningful dialogue between those of different national and cultural identities in Northern Ireland with a view to promoting parity of esteem, mutual respect and understanding and cooperation.*

3.44 At (P31-32) paragraph 5.3 it states that the strategic aims of the Office will be:

- (a) to promote cultural pluralism and respect for diversity, including Northern Ireland's ethnic, national, linguistic and faith communities;*

²⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

(b) build social cohesion and reconciliation, so that everyone has a sense of belonging;

(c) build capacity and resilience on how we address our unresolved cultural identity issues; and

(d) celebrate and support all aspects of Northern Ireland's rich cultural and linguistic heritage, recognizing the equal validity and importance of all identities and traditions.

3.45 The Commission notes that: *"In pursuing those aims the Office will have a significant job of work to do, including:*

(a) provide guidance to public authorities concerning their duty under their new obligations amended to the Northern Ireland Act;

(b) monitor the compliance of public authorities with that duty;

(c) report to the Assembly on compliance with that duty;

(d) promote best practice in relation to compliance with that duty."

3.46 Furthermore the New Decade, New Approach document at (P16) paragraph 28 states: *An Ad-Hoc Assembly Committee will be established to consider the creation of a Bill of Rights that is faithful to the stated intention of the 1998 Agreement in that it contains rights supplementary to those contained in the European Convention on Human Rights (which are currently applicable) and "that reflect the particular circumstances of Northern Ireland", as well as reflecting the principles of mutual respect for the identity and ethos of both communities and parity of esteem."*

3.47 The Commission further notes the UK Government commitment at (P49) paragraph 24 to *"Recognise Ulster Scots as a national minority under the Framework Convention for the Protection of National Minorities."*

Chapter 4 Leadership for a Shared Society

The Importance of Leadership

- 4.1 One of the issues that was regularly raised with and discussed by the Commission in the course of its work was leadership. In some cases, the discussions were around leadership that has been shown, in others they reflected concerns about the lack of leadership that people felt they had seen from politicians and public agencies, and the lack of confidence that has developed as a result. The discussions also included the role of paramilitary groups in our society and the ways in which they seek to assert leadership and control.
- 4.2 During its consultation and engagement exercise the Commission heard how the polarised political and cultural narrative in our society creates a barrier to mutual understanding, respect and potential reconciliation; and heard from many parts of the community how this affects the expression of their cultural identity in the public space.
- 4.3 The Commission heard from some Nationalists and Republicans who felt that despite ‘parity of esteem’ being outlined in the Belfast / Good Friday Agreement, their sense of Irishness was not as equally regarded or respected within the social, civic and cultural fabric of society as that of Britishness. In particular many felt that their ability to fly the Irish national flag and speak Irish was not on a par with similar practices enjoyed by Unionists.
- 4.4 The Commission also heard from some people within the broad Unionist part of the community felt there to be a poor and negative image of Ulster-Scots language and culture being perpetuated in the public arena, with people citing the media and the education system as being particularly problematic. Many Unionists and Loyalists who attended public engagement events also felt that there was a consistent lack of acknowledgement, within Republicanism, of the constitutional position of Northern Ireland as part of the United Kingdom.
- 4.5 It was clear to the Commission that the lack of an agreed understanding of the constitutional question, the lack of a sense of parity of esteem and perceptions

that certain cultural identities are sometimes neither accepted nor respected in wider society has a significant impact on expressions of cultural identity in the public space. Political identities are expressed through cultural practices including the flying of flags, murals, memorials, parades, linguistic expression and events such as bonfires. There is even contention in the language used to refer to places including the name of the region.

- 4.6 In many cases the expressions of Britishness and Irishness are more prevalent within our society than in the rest of Ireland or in the rest of the United Kingdom. In addition, as these expressions of cultural identity are so deeply connected with political and constitutional matters, their expression can, on occasion, cause offence, hurt and antagonism. Overt expressions of culture, heritage and identity particularly manifest in areas where Nationalists and Unionists live in close proximity to each other. Whether intended or not, these expressions of culture are often perceived as markers of territory.
- 4.7 The challenge is to find ways of reducing the fear, distrust and disrespect often associated with public expressions of cultural identity, among both the people who organise or participate in these expressions and those who oppose them.
- 4.8 While there were acknowledgements that some of those engaged with paramilitary groups had played a positive role in the development of the peace process, people who responded to the Commission's engagement process also raised concerns around the complex and pernicious role of paramilitary organisations in our society. This included a range of issues involving the public space and control of the territory surrounding flags, memorials, bonfires and murals. There was a sense that despite decommissioning, paramilitary groups continue to organise and exert coercion and control in substantial areas, including through the medium of cultural expression.
- 4.9 The question of how to transition from a society in which paramilitary groups have previously played a significant role has been an important part of the Commission's discussions, and it acknowledges the Executive's commitment to

tackling Paramilitarism as outlined in 'A Fresh Start' and reasserted in the New Decade, New Approach document produced by the two Governments.

4.10 The Commission is resolute in its view that there is no role for paramilitary organisations in our society. As long ago as 1996 all parties involved in the multi-party talks that resulted in the Belfast/Good Friday Agreement committed themselves to a set of principles²⁶ proposed by Senator George Mitchell, including their *“total and absolute commitment to democratic and exclusively peaceful means of resolving political issues”*. Ten years later, in 2006 the Independent Monitoring Commission (IMC)²⁷ stated: *“We have also referred in the past to a culture of lawfulness. By this we mean a situation where communities recognise the need to observe the law and support those who enforce it. With such recognition goes acceptance of the importance of observing individual and collective human rights – an acceptance that carries with it a belief in the duties that everybody has towards others. The notion of a culture of lawfulness is valuable in the context of our remit of reporting on continuing paramilitary activity. In many of the communities in which paramilitary groups are most deeply rooted it exists only to a limited extent. This is partly for historical reasons.....A stronger culture of lawfulness can only help bridge the gap between people and policing where it still exists. Accordingly the establishment of a culture of lawfulness is both an influence on paramilitarism and a measure of what is happening to it. Participation in the structures of policing and justice is a political manifestation of the culture of lawfulness.”*

4.11 Almost another ten years later, the Fresh Start Agreement in 2015 reaffirmed the Mitchell Principles and committed all the political parties to:

- work collectively to achieve a society free of paramilitarism;
- support the rule of law unequivocally in word and deed and support all efforts to uphold it;
- challenge all paramilitary activity and associated criminality;
- call for, and work together to achieve, the disbandment of all paramilitary organisations and their structures;

²⁶ <https://cain.ulster.ac.uk/events/peace/docs/gm24196.htm>

²⁷ Tenth Report of the Independent Monitoring Commission 1.10 p8 (2006)

- challenge paramilitary attempts to control communities;
- support those who are determined to make the transition away from paramilitarism; and
- accept no authority, direction or control on our political activities other than our democratic mandate alongside our own personal and party judgment.

4.12 The resulting Executive Action Plan for Tackling Paramilitarism²⁸ aims at “a society where citizens and communities feel safe and confident; where paramilitarism has no place; where the public support, and have even more confidence in, the justice system; and where those who wish to move away from paramilitary activity and structures are supported to do it.”(P2)

4.13 The Framework for promoting a Culture of Lawfulness flowing from the Executive Programme for tackling paramilitary activity, criminality, and organised crime²⁹ states the following:

“Lawfulness means awareness of, adherence to and respect for the rule of law. A culture of lawfulness is one in which obeying the law is accepted as the way to behave and relate to others in society. People and institutions are expected to follow the law, to see breaking the law as unacceptable and to report crimes and provide information to the police, who then, with others in the justice system, act upon it to bring about justice. Any attempt to intimidate or prevent anyone from providing information to the police is also considered as unacceptable, is reported and acted upon.” (paragraph 9)

However, promoting a culture of lawfulness is about more than just criminal justice: in a culture where lawfulness is respected and embedded, individuals should feel a sense of social connection and desire to participate in society; acting in accordance with a sense of personal responsibility whilst being empowered and supported through the support available in their communities.

²⁸ <https://www.northernireland.gov.uk/sites/default/files/publications/newnigov/Executive%20Action%20Plan%20-%20Tackling%20Paramilitary%20Activity.pdf>

²⁹ <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/framework-for-promoting-a-culture-of-lawfulness.pdf>

Whilst there is a need for a permeating respect for the rule of law, at an individual level this also means the influence of acceptable standards of behaviours and positive role models, which are accepted by all, allowing people to live in safety and stability.” (paragraph 10)

- 4.14 It is striking that some 25 years after the Mitchell Principles, our society is still faced with the challenge of providing communities with safety and confidence, and of removing paramilitarism. The Commission’s view is that this challenge, and the challenges associated with public expressions of cultural identity, are in some cases closely connected. The rule of law and a culture of lawfulness, as described by the IMC in 2006, should underpin our society.
- 4.15 These challenges – of reducing the fear, distrust and disrespect that are often associated with public expressions of cultural identity; and of developing a culture of lawfulness - carry responsibilities for all those in positions of leadership, political and civic, as well as for the public agencies to whom the public look to protect and serve them.

A Role for Political Leaders

- 4.16 Given the deep connection between the politics of our society and the ways in which cultural identities are expressed and perceived, the Commission believes that political leaders have a key role to play in addressing that challenge.
- 4.17 As reflected above, politics is predominantly defined by the clash of two opposed legitimate political ambitions – the maintenance of the union of Northern Ireland with Great Britain, and the establishment of a united Ireland. As a result, issues over expressions of cultural identity that are perceived as reflecting that division are often contentious and serve to reinforce division in a particularly emotive way. The political battle is extended into symbolic and cultural issues, strengthening the political base of parties along identity lines, rather than through broader social and economic issues that run across, rather than within, groups with different cultural identities. Political divisions therefore reinforce tensions over public expressions of cultural identity and vice-versa.

- 4.18 Addressing the negative impact of the relationship between political positions and public expressions of cultural identity requires leadership. Many people who engaged with the Commission expressed the view that the task of transformation into a shared society in which cultural expression can be celebrated, would be easier if those in positions of elected and unelected leadership demonstrate by word and deed, that they respect and value the diversity of others. Examples were given where this had been done successfully in challenging circumstances, and also where community endeavours to do so had been undermined by those in leadership positions.
- 4.19 The Commission agrees, and believes that a starting point would be unequivocal political leadership in relation to the notion of respect, as outlined in the Programme for Government. This could provide the confidence and assurance that those in political leadership respect the constitutional position of Northern Ireland, respect the legitimacy of both Unionist and Nationalist constitutional aspirations and parity of esteem, and are committed to just and equal treatment of the identity, ethos, and aspirations of all. The provision of such assurances, if given in an open and genuine manner across all political levels, could help to create an enabling environment within which culture, heritage, identity and tradition could be celebrated and commemorated in ways that are both respected, and respectful.
- 4.20 The message from many people who spoke to the Commission was simple. If society is to be marked by the way in which people of differing cultural identities show respect for one another, then politicians need to show respect for each other in their public discourse. Political leaders, and all those who speak in the name of their parties, must demonstrate, by their actions and words, that they are genuinely committed to a diverse society.
- 4.21 The Commission discussed how political leaders should seek to actively recognise, understand and protect the diverse cultural identities within the society that they seek to lead, and find ways to demonstrate that such as by attending particular events or providing legislative or financial support to differing cultural activities. The Commission did not make any recommendations on this. However,

the Commission notes the leadership demonstrated by the political parties in re-entering the Executive.

A Role for Civic Leaders

4.22 The need for strong and positive leadership extends well beyond politics and into the civic sphere. All those in positions of leadership in any sector – education, media, faith, sport, cultural, voluntary and community, private enterprise, and others – have a role to play in transforming our society.

4.23 Positive political, civic and statutory leadership will help to create the conditions in which other organisations and individuals are empowered to act in ways that would embed a culture of respect across society. It would empower statutory organisations to promote positive celebrations of cultural identity, empower leaders of community organisations to lead their organisations in positive directions, and empower members of the community to speak out against attitudes and behaviour that fall short of the values that political leaders are demonstrating.

A Role for Public Agencies

4.24 With unequivocal backing from political and civic leaders, people in positions of leadership within public agencies of all kinds should be motivated and confident to use their authority and resources to promote and protect lawful and respectful expressions of cultural identity in the public space.

4.25 Where Public Agencies feel they do not have the necessary legislative authority or resources to do so, or where they believe that other agencies whose co-operation is necessary for efficient and effective action to be taken, are failing to provide it, they must make that clear to legislators and Ministers and seek to have such deficits addressed.

A Political and Civic Consensus

4.26 The Commission's ambition is to see our society transformed into one that is marked by its rich diversity, in which anyone and everyone's expressions of the cultural identity in the public space are respected, and respectful. Our recommendations throughout this report are aimed towards that goal. The

Commission believes that the achievement of that ambition could be significantly enhanced by the existence of an overall political and civic consensus on the importance of cultural diversity and respect for everyone's cultural identity.

Recommendations

4.27 The Commission recommends that all those in positions of leadership – political, civic and in public agencies - seek opportunities to publicly declare their commitment to the following vision and ambition for our community:

- *We are committed to creating an open, tolerant and respectful society, which seeks to increase and deepen understanding of differing cultural identities.*
- *Our ambition is to become a community in which everyone's cultural identity and its expression is both respected and respectful.*
- *We will do our utmost to build a society in which everyone feels welcome and entitled to express their cultural identity, in a way that respects others, within the rule of law.*
- *We wish to see our society move to a place where the development of diversity is seen as contributing to our collective cultural wealth.*
- *It is our responsibility to undertake this task within a culture of lawfulness, in which everyone sees the mutual benefits of complying with the framework that govern how identity and cultural expression is marked.*
- *We recognise the importance of good relationships in our communities and institutions, and that our words and actions will impact, positively or negatively, on developing and maintaining those relationships.*
- *We will seek to develop and protect shared public spaces, where no area is seen as belonging to any one section of the community.*

New Decade, New Approach

- 4.28 The Commission notes these commitments outlined in New Decade, New Approach document. P13, paragraph 15 of New Decade, New Approach states: *The Parties have agreed that the institutions should be formed on the basis of **good faith, trust and mutual respect** and have reaffirmed **their commitment to the principles of power-sharing and cross community protection** contained in the Belfast Agreement (Good Friday Agreement).*
- 4.29 P15, paragraph 25 of New Decade, New Approach states: *The parties affirm the need to **respect the freedom of all persons in Northern Ireland to choose, affirm, maintain and develop their national and cultural identity** and to celebrate and express that identity in a manner which takes into account the sensitivities of those with different national or cultural identities and respects the rule of law. They also affirm the need to **encourage and promote reconciliation, tolerance and meaningful dialogue** between those of different national and cultural identities in Northern Ireland with a view to promoting **parity of esteem, mutual respect, understanding and cooperation**.*

SECTION 2

CULTURAL IDENTITY AND SOCIETY

CHAPTER 5 EDUCATION

Background

- 5.1 Education plays an extremely important role in exploring and understanding identity, culture and tradition. It presents an opportunity to help build children's and young people's sense of self, as well as their understanding and appreciation of diversity within our society.
- 5.2 In general most Protestant children in our society attend state 'controlled' schools while most Catholic children attend Catholic 'maintained' schools. There are a small number of integrated schools that educate Catholic and Protestant children – and others - together. There are also a small number of Irish-medium schools. Over several decades there have been a number of policy interventions to address the challenge of improving community relations, diversity and equality within the context of a segregated schooling system.

International Instruments Relating to Education and Culture

United Nations Convention on the Rights of the Child (UNCRC)

- 5.3 The fullest expression of the cultural rights of children in relation to education is to be found in the UNCRC, a universally agreed set of standards and obligations to protect the human rights of children. The UNCRC includes certain cultural rights and how they relate to education, as set out in Articles 29, 30 and 31.
- *Article 29.1.c commits States to the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own.*
 - *Article 30 commits those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist to the creation of an environment where, 'a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.'*

- *Article 31 commits State Parties to recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and ‘to participate freely in cultural life and arts’; and ‘respect and promote the right of the child to participate fully in cultural and artistic life, and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.’*

5.4 The United Nations (UN) Special Rapporteur in the field of cultural rights considers the writing and teaching of history as central to achieving a balanced approach when implementing Article 29 of the UNCRC. *“In particular, the right of individuals and communities to express their identities and enjoy their cultural heritage should not lead to situations in which people, on that basis, create separate, hermetically sealed worlds.”*³⁰ (P15) paragraph 50. The right of children to develop their own historical perspective is to be considered an integral part of the right to education.

5.5 The Rapporteur acknowledges that past conflict is sometimes considered too recent to be addressed and taught in schools: *‘Understanding the past requires distance. It is usually considered that at least one generational period is needed before painful events can be discussed openly. Nevertheless, discussions on recent events are inevitably conducted within society, and younger generations receive historical narratives from various sources, including the Internet. History teaching in schools therefore appears to remain the best option to deal with a recent painful past because it affords an opportunity to exercise critical thinking and expose pupils to various narratives. This, however, calls for robust education of teachers.’* (P9) paragraph 26).

Council of Europe’s Framework Convention for the Protection of National Minorities

5.6 The Council of Europe’s Framework Convention for the Protection of National Minorities makes various references to education and cultural identity. Article 6 commits signatories to encourage a *‘spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-*

³⁰ <https://undocs.org/en/A/68/296>

operation among all persons living on their territory'. Article 12 commits signatories, where appropriate, to take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. Article 14 commits signatories to recognising that every person belonging to a national minority has the right to learn his or her minority language.

- 5.7 The Council of Europe's report *Human Rights in Culturally Diverse Societies* observed that under provisions of the Framework Convention, State Parties need to review regularly the entire curriculum in order to ensure that the diversity of cultures and identities is reflected and that tolerance and intercultural communication are promoted.

OSCE Ljubljana Guidelines on Integration of Diverse Societies

- 5.8 The Organisation for Security and Cooperation in Europe (OSCE) Ljubljana Guidelines on Integration of Diverse Societies³¹ recommend that education policies should aim to foster common integrated and inclusive educational environments that recognise, value and respond to diversity and promote a culture of respect for others within the student body and beyond. The education system should also develop and teach a general compulsory curriculum with associated learning materials that includes teaching about the histories, religions, cultures, traditions and contributions of both minority and majority groups within the State, while reflecting different perspectives: "*Respect for diversity and pluralism should be mainstreamed into all subject areas covered by the curriculum.*" (P56)

Northern Ireland Legislation and Policy Relating to Education and Culture

- 5.9 The first public commitment to community relations in education was made in a 1982 circular *The Improvement of Community Relations; The Contribution of Schools*³², which stated that "*every teacher, every school manager, board member, trustee, and every educational administrator within the system has a responsibility for helping children learn to understand and respect each other*".

³¹ <https://www.osce.org/files/f/documents/0/9/96883.pdf>

³² Department of Education (Northern Ireland) (1982). *The Improvement of Community Relations: the Contribution of Schools*. DENI Circular 1982/21

The Education (Northern Ireland) Order 2006

5.10 *The Education (Northern Ireland) Order 2006*³³ provides the Department of Education with the authority to define the minimum content for a series of 'learning areas' and provides that all schools are required to cover the minimum content of each area of learning, as defined in that Order.

5.11 Article 4 places a duty on boards of Governors and school Principals of every grant-aided school to ensure that *the curriculum for their school is "a balanced and broadly based curriculum which -*

- (a) *promotes the spiritual, emotional, moral, cultural, intellectual and physical development of pupils at the school and thereby of society; and*
- (b) *prepares such pupils for the opportunities, responsibilities and experiences of life by equipping them with appropriate knowledge, understanding and skills.*

The Education (Curriculum Minimum Content) Order (Northern Ireland) 2007

5.12 Subsequently, the Department produced *The Education (Curriculum Minimum Content) Order (Northern Ireland) 2007*³⁴, outlining the minimum content to be covered by schools under each area of learning and at each stage of learning from Foundation Stage (ages 4-6) to Key Stage Four (ages 14-16). The minimum content outlines various steps to explore issues of cultural identity within both a local and wider context. The statutory requirements of the curriculum are a matter for the Department of Education and its Minister. The Minister gives direction to the Council for Curriculum, Examinations and Assessment (CCEA) to review the curriculum, which involves a period of research, review and consultation.

5.13 In post-primary schools issues of cultural identity are addressed under the theme of 'Learning for Life and Work: Local and Global Citizenship' which addresses issues associated with diversity and inclusion; equality and social justice; human rights and responsibilities and democracy and active participation.

³³ <http://www.legislation.gov.uk/nisi/2006/1915/contents/made>

³⁴ <http://www.legislation.gov.uk/nisr/2007/46/contents/made>

- 5.14 The curriculum states that all young people are required to explore aspects related to mutual understanding and cultural awareness within Key Stage 3 (ages 11-14).
- 5.15 In History all young people aged 11-14, in considering ‘Mutual Understanding’ and issues of ‘Cultural Awareness’, learn about Irish history from 1600-1920. CCEA guidance permits each school additional flexibility to make decisions about how best to interpret and combine minimum requirements so as to provide a broad and balanced curriculum that will prepare each young person for a rapidly changing world. Flexibility within the History curriculum means the Partition of Ireland is the only core topic that all young people have to study. A key aim of this topic is to: *‘Investigate the long and short term causes and consequences of the partition of Ireland and how it has influenced Northern Ireland today including key events and turning points.’*
- 5.16 The history of Northern Ireland, including the Troubles, is only studied by young people who choose to study History at GCSE level (ages 14 - 16) where the options are Changing Relations: Northern Ireland and its Neighbours 1920-1949; or Changing Relations: Northern Ireland and its Neighbours 1965-1998.

The Shared Education Act (Northern Ireland) 2016

- 5.17 The Shared Education Act (Northern Ireland) 2016³⁵ was passed by the NI Assembly and provides a legislative definition of shared education, confers a duty on the Department of Education to encourage, facilitate and promote shared education and confers a power on relevant arms-length bodies of the department to encourage and facilitate shared education.
- 5.18 The Act defines Shared Education as meaning “the education together of -
- those of different religious belief, including reasonable numbers of both Protestant and Roman Catholic children or young persons; and
 - those who are experiencing socio-economic deprivation and those who are not, which is secured by the working together and co-operation of two or more relevant providers.”

³⁵ <http://www.legislation.gov.uk/nia/2016/20/contents>

What the Commission Heard

- 5.19 Education and its role in aiding understanding of cultural diversity emerged as a consistent theme throughout the Commission's engagement process. For those who engaged in that process a lack of mutual understanding was viewed as a major barrier to progress, and it was felt this was reflected in a lack of respect shown to the exploration, understanding and celebration of identity, culture and tradition within the education system. People highlighted a need to teach young people about relationships, respect, similarities and differences within our society.
- 5.20 Views were expressed about the perceived failure of the education system to explore and understand the similarities and differences among the cultures, identities and traditions within our society, including those within the communities in which young people live. Some people within the Unionist community expressed a belief that the controlled sector does little to promote the culture of unionist communities.
- 5.21 There was a recurring view expressed that the history curriculum was not fit-for-purpose in terms of promoting mutual understanding and a plurality of historical narratives. Some felt that the curriculum shied away from exploring the history of events that have shaped this society, through to and including the conflict and the various political agreements over the last 20 years.
- 5.22 The Commission also met with a number of organisations and individuals from the education sector and reviewed various submissions and research publications. Some contributors contended that the current curriculum does encourage such exploration, but that some schools and teachers felt uncomfortable in dealing with these matters and some simply avoided them. Evidence from a number of practitioners and professionals involved in curriculum design indicated that, in terms of Irish history, only a 'tiny minority' of school children aged 11-14 had an opportunity to study beyond the issue of 'Ireland and the First World War'. It was put to the Commission that almost all pupils had 'no sense' of the causes and consequences of the partition of Ireland.

- 5.23 The capacity and readiness of teachers to cover difficult subject matter such as the recent history of the conflict, culture, identity and citizenship was raised as an issue. While it was recognised that some schools and some programmes are trying to deal with these matters, concerns were expressed about the training, objectivity and ability of teachers to do so.
- 5.24 The Commission found some positive examples of issues such as citizenship and cultural differences being explored. But the impression from its public consultation that 'Learning for Life and Work: Local and Global Citizenship' was not taken seriously by schools but dealt with as an afterthought was confirmed by a number of education professionals, including teachers.
- 5.25 The Commission also heard that there was no inspectorate mechanism to assess whether any of the objectives to promote the aims of Mutual Understanding among our young people set out by the Education Order (Northern Ireland) 2007 were being met.
- 5.26 A view was expressed in relation to the role of school Principals and Governors in defining the ethos of their schools and how they reflect the communities in which they are based. Some felt that teachers - particularly within the Controlled sector - did not reflect local identity and traditions in their teaching, complaining that neither they, nor their children, learned anything of their 'own' history in schools or saw their cultural identity respected. The interface between cultural practices and social class was seen to be an issue for some teachers. One possible reason suggested was that the strong links between the school, the community and in some cases the church within the Maintained sector was not reflected in the Controlled sector.
- 5.27 Much of the discussion of education focussed on formal education within schools. The influence of adults through informal education on young people was also recognised. Therefore providing formal and informal education and learning opportunities for adults on issues affecting identity, culture and tradition, including our history, is equally important. A number of examples were given of how community adult education programmes covering these issues, were organised in some cities and towns, and how demand often exceeded supply.

5.28 The Commission further notes what is contained within the New Decade, New Approach document. Under the functions listed for the Office of Identity and Cultural Expression (P.32) it states the need to: *“promote public awareness and educational programmes, including guidance on how the rights of the child to learn about their identity and heritage, as well as those of other traditions, will be incorporated into the education sector.”*

The Commission’s View

5.29 Reflecting upon the evidence before it, the Commission finds that many young people finish school without an understanding of their own cultural identity and of other communities within our society. While it is acknowledged that the curriculum presently allows for culture, identity and tradition to be explored within schools, this does not appear to be applied consistently across all schools.

5.30 Providing young people, in particular, with the opportunity to explore and affirm their own cultural identity, whilst exploring those of other communities, is one way to build confidence and understanding of their identity. This, in turn, is key to building cultural confidence, mutual understanding, acceptance of difference and respect for others. The Commission finds that, as our society seeks to transition from conflict, elements of the education curriculum are not delivering as fully as they ought to.

Recommendations

5.31 The Commission recommends that the Department of Education be placed under legal duty to implement UNCRC Article 29.1; Article 30; and Article 31 in a manner appropriate to our society which is one emerging from conflict. In the view of the Commission this requires the Department of Education, in conjunction with CCEA, to review the curriculum and ensure that every school child learns about the key markers of cultural identity in our society. This would include expressions that reflect the three traditional strands of historic Ulster identity (English, Irish and Scots) alongside cultural expressions of British and Irish heritage. This should include wider European and global cultural influences (including recent migration patterns); and key cultural markers of minority ethnic and faith communities. The

review would include consultation with educational and cultural sectoral bodies, Boards of Governors, parents and the general public.

- 5.32 The Commission recommends that the Department of Education, in conjunction with CCEA, institutes a core history unit running throughout Key Stage 3 (ages 11-14). This would cover, for example, the Normans in Ireland to the Good Friday Agreement and exploring multiple narratives and our shared history within Northern Ireland and the island of Ireland; the development of key identities within Northern Ireland; and relationships within the island of Ireland and between Ireland and Britain. The rest of the curriculum would remain flexible and devolved as at present.
- 5.33 The Commission recommends that the Department of Education provides resources and training to ensure that teachers feel confident in facilitating discussion of controversial issues in the classroom.
- 5.34 The Commission recommends that the Department for Education ensures that the remit of the Education and Training Inspectorate includes a responsibility to specifically report on their assessments to see if schools are delivering on the minimum requirement of the curriculum in relation to building mutual understanding, and provides adequate resources for it to do so.

New Decade, New Approach

- 5.35 The Commission notes that the New Decade, New Approach document, states at (P35) 5.19 *“The legislation will also include a duty on the Department of Education to encourage and facilitate the use and understanding of Ulster Scots in the education system.”*
- 5.36 Furthermore it states at (P35) 5.16.2 that the role of the Ulster-Scots/Ulster British Commissioner will be to *“provide advice and guidance to public authorities, including where relevant on the effect and implementation, so far as affecting Ulster Scots, of commitments under the European Charter for Regional and Minority Languages, the European Framework Convention for the Protection of National Minorities, and the United Nations Convention on the Rights of the Child.”*

5.37 As referred to previously the Commission notes a commitment of the UK Government at (P49) paragraph 24 to *“Recognise Ulster Scots as a national minority under the Framework Convention for the Protection of National Minorities.”*

CHAPTER 6 MEDIA

Background

- 6.1 The media - broadcast, print and digital - plays a hugely significant role in both reporting and reflecting the cultural fabric and complexity of our society.
- 6.2 For many people and organisations, how media is imparted and received has been revolutionised in recent times. The era of traditional media transmitting output to the vast majority of the population has passed. People can now filter the news they receive and can become news creators themselves through online platforms.
- 6.3 Northern Ireland is one of the busiest media markets in the Western world. For a region of its size and population the rate of media production is high. We have over 60 local newspapers, three daily newspapers, two dedicated daily television news programmes, eight commercial radio stations, ten community radio stations, one community television channel and upwards of 20 online-only local news websites. Added to this, most news agents stock many UK national broadsheet and tabloid newspapers, many Ireland national broadsheet and tabloid newspapers and in some cases, titles from Scotland. It can be typical to see 15-25 newspapers stocked in a newsagent. This volume of media both reflects and drives the influential role that it plays in the social and cultural life of our society.

Legislation and Policy Relating to Media

- 6.4 There is a range of legislation and relevant documents which relate to media, including:
- European Charter for Regional or Minority languages
 - European Convention on Human Rights
 - EU Audiovisual Media Services Directive³⁶
 - UK Broadcasting Act 1990³⁷ & 1996³⁸
 - UK Communications Act 2003³⁹

³⁶ <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

³⁷ <http://www.legislation.gov.uk/ukpga/1990/42/contents>

³⁸ <http://www.legislation.gov.uk/ukpga/1996/55/contents>

- Defamation Act 2013⁴⁰
- Wireless Telegraphy Act 2016⁴¹
- Royal Charter on Self-Regulation of the Press 2013⁴²
- Royal Charter for the Continuance of the BBC 2016⁴³
- Belfast/Good Friday Agreement 1998

6.5 Broadcasting is one of the key aspects of cultural expression, as reflected in various international human rights documents including the European Charter for Regional or Minority Languages. It is also reflected in the inclusion of Irish language film and television production commitments in the Belfast/Good Friday Agreement.

6.6 The current legal framework governing media, access to media, fairness and balance, etc. is complex and operates at both a UK and European level. Legislation pertaining to broadcasting is a reserved matter, meaning Westminster retains full legislative authority.

6.7 The legal underpinning of media and broadcasting can roughly be divided into two categories: (i) laws and regulations which set out rights to access media and requirements in relation to fairness, etc. and (ii) laws and regulations which deal with operational and procedural issues.

6.8 The first category includes the European Convention on Human Rights Articles 8 (right to privacy), 9 (right to freedom of thought, conscience and religion), 10 (right to freedom of expression) and 14 (enjoyment of rights and freedoms to be secured without discrimination); the EU Audiovisual Media Services Directive; the UK Communications Act 2003; the UK Broadcasting Acts 1990 and 1996; the Royal Charter on Self-Regulation of the Press 2016 and the Defamation Act 2013.

³⁹ <http://www.legislation.gov.uk/ukpga/2003/21/contents>

⁴⁰ <http://www.legislation.gov.uk/ukpga/2013/26/contents/enacted - applies in GB only.>

⁴¹ <http://www.legislation.gov.uk/uksi/2016/426/made>

⁴² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/254116/Final_Royal_Charter_25_October_2013_clean_Final_.pdf

⁴³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577829/5796_4_CM_9365_Charter_Accessible.pdf

- 6.9 The second category includes the Wireless Telegraphy Act 2016, Communications Act 2003, Royal Charter for the continuance of the BBC 2016 and various others.
- 6.10 Broadcast media (TV and radio) are regulated by OFCOM whose broadcasting code⁴⁴ includes requirements around due impartiality and accuracy, undue prominence of views and opinions, religion, harm and offence, fairness and privacy, amongst others.
- 6.11 Following the Leveson inquiry, press media now has two methods of voluntary regulation: IMPRES, which received Royal Charter recognition, and Independent Press Standards Organisation (IPSO). Some media, including the FT and Guardian, self-regulate and are independent from both bodies.
- 6.12 OFCOM provides operating licenses to national and local TV channels, commercial and community radio. The current BBC license⁴⁵ was created in 2017 and runs for ten years. It includes a specific requirement pertaining to BBC Northern Ireland broadcasting of Irish language and Ulster-Scots programming. OFCOM consults on these licenses before they are issued.
- 6.13 The Belfast/Good Friday Agreement includes specific references to media. Section 6 makes reference to exploring urgently increasing the availability of Teilifís na Gaeilge (now TG4) in Northern Ireland and seeking more effective ways to encourage and provide financial support for Irish language film.

Language Broadcasting in Britain and Ireland

- 6.14 The Welsh-language television channel S4C provides some 1700 hours of original content per year, some of which is provided free-of-charge by BBC Wales. BBC channels in Wales carry Welsh language programming and news in the Welsh language is included on the main BBC UK News online page. The BBC provides a Welsh-language radio station, BBC Cymru. In 2017 S4C's funding was £84m, 8% of which came from UK government funding, 2% from commercial income and the

⁴⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0005/100103/broadcast-code-april-2017.pdf

⁴⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0015/112416/bbc-operating-licence-original.pdf

remainder from the TV license fee. S4C will be funded entirely by the license fee from 2020 onwards.

- 6.15 The BBC launched a Scottish-Gaelic channel BBC Alba in 2006 which carries over 500 hours of original programming per year. BBC Scotland's Radio nan Gàidheal broadcasts as a standalone Scottish-Gaelic station. News in Scottish-Gaelic is also provided on the main BBC UK News online page. The introduction of a new BBC Scotland channel, which will replace BBC4 on digital televisions, is set to deliver an increase in Scottish-Gaelic programming.
- 6.16 BBC Alba is broadcast in partnership between BBC and MG Alba, an organisation set-up under the Communications Act 2003 to provide Scottish-Gaelic programmes to people in Scotland. It is funded by the Scottish government (£12.8m in 2017) and in 2016-2017 spent £8.9m million creating 439 hours of programming with 20 different production companies. It was given £1m annual funding by UK government until 2016 but this has now stopped.
- 6.17 TG4, which was launched in 1996, produces 2.5 hours of original Irish language programming per day, resulting in over 900 hours per year including children's and prime-time programming. This is in addition to news programming. RTE also broadcasts Irish language programming, carries Irish language news bulletins and manages the national Irish language radio station Raidió na Gaeltachta which is broadcast across the island of Ireland. TG4 is funded by the Irish government (€32.79 in 2017) and through commercial advertising sales (€3m).
- 6.18 It was highlighted that, in 2018/19, 12.2% of originated non-news commissioned hours on BBC Northern Ireland television is in Irish or Ulster-Scots⁴⁶. The BBC Operating License states that on Radio Ulster and Radio Foyle at least 240 hours (including repeats and acquisitions) are allocated to indigenous minority language programming, including Irish and Ulster-Scots output (Pgs 31-32). The total spend for Irish on the BBC (Radio/TV/online) for 2018/19 was £913,098 and for Ulster-

⁴⁶ Letter from the BBC NI 29 May 2019.

Scots £422,699⁴⁷. The Irish Language Broadcast Fund produces 50-60 hours of programming per year with 25 hours of this broadcast on BBC1. The Ulster-Scots Broadcast Fund produces 8-10 hours of programming per year, most of which is broadcast on BBC NI with some on UTV and in Scotland. Both funds are administered by NI Screen.

6.19 The Commission noted that a considerable discrepancy exists between provision for minority language output in Northern Ireland and elsewhere in the UK and Ireland.

Language	Number of Speakers*	Direct Annual TV Broadcast Funding	Sources
Irish	161,622	£3m	UK DCMS
Ulster-Scots	134,157	£1m	UK DCMS
Welsh	562,000	£83m	License Fee
Scottish-Gaelic	57,375	£12.8m	Scottish Government

*definitions vary.

What the Commission Heard

6.20 Through its public engagement the Commission heard a range of views regarding the media and its influence and impact on cultural and public life.

6.21 There was a broad understanding that the media played an important role in the portrayal of cultural expression. Many of those who attended public meetings spoke of a perceived bias in reporting of loyalist/unionist culture by media organisations, stating that there was a direct bias in the reporting of events, that individuals were being demonised today for actions carried out in the past, that aspects of culture and identity associated with, what some people referred to as, the 'CNR' section of the community were more positively covered than aspects of

⁴⁷ Information provided by BBCNI.

cultural identity associated with, what some people referred to as, the 'PUL' section of the community.

- 6.22 Members of competition and marching bands in particular reported that their events only received media attention when the media perceived that there was bad news associated with them. This included the perception that while Irish traditional music appeared throughout the year on broadcast media outlets, there was limited broadcasting of competition and marching bands. Given the large numbers of individuals learning and performing such music on a weekly basis, this was seen as negative.
- 6.23 People expressed frustration at their sense that bad news sells while good news stories often go unreported. The importance of language and tone was emphasised, with the use of negative terms and labels to describe people and groups being seen as unhelpful. The role of social media was also discussed, specifically its capacity to inflame and raise tensions in local communities.
- 6.24 The Commission heard criticism of how the media dealt with sensitive issues, citing the demonising, in some cases, of those trying to move forward in a post-conflict society.

The Commission's View

- 6.25 The Commission considers that the media plays a critical role in reporting and shaping people's understanding of culture, identity and tradition. Northern Ireland has a highly developed media sector and the Commission believes all cultures should be respected and should receive fair and balanced coverage from media outlets. It is important that cultural output in the media, especially in broadcasting, is not considered in isolation from wider cultural issues and government strategies relating to culture and education.
- 6.26 Aside from newspapers and mainstream media, the region also enjoys a vibrant and growing community media (radio and television) sector. These outlets provide important platforms for communities to highlight the issues they face, the work they do and how they celebrate their culture.

- 6.27 The Commission discussed at length perceptions of bias in reporting of unionist and loyalist cultural events. This included the fact that broadcast media's only dedicated programming was in July, despite the fact marches took place over a period of many months. It also discussed the regular ridicule and derisory tone which some media outlets and some commentators used when discussing the Ulster-Scots language and other aspects of Ulster-Scots culture. It was argued that this would not be an acceptable tone if used to discuss other minority communities.
- 6.28 A number of reasons for this were discussed. It could be a reflection of inherent bias, a lack of awareness of understanding of unionist/loyalist culture among those working in media, and/or a lack of capacity within groups to access and influence media.
- 6.29 The Commission also discussed perceived bias against aspects of nationalist culture. This included reporting of derisory comments made about the Irish language by political representatives, where subsequently presenters appeared to try to imply the comments were amusing. In addition, among nationalists there was a historic perception of bias by BBC and UTV regarding news and current affairs and also that GAA sports receive less coverage at club level than football.
- 6.30 The fact that the majority of output from local BBC and UTV broadcasters focused on news and/or current affairs was compared to RTE, which produces a significant amount of community-focused radio and television output on a daily basis. The nature of news programming means that reporting can by its nature, be negative. However, radio and television programmes outside news and current affairs can provide outlets to showcase cultural activity in a positive manner. While there are some such programmes broadcast on BBC NI television, they are usually scheduled very late.
- 6.31 The Commission discussed the importance of increasing local commissioning of programmes and improving local output. Comparisons with RTE, which covers community initiatives and issues during main news programmes and in other

programmes broadcast during prime viewing hours, were noted. The lack of local programming for local ethnic minorities was also highlighted.

- 6.32 The Commission was surprised that the Northern Ireland Executive provides no funding at all to either the Irish Language Broadcast Fund or the Ulster-Scots Broadcast Fund. Both of these funds are supported by the UK Government's Department of Culture Media and Sport through the British Film Institute. It was also noted that funding for drama and animation has ceased due to funding limitations and that funding should be guaranteed in both areas on a longer term basis.
- 6.33 While broadcasting is a reserved issue, this mainly refers to the legal framework under which broadcasting is regulated. It does not preclude the funding of broadcasting output by devolved institutions (as much of NI Screen's other work does). As is the case in Scotland, Northern Ireland has become a global hub in broadcasting and the Executive has recognised the economic value of building and developing indigenous broadcasting talent.
- 6.34 Newspapers are not subject to the same regulation or requirements as broadcast media. Nevertheless, examples from some newspaper columnists and cartoonists have portrayed the Ulster-Scots language and community in a negative light.
- 6.35 It was recognised that while social media has played a positive role in opening up media opportunities to all, problems had arisen in this area. The role of social media in promoting community tensions and acting as a platform for hate speech was discussed. Facebook and Twitter were used by groups and individuals to exchange sectarian, racial and gender abuse, to attempt to intimidate others and even to arrange confrontation.
- 6.36 The Commission discussed a number of options, including the three below which could see increased funding for both Irish language and Ulster-Scots programming:

- a. **Direct Northern Ireland Executive funding to NI Screen** to increase the resources available to the Irish Language Broadcast Fund and the Ulster-Scots Broadcast Funding in addition to funding currently provided by DCMS. These funds have declined in value in real terms since they were setup and are limited in terms of how they can support wider language and cultural revival and growth. For example, the main focus is on documentaries, with no drama or animation produced in either language, thereby limiting the audience scope and reach.

- b. **Establish a Languages Media Services organisation**, underpinned by legislation (similar to the Scotland model in the Communications Act 2003), which would be funded directly by the NI Executive, UK government and the licence fee. The organisation would co-ordinate and manage production of Irish language and Ulster-Scots broadcasting output on a planned multi-annual basis; form partnerships with local, national and international broadcasters, production companies and film companies; and, while funded by government, would be free from day-to-day political interference. In addition, this would explore the potential of online and digital broadcasting and how these could reach new audiences.

- c. **Direct funding from the licence fee**. While the majority of Welsh language broadcasting, and a significant portion of Scottish Gaelic broadcasting (through the partnership with BBC Scotland which manages BBC Alba), are funded directly by the licence fee there is piecemeal funding for Irish or Ulster-Scots programming directly from the licence fee. The vast majority comes from the two broadcasting funds which operate outside the licence fee structure. Concerted efforts should be made to ensure funding directly from the licence fee and this should be the focus of all parties prior to the next licence fee settlement and issue of new broadcast licences from OFCOM.

6.37 In the New Decade, New Approach document under the functions for the Office of Identity and Cultural Expression, (p.32) it notes at paragraph 5.5.9 that the Office will “*provide grant aid (capital and revenue) to projects and programmes consistent with the aims set out in paragraph 5.3 (the strategic objectives of the*

Office). The Office will have funding streams and schemes including publishing and broadcasting, small grants, events and tourism, exhibition and museum curation, build heritage, cultural education and tourism projects.”

Recommendations

- 6.38 The Commission recommends that broadcasters and media organisations in Northern Ireland provide cultural awareness training for their employees. The objective would be to impart a broad understanding of all sections of the community and cultural identities and how they contribute to the broad cultural output. Consideration should also be given to the drawing up of guidelines regarding the coverage of cultural activity, including music and sport, to ensure fair and balanced reporting and visibility of events.
- 6.39 The Commission recommends that the focus of media coverage of local issues should be broader than news and current affairs. Programming on mainstream television and radio programmes should highlight local initiatives, including the vast and varied cultural output. This should include radio, television and online broadcasting.
- 6.40 The Commission notes the positive role that social media (Facebook, YouTube) plays in allowing small groups to bring their activities to the attention of wider national and global audiences. However, the Commission recommends that where social media becomes a platform for hate speech, the PSNI must investigate.

New Decade. New Approach

- 6.41 The Commission notes the UK Government's commitment at (P48), paragraph 23 of the New Decade, New Approach document to *"Support discussions with NI Screen to explore how the remit of the Ulster Scots Broadcasting Fund (USBF) and Irish Language Broadcasting Fund (ILBF) can be broadened, and will increase funding for the USBF and ILBF to reflect any broadened remit."*
- 6.42 In addition the Commission notes at (P61) *"The Government remains committed to the work of the North / South language bodies and to the promotion of the Irish language. In this context, the Government will make provision for additional funding over 3 years with a contribution to the Irish Language Broadcasting Fund, and funding for a promotional programme by An Ciste Infheistíochta Gaeilge to be delivered in partnership with Irish-medium community groups, Glór na nGael and*

the Gaelbhreach Scheme. Funding will also be provided to develop Irish Language Networks.”

CHAPTER 7 SPORT

Background

7.1 Sport plays a significant role in the cultural life of Northern Ireland, impacting upon and reflecting aspects of many people's identity, whether as participants or spectators. It also plays a vital role in social networking and social cohesion.

7.2 The Executive's Together: Building a United Community Strategy (T:BUC) makes strong reference to the positive role that sport can play in building good relations between people of differing identities:

"We recognise that sport in particular can be a vehicle for building good relations, particularly amongst our young people. Many people from differing backgrounds would otherwise not have the opportunity to meet, outside of a sporting context. In this way, sport can unite people under a common purpose and build relationships as a result of mutual interest." (Paragraph 5.26)

7.3 There are a number of examples where sport has indeed played a positive role in building good relations between people of differing identities. One is the Annual Celebration of Sport, an event that provides opportunities for children to try non-traditional sports that would not be offered within their school/communities. Another is the T:BUC cross-community sports programme 'Uniting Communities', the objective of which is to change perceptions and build strong relationships across communities using sport and physical/creative activity as the method of delivery.

7.4 In 2015 the Northern Ireland Executive published research⁴⁸ which examined how sport presents both challenges and opportunities in addressing division in Northern Ireland.

7.5 That research concluded that, in line with the Executive's assertion of sport as a vehicle for building good relations, many people believe that sport is a good way of

⁴⁸ Social exclusion and Sport in Northern Ireland 2015, Ulster University research commissioned by the Northern Ireland Executive

breaking down barriers between people, and that sports-based peace-building projects are effective. However, while the research found that 84% of people believe sports in Northern Ireland to be more inclusive than ten years ago, it also showed that participation and interest in a number of sports continue to be affected by the community divide.

- 7.6 The research examined each sport in turn, as well as identifying a number of issues relating to sport in general. These included the continued perception of sporting colours, emblems and venues as politico-religious markers, with interviewees providing *“rich detail and telling anecdotes to illustrate the ‘otherness’ of certain sports venues, the manner in which sports emblems or even equipment could identify someone as a member of the out-group, and the related threat/anxiety that this may cause in particular areas (P12)”*.

What the Commission Heard

- 7.7 The issues identified in the research outlined above were also referenced by people who attended the Commission’s public engagement events and meetings the Commission organised with sports sectoral bodies.
- 7.8 The Commission heard and received evidence of both the positive and negative impact that sport can have in the cultural life of society. On the negative side, the Commission’s attention was drawn to ways in which some people felt excluded from certain sports which they perceived as being exclusive of their cultural or political identity. In some cases this was due to the use of flags, anthems and songs. Representatives of sporting bodies acknowledged these issues.
- 7.9 On the positive side, the Commission heard examples of the considerable efforts made by sporting organisations and their supporters to ensure that their sports are welcoming and inclusive to all.
- 7.10 The Commission heard of programmes designed to enable participation in sports that people had not previously played, thereby helping to address perceptions and/or concerns in relation to certain sports, their participants and/or their venues that are viewed as being more aligned to one community, identity, tradition, gender

or ethnic group. Some suggested the creation of better links between schools and sporting organisations to strengthen the sustainability of such approaches.

- 7.11 The Irish Football Association's "Football for All" strategy⁴⁹ and its work to make Northern Ireland home games a more welcoming environment for all was highlighted by many as very positive.
- 7.12 Ulster Rugby was highlighted as a positive example of making a sport that many consider as associated with the middle class more open and accessible to all. It was also noted that at rugby matches fans will display a range of flags, including the Ulster banner and the nine County Ulster flag, without any issue.
- 7.13 The GAA's decisions to remove its previous bans on its members from playing or attending 'foreign' games (such as rugby, hockey and football), on members of the security forces from joining the GAA, and on 'foreign' sports being played in GAA grounds were acknowledged.
- 7.14 In sectoral meetings the Commission also examined the issue of inclusiveness within the Irish Amateur Boxing Association, which established an Independent Working Group to examine this issue following concerns raised within the boxing community. That Group brought forward 12 recommendations including a Code of Conduct for the display of flags and emblems, policies on dealing with sectarianism, and a social media policy. Despite the adoption of a detailed Flags and Emblems Policy in 2016, the Commission heard that some boxers continue to express concerns.
- 7.15 The Commission was told of examples where individuals felt pressured to make choices as to which national flag they should compete under and suffered criticism for their decision. The Commission also heard of situations where sporting bodies misunderstood the entitlements of players to play for different national teams.

⁴⁹ <https://cain.ulster.ac.uk/issues/sport/docs/wilson1205.pdf>

- 7.16 The issue of national sporting representation is a complex one, often linked to historical organisational boundaries that have, or have not, been altered by the partition of Ireland in 1921. The Commission heard how some individuals felt that Sport NI should alter its policy of only recognising one governing body for each sport, in order that they would have the option to organise and gain recognition of Northern Ireland sporting associations – for the Commonwealth Games, for example - on the same basis as people in England, Wales and Scotland. This is currently not possible for athletes in some sports that are organised on an all-Ireland basis.
- 7.17 The Commission was struck by complaints that Sport NI does not provide sporting organisations with practical guidelines on dealing with issues related to identity and division within sport, despite Sport NI having published a guidance booklet entitled *Fair Play in Sport*⁵⁰ in 2013 that seeks to do just that.

The Commission's View

- 7.18 The Commission wishes to see a society in which everyone feels free and welcome to engage in any sport of their choosing, and where sporting bodies, Sport NI, the Executive, and political leaders all recognise and rise to the role that they can play in bringing that about.
- 7.19 In order to support sporting bodies in doing so, the Commission believes that the statutory body that exists to support the development of sport in Northern Ireland – Sport NI – should play a more proactive role. One way it could do so would be by ensuring that its investment of public money in sports development contributes to the Programme for Government outcomes in relation to building a shared future.
- 7.20 The issue of eligibility and/or choice to play for different national teams, and the inability of athletes from Northern Ireland who play sports organised on an all-Ireland basis to compete in the Commonwealth Games, remains contentious/unresolved.

⁵⁰ <http://www.sportni.net/sportni/wp-content/uploads/2013/09/Promotingfairplayinsport.pdf>

- 7.21 The Commission noted that Sport NI's 2017-2021 funding programme includes a condition that each body it funds must produce a "pathways" document clearly setting out the routes that players may take to play their sport at an international level. It also noted that under Sport NI's policy of identifying and recognising a single governing body for each sport, one of the conditions for recognition is a written agreement that any sportsperson who wants to switch national representation will be facilitated to do so. It is acknowledged that rules set by world governing bodies can be a deciding factor in this issue.
- 7.22 The Commission recognised the range of work taking place across so many sporting organisations to open their sport up to the diversity within society. In addition, the Commission noted the work done between sporting organisations to work in partnership with and to support each other. The 'Game of Three Halves' developed by Ulster Rugby, the GAA and the IFA seems to be a particularly good example. However, the challenge facing sporting bodies remains considerable. As an integral part of community life, they tend to reflect identity politics within our society. As such, sport is both a marker of difference but also a vital way to bring parts of society together.
- 7.23 The Commission noted aspects of sporting organisations that could be perceived as creating an exclusive environment. In particular, anthems and songs; flying of flags; the naming of grounds, teams and trophies; and the history, ethos and constitutions of organisations, were referenced. More generally, the Commission recognised that sports bodies still had challenges to overcome to reduce levels of exclusion towards people because of their gender, race and ethnicity, political opinion, religious background, disability or sexual orientation.
- 7.24 The Commission acknowledges and welcomes the considerable efforts made by sporting bodies to reduce any sense that their sports are exclusive to particular sections of society. The Commission supports these efforts to deliver sport in ways that ensure inclusion, openness and maximum involvement.

Recommendations

7.25 In relation to Sport NI the Commission recommends:

- That it includes within its Vision, Mission and Strategic Objectives an explicit reference to the role of sport, and Sport NI, in helping to build a shared society;
- That it provides sporting organisations with practical guidelines on dealing with issues related to identity and division within sport, and support to implement them;
- That along with other statutory bodies that fund sport, it be obliged to make any funding that it invests in sporting bodies conditional upon demonstrable implementation of good relations plans, with defined and measureable outcomes, and that funding and other support is made available to assist sporting bodies in doing so;
- That in order to build on the progressive work undertaken by sporting bodies to date, it should convene a “Sport for All” group, comprising the major sporting bodies that operate within Northern Ireland, including those that operate on an all-island basis. This group would consider, in consultation with groups representing supporters, Councils and the wider community, what further steps they could individually or collectively take to create a welcoming environment for all.
- That recognising the anomalous position which prevents some local competitors representing Northern Ireland at international tournaments, it should examine on a sport-by-sport basis whether there are steps that it can take to address this issue.

7.26 The Commission recommends that, notwithstanding the rights of individual organisations, all sporting bodies are supported to ensure that their policies, practices and use of public resources are in accordance with the principles of equality and good relations, equity, diversity and interdependence, and directed towards sports development and sporting activities.

- 7.27 The Commission recommends that the NI Executive consider the Ulster University's research into Social Exclusion and Sport in Northern Ireland 2015 and where appropriate implements the various recommendations.
- 7.28 Acknowledging the positive impact when political leaders attend sporting events traditionally associated with parts of the community other than that which they come from, the Commission recommends that political leaders seek further opportunities to demonstrate that sport can be enjoyed regardless of any individual's political or cultural identity.
- 7.29 The Commission recommends that sporting bodies continue to look closely at the cultural aspects of their organisations that can be perceived as barriers to creating a welcoming and inclusive environment for people from across our society.

CHAPTER 8 LANGUAGE, CULTURE AND HERITAGE

Background

- 8.1 The use and impact of language within society is something that should not be underestimated. Aside from its importance in our everyday lives, it also plays an important part in reinforcing our individual and cultural identities and heritage.
- 8.2 Throughout these islands, English remains the primary medium through which we communicate. But other indigenous languages are recognised and protected.

Law and Policy Relating to Language Status

Ireland

- 8.3 Irish is recognised by the Constitution of Ireland⁵¹ as the national and first official language. English is the other official language.

Wales

- 8.4 There has been over half a century of legislation on the Welsh language. The Welsh Language Act 1967⁵² granted the right to testify in Welsh in Court, and the right to have official forms in Welsh. The Welsh Language Act 1993⁵³ established the principle that in the conduct of public business and the administration of justice in Wales, the Welsh and English Languages should be treated on the basis of equality.
- 8.5 The Welsh Language (Wales) Measure 2011⁵⁴ gives the Welsh Language official status in Wales and a legal effect which means that Welsh should be treated no less favourably than the English language in Wales. These pieces of legislation establish Wales as a bilingual country.

⁵¹ <http://www.irishstatutebook.ie/eli/cons/en/html>

⁵² <http://www.legislation.gov.uk/ukpga/1967/66/enacted>

⁵³ <http://www.legislation.gov.uk/ukpga/1993/38/contents>

⁵⁴ <http://www.legislation.gov.uk/mwa/2011/1/contents/enacted>

Scotland

8.6 The Gaelic (Scotland) Act 2005⁵⁵ makes the Gaelic language an official language of Scotland commanding equal respect to the English language. Giving Gaelic equal respect does not automatically mean identical treatment for Gaelic and English, or that a particular level of Gaelic provision must be made available in all circumstances. The Act avoids any suggestion of imposing a general duty to institutionalise Gaelic-English bilingualism.

Northern Ireland

8.7 There are a range of international instruments as well as domestic legislation that apply to the area of language in Northern Ireland.

Framework Convention for National Minorities (FCNM)

8.8 The international standard concerning treatment of cultural minorities is the Framework Convention for National Minorities (FCNM). It has been ratified by both the UK and Irish governments and commits both governments to non-discrimination in the treatment of cultural minorities. It includes a number of provisions in relation to minority languages.

8.9 Article 5 states “*The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.*”

8.10 Article 11 requires the state to facilitate the display of traditional local names, street names and other topographical indications in the minority language, where there is a sufficient demand and in areas traditionally inhabited by substantial numbers of persons belonging to a national minority.

European Charter for Regional or Minority Languages

8.11 At a European level, the UK government has also ratified the European Charter for Regional or Minority Languages in respect of Irish and Ulster-Scots as well as

⁵⁵ <http://www.legislation.gov.uk/asp/2005/7/contents>

Welsh, Scots and Cornish. The Charter promotes a multi-cultural approach to the languages it protects, aiming to create a culture where regional and minority languages can flourish alongside each other and the majority language of the State.

8.12 Part II requires governments to take resolute action to promote the languages, applies to all languages registered by the state and contains general objectives and principles by which public authorities are to base their policies, legislation and practice, such as:

- The use of languages also has to be encouraged in public life ..., such as education, administration, courts, media and economic life.
- offer appropriate forms and means for the teaching and study of all its regional or minority languages.
- promotion of mutual understanding between all linguistic groups of the country, be they speakers of majority languages, regional languages or minority languages.
- promote mutual understanding and respect for others and their cultures and languages.
- requires states to actively promote exchanges across national borders.

8.13 Part III contains a series of specific provisions concerning the place of regional or minority languages in the various sectors of the life of the community including education, public authorities, media, culture, economic and social life and trans-frontier exchanges. States can choose which languages they register, at what level and for which part of their jurisdiction. The state must also specify its acceptance of at least 35 of around 100 optional commitments under Part III for a particular language. To do so, the language needs to enjoy a level of development and demand whereby such commitments can be fulfilled; as the language grows the state's commitments can be progressively increased.

8.14 In Northern Ireland the Charter applies to Irish and Ulster-Scots, but following decisions by the UK Government Part III applies to Irish only. The Charter does not cover the languages of migrant and minority ethnic communities.

8.15 The above measures confer a special place for Irish and Ulster-Scots in international and national law in that both these languages accrue certain advantages not extended to other linguistic identities in our society.

The Belfast/Good Friday Agreement

8.16 The Belfast/Good Friday Agreement recognises Irish and Ulster-Scots as the principal linguistic minorities in Northern Ireland. Strand Three of the Agreement states:

'In the context of.....the UK signing the Council of Europe Charter for Regional or Minority Languages, the British Government will in particular in relation to the Irish language, where appropriate and where people so desire it:

- *take resolute action to promote the language;*
- *facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;*
- *seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;*
- *make provision for liaising with the Irish language community, representing their views to public authorities and investigating complaints;*
- *place a statutory duty on the Department of Education to encourage and facilitate Irish-medium education in line with current provision for integrated education;*
- *explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of Teilifís na Gaeilge in Northern Ireland;*
- *seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland; and*
- *encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the desires and sensitivities of the community."*

Northern Ireland Act 1998

8.17 Commitments made in the Belfast/Good Friday Agreement by the British Government were legislated for in the Northern Ireland Agreement 1998, including placing a statutory duty on the Department of Education in Northern Ireland to encourage and facilitate Irish-medium education.

8.18 Following the 2006 Agreement at St Andrews, the British Government amended the Northern Ireland Act 1998 to include requirements that the NI Executive “*adopt a Strategy setting out how it proposes to enhance and protect the development of the Irish language*”, and “*a Strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture*’.

Straitéis le Forbairt na Gaeilge a Fheabhsú agus a Chosaint

8.19 In 2015, the Department of Culture, Arts and Leisure (DCAL) published a Strategy to Enhance and Protect the Development of the Irish Language over the period 2015-2035⁵⁶ (Straitéis le Forbairt na Gaeilge a Fheabhsú agus a Chosaint)⁵⁷. The key aims of that strategy are to:

- *support quality and sustainable acquisition and learning of the Irish language;*
- *enhance and protect the status and visibility of the Irish language;*
- *deliver quality and sustainable Irish language networks and communities; and promote the Irish language in a way that will contribute towards building a strong and shared community. Public authorities would facilitate the use of Irish both orally and in writing and will produce and adhere to a Code of Courtesy that meets the needs of those who wish to conduct their business through Irish. A language awareness and language training programme would need to be provided so that a higher proportion of public service staff can effectively deliver services in Irish to customers who seek them. Local Councils would be expected to:*

⁵⁶ <https://www.communities-ni.gov.uk/sites/default/files/consultations/dcal/01-consultation-document-draft-irish-language-strategy-july-2012.pdf>

⁵⁷ <https://www.communities-ni.gov.uk/sites/default/files/consultations/dcal/01-c%C3%A1ip%C3%A9is-chomhairli%C3%BAch%C3%A1in-dr%C3%A9acht-strait%C3%A9is-gaeilge-l%C3%BAil-2012.pdf>

- *adopt Irish language policies and plans and appoint Irish language officers; initiate or expand facilities for the use of Irish in their Council and committee meetings;*
- *increase the visibility of the Irish language by publicising the availability of their Irish language services;*
- *provide an Irish or bilingual version of publications, official documents and forms in line with the approach of the Strategy and the European Charter for Regional or Minority Languages; and*
- *facilitate the proper preservation and signposting of Irish place-names and the naming of new housing developments; and encourage tourism and cultural initiatives through Irish.*

8.20 The Strategy includes Strategic Objectives to ‘*increase positive attitudes to the Irish language throughout the community*’ and to ‘*increase positive attitudes towards the Irish language in the Protestant Unionist Loyalist community.*’

8.21 The Strategy was not agreed by the Executive. In March 2017, following a Judicial Review Application by Conradh Na Gaeilge, the High Court⁵⁸ found that the Northern Ireland Executive had failed to comply with obligations flowing from the Northern Ireland Act 1998 requiring it to adopt a strategy in respect of the Irish language and that consideration of a strategy was not sufficient to discharge the duty arising under the Act. The judgement also noted that there had been a similar failure to comply with the Act as regards a strategy for Ulster-Scots.

Roadin furtae Brìng Forrits an Graith tha Ulstèr-Scotch Leid, Heirskip an Cultùr

8.22 In 2015, DCAL also published a draft Strategy to Enhance and Develop the Ulster-Scots language, Heritage and Culture over the period 2015-2035 (Roadin furtae Brìng Forrits an Graith tha Ulstèr-Scotch Leid, Heirskip an Cultùr)⁵⁹. The key aims of that strategy are to:

⁵⁸ <https://judiciaryni.uk/sites/judiciary/files/decisions/Conradh%20Na%20Gaeilge%27s%20Application%20and%20In%20the%20Matter%20of%20a%20Failure%20by%20the%20Executive%20Committee%20of%20the%20Northern%20Ireland%20Assembly%20to%20Comply%20with%20its%20Duty%20Pursuant%20to%20Section%2028D%20of%20the%20Northern%20Ireland%20Act%201998.pdf>

⁵⁹ <https://www.communities-ni.gov.uk/sites/default/files/publications/dcal/strategy-to-enhance-and-develop-the-ulster-scots-language-heritage-and-culture-2015-2035.pdf>

- *foster an inclusive, wider understanding of the Ulster-Scots language, heritage and culture in a way that will contribute towards building a strong and shared community;*
- *promote and safeguard the status of, and respect for, the Ulster-Scots language, heritage and culture; and*
- *build up the sustainability, capacity and infrastructure of the Ulster-Scots community.*

8.23 In relation to public services, the strategy indicates that Departments, Councils and public bodies need to:

- *facilitate and encourage the use of Ulster-Scots in public life;*
- *increase awareness and visibility of the Ulster-Scots services they provide;*
- *encourage the promotion of Ulster-Scots cultural and heritage tourism initiatives;*
- *ensure that respect for Ulster-Scots within the context of cultural diversity is an element of their commitment to good relations; and*
- *facilitate the proper preservation and signposting of Ulster-Scots place names.*

8.24 The strategy also states that awareness training for relevant staff needs to be a good practice requirement.

8.25 As with the Irish Language strategy, this Ulster-Scots strategy was not agreed by the Executive.

What the Commission Heard

8.26 Throughout the engagement phase of the Commission's work the issue of language, its use, and in the views of some its abuse, was a recurring theme. The Irish and Ulster-Scots languages were discussed at most meetings.

8.27 The wider political discussion around the Irish language led some contributors to conclude that an Irish Language Act was needed to protect the language and the rights of those who seek to conduct themselves through the medium of Irish. Many felt that the Irish language has been undervalued and disrespected. For

those who supported an Irish Language Act, the full implementation of existing political agreements was the only way to properly resolve this issue.

8.28 The Commission also heard some hostility to the Irish language among those who spoke of their sense that it is being used as a ‘political weapon’ to undermine what they described as ‘Unionist/British’ culture within Northern Ireland. The perception that some Councils are imposing Irish language signage on minorities without their consent was cited as an example. Others expressed a fear that children from a unionist background would be ‘forced’ to learn Irish in schools. When concern was expressed about perceived discrimination against ‘Unionist culture’, ‘Protestant culture’ or ‘British culture’ this tended to be in the context of other issues such as parades, bands, bonfires and flags.

8.29 Some suggested that given its relative usage in everyday life, and the potential costs, public funds should not be used for an Irish Language Act. In their view, legislation comparable with that in Wales was not an appropriate model for our society.

8.30 However others from a unionist background appreciated the richness of the Irish language and its heritage within our society. Some welcomed an Irish Language Act, and there were suggestions that much work is required to identify and tackle the perceived fears and mistrust that many people have in relation to the language.

8.31 Questions were posed about other languages and whether or not they should be afforded similar rights.

The Commission’s View

8.32 The Commission recognises that our cultural identity has been influenced by myriad sources such as Irish, English and Ulster-Scots language, heritage and culture. This common heritage reflects our cultural diversity and cultural interdependence.

Recommendations

- 8.33 The Commission recommends that the NI Executive recognises the shared heritage of British, Irish and Ulster-Scots within our society.
- 8.34 The Commission recommends that the NI Executive declares that British culture and heritage (which includes the English language); Irish language, culture and heritage; and Ulster-Scots language, culture and heritage should command equal respect in our society.
- 8.35 The Commission recommends that public bodies be supportive and generous towards British culture and heritage; Irish language, culture and heritage; Ulster-Scots language, culture and heritage; and towards the cultural identities of other communities within our society.
- 8.36 The Commission recommends that the NI Executive, political parties and civil society consider how to increase positive attitudes towards British culture and heritage; Irish language, culture and heritage; and Ulster-Scots language, culture and heritage; and towards the cultural identities of other communities within our society in a manner that is appropriate to a society emerging from conflict.
- 8.37 The Commission recommends that education should be central to promoting mutual understanding and respect in our society around cultural diversity.
- 8.38 The Commission recommends that the special place of the Irish language and Ulster-Scots language, culture and heritage be resourced appropriately and that this should be audited on the basis of Equity, Diversity and Interdependence.

Where Challenges Remain

- 8.39 The Commission discussed the need for Irish and Ulster-Scots language, culture and heritage to be reflected within the representation on public bodies which are active within the cultural sphere. The Commission was not able to agree a recommendation in relation to this.

New Decade, New Approach

- 8.40 As a result of the New Decade, New Approach document, provision will be made for the appointment of an Irish Language Commissioner and a Commissioner *“to enhance and develop the language, arts and literature associated with the Ulster Scots/ Ulster British tradition in Northern Ireland”* (Pgs 33 and 34). Both Commissioners will be guided by *“the guiding principles as set out in legislation, and serve to promote mutual respect, good relations, understanding and reconciliation.”*
- 8.41 The Commission notes the location of these two Commissioners as independent, but within the wider agenda of the Office of Identity and Cultural Expression. This has the potential to inform those aspects of identity and cultural expression that are a central part of the passion that people have for their linguistic heritage.

SECTION 3

CULTURAL IDENTITY IN THE PUBLIC SPACE

CHAPTER 9 PUBLIC SPACE, THE PUBLIC GOOD AND THE ARTS IN THE PUBLIC SPACE

Background

- 9.1 Public spaces are the physical spaces that all citizens are entitled to use on a shared basis subject to laws and bye-laws. These include parks, streets and paths, public buildings, including museums, galleries, leisure centres, civic and administrative buildings, and some other spaces like shopping centres. There is historical, philosophical and social scientific evidence to support the importance of common spaces. The idea of a public sphere or space is fundamental to any democracy and is rooted in the idea of the gathering space, or the Agora, in ancient Greece. It suggests the right to express ones identity, opinion and to debate ideas. It suggests freedom of expression, association and assembly.
- 9.2 As indicated throughout this report, the importance of shared and social events and a sense of place that cut across our society are vital to social cohesion: the festival, carnival, concert, parade, sporting event, protest or party.
- 9.3 Access to and the use of public spaces is important because it is an indicator of a sense of citizenship and of belonging in a society. For example, the right to assemble is about active participation. Anyone who has taken part in a major event in a town or city knows that it can provide a sense of place, a space of engagement and a sense of belonging, in community with others. Consequently, an open public space is good for citizenship and social cohesion.
- 9.4 Groups and communities want to see acknowledgement of their identities, histories and contribution to our society in places like museums, galleries and civil buildings and spaces.
- 9.5 It is important that we have access to public spaces: be that a town hall, museum, gallery, library, court, a park, or a square. Those spaces are engaged with through architecture and planning, through the arts, through transport and pathways and through names. Our sense of place is connected to a sense of safety and belonging. Again, this relates to our sense of citizenship and inclusion. A society

with safe, welcoming, accessible and connected public spaces is likely to foster good social cohesion.

- 9.6 In practice, legal and operational restrictions mean that not all of these spaces are open to everyone all the time. Groups that are economically or politically marginalised can be excluded from public spaces. That is why, in a democracy, the right to assemble, to protest and to freedom of speech is protected by specific rights which in theory, should be available to everyone. However, in practice, some public spaces are more accessible than others.
- 9.7 Sometimes fears held by individuals mean they self-exclude. For example, a public space that is poorly lit might not feel safe and therefore becomes inaccessible at night. And, groups of people might be afraid to express their identity in some public spaces because of dominant cultural norms in wider society or local communities. The importance of this should not be lost on anyone who knows the history of our society, particularly in the historic and current contested nature of some parades and demonstrations
- 9.8 The discussion of public space in our context is important, but not because it precludes conflict and contest. In a complex and divided society, debate and disagreement, expression and protest take place in the public space. People have the right to use public space for that purpose. But this can only take place in a democratic society if we allow the public space to also do other things and this only works if a broader sense of belonging and trust creates a sense of citizenship. In our context the Commission has described the attempt to make this happen as shared space.

Shared Space

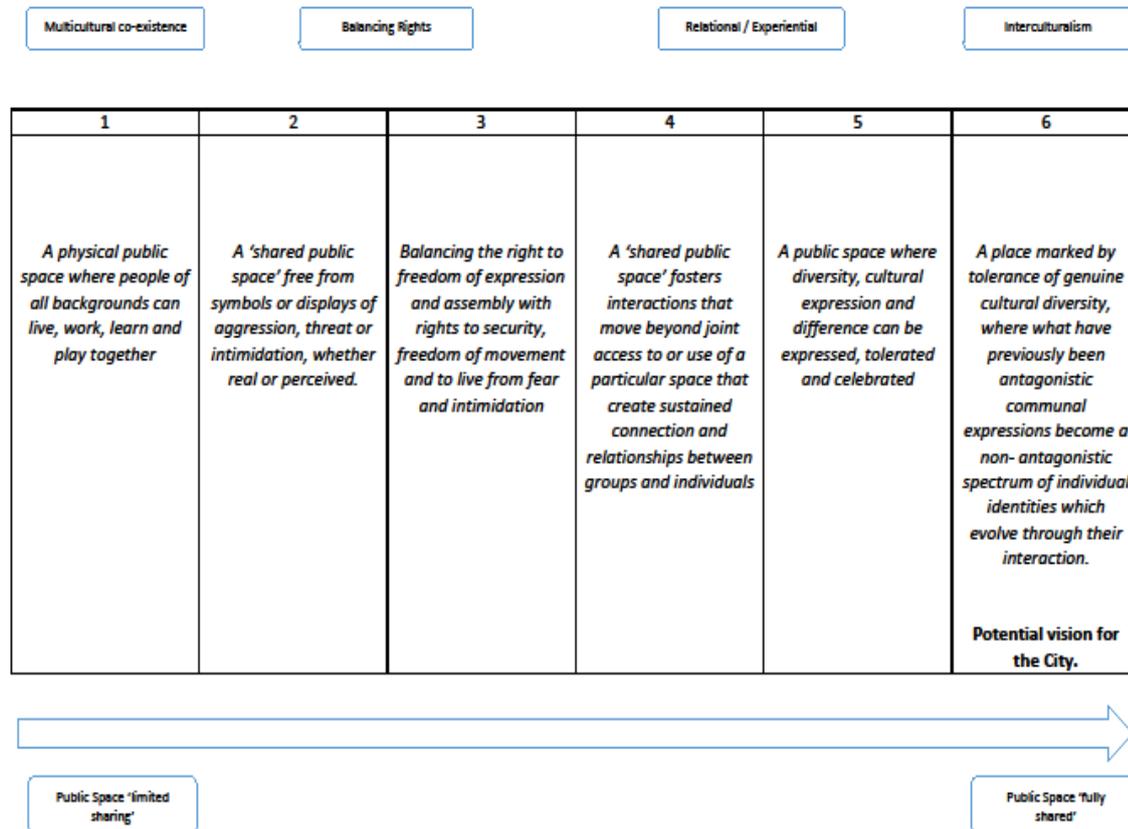
- 9.9 How do we create the types of good common public spaces that make our society work better? The NI Executive's strategy for improving community relations, *Together: Building a United Community*, set out a vision for a shared society as: "A united community, based on equality of opportunity, the desirability of good relations and reconciliation – one which is strengthened by its diversity, where

cultural expression is celebrated and embraced and where everyone can live, learn, work and socialise together, free from prejudice, hate and intolerance” (p.3).

- 9.10 The creation of shared space is an important component in realising this vision. Shared space has two features which can potentially be part of an agenda of equality, diversity and interdependence. The first aspect of shared space involves maximising the rights of individuals and groups to use and express themselves in public spaces. In this sense, shared space reflects people’s rights as citizens, their access to freedom of speech, freedom of assembly and their access to the resources, facilities and amenities within our society. The state has a positive duty to protect these rights. The second feature of shared space is the creation of places of interaction and common experience. This involves the facilitation of events that are open, welcoming and that encourage diversity and learning. These will typically bring together people from different communities of interest and cultural identities at common events and impart a sense of belonging and a sense of place through the said event. This might be described as the civic identity and might include local identities and a city identity, which is often the work of local Councils and funding agencies and it is the work of architects, planners and artists to create environments where this might take place. It is at the heart of tourist campaigns and make our spaces and places creative and exciting. They provide the means through which diverse citizens can experience interculturalism.
- 9.11 Research study for creation of shared public spaces (ILEX)⁶⁰ provides analysis and a spectrum of shared space.

⁶⁰ ILEX Shared Public Space Final Draft report February 2008

Spectrum of Shared Public Space



9.12 The research considered five statements on shared space. The key elements within these are:

- It is a physical public space where people from all backgrounds can live, learn, work and play together
- It is a space that is free from symbols or displays of aggression, threat or intimidation that prevents a person entering and using the amenities within that space
- It is a space that requires balancing the right to freedom of expression and assembly with rights to security, freedom of movement and to live free from fear and intimidation

- It is a space that fosters interactions that move beyond joint access to or use of a particular space to create sustained connection and relationships between groups and individuals
- It is a space where identity or political perspective is not suppressed or hidden, but a space where diversity, cultural expression and difference can be expressed, tolerated and celebrated.

9.13 In order to improve social cohesion and good relations, the objective for public authorities is to create a space that fosters engagement, interaction and relationships.

9.14 The interface between shared space and good relations is therefore about the right to access areas, and the opportunity to experience the space together with other members of our diverse society. It does not deny or disallow differences, but rather provides for areas of commonality and binding ideas of citizenship. It is a place where expressions of cultural identity (that may have previously been grounds for threat or dispute) become grounds for tolerance and even celebration. Participating in and attending events that reflect different cultural identities to our own, and organising events that are welcoming to people from different cultural backgrounds, can serve to affirm one's own cultural identity. When people from different cultural backgrounds attend and enjoy different cultural activities, this can enhance and sustain cultural heritage, adding positively to the collective cultural wealth that exists in our society.

9.15 While this description of shared space may well be the ultimate aspiration, the five statements at paragraph 9.12 are the steps that can and should be taken in order to achieve this.

9.16 As one example of how respect and dignity can be achieved, Belfast City Council has developed a series of 'shared space principles'. These principles promote the understanding that that 'shared space' is not neutral space; it is a place where ones identity can be expressed in an open and non-hostile environment. Shared space should therefore be:

- Welcoming - where people feel secure to take part in unfamiliar interactions, and increase an overall sense of shared experience and community
- Accessible – well-connected in terms of transport and pedestrian links within a network of similar spaces across the city and managed to promote maximum participation by all communities
- Good quality – attractive, high quality unique services and well-designed buildings and spaces
- Safe – for all persons and groups, trusted by both locals and visitors.

Events and the use of the Arts in Public Spaces

9.17 One of the aims of the Executive’s *“Together: Building a United Community”* strategy is to build a community “where cultural expression is celebrated and embraced”. There are many events held in public spaces across our society. These assemblies include parades, protests and gatherings such as those organised by the Loyal Orders, the Ancient Order of Hibernians and marching bands. It also includes sporting events and a wide range of annual festivals (including Pride, St. Patrick’s Day, Culture Night, Orangefest, Féile, the Mela, Chinese New Year), community festivals and carnivals, commemorations, official civic events, holiday events such as those related to religious events including Christmas, music concerts and festivals, and fairs. Public celebration of the various differing and shared cultural identities that exist within our community should be encouraged, if such celebration is undertaken in a respectful and dignified manner.

9.18 There is a wide and extensive expression of the arts in the public space. This includes artistic events, performances, music, visual spectacles and other exhibitions of art in public spaces. It is recognised that the inclusion of art offering in public spaces can make a difference to people’s experience of the space. There is clear evidence of the instrumental benefits of engagement with the arts.

9.19 The right to freedom of expression is important in every society, and the Commission acknowledges the benefits of the arts to inform, challenge, educate and entertain.

- 9.20 There are many examples where the arts are used to increase diversity, build community relations and promote positive cultural expression. The arts provide a sense of identity, culture and tradition. In addition to the arts in the public space being of instrumental benefit to the social wellbeing of local communities, local community-led displays, festivals and events can also be an attraction to visitors, providing an additional economic benefit to communities and cities across our society.
- 9.21 There is evidence of the positive impact that band culture, drama, performance art, festivals and public art installations have in promoting good relations within and between communities. The impact can be both social and economic.
- 9.22 According to the Arts Council of Northern Ireland, other benefits of the use of the arts in the public space include increasing the confidence and self-esteem of participants, improved community cohesion, creating a sense of place and ultimately building stronger and safer communities.

What the Commission Heard

- 9.23 During its public consultation and engagement process, the Commission heard many views on the role of events including commemorations in the public realm. While not explicitly specified within the remit of the Commission, the views expressed during its public engagement process referred to a wide range of events including parades.
- 9.24 The importance of traditional events, including parades to local communities and their sense of cultural identity was frequently highlighted. The role such events played in local areas and their value to the cohesion and confidence of communities was discussed at almost every public meeting.
- 9.25 There was a view that, in many situations, those participating in events are often demonised for taking part in their cultural celebration, with a view to them being ultimately removed from the civic space. Consequently this is seen as an attack

upon the communities in which they take place. The role of the media in providing negative coverage of events was discussed previously at chapter 7.

- 9.26 There was also criticism of the behaviour of some participants, spectators and protestors at some events. The Commission had useful discussions about where responsibility lies for both the content of events and for the behaviour of spectators and participants.
- 9.27 The issue of respect was a common thread. This was raised by participants, supporters and opponents of public events regardless of their community background. This included demands that organisers secure community consent for events, or at least consult with communities in order to minimise disruption and consider all implications. Alternative views were given on the perceived motivation of organisers of some events. There was a belief that some were more focussed on provocation and intimidation rather than celebration and commemoration.
- 9.28 The inclusivity and accessibility, or otherwise, of events in the public space was raised regularly. People discussed the importance of having accessible and open events. However, there was a view that while some of these may, by their very nature, be viewed as single identity, they should not be criticised for being so. These could be influenced by displays of national allegiance or informed by traditions through the years.
- 9.29 There was a considerable range of views expressed in relation to neutral space and shared space. Many viewed the concept of neutral spaces as negative, as it fails to reflect the range of identities that shared space should encompass. Creating genuinely shared spaces was therefore seen as important. Alternatively others believed that neutral spaces were necessary to prevent offence being caused to others. The importance of having shared space as a way for people to integrate more was also highlighted. This included greater shared housing and shared education. The use of contentious references in the naming of public spaces was highlighted as an obstacle to integration and inclusion.

- 9.30 The Commission heard of the need to create spaces for people to come together and engage with one another. People believed that for this to be successful it needs to be part of routine activity. Having such spaces was considered essential.
- 9.31 The issue of paramilitary regalia or other symbols and associations being prominent at some events in public spaces was highlighted as a problem. How such displays are being excluded from within the workplace was given as an example of how society has previously been successful in tackling such issues.
- 9.32 Public expressions of cultural identity are often linked to the commemoration of historic events. Views were expressed about the ongoing impact of the legacy of the Troubles and displays at events in the public space that can be hurtful reminders to victims and survivors, including the families of people who lost their lives.
- 9.33 Some people questioned the legality of decisions by the Parades Commission or the Police about some events, in that restrictions applied were perceived as unbalanced and to whom they applied was not always clear. The use of music or songs which are perceived as sectarian at some events in the public space was also highlighted as an issue and the Commission discussed this within the context of sectarian hate incidents.
- 9.34 Positive examples were given of efforts by event organisers to use their own trained stewards as a means of reducing tensions. The Commission heard from those involved in many community organisations, but particularly from those representing bands, that training around event management, stewarding, managing risk, health and safety was highly beneficial. The provision of training was appreciated as it showed commitment to this area, and those who had been through training reflected their pride in holding high quality and safe events.
- 9.35 Local agreements around events were highlighted as very positive and to be encouraged, although concerns were expressed by some over the legitimacy of some unelected representatives claiming to represent communities. In addition

there were many contributors who believed that people actively travel from different areas to be offended by certain events.

The Commission's View

- 9.36 Public space is space shared in common and should reflect both diversity and difference. Events and the use of the arts in public spaces can provide cohesion and common experiences. The ability of individuals and groups to access and express themselves in the public space is an acknowledgment of their rights and of their citizenship. The importance of this was expressed time and again by many people that the Commission met. In recognition of the diverse society in which we live, the Commission does not believe all public spaces should, or can, be neutral. All public space should be considered shared, in which everyone feels entitled and welcome to organise events that reflect their cultural identity. This requires that that we adhere to all relevant legislation, and recognise the importance of accepting responsibilities as well as asserting their rights.
- 9.37 Everyone within our society should feel that their identity can be reflected in the cultural life of the community in which they live, work and socialise. It is reasonable to expect Government at all levels to ensure the public events and artistic endeavours that they organise, sponsor or otherwise facilitate, reflect the diversity of identities that make up the population our society.
- 9.38 The Commission recognises the important role that the use of the arts can play in the public space, for the public good. The arts can create spaces of engagement and debate, promote cultural diversity and contribute to good relations across all of our society.
- 9.39 Recommendations in relation to events in public spaces and the exhibition or performances of arts in the public space are aimed at encouraging the celebration of cultural identities, rather than deterring or preventing them. They aim to create the conditions in which communities can welcome the organisation of such events and activities in their local area or are enabled to attend events in other areas.

9.40 While some expressed a desire for enhanced sharing of space it created fears for others. Concerns were expressed that with greater integration of communities, there is an erosion of the identity and culture of the community that is opening its space to others. While this view does not currently recognise the benefits that can be garnered through greater integration and the sharing of space, it is very real to these communities and needs to be addressed.

Recommendations

9.41 The Commission recommends that the NI Executive develop a new civic accredited arts and heritage, education, training and exhibition initiative in a dedicated space. This would enable skills development with social and cultural history, and artistic awareness through the creation and display of the arts. This would draw upon local and international experts in heritage and traditional conservation and preservation alongside applied contemporary cultural curatorial opportunities not currently catered for in the museums and heritage sector. This would facilitate and enable communities to positively and inclusively reflect the identity, culture and traditions of their neighbourhoods.

9.42 The Commission recommends that the rights, values and principles upon which society seeks to express and celebrate culture, identity and tradition, outlined at chapter 4 of this report, be used as the basis for organising events and creative expression in the public space.

9.43 The Commission recommends that the NI Executive ensures that the use of the arts in the public space is supported by an equitable and proportionate distribution of available public funds that evidences value for money.

9.44 It is recommended that the NI Executive fully appraise the direct, indirect and induced costs and benefits of arts in the public space including cultural celebrations.

9.45 The Commission believes that the common good is served by a vibrant and creative public space. This environment can best be achieved through the development of high quality event management and incentivising the learning and

adoption of best-practice at a community level. The Commission therefore recommends that public bodies and organisers work together to ensure that event organisers can avail of a range of training packages including those which provide peer learning and mentoring in:

- Steward training
- Health and safety training
- Risk assessment
- Event and festival management
- Marketing skills

9.46 The Commission was of the view that Councils should adopt a standardised plan that organisers of public events should follow, ensuring a consistency of approach across Council areas. The Commission highlights efforts by Councils and other groups to identify features that create good civic engagement and shared space.

9.47 The Commission discussed use of symbols and emblems in public space, which promote proscribed organisations. The Commission believes that event organisers should be mindful of the potential for symbols/emblems to cause offence.

CHAPTER 10 SYMBOLS AND EMBLEMS, CONFLICT AND COHESION

- 10.1 The Commission was asked to scope *'the range, extent and nature of issues relating to flags, identity, culture and tradition'*. Many people highlighted the importance to them of flags, symbols and emblems but it was also highlighted that the use of flags, emblems and symbols creates contention and conflict. In our society, one coming out of conflict, flags, symbols and emblems assumed a new and significant importance after the 1998 Agreement.
- 10.2 One example shows how a symbol can capture the imagination in a very short period. Over the months of Covid lockdown in 2020, the symbol of the rainbow became visible in household windows across Northern Ireland. It was also displayed from murals, on banners, on buildings and as stickers in the back of cars. The rainbow was displayed across areas perceived as Nationalist and Unionist and areas of different social class. For many, it expressed a common support for front line workers at a time of crisis. In a society that so often views symbols as politically contested it is important to remember that symbols also provide diverse social groups with a sense of cohesion.
- 10.3 There are some important features associated with symbols and emblems that it is worth identifying in order to understand why it is important to take them seriously.
- 10.4 The meaning of a symbol is not innate in the object/sign. The object or emblem acting as symbol is given meaning by us. In that sense, the meaning is 'in our heads'. Everyone understands a symbol in their own way. So whilst some of that understanding will be held in common with others, some of the meaning will be personal and linked to our own life experiences. This has important ramifications because it means a symbol can be linked to our personal identity. As such, an attack upon a symbol can feel personal.
- 10.5 The use and adherence to these symbols are done in common. People stand for an anthem together, or lower a flag, or cheer a team. The use of the symbol in common gives people a sense of what has been called 'communitas'. It gives a

feeling that we share things in common. And they are therefore connected to the emotion we feel for our groups and are part of our identity.

- 10.6 This combination of the personal and social is what makes symbols so powerful. This has a number of implications. First, it helps groups sustain a sense of togetherness even when there may be great diversity, perhaps political diversity, within a group. The most obvious example of this are nations. People in a nation will share very different political perspectives but will often share common allegiance to that nation expressed through flags and anthems. Symbols, as with the example of the rainbow, can express cohesion in diversity.
- 10.7 Second because large numbers of people share a common emotional allegiance, symbols have political power. As such, political parties, politicians, activist groups and communities, as well as commercial companies, know that their use of the symbol can impact the cohesion and attitudes of the group. The use of symbols is therefore part of political and marketing campaigns. And very often symbols are a point of political conflict.
- 10.8 Political conflict through symbols takes place either by different groups or politicians claiming the use of the same symbol or when they are conducting campaigns through competing symbols.
- 10.9 This is why, in the conflictual politics in our society, we seem to spend an inordinate amount of time discussing flags, symbols, bonfires, statues, murals, banners and memorials. They play a role in social cohesion and identifying particular groups and, at the same time, play a very personal and emotional role in people's identity.

CHAPTER 11 FLYING OF FLAGS ON STREET FURNITURE

Background

- 11.1 The display of flags to mark certain events is common across the world. This is a tradition of particular significance in Northern Ireland and is viewed as very important by many people who wish to openly and publicly express their allegiances. This has been a source of contention, representing for many the core issues which lie at the heart of the establishment of this Commission.
- 11.2 In the past, flags flown in streets and from houses were mainly national flags and were flown in conjunction with times of celebration/commemoration such as Easter, the First of July, Twelfth of July and the Last Saturday in August. Over the last two decades the placing of a substantial number of flags on lamp posts and on other street furniture such as road signs and telegraph poles, has developed in contrast to the more traditional practice of placing flags on houses and/or putting up bunting and arches in residential streets.
- 11.3 More recently there has been a significant change in the number and nature of flags and how they are flown. In recent years large numbers of national flags and flags representing proscribed organisations have been flown from lamp posts and road signs, both in housing estates and on major arterial routes. The period of time when flags are flown has also changed, with some flags left on display for long periods of the year.
- 11.4 The decision of Belfast City Council in December 2012, to change its policy to one where the Union flag was displayed on designated days gave rise to significant protests from many Unionists, who saw the decision as an attack on their national identity. While the subsequent protests focused on the decision around the official flying of flags, the months which followed saw an increasing number of flags flown, mostly along roads and in the main from lamp posts, telegraph poles and road signs. While there have been many protests over the years in relation to the flying of flags, the dispute in 2012 had a widespread impact on many communities.

Commemorative and Cultural Flags

- 11.5 Flags, particularly national flags, are frequently used for commemoration. There is little more powerful use of a flag than when it is draped over a coffin or used in an act of commemoration. It is precisely this element of the use of flags that help give them their symbolic and emotional power.
- 11.6 Over the last two decades, a practice has developed of designing new flags ostensibly for commemorative purposes. In addition, the practice of placing these flags on lamp posts rather than the traditional flying of flags on houses has led to the more widespread use of flags.
- 11.7 Commemoration also links moments in history with contemporary politics. Through commemorative practice, individuals and current organisations, can make claims of legitimacy and relevance by linking themselves to particular historical narratives. As such, acts of commemoration and symbols that can be seen as commemorative, also have contemporary meaning. To describe a flag as simply 'historical' is to ignore the contemporary political context. Commemoration is, inevitably, also political.
- 11.8 The use of flags is common throughout the world but, as with commemoration, the contexts in which these flags are used is very important. Flags representing local football clubs – GAA and football – as well as flags flown for Celtic and Rangers are a legitimate form of expression. However they also, potentially, express division and can be used to mark territory.

Legal Context

- 11.9 There is a range of legislation that is relevant to the display of flags on or attached to lampposts, telegraph poles and road signs and other street furniture. The relevant legislation relating to the flying of flags is as follows:

- Section 87 of the Roads Order (NI) 1993⁶¹

⁶¹ <http://www.legislation.gov.uk/nisi/1993/3160/article/87/made>

- The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015⁶²
- The Terrorism Act 2000⁶³
- The Public Order (Northern Ireland) Order 1987⁶⁴
- Article 18(1) of the Local Government (Miscellaneous Provisions) Northern Ireland Order 1985⁶⁵.

Section 87 of the Roads Order (NI) 1993 provides as follows;

(1) Any person who, without lawful authority—

(a) paints or otherwise inscribes or affixes any picture, letter, sign or mark; or

(b) displays any advertisement, upon the surface of a road or upon any tree, structure or other works in or on a road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Planning (Control of Advertisements) Regulations (Northern Ireland) 2015

the display of the national flag of ANY country is currently permitted so long as each flag is displayed on a single flagstaff and ‘neither the flag nor the flagstaff display any advertisement or subject matter additional to the design of the flag.’ These regulations allow an exemption for the display of election posters, ‘pending an election’ and two weeks after an election. Councils presently have lawful authority to place hanging baskets and banners on lamp posts.

Section 3 of the Terrorism Act 2000 provides for the proscription of terrorist organisations. Membership of such organisations constitutes an offence, and ancillary offences also exist (supporting a proscribed organisation etc).

Sections 12 and 13 of the Terrorism Act 2000 provide that inviting support for a proscribed organisation could include the content within flags or displays using a mural.

⁶² <http://www.legislation.gov.uk/nisr/2015/66/contents/made>

⁶³ <https://www.legislation.gov.uk/ukpga/2000/11/contents>

⁶⁴ <http://www.legislation.gov.uk/nisi/1987/463/contents>

⁶⁵ <http://www.legislation.gov.uk/nisi/1985/1208>

12 (1) *A person commits an offence if—*

- *he invites support for a proscribed organisation, and*
- *the support is not, or is not restricted to, the provision of money or other property (within the meaning of section 15).*

13 (1) *A person in a public place commits an offence if he—*

- *wears an item of clothing, or*
- *wears, carries or displays an article, in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.*
- Section 1 of the Terrorism Act 2006⁶⁶ creates the offence of Encouragement of Terrorism in publications. A publication can include matter to be read, listened to, or looked at or watched, and may include visual images without any accompanying text.
- Subsection (3) provides an example of Glorifying Statements that may be understood as indirectly encouraging terrorism offences: firstly, the audience must reasonably understand that they should emulate the conduct; in other words, that they should do something similar. Secondly, a concept of ‘in existing circumstances’ means that it must be possible for them to emulate the conduct glorified ‘in this day and age’. This means that the glorification of distant historical events is unlikely to be subject to these definitions. Section 22 of the Act ensures that proscribed organisations cannot avoid the proscription regime simply by changing their names with power given to the Home Secretary to make an order to that effect.

The Public Order (Northern Ireland) Order 1987 prohibits provocative conduct in a public place or at a public meeting or procession, and includes the display of anything with the “intent to provoke a breach of the peace or by which a breach of the peace or public order is likely to be occasioned” . It also prohibits “the display of written material which is threatening, abusive or insulting is also prohibited if intended to stir up hatred or arouse fear; or is likely to do”.

⁶⁶ <http://www.legislation.gov.uk/ukpga/2006/11/contents>

Article 18 (1) of the Local Government (Miscellaneous Provisions) Northern Ireland Order 1985 gives Councils the authority to remove flags which contravene advertising regulations.

At present, citizens do not have lawful authority to put up any flag on lamp posts or road signs.

2005 Flags Protocol

11.10 In 2005 the Office of the First Minister & deputy First Minister (now the Executive Office) published a flags protocol⁶⁷. This protocol was developed in association with the Police Service of Northern Ireland, the Department for Social Development, the Department for Regional Development – Roads Service, the Department of the Environment – Planning Service and the Northern Ireland Housing Executive.

11.11 The protocol aimed to advance a ‘partnership approach’ to ‘develop a strategic and graduated response to the flags issue which involves consultation, shared understanding, negotiation and, if necessary, proportionate and legal use of enforcement methods’.

11.12 The protocol suggested that ‘whatever agency is placed in the most effective position to consult, negotiate and resolve situations, will take the lead and will be supported by other partners within their remit and specialism’. It further suggested that ‘...where the display is one that is causing community tension or affecting quality of life for a community, then the police will take the lead’. On the removal of flags the PSNI were deemed lead agency ‘where a partner agency was unable to take action’.

11.13 The protocol also suggested that other agencies, including the Housing Executive, might lead where the removal of flags is part of ‘broader environmental

⁶⁷ <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/Joint%20Flags%20Protocol%202005.pdf>

improvement' and that the DOE (now Department of Infrastructure) will act with other agencies under the auspices of the Planning (Control of Advertisements) Regulations (NI) 1992.

11.14 The statutory organisations faced particular challenges in delivering their obligations, not least of which was dealing with overt or perceived paramilitary threats to those seeking to enforce the agreed arrangements. The protocol highlighted the challenges in monitoring and measuring success in these matters, highlighting the many factors which had an influence. However, it is apparent that the desired change was not effected and ultimately the protocol proved wholly ineffective.

11.15 The evidence⁶⁸ suggests that there has been little or no improvement in the years following the development of the protocol. There may be a number of reasons for this. The Commission notes that there is still an issue over which agency leads the process and that local Councils were not included in the partnership agreement.

What the Commission Heard

11.16 During the engagement phase of its work, the Commission heard a wide range of views in relation to the erection and flying of flags from street furniture. Some argued that there should be no restrictions to the erection and flying of flags; others thought that there should be, whether by way of protocols or legislation; and a range of suggestions were made as to where, when and which flags should be flown. Some suggested that flags should not be flown outside places of worship, schools, hospitals/health centres and other key public buildings. Some suggested that all flags should be banned, while some said that flags should be flown only for specific periods of time.

11.17 There were strong views expressed about the types of flags that should be flown. Many welcomed the flying of national/cultural flags, pointing to the long established tradition of decorating houses and streets and the sense of local identity created when communities came together to mark important cultural and

⁶⁸ https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm_dev/public-displays-of-flags-and-embblems-in-ni-survey-2010.pdf

historic events. Many expressed the view that flying national flags at certain times of the year was important to them and was an integral part of their culture, providing comfort and reassurance and a sense of belonging. They welcomed the decoration of areas and did not wish to see this tradition diminished or restricted.

- 11.18 There was considerable focus on the need for national flags, which are often left to become tatty, to be respected and treated with dignity. There was also a widely expressed view that there was a need for a better understanding about flags, their history and what they represent.
- 11.19 Some referred to the widespread practice of flying flags to mark sporting events, and the Commission heard that there was a need to ensure that this was done sensitively, taking into account the views of local residents.
- 11.20 There was a strong view that flags that associated with, promoting or supporting proscribed organisations should not be displayed. Many contributors said that the flying of these flags represents the marking of territory both within and between communities, and an attempt to exercise control, threatening those that have no affinity with the flags being flown. Many felt that the flying of such flags was an attempt to antagonise and raise tensions. Some concerns were expressed about the negative influence exerted by proscribed organisations who use young people to place paramilitary symbols and flags in public spaces.
- 11.21 During its consultation the Commission heard of the use of flags by paramilitaries to mark territory, both within and between communities, and the use of such flags to impose control on local communities.
- 11.22 The period of time when flags are displayed has, for many, become increasingly associated with territorial demarcation, with large numbers of flags in place well before and well beyond the usual periods of celebration and/or commemoration.
- 11.23 The effect on business and tourism was also identified with some pointing to the negative impact of flags flying all year round, many of them tattered, and there was general consensus that this should stop.

11.24 The Commission was made aware of locally agreed solutions and the development of protocols around the type and time flags are flown. Some people said that such an approach was helpful in making progress on this issue at a local level. In addition some believed that loyalists in particular, were not being given the recognition they deserved for addressing issues such as flags and bonfires in some areas.

11.25 Others were of the opinion that legislation was the only effective way to regulate the flying of flags. Some strongly opposed this view and believed that legislation would be counter-productive resulting in more flags and greater likelihood of tensions between those erecting the flags and statutory bodies, including the PSNI. Some also felt legislation would not be effective as the PSNI and statutory bodies would be unable and unwilling to enforce it. There were also concerns expressed that the PSNI does not currently deal with the erection and flying of flags in areas where they are unwanted and this situation would not change.

Research & Survey Results

11.26 The Commission considered evidence from surveys and opinion polls on the issue of flags on lamp posts. For twenty years, the Northern Ireland Life and Times (NILT) Survey has asked questions about the flying of flags and several other opinion polls gave some sense of people's feelings about when flags are flown, how long they are flown for and what flags are flown.

Support for the Flying of Flags

11.27 It has been clear from surveys that many people do not support flags flying on lampposts. In 2019 32% of people 'strongly agreed' or 'agreed' with the statement that they support the flags flying on lamp posts on *special dates* for *special occasions*. However, 43% disagreed or strongly disagreed. A poll by Lucid Talk in 2015 suggested that over 60% of people were either annoyed or slightly annoyed by the displays of flags (**Tables 1 and 2**). Obviously, the level of support for this practice will vary in different areas.

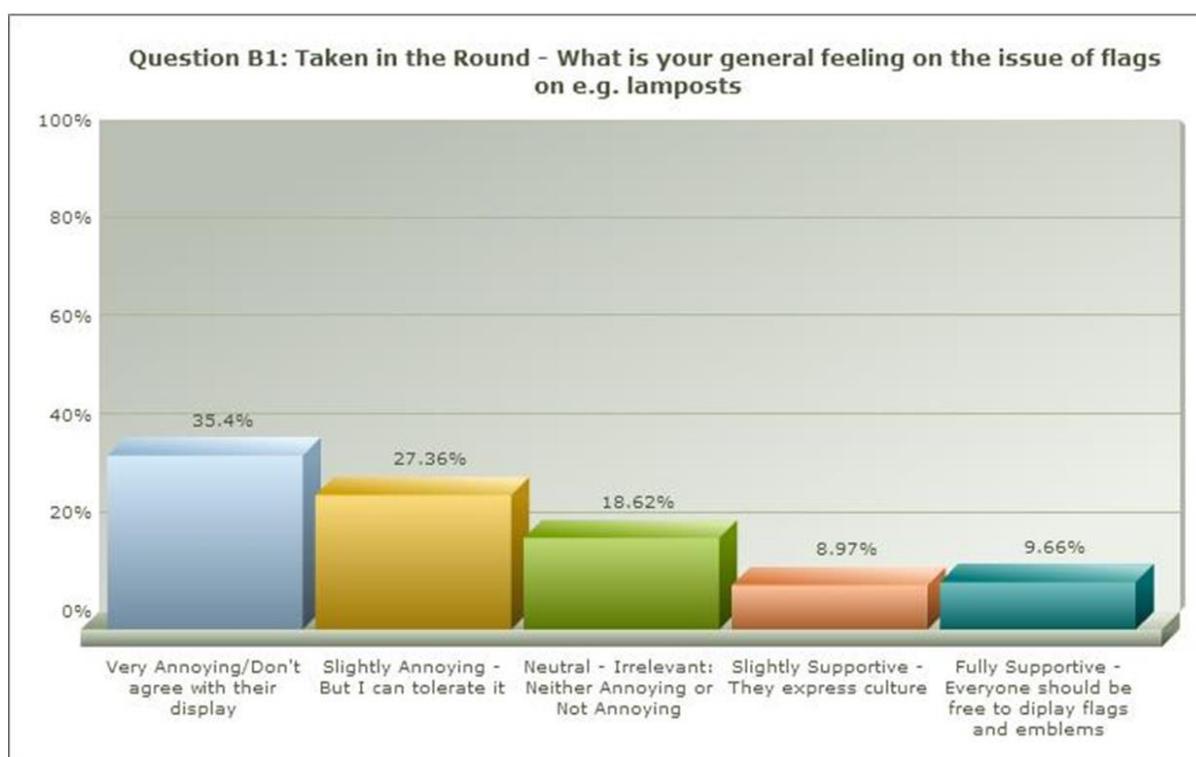
Table 1: Life and Times Survey 2019

How much do you agree or disagree with each of these statements about flags?

I support the flying of flags on lampposts throughout Northern Ireland on special dates for particular celebrations.

	%
Strongly agree	6
Agree	26
Neither agree nor disagree	17
Disagree	19
Strongly disagree	24
It depends on the flag	5
Don't know	3

Table 2: Lucid Talk December 2015



11.28 The Life and Times Survey in 2019 also suggests a considerable degree of anxiety over the flying of flags. When asked if flags should be removed straightaway 'even if this causes trouble' 56% of people agreed or strongly agreed whilst 22% disagreed and strongly disagreed. Again, these opinion levels are bound to vary in local areas.

TABLE 3

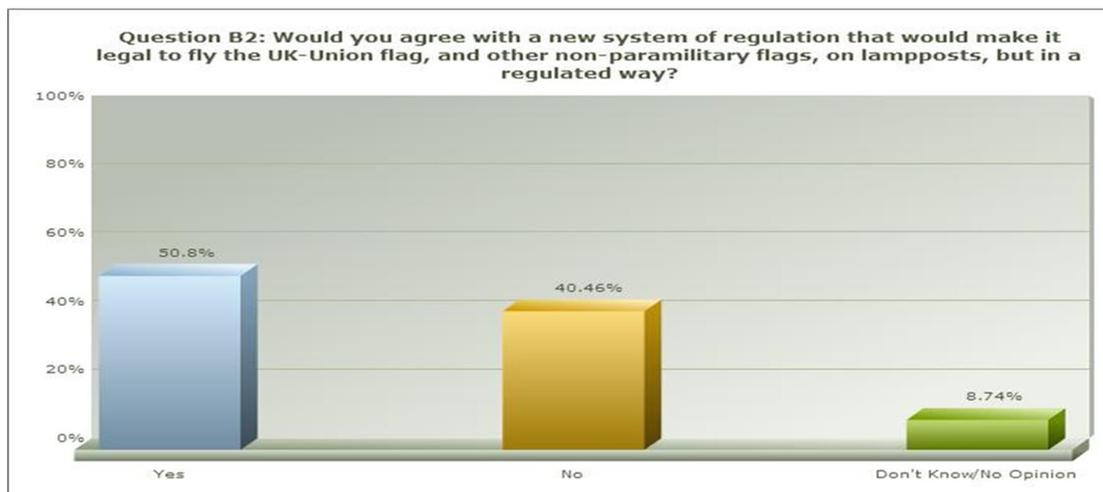
How much do you agree or disagree with each of these statements about flags?

If flags appear on lampposts I would like them all taken down straightaway, even if this causes trouble.

	%
Strongly agree	34
Agree	22
Neither agree nor disagree	16
Disagree	16
Strongly disagree	6
It depends on the flag	4
Don't know	2

11.29 In the Lucid Talk Poll of 2015 whilst 50.8% of people approved of the idea that new regulations should make it legal to fly the Union flag and other non-paramilitary flags in a regulated way 40.46% disagreed (**Table 7**). Of course, some of those disagreeing might do so because they want no regulation of flags, whilst other might want no flags up in any circumstances.

Table 7: Lucid talk poll 2015



11.30 The Commission also considered the most recent research update published by Access Research Knowledge (ARK) Northern Ireland in November 2017. The update concluded that “flags and other forms of markers continue to be

controversial in Northern Ireland”⁶⁹ with reaction varying according to religious and other forms of identity.

11.31 Reflecting a more positive outlook, two thirds of respondents did not report annoyance or intimidation by any republican or loyalist flags, kerb painting or flags in the previous year.

The Commission’s View

11.32 The Commission acknowledges that some communities have undertaken very positive work and developed local protocols, aimed at creating a better environment for the flying of flags within local areas, however whilst there are examples of good practice and positive local agreements, it is also evident that significant problems remain.

11.33 There are undoubtedly examples of partnership working between agencies in some areas which have included local Councils. The Commission is also aware of agencies routinely working in partnership in some areas. However, evaluations undertaken after the introduction of the protocol, such as the *Public Display of Flags and Emblems in Northern Ireland Survey 2006-2009* (Institute of Irish Studies 2010)⁷⁰, make it quite clear that there was no overall improvement.

11.34 The Commission believes that the 2005 Protocol has not been effective. It has heard evidence that people are unclear who currently has lead responsibility for dealing with the flags although it is often perceived to be the PSNI. The Commission also noted that whilst local Council's are approached with issues over flags they are not part of the 2005 Protocol. It is also clear that statutory organisations faced particular challenges in delivering their obligations not least of which was dealing with overt paramilitary threats to those seeking to enforce the agreed arrangements. In addition, the Commission is not aware of consistent partnership working between agencies.

⁶⁹ https://www.ark.ac.uk/ARK/sites/default/files/2018-07/update119_0.pdf

⁷⁰ <https://pure.gub.ac.uk/en/publications/public-displays-of-flags-and-emblems-in-northern-ireland-survey-2>

11.35 In addition, it is clear from an examination of the current legislation that citizens do not have lawful authority to put up any flag on lamp posts or road signs. As such, in order to recommend a Protocol or Code of Practice, and embed a culture of lawfulness, current legislation requires change.

11.36 The Commission believes that there needs for greater clarity over roles and responsibilities and an improved structure for interagency working that includes local Councils.

11.37 The Commission agrees that the practice of leaving flags flying for extended periods of time, becoming tattered and dirty, is unacceptable and not consistent with the principle of treating flags with due respect.

11.38 The flying of any flag which supports or promotes a proscribed organisation is wholly inconsistent with the concept of a culture of lawfulness and this practice has no place within the arena of legitimate cultural expression.

Where Challenges Remain

11.39 The Commission considers that the flying of flags to mark significant cultural or historic events is a legitimate form of cultural expression. However, as identified in paragraph 11.35 above, current legislation does not give authority for citizens to place flags on lampposts. The authority to place items on street furniture lies with the landowner (usually the Department for Infrastructure) or other designated agencies such as local councils. The exception to this is an exemption under the Roads Order for election posters to be erected during the period from when the election date is known until a short period after the election has taken place.

11.40 The Commission could not agree on whether changes should be made to current legislation in order to create a similar exemption to that which exists for election posters. Such an exemption could provide:

- (a) the authority for placing flags on street furniture and
- (b) the conditions under which such an exemption would operate.

Consequently, without any legislative changes, the Commission is not in a position to recommend a code of practice that would accompany any such legislative change.

11.41 Notwithstanding 11.40, there was widespread agreement on a range of elements that could be included in any code of practice that would be introduced to sit alongside any change in legislation, should that happen. The Commission was of the view that any exemption under the Roads Order for the flying of flags, were it to come about, should only apply under the following conditions:

- For displays of flags to be representative of significant commemorations and celebrations, displays should be kept close to the dates of those events, and apply for certain times in July, August and the Easter period.
- Flags should not be placed on lamp posts, on individual property, or near a place of worship or school, in any way that could be considered intimidatory or threatening.
- Flags should not be flown around places where public services are delivered (for example hospitals, health centres, leisure centres and libraries).
- Flags should not be placed in positions that might be reasonably construed as antagonistic such as interfaces.
- Flags should never be flown in a worn or damaged condition, or when soiled.
- No national flag should ever be defiled or burned.
- Residents of areas where flags are displayed can reasonably expect to know who is putting flags up and how long they will be displayed.
- The placing of flags must not endanger the safety of road users.

11.42 The Commission was also conscious that there are special occasions which fall outside the periods of Easter, July and August where groups and communities would wish to have flags flying for a celebratory or commemorative occasion. For the flying of flags outside of those periods, the Commission was of the view that these special occasions should have a process in place to enable authority to be granted by a designated body. In this case, the following conditions should apply:

- Notification of an intention to hang flags on street furniture outside of the specified period must be provided to an officer designated by the local Council a minimum of 10 days in advance of doing so. That notification will only be accepted as valid if the following is fulfilled:
- it is signed by an office bearer in a constituted organisation or that has been accredited with the Sports Council's Clubmark;
- it specifies the occasion that is being celebrated or commemorated and a stated intention to erect flags to mark this occasion;
- it specifies the dates upon which the flags will be hung and taken down (which must be for the period of the occasion being marked and no longer than 5 days);
- it specifies the roads/streets where the flags will be hung;
- it specifies the types of flags to be hung;
- it provides evidence of local community consultation and agreement around the erection of flags for the said occasion; and
- the office bearer assures the Council of the organisation's commitment to full adherence to the 'code of practice' outlined in 11.41 above

The designated officer will inform the group if the application conforms to the criteria laid out above, within 3 days of the application being made.

11.43 The Commission agreed that flags supporting paramilitary organisations should not be flown. There is, in law, no such entity as a 'paramilitary organisation' only 'proscribed organisations'. However, there was no agreement on a mechanism for regulation and enforcement. The Commission discussed the means by which any permission to fly flags is created would ensure that any flag that identifies with, lends support to, advertises or can be associated with any organisation proscribed since 1968 is prohibited. In particular, two options were discussed but not agreed:

Option A

Only national flags, regional and county flags, traditional sporting flags and flags of long established official cultural organisations will be allowed. This would remove any dispute over what constituted a 'paramilitary' flag. -

- The body granting lawful authority for the flying of flags within the designated period will be the final arbitrator of the above.
- Flags being flown outside of the periods of lawful authority or any flag that identifies with, supports, advertises or can be associated with any proscribed organisation will be removed by the relevant agency.

Option B

Flags associated with proscribed organisations (or organisations proscribed during any period following 1968) should be banned.

- 11.44 In terms of option B, the Commission considered likely circumstances where there is a dispute as to what constitutes a flag that advertises or promotes a proscribed organisation. The Commission discussed whether the body granting lawful authority for the flying of flags within the designated period could, having taken advice from PSNI, be the final arbiter of what constitutes such a flag. There were members of the Commission who felt this was unworkable and therefore preferred option A; that only national flags, regional and county flags, traditional sporting flags and flags of long established official cultural organisations should be allowed.
- 11.45 There was widespread agreement that the NI Executive and relevant statutory agencies should work together to promptly remove any flags flown outside of the exempted periods, that do not conform to the code of practice or which identify with any proscribed organisation.
- 11.46 A culture of lawfulness, and public confidence, in the erection and removal of flags will only be enhanced through prompt and consistent enforcement of legislation and/or a code of practice. This is the responsibility of the respective property owner on whose property the flag resides and should involve consultations with the PSNI where legislation or the code of practice is not being adhered to.
- 11.47 The Commission considered that flags used to commemorate people or historical events or cultural and sporting bodies should only be used in limited and respectful circumstances. If they are not linked to anniversaries or remain flying for significant

lengths of time then they become more recognisable as markers of territory and potentially activities of coercion.

11.48 In line with its remit, the Commission was tasked with developing a Flags Protocol. While there is no lawful authority, under existing legislation for the flying of flags from street furniture, a possible code of practice is provided below.

POSSIBLE CODE OF PRACTICE: RESPECTFUL DISPLAY OF FLAGS

The Commission has developed a series of values, principles and guidelines in relation to the positive promotion of identity, culture and tradition. Respect is a key underpinning value and principle. Cultural events and activities should be respected and respectful. In relation to flags, respect covers a number of areas:

- Respect for the flag
- Respect for the community
- Respect for the event

Respect for the flag:

Many flags, when flown over a long period become tattered, worn and soiled. Therefore, flags should be taken down before this happens, as a mark of respect to the nations, organisations or cultural bodies that the flag represents. The principle of respect also means that a national flag, or any other flag, should never be used for the purposes of provocation, to threaten people or to mark territory and the flags of other nations should also be granted respect. No national flag should ever be defiled or burnt.

Respect for the community:

Flags should never be used to define a neighbourhood or a community as being of one tradition or another. Flags should also never be used as a means to intimidate any community. When flags are being used to accompany a celebratory or commemorative event, they should be used for that purpose and therefore should be time bound and related to the location where the event is being held.

Respect for the Event

Authority is given for the flying of flags out of respect for the particular historical or political event. It is not to be used as general permission to put flags up in all places and over long periods of time. The respectful use of flags at such events increases the status of the event and flags should be linked to the time and place of events. Flags, particularly national flags, need to be treated with respect. This means among other things that:

Time

- Flags should never be flown in a worn or damaged condition, or when soiled. To do so is to show disrespect for the nations, organisations or cultural bodies they represent.
- For displays of flags to remain representative of significant commemorations and celebrations it is important that displays are kept close to the dates of those events.

Place

- Flags should not be placed on lamp posts on or near an individual property or place of worship in any way that could be considered intimidatory or threatening.
- Places where public services are delivered for example schools, hospitals, health centres, leisure centres and libraries should be open, shared, accessible and welcoming to all and therefore should be places around which flags are not flown.
- Flags should not be placed in positions that might be reasonably construed as antagonistic such as interfaces.

Transparency

In order to prevent or mitigate conflict the utmost courtesy must be shown to those who might feel uncomfortable with the flag display. Residents of areas where flags are displayed can reasonably expect to know who is putting the flags up and how long they will be displayed. It is good practice to find a way of communicating to people when the flags are being put up and for how long.

Health & Safety

The placing of flags on lampposts must not endanger the safety of road users. Flags must not be placed on telegraph poles or electricity pylons under any circumstances.

CHAPTER 12 FLYING OF FLAGS ON PUBLIC BUILDINGS

Background

12.1 Every country in the world uses its national flag on public buildings as a reflection and recognition of sovereignty. Locally, in a situation of contested national identities and constitutional aspirations, the issue of what national flags should be flown, how often and from which public buildings has been a subject of much contention in recent years.

Law and Policy Relating to the Flying of Flags From Public Buildings

12.2 The current legal context in relation to official flying of the Union Flag on public buildings varies, depending on whether the building is the responsibility of the UK national government, a devolved administration or local government.

12.3 National government departments and agencies are required to fly the Union Flag on their buildings on a list of specified days which are designated by the Department of Digital, Culture, Media and Sport (DCMS), but are permitted to fly it all year round if they so choose.

12.4 Sites under the authority of the NI Executive fly the Union Flag on days designated in accordance with **the Flags (Northern Ireland) Order 2000**⁷¹ and the **Flags Regulations (Northern Ireland) 2000**⁷² as amended. These regulations *require* the Union Flag to be flown:

- On specified government buildings on specified days (*Regulation 2(1)*)
- On all other government buildings where it was the practice to fly it on notified days in the 12 months preceding 31 November 1999 (*Regulation 2(2)*)
- On a government building on the occasion of a visit of Her Majesty the Queen, in addition to the Royal Standard, where there is more than one flag pole (*Regulation 4(2)*)
- At half-mast on specified government buildings on the death of a member of the Royal Family or serving or former UK Prime Minister (*Regulation 6*)

⁷¹ <http://www.legislation.gov.uk/nisi/2000/1347/made>

⁷² <http://www.legislation.gov.uk/nisr/2000/347/contents/made>

- 12.5 The regulations *permit* the Union Flag to be flown:
- On a government building on the occasion of a visit by a Head of State other than Her Majesty the Queen (if there is more than one flagpole, the flag of the country of the visiting Head of State may be flown in addition to the Union Flag) (*Regulations 3(1) and 3(2)*)
 - On any other government building on a day when it is required or permitted to be flown under Regulation 2(1), 2(2), 3(1) or 6 or where Regulation 4(1) requires the Royal Standard to be flown
- 12.6 The flying of flags by local government is left to the discretion of each local authority. In developing or reviewing a policy on the flying of the Union Flag a Council is required to consider the policy aims, objectives, rationale and must not cause unlawful discrimination or harassment, unintentionally or indirectly through the effects or impacts of the policy. While the policy aims and objectives must be legitimate, ultimately the policy is a matter for each Council to decide for itself. In reaching an outcome on any review of its policy, a Council must comply with its Section 75 duties, namely to “have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations.”
- 12.7 The Equality Commission considers that flying the Union Flag on public buildings with the aim of acknowledging the constitutional position of Northern Ireland is a legitimate policy aim. It also considers it legitimate to fly the Union Flag as a mark of commemoration, in a manner which symbolises the dignity and respect for those it is remembering. It further advises that flags and emblems should be used in a manner which promotes mutual respect rather than division.
- 12.8 In a judgement on a Judicial Review of the Flags Regulations, brought by Conor Murphy MLA in 2001⁷³, Kerr J noted: “*the Regulations follow the principle that it is the inappropriate or excessive use of symbols, including flags, which should be eliminated, not their constitutional significance*”. Kerr J also judged that the demands and limits within the Flags Regulations were deemed “*to reflect Northern*

⁷³ [2001] NI 425

Ireland's constitutional position, not to discriminate against any section of its population.”

12.9 In relation to the wider issue of flags and symbols, Kerr J also judged that a balance had been struck through the Regulations for the promotion of the constitutional position of Northern Ireland with “*a recognition of the need for sensitivity in relation to the flying of flags and the need for respect for the rights and aspirations of others.*”

12.10 The flying of the Union Flag on public buildings represents the sovereignty of United Kingdom in Northern Ireland. The measures contained within the Flags Regulations reflects the context within which flag flying should operate and also represents the reality of the differing political aspirations within our society.

What the Commission Heard

12.11 During its consultation and engagement programme, the Commission heard many opposing views regarding the official flying of flags on public buildings.

12.12 Some young people who attended engagement events suggested that a new flag should be designed for use on public buildings, with no religious or political links. However, the majority of views expressed related to the flying of existing national flags.

12.13 Many people felt that while Northern Ireland remains part of the United Kingdom, the Union Flag should be the only flag flown from public buildings. Some expressed the view that it should be flown all the time, while others expressed a preference for it to fly only on designated days.

12.14 A range of surveys have explored public opinion in relation to the issue of whether the Union flag should be flown every day or on designated days only. The 2019 NILT survey⁷⁴ found 21% of people surveyed wanted the Union Flag to fly from public buildings all of the time; 56% opted for the Union Flag to be flown on

⁷⁴ https://www.ark.ac.uk/nilt/2019/Community_Relations/FLAGPUBL.html

designated days; 13% said that it should never be flown; and 10% expressed no opinion.

12.15 When broken down by political opinion, almost 44% of people who classed themselves as Unionist said that the Union Flag should be flown all of the time; over 51% said that it should only be flown on designated days and less than 1% said that it should never be flown. Less than 2% of people who classed themselves as Nationalist said that the Union Flag should be flown all of the time; almost 59% said it should only be flown on designated days and 37% said that it should never be flown. 55% and 52% of people who identified themselves as Irish and British, respectively, opted for designated days.

12.16 Whilst no option had overwhelming public support, the flying of the Union Flag on designated days appears to have been the one most widely favoured.

12.17 The question of whether the Irish national Flag should be flown was not asked in the survey. But the Commission heard arguments that flying the Irish national Flag on public buildings would be a recognition of parity of esteem for people who regard themselves as Irish and would symbolise civic spaces being shared.

12.18 Nationalists and Republicans advocated a 'two flags or no flags' policy, under which either the Irish national Flag would be flown alongside the Union Flag, or no flags should be flown at all. They argue that the official flying of the Irish national Flag alongside the Union Flag would represent a clear acknowledgment of both Britishness and Irishness within our society, would be a legitimate expression of Irishness and would demonstrate parity of esteem, inclusivity and the promotion of mutual respect.

12.19 While in principle Councils could decide to fly both national flags in this way, none has done so; but some Nationalist controlled Councils have taken the decision to fly neither.

The Commission's View

12.20 It is clear to the Commission that in relation to these two diametrically opposed political and public positions relating to the official flying of flags on public buildings – that either the Union Flag only, should fly on public buildings, or; that the Union Flag and the Irish national Flag should both fly on public buildings together, or there should be no flags flown at all – there is currently no meeting point.

12.21 The Commission notes that the Belfast/Good Friday Agreement recognises that the sovereignty of Northern Ireland presently rests with the United Kingdom, that there should be parity of esteem for the aspirations of both communities and that symbols should be used in a way that promotes mutual respect.

12.22 The Commission sought to examine options on how this issue might be progressed for the good of all within our society. In doing so, the following observations were recognised from the Belfast/Good Friday Agreement:

- The Belfast/Good Friday Agreement recognises the constitutional position that Northern Ireland is part of the United Kingdom.

'recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland; (Constitutional Issues 1 (i))

- The Belfast/Good Friday Agreement recognises the legitimacy of Irish identity, the legitimate political aspiration of a United Ireland and that British and Irish Identities should command Parity of Esteem.

'the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities; (Constitutional Issues 1 (v))

- The Belfast/Good Friday Agreement recognises the sensitivity in the use of symbols:

‘the sensitivity of the use of symbols and emblems for public purposes and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division.’ (Economic, Social and Cultural Issues 5).

Where Challenges Remain

12.23 The various political positions in relation to this issue contain no meeting point. However, a range of suggestions and options were explored by the Commission in an effort to identify potential areas for future discussion and negotiation on this issue. These are detailed in the following paragraphs:

12.24 To reflect the political reality within our society, the Commission discussed the following options that were raised in the course of its public engagement:

- a) Fly the Union Flag on a range of designated days on all Council buildings, on the headquarters of NI Government buildings, and on National Government buildings.
- b) Fly the Union Flag 365 days per year on all Council headquarters buildings; and fly the Union Flag on designated days (as per DCMS) on the headquarters of NI Government buildings, and on National Government buildings.
- c) Fly the Union Flag 365 days per year on all Council headquarters buildings, and on the headquarters of NI Government buildings; and fly the Union Flag on designated days (as per DCMS) on National Government buildings.
- d) Fly both the Union Flag and the Irish national flag 365 days per year on all Council headquarters buildings; and fly both the Union Flag and the Irish national Flag on designated days on the headquarters of NI Government Department Buildings.
- e) Fly the Union Flag and the Irish national Flag on designated days on all Council buildings and on the headquarters of NI Government buildings.
- f) Fly no flags from any NI Government or Council buildings.

12.25 The Commission also discussed the possibility of developing a new Civic Flag. This would not be a regional flag or a National flag, but rather a Civic flag that would be designed to be representative of the diversity of our society, including our new communities.

12.26 Such a Civic Flag would therefore incorporate representations of Britishness, Irishness and our collective diversity. If this option were developed it could add to the wider debate around the official flying of flags on public buildings, thereby widening the options available to society, such as:

- a) Fly the Civic Flag and the Union Flag from NI Government buildings and Council buildings 365 days per year.
- b) Fly the Civic Flag and the Union flag from NI Government buildings on designated days. In addition, fly the Civic Flag 365 days a year from Council buildings and allow Councils to decide for themselves on which days to fly the Union Flag alongside it.
- c) Fly the Civic Flag 365 days a year from NI Government buildings and allow Councils to decide for themselves on which days to fly the Union Flag and the Irish national Flag alongside it.
- d) Fly the Civic Flag on designated days from NI Government buildings and allow Councils to decide for themselves on which days to fly the Union Flag and the Irish national Flag together alongside it.

The days to be classed as 'designated' could be amended to incorporate more locally relevant and agreed commemorative or celebratory events.

12.27 National Government buildings would continue with a sensitive and appropriate practice in relation to flag flying on government buildings.

New Decade, New Approach

12.28 The Commission notes within the New Decade, New Approach document produced by the two Governments (Section 5.5.8, P32) the proposed establishment of.....an Office of Identity and Cultural Expression, one of whose functions will be to: "*periodically audit public authorities on how they have*

respected and accommodated the cultural expression of minorities within their area of responsibility.”

12.29 The Commission further notes at (P50) paragraph 27 the commitment to *“Update the Flags Regulations (Northern Ireland) 2000 to bring the list of designated flag flying days from Northern Ireland government buildings and court-houses into line with the DCMS designated days, meaning the same designated days will be observed in Northern Ireland as in the rest of the UK going forward. This will involve the addition of three designated days.”*

CHAPTER 13 BONFIRES

Background

- 13.1 Throughout the world, the lighting of fires and more locally, the practice of burning bonfires, is something that is undertaken to mark aspects of cultural identity, celebration, commemoration or recollection. These celebrations or commemorations are important for many people within our society. Eleventh Night bonfires are an important aspect of the identity and cultural expression of the Unionist and Loyalist community. Bonfires have also been lit in communities to mark Halloween, the Feast of the Assumption or the eve of the introduction of Internment. Other festivals and events, such as Lundy's Day, also use fire as an integral part of their commemorative events.
- 13.2 There has been a long tradition of community run and family friendly events and activities around bonfires, with these activities being staged to recall the arrival of King William, via Carrickfergus, into Belfast, when small bonfires, or beacons, were lit on the hills to assist his journey.
- 13.3 In recent years, there has been a move to use willow-burning beacons as a means of replacing traditional bonfires in some areas. This has particularly been the case in built-up urban areas, where space for a traditional bonfire has decreased. Areas that have sufficient space for a traditional bonfire generally continue to uphold this practice. However, the now widespread use of beacons is a welcome development for some.
- 13.4 A bonfire or a beacon can be a great way of celebrating events. However household waste may not be burned. Garden waste and dry materials, such as dead wood, may be burned under certain conditions. Anyone operating a bonfire, other than a small garden bonfire within their own property, must have authorisation from the landowner to do so.

Legal Context

- 13.5 There is a wide range of legislation which has relevance to bonfires and activities around them including:

- Waste and Contaminated Land Order 1997⁷⁵
- Litter (NI) Order 1994⁷⁶
- Clean Air (NI) Order 1981⁷⁷
- The Roads (NI) Order 1993
- Public Health (Ireland) Act 1878⁷⁸
- The Public Order (Northern Ireland) Order 1987
- Criminal Damage (NI) Order 1977⁷⁹
- Environment (NI) Order 2002⁸⁰
- Fire and Rescue Services (NI) Order 2006⁸¹
- Waste Management Licensing Regulations (NI) 2003⁸²
- Clean Neighbourhoods and Environment Act (Northern Ireland) 2011⁸³
- Health & Safety at Work (NI) Order⁸⁴

13.6 Some examples of how some of these legislative areas apply to bonfires is detailed below:

The Waste and Contaminated Land (NI) Order 1997 - places a duty on the Northern Ireland Environment Agency with regard to the deposition, transport and disposal of controlled waste. Materials that are being burnt on a typical bonfire are regarded as controlled waste. This means that in relation to bonfires, the NIEA could prosecute the landowner (a Council, or the Northern Ireland Housing Executive) for allowing the illegal deposition of waste on its land. It can also prosecute the producer/carrier for the illegal transportation and/or placement of controlled waste onto an unlicensed site. It can issue an Article 27 Notice to the landowner directing them to dispose of the waste in a specified manner. Property/land owners, whether private or public, are obliged to maintain their property in a safe manner and are therefore responsible for what happens on their

⁷⁵ <http://www.legislation.gov.uk/nisi/1997/2778/contents/made>

⁷⁶ <http://www.legislation.gov.uk/nisi/1994/1896/contents>

⁷⁷ <http://www.legislation.gov.uk/nisi/1981/158/contents>

⁷⁸ <http://www.legislation.gov.uk/ukpga/Vict/41-42/52/contents/enacted>

⁷⁹ <http://www.legislation.gov.uk/nisi/1977/426/contents>

⁸⁰ <http://www.legislation.gov.uk/nisi/2002/3153/contents>

⁸¹ <https://www.legislation.gov.uk/nisi/2006/1254/contents>

⁸² <http://www.legislation.gov.uk/nisr/2003/493/contents/made>

⁸³ <http://www.legislation.gov.uk/ni/2011/23/contents>

⁸⁴ <http://www.legislation.gov.uk/nisi/1978/1039>

land. Article 28 of the Waste and Contaminated Land Order allows Councils to act in default and to remove waste that has been unlawfully deposited on any land in order to remove or prevent pollution or harm to health, where there is no occupier of the land, or where the occupier did not permit the deposit of waste. The law also requires public landowners to maintain their property in a safe manner. In the event of bonfire material being gathered on land without permission, the land owner is faced with a dilemma. The potential impact of removal of the material and the fear it generates, sometimes with paramilitary influence, means that materials tend to remain on site. However, landowners could be liable to prosecution for allowing material to be deposited on their land.

Article 3 of the Litter (NI) Order 1994 - a local Council may serve a litter clearing notice in relation to open land in its district if it is satisfied that the land is defaced by litter in a way that is detrimental to the amenity of the locality. A litter clearing notice requires the person on whom it is served to clear the land of the litter. Article 3 also makes it an offence for any person to throw down, drop or deposit anything to cause, or contribute to, or tend to lead to, the defacement by litter of any such place. Such legislation, although not designed to deal specifically with bonfires, could be applied in instances where bonfires are detrimental to the amenity of a locality.

Public Order and Criminal Damage - there are various issues which may be associated with bonfires which are deemed illegal and which may cause to, or can give rise to legitimate complaints. Some examples include illegal activity such as trespassing on property, obstruction of roads, theft of materials to be burned or issues such as youths causing annoyance, under-age drinking or arson. There is no specific legislation in respect of policing bonfires. Undesirable behaviour associated with bonfires is generally captured under the guise of anti-social legislation. The Police can become involved where a complaint is received of injury to a person, damage to property, where there is public disorder, or if there is proof that a hate crime is being intended.

Clean Air (NI) Order 1981 - Councils have a number of powers to control air pollution and under Article 4, they can prohibit the emission of dark smoke where

waste originating from a trade source is burned. The person responsible for complying with this provision is the property/land owner. Under Article 23 where nuisance is caused by smoke, action can be taken under the **Public Health (Ireland) Act 1878** for “statutory nuisance”. The person responsible can either be the land owner or the person by whose act the nuisance occurs.

The Roads (NI) Order 1993 - applies to roads which are maintainable by DfI Roads and gives it powers to require a person who places anything on the road as to constitute a nuisance to remove it immediately. Where it is deemed to be a danger the Department may remove it. Article 94 makes it an offence for any person to deposit, or permit to be deposited, building materials, rubble, rubbish or compost on a road as to cause, or likely to cause obstruction or danger. Enforcement of this is dealt with by the PSNI. The Department may remove the material or take such other steps as are necessary to remove the danger.

The Public Order (Northern Ireland) Order 1987 – gives powers to impose controls on open-air public meetings where there may be offences including Breach of the Peace, Stirring up hatred or arousing fear.

Criminal Damage (NI) Order 1977 - Article 3(1) of this order makes it an offence for a person to, without lawful excuse, intentionally or recklessly destroy or damage and property belonging to another person.

Environment (NI) Order 2002 – places a duty on DAERA to create and maintain air quality strategy duty on Councils to implement Air Quality Strategy and review air quality.

Fire & Rescue Services (NI) Order 2006 – gives discretionary powers to NIFRS to do anything reasonably believed to be necessary if a fire has broken out or is about to break out, for the purpose of protecting life or property.

Waste Management Licensing Regulations (NI) 2003 – sites where waste is disposed of or held pending disposal are to be authorised to do so. Under the

'duty of care' provisions producers and carriers of waste must ensure waste is only taken to a site licensed for that type of waste.

- 13.7 While none of these legislative provisions are specifically designed to address bonfires, there are provisions within them nonetheless which could be applied to deal with issues emanating from them.
- 13.8 There can be a range of significant financial costs associated with bonfires such as clear-up costs, repair costs and increased call-outs to the emergency services in the lead up to, and also on, those nights when bonfires are lit.
- 13.9 All of this presents the statutory bodies such as the Northern Ireland Environmental Agency, the Northern Ireland Housing Executive, Local Councils, the Police Service of Northern Ireland, the Northern Ireland Fire and Rescue Service and Department for Infrastructure, Roads, with a range of significant challenges in how to respond to bonfires, in an unclear legal environment. The fact that such bonfires occur, coupled with the difficulties faced by statutory agencies, works against the development of a culture of lawfulness around bonfires.

What the Commission Heard

- 13.10 Many people who attended the consultation and engagement events undertaken by the Commission spoke of bonfires as being a key element in the heritage and traditions within the Unionist and Loyalist community.
- 13.11 People who attended meetings with the Commission spoke of their pride in the staging of bonfires and associated events. People spoke of this aspect of their heritage as being the central period of celebration and commemoration within the broad Unionist and Loyalist community.
- 13.12 The Commission heard of the commitment within local communities to the positive management of bonfires and associated events in some places such as Ballymena, Belfast, Derry/Londonderry, Magherafelt, Desertmartin, Portadown, Ballycarry, the Ards Peninsula and elsewhere.

- 13.13 As is the case in Britain and elsewhere, bonfires are part of formal festival events, advertised and promoted by the Tourist industry. There are some bonfires around July, which are attended by tourists, which could be developed further as a positive tourist attraction.
- 13.14 The Commission also heard how people do not always view bonfires positively. The Commission heard that in some areas bonfires are dangerous and raise considerable safety and environmental concerns, particularly where they are constructed close to homes or property, or burn toxic materials. The burning of flags, emblems, election posters and other offensive images and items on bonfires also causes concern to many people.
- 13.15 In some Council areas, where there is a Unionist minority, there is a perception of there being little or no engagement between Council Officers and those involved in bonfires, with the perception that some such Councils are seeking to prevent unionists having Eleventh Night bonfires on their land.
- 13.16 The Commission heard that these concerns exist equally for some people within Unionist and Loyalist areas around Eleventh Night bonfires, as they do for some people regarding bonfires that occur within Nationalist and Republican areas.

Engagement on Bonfires

- 13.17 While it varies across different Council areas, there are examples of agencies and elected representatives who have engaged with local communities to find solutions to the difficult issues presented by bonfires. The leadership role of elected Members in engaging on issues such as bonfires should be encouraged and supported. Due to the challenges around bonfires, engagement has been developed through schemes which have mainly provided funding for festival and community events. While no bonfire scheme funds the actual bonfire, most schemes have made funding conditional on groups adhering to a series of requirements around the construction of the bonfire and how it is managed. Funding for the festival or community events has been withheld in some cases where groups have not complied with these requirements, leaving event organisers in a vulnerable position. Furthermore, there are mixed views on the

success of these schemes, which are not uniformly agreed and viewed by some as being divisive.

13.18 Information provided to the Commission from a number of agencies indicates that where engagement has been positive around bonfires where problems exist, there have been transformations such as:

- Reductions in anti-social behavior
- Reductions in call-outs to the emergency services
- Reductions in the repair and clear-up costs associated with bonfires
- Reductions in damage to property
- Reductions in the number of flags and emblems being burned
- Greater community involvement in local events and activities
- Reductions in negative paramilitary control and influence around bonfires

The Commission's View

13.19 Resulting from the consultation and engagement process and drawing on additional good practice and research, the Commission acknowledges the wish of people to have a bonfire as a form of cultural celebration or commemoration. The Commission believes that this wish should be reflected within a framework that recognises bonfires as a legitimate form of cultural expression and permits them, provided that they are constructed and managed in a manner that is safe; minimises the negative environmental impact; and where the bonfire is supported by the majority of residents, with events being made family friendly and appropriate for those living in and visiting the area.

13.20 The Commission acknowledges that not everyone wants bonfires in their areas or they may want the bonfires to be smaller, better located and better managed and that in some places there is no longer sufficient space to have a bonfire. Within many of these areas, the Commission heard how communities have developed creative and artistic ways to mark the event through developing alternatives to bonfires. These include festivals, street parties and other community events. Many groups involved in cultural, historical and community celebrations or commemorations have sought to explore alternatives to traditional bonfires.

13.21 The Commission acknowledges that some communities have replaced the traditional bonfire with a beacon, reflecting the historic origins of the practice of burning fires on the Eleventh of July.

13.22 The following recommendations seek to create an environment for addressing those negative aspects of bonfires that exist in some areas, while providing the legal safeguard to statutory bodies, Government departments and landowners to enable bonfires to occur legitimately and safely. The Commission hopes that these recommendations will facilitate bonfires and related events in a way that will add to the richness and diversity of the wider cultural wealth within our society, creating new opportunities for positive engagement between statutory agencies, Government departments and communities.

Recommendations

13.23 The Commission recommends that the NI Executive recognise, that within Northern Ireland bonfires are an important aspect of the culture, identity and tradition of communities and are therefore a legitimate form of celebration or commemoration, provided they are compliant with the law.

13.24 The Commission recommends that the Department of Agriculture, Environment and Rural Affairs make bonfire materials, of wood only, exempt from being classified as controlled waste within the Waste and Contaminated Land Order, for traditional bonfires. This would enable such bonfires to occur lawfully on public land when they are undertaken as part of a cultural event and where landowners permit them to occur. As the proposed change in legislation would enable land owners to permit a bonfire on their land for such an occasion, land owners would be in a position to set the conditions upon which such permission is granted, thereby ensuring that the bonfire is safe.

13.25 Article 10 of the Recreation and Youth Services (NI) Order 1986 enables Councils to establish, maintain and manage facilities for recreational, social, physical and cultural activities, together with certain ancillary powers, including the power to provide assistance to third parties to organise such activities. Combined with the

proposed amendment to the Waste and Contaminated Land Order set out above, this power would allow Councils to provide an appropriate piece of land for a bonfire when it is undertaken as part of a cultural or commemorative event within communities and in line with the conditions outlined above. The Commission recommends that the NI Executive extends the provisions of this Order to other relevant public land owners to similarly enable them to provide space for a bonfire when it is undertaken as part of a cultural or commemorative event.

13.26 As part of a wider cultural education programme, the Commission recommends that the NI Executive considers the inclusion of a programme to support positive expression of cultural heritage and commemoration, within a context that promotes a sensitivity towards environmental awareness, and highlights the risk to life and property and which causes harm to human health. Such a programme would include elements on the historic background of cultural and historical events that are traditionally marked by bonfires, and would seek to inform people from different backgrounds, as well as those people within communities where bonfire building is common. It would incorporate elements on better bonfire management and support alternatives to bonfires such as beacons. It is essential that any education programme that relates to the cultural tradition of bonfires is developed in association with established cultural organisations and is properly resourced.

13.27 The Commission recommends that the NI Executive also considers the development of a skills based arts programme that harnesses the creativity and talents of those involved in the construction of bonfires. See also 9.41.

13.28 The Commission recommends that under the leadership of the NI Environment Agency, landowners and relevant statutory organisations collectively and robustly pursue incidents of illegal dumping of tyres, rubbish and fly-tipping at bonfire sites. This will require prompt and effective interagency collaboration and engagement.

13.29 The Commission recommends that the NI Executive fully supports statutory organisations where and when they have to intervene in the event of a bonfire being planned, constructed or burned in a manner that:

- Risks life and/or property; or

- Causes harm to human health or the environment; or
- Gives rise to an offence of hate crime; or
- Encourages support for proscribed organisations; or
- Gives rise to instances of Anti-Social Behaviour; or
- Is being constructed without the permission of the landowner.

This will involve agencies complying with their legal obligations under current enforcement provision and may also include conferring powers, where they do not already exist, to enable agencies to take proactive remedial steps at a bonfire site to activate the removal of a bonfire, if this is required.

13.30 Within a new environment in which bonfires can occur in a legal manner, the Commission recommends that the NI Executive endorse the following set of conditions that public land owners would require bonfire builders to comply with, in order for a bonfire to be permitted. These conditions would include, but may not be limited to, the following:

- Bonfire organisers need to consider the views of those living in the immediate area where a bonfire is proposed to take place. Public bodies on whose land a bonfire is being proposed, need to gather these views and work with bonfire organisers and other agencies to act upon this.
- As a minimum, the collection or gathering of any materials on a bonfire site should begin no earlier than 6 weeks prior to the bonfire being lit.
- Materials to be burned should consist of wood only. Pollution and environmental damage should be minimised.
- Bonfire builders and organisers must consult with the NIFRS on the size and location of the bonfire and should ensure that there is at least a 1:5 ratio of the height of the bonfire to its proximity to any physical structure such as housing. The burning of any flag, emblem, election poster or any other image or item which could cause offence is counter to the positive expression of culture and identity in a culturally diverse society and bonfire builders and organisers should refrain from this practice. This will be enforced by the land owner and other relevant statutory agencies.

Land owners may also wish to propose that failure to comply with these conditions may lead to permission for a bonfire in future years not being granted.

CHAPTER 14 MURALS

Background

- 14.1 Murals provide a backdrop to urban living in many societies, where they can be used to portray aspects of culture, heritage and identity. They express the skill of the painters and can enrich the streets of towns and cities. Their themes and content can express creative thought, and positively reflect the values and issues that are important to a community.
- 14.2 In our society the tradition of painting murals dates back to the early twentieth century. They have been variously used to convey political messages; to reflect social developments, international solidarity, and significant local people; or to commemorate historical events and local social history. There are many murals that mark historic or cultural occasions, such as the Battle of the Boyne, the 1916 Rising, the two World Wars and many other significant events. Largely associated with urban areas, their artists have become skilled in helping to tell the stories emanating from the communities in which they work.
- 14.3 The impact of murals often depends on their content and physical location. Murals can provide a sense of belonging for people who see their culture reflected within them. Some project a positive narrative of a community's past, present, and its aspirations for the future. Some people argue that these can also be perceived as exclusive, offensive or menacing, and can create or sustain division.
- 14.4 While many murals have reflected aspects of cultural identity, during the Troubles murals became more associated with expressions of political identity and the increasing predominance of paramilitarism.
- 14.5 Many murals, particularly since the 1980s and 1990s have contained images associated with proscribed organisations and the valorisation or glorification of armed violence and its perpetrators. Whilst these have significantly reduced since the 1998 Agreement there is still an issue around the use of murals to assert the control of territory by paramilitary groups.

14.6 In recent years publicly funded reimagining projects have sought to replace paramilitary murals with less contentious imagery. At the same time, murals to represent the political division in our society have also become tourist attractions in urban areas used by some to elicit direct, indirect and induced economic benefits and a sense of purpose.

Law and policy relating to murals

14.7 There is a range of legislation that could be relevant to murals.

The Human Rights Act 1998 allows for freedom of cultural expression subject to certain restrictions that are ‘in accordance with the law’ and necessary in a democratic society. However, the application of this right can be weighed against material within a mural which may be considered to be offensive or inciting violence.

Section 1 of the Terrorism Act 2006 and **schedule 2 of the 2000 Act** state that it is a criminal offence to either publish a statement or disseminate a publication that is “*likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism*”.

Section 75 of the Northern Ireland Act places a statutory obligation on all public authorities to have due regard to the need to promote equality of opportunity and regard for the desirability of promoting good relations. This duty includes decisions on the allocation of public funds or granting of permission to use public property for projects that involve the development and erection of a mural.

Article 3(1) of the Criminal Damage (NI) Order 1977 makes it an offence for a person to, without lawful excuse, intentionally or recklessly destroy or damage any property belonging to another.

The Clean Neighbourhoods & Environment Act (NI) 2011 contains provisions relating to graffiti, which it defines as including painting, writing, soiling, marking or

other defacing by whatever means. This would include murals, at least those which can be said to 'deface'.

14.8 The legislation referred to above was not designed to deal with the painting of political/cultural murals which are prevalent in our society. As such their effectiveness as legal remedies enabling those wishing to take action may be limited.

What the Commission Heard

14.9 The presence, content and perceived purpose of murals arose as an issue in the course of the Commission's engagement process. Some who commented on murals felt that they are a means of positively expressing the culture, identity and heritage of communities. They pointed to the use of murals to recognise, celebrate or commemorate the contribution of particular individuals or groups within a community or area.

14.10 However, others' views of murals were less favourable, with a majority of those who commented on murals expressing significant concerns about the painting of paramilitary murals. Many expressed a strong desire to see such displays removed from their communities, citing them as attempts by paramilitary groups to assert control over areas. Accordingly, people voiced their fear of speaking out against such images.

14.11 So while some people commented that these displays associated with paramilitarism reflect the identity of the communities in which they are located, and provide a sense of safety, there was general opposition to murals that:

- (a) glorify or celebrate acts of violence or people who carried out acts of violence;
- (b) are paramilitary in content and advertise and support proscribed organisations;
- (c) are perceived as being threatening or intimidating in their content; or
- (d) are used as a means of marking territory.

14.12 The Northern Ireland Housing Executive has acknowledged that *"Political and sectarian displays are prevalent within housing estates and symbols such as murals, flags, kerb painting, bonfires and paramilitary memorials can create a 'chill*

factor' for visitors". This evaluation of its Community Cohesion Strategy programme⁸⁵ also contained survey results which indicate that "murals can be a catalyst for physical, social and economic regeneration."

14.13 Yet when it came to dealing with murals that promote or lend support to a proscribed organisation, some people stated that statutory organisations fail to intervene, take action or enforce legislation. This can create a sense of powerlessness among those who would like such images removed.

14.14 The Commission was made aware that there is no strategic policy that relates specifically to the erection of murals. Under planning rules, provided that it is permitted by the property owner, a development within certain parameters relating to nature, size and scale is classified as "permitted development". Murals may fall within this category.

14.15 The Commission engaged with statutory organisations on this issue and was appraised of their challenges associated with preventing or removing such murals. Primary among these were concerns related to intimidation of staff and contractors.

The Commission's View

14.16 The Commission believes that in general, the painting of murals can be a positive expression of the culture, heritage and identity within communities.

14.17 The Commission supports the view strongly expressed within our consultation process that the presence of murals that promote proscribed organisations is not consistent with a culture of lawfulness. The Commission believes that such murals are not positive expressions of the culture, heritage and identity of our communities, and are primarily used as a means of coercive control.

14.18 The Commission engaged with statutory organisations, and established that there is no strategic policy that relates specifically to the erection of murals. Under

⁸⁵ https://www.nihe.gov.uk/Documents/Community-Cohesion-Strategy-consultation-responses/community_cohesion_strategy.aspx

planning rules, provided it is permitted by the property owner, a development within certain parameters relating to nature, size and scale is classified as “permitted development”. Murals may fall within this category.

14.19 Statutory organisations described the challenges associated with preventing or removing murals, the biggest of which is related to intimidation of staff and contractors. The Commission also heard that public order considerations are sometimes used as an excuse the basis for not taking action to remove paramilitary murals. The overall impression this creates is that public bodies are unwilling, or unable, to enforce the law and their own obligations. This undermines wider efforts to create and reinforce a culture of lawfulness.

14.20 The consequence of this is a perception that public bodies are not fulfilling their obligations when it comes to addressing concerns in relation to paramilitary murals, and that the application of legislation to deal with them is minimal.

14.21 In the absence of an official process for murals, the Commission is of the view that anyone planning a mural should:

- seek permission from both the property owner and the land owner (if a separate individual or body) for the erection of the mural;
- seek guidance on health and safety aspects (where a mural is being erected on a panel); and
- be in a position to robustly evidence claims that the location and content of the mural would not threaten or intimidate others and that this is supported by local people and people using amenities and facilities in the area.

14.22 The criteria outlined at 14.21 should be essential requirements within any future publicly funded programmes relating to the painting of murals.

Recommendations

- 14.23 The Commission proposes the following recommendations to support positive aspects of cultural identity within communities, while addressing the continued existence of those murals which promote coercive control and undermine a culture of lawfulness.
- 14.24 The Commission recommends that the NI Executive develop an accredited arts, education and training initiative in relation to murals. Drawing on local and international expertise, this initiative would combine skills development with social and cultural history, community participation and artistic awareness through the creation and display of murals. It would facilitate and enable communities to erect positive images that reflect the identity, culture and traditions of their neighbourhoods. The NI Executive might consider giving consideration to the long-term funding of such an initiative. See also 9.41 and 13.27
- 14.25 The Commission recommends that the NI Executive devises an appropriate way of supporting communities to address the continued presence of murals that advertise and lend support to proscribed organisations through a process of re-imaging that would remove or replace murals. If the mural is being replaced, any public funding would be conditional upon:
- The replacement mural not advertising or lending support to a proscribed organisation;
 - The funding body being satisfied that the replacement mural will be of benefit to the local community for social, cultural or historical reasons; and
 - Genuine efforts being made by those seeking funding to ensure that the replacement mural does not cause pain or hurt to others as a result of their experiences of the Troubles.
- 14.26 The Commission recommends that the Executive undertakes a review of existing legislation and if necessary, introduces new legislation to empower public sector bodies to take action to remove murals, on public and private buildings, or prevent them being painted where they contravene a set of guidelines.

Where Challenges Remain

14.27 The Commission discussed but did not reach consensus on a range of guidelines that could be used in any future programmes concerning murals. The Commission has listed some possible criteria below in relation to murals:

- The need to seek permission from the property and land owners
- The need to seek planning permission if appropriate;
- The need to undertake consultation within the local community;
- The need to ensure that the content does not advertise or lend support to a proscribed organization;
- The size and location of the mural; and
- The benefit of the mural to the community for social, cultural or historical reasons.
- Avoidance of content that would cause pain or hurt to others as a result of their experiences of the Troubles.

CHAPTER 15 MEMORIALS, REMEMBRANCE AND COMMEMORATION

Background

- 15.1 The process of remembering can be a crucial part of people's culture and identity. Social groups draw upon the past to tell them who they are. But what is remembered and what is forgotten is as much a reflection of the present as of the past. It is a part of politics. Since there is no agreement about the causes of the conflict that our society endured, it has not yet been possible to resolve the sensitive area of dealing with the past, nor to create an enabling environment for its remembrance. In its absence there is little official remembering or commemorative activity, and unofficial activity is rarely shared beyond single identity groups. Reconciliation within our society is at an early stage.
- 15.2 Apart from official acts of remembrance or commemoration at public memorials, practices related to public remembrance and commemoration in relation to the conflict have evolved in a localised and ad-hoc manner. In many cases, public remembrance takes the form of physical memorial structures.
- 15.3 There are hundreds of Troubles-related memorials across our society, in the form of free-standing plinths, murals, plaques, gardens, plots, obelisks, windows and the naming of buildings and parks. Memorials to Loyalists and Republicans represent the majority, compared with memorials to civilians and the security forces. When compared with the percentage of conflict related deaths, memorials in the public realm disproportionately focus on combatants, as opposed to civilians. Many of these memorials are in public spaces such as town centres, main roads and within local neighbourhoods.
- 15.4 Commemoration of historical events, as well as public commemorative spaces, such as civic and public buildings, have long had important political relevance in our society. Such events and spaces have the potential to both upset and enhance community relations.

15.5 The increase in public memorialisation and commemoration in our society reflects a trend in many other societies emerging from conflict. The 2014 report⁸⁶ of the UN Special Rapporteur in the field of cultural rights addressed memorialisation processes in post-conflict and divided societies, with a specific focus on memorials and museums of history/memory. The report, submitted to the UN General Assembly, highlighted how *'too much memory, especially if presented in the form of irreconcilable versions of the past, might hurt rather than help a society'*. The Special Rapporteur noted that all post-conflict and divided societies had to confront the need to establish a *'delicate balance between forgetting and remembering.'* The principle questions to be asked and debated in the public sphere each time are: what are the specific intended goals of the memorial? Who is it made for? What will be its likely sociopolitical impact? Who participates in its establishment, including in the design, execution and stewardship? Does it include plurality of narratives?

15.6 The Special Rapporteur concluded that an essential element for successful memorialisation is collaboration between the authorities, citizens and civil society, especially representatives of those directly affected by past events. The Special Rapporteur recommended that States and other stakeholders support victims and families of victims seeking to commemorate the past. Memorialisation should be understood as *'processes that provide the necessary space for those affected to articulate their diverse narratives in culturally meaningful ways.'* So that States and other stakeholders refrained from using memorialisation to further their own political agendas the report recommended that such processes:

- Ensure the transparency of memorialisation processes and promote civil society participation at all stages, including in the decision-making process leading to the memorials. Memorialisation processes should be centred on the victims and designed to empower them;
- Promote critical thinking on past events by ensuring that memorialisation processes are complemented by measures fostering historical awareness and support the implementation and outreach of high-quality research projects,

⁸⁶https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_49_ENG.DOC&action=default&DefaultItemOpen=1

cultural interventions that encourage people's direct engagement and educational initiatives;

- Respect the freedom of opinion and expression of curators and refrain from imposing political control and putting financial pressure on them;
- Respect the right to freedom of artistic expression and creativity in addressing memorialisation issues and collaborate with artists. States should ensure the availability of public spaces for a diversity of narratives conveyed in artistic expressions and multiply opportunities for such narratives to engage with each other;
- Encourage the memorialisation of those who refused to participate in mass or grave violations of human rights, resisted oppression and helped each other across community divides;
- Judiciously consider the cultural and symbolic landscape being built or reconstructed following conflict, to ensure that it is reflective of the various aspirations and perspectives of people and enables critical thinking, historical awareness and mutual understanding between communities.

15.7 Finally, the Special Rapporteur recommended that States adopt legislation setting out guidelines regarding memorialisation processes, in accordance with international standards and taking into consideration the recommendations above.

Law and Policy Relating to Public Memorials

15.8 There is a range of legislation that is relevant to memorials in public space.

Schedule to the Planning (General Permitted Development) Order (NI) 2015⁸⁷

15.9 While there is no official planning policy or process that relates specifically to the erection of memorials, this schedule sets out the classes of development which are permitted for planning purposes. While memorials may be subject to the planning process they are not all automatically deemed unlawful, as development within certain parameters relating to nature, size and scale is classified as "permitted development" and therefore does not require express planning permission. Relatively small memorials such as wall plaques and murals are

⁸⁷ <http://www.legislation.gov.uk/nisr/2015/70/contents/made>

unlikely to require approval, unless for example, placed upon a listed building. Memorial gardens and large monuments however would ordinarily require planning permission.

Planning Act (NI) 2011

15.10 Section 24 of the Planning Act (NI) 2011⁸⁸ provides that 'subject to this Act, planning permission is required for the development of land'. Section 23 of the Act defines what is meant by development. In general terms this means '*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*'. Even though a structure may be erected without express planning permission, the power of the planning authority to take enforcement action is time-limited, so 'development' - including any memorial which has been extant for more than five years - is likely to be immune from enforcement action. However, a public authority still has the power to remove anything which has been erected on its land, regardless of how long the structure has been there.

Section 75 of the Northern Ireland Act

15.11 Section 75 of the Northern Ireland Act 1998 also requires public bodies, including local Councils, in carrying out their functions, to have due regard to the need to promote equality of opportunity between certain groups, and to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group. In making a planning or any other decision related to a memorial a Council would need to consider if the presence of such a memorial could be perceived as marking out territory and thus inhibit the use of this area by the whole community.

Department for Infrastructure Policy

15.12 The Department for Infrastructure (DFI) has no general powers to consent to memorial type structures on a road. However where road safety is not an issue DFI operates a 'policy' regarding roadside monuments, roadside memorials, kerb painting, etc under which unless such structures or emblems pose a danger to

⁸⁸ <http://www.legislation.gov.uk/nia/2011/25/contents>

road users, or there is a clear indication that removing them would have widespread local support, no immediate action will be taken.

What the Commission Heard About Remembering Those who have Died

15.13 During its engagement process, the Commission heard of the common aspect of remembrance across our society. Remembering the dead is a human and sensitive process that all communities have in common.

15.14 The Commission heard from many people who felt that people and communities across our society have a right to remember the dead and significant events. However, overwhelmingly it was said that this should be done within the law and in a respectful, sensitive and dignified manner that seeks to avoid causing pain or hurt to others.

15.15 The Commission heard views expressed that official structures of memorialisation focus almost exclusively on military and security forces.

15.16 It also heard that many unofficial public memorials are located within communities in which there is a level of acceptance of, and emotional attachment to, them. It was felt that some public memorials have provided acknowledgement and brought a sense of closure to those communities in relation to the conflict.

15.17 Conversely, concern was also expressed that the number of these memorials in some areas prevented communities from moving on and slowed down the process of reconciliation and healing.

15.18 Some people who attended engagement events spoke of the insensitive location of some public memorials and of the perception that they were being erected without lawful authority, often on public property, and without any local consultation.

15.19 They also commented on some memorials being perceived as a means of marking territory and therefore intimidatory. The Commission heard a view that sometimes memorials – rather than being a form of commemoration to people who have died

- are being used as a means of glorifying violence. Some people expressed a fear of reprisal in the event of raising an objection to memorials.

What the Commission Heard About Commemoration of Events

15.20 Through public engagement events and submissions, the Commission heard of what became known as the decade of centenaries - the positive commemoration of the centenaries of events that between 1912 and 1922, but which shaped the society we live in today. The commemoration of these events, much of which took place in civic and public spaces, has largely been positive in creating opportunities for communities to explore these historic events in a shared environment.

15.21 The Commission heard of how, in advance of the onset of the decade of centenaries, a number of bodies took a leading role in developing an inclusive environment within which commemorative events could take place. The Community Relations Council⁸⁹ and the Heritage Lottery Fund NI developed the following principles for events:

- Start from the historical facts;
- Recognise the implications and consequences of what happened;
- Understand that different perceptions and interpretations exist; and
- Show how events and activities can deepen understanding of the period.

15.22 The Commission also heard of Belfast City Council's adoption of a series of principles⁹⁰ for its commemorative activity which has been used for the past nine years, including that:

- Events should provide opportunities to include a range of different perspectives and ideologies, rather than a single viewpoint, aiming to increase understanding and appreciation of other perspectives and identities;
- They should be based on historic accuracy, robust academic expertise and critical analysis;
- The interpretation of events should be in a broad historical context and understanding of the national and European setting of the time; and

⁸⁹ <https://www.community-relations.org.uk/sites/crc/files/media-files/Decade%20Principles.pdf>

⁹⁰ Agreed by BCC at its meeting on 1 November 2011

- Events and activities should not be exclusive but welcoming to all sections of our increasingly diverse community.

15.23 The Commission further heard how commemorative spaces such as civic and public buildings need to acknowledge our shared history and reflect the diversity of our society. No one suggested that artefacts or memorabilia relating to history should be stripped away, but rather a process of 'adding to' commemorative spaces should be undertaken in order to include and reflect the cultural and political diversity of our society as it is today.

The Commission's View of Commemoration of Events

15.24 The Commission believes that the development of the principles set out above has been valuable in facilitating shared remembrance and exploration of events that significantly shaped our society.

15.25 The involvement of civic society in developing and applying these broad principles was seen as key to their acceptance and use. It has shown that shared commemorative activity in public spaces can be achieved when activities and policies are underpinned by leadership and agreement. This was demonstrated most significantly through the commemorative events marking the 2016 centenary of the Easter Rising and the Battle of the Somme.

15.26 The Commission notes in particular that the centenary of the establishment of Northern Ireland, and the constitutional division of the island of Ireland, will be a key event, and clearly has the potential to be divisive. However, the Commission believes it is possible to approach these events in a creative and empathetic way that can increase understanding and reconciliation.

15.27 It must also be recognised that these events are being commemorated at a distance of one hundred years, whereas the events of the conflict are still raw in the memories of many people. Our society is now in the midst of a significant set of more recent anniversaries associated with the outbreak of the conflict in 1968 that will be painful for victims and survivors. Thought should be given to how the principles that were developed for the decade of centenaries can inform wider

commemorative practices, events in general and the commemoration of historical events since 1968.

Recommendations

15.28 The Commission recommends that the NI Executive acknowledges that everyone has a right to remember their dead and that this should be done in a way that is respectful, sensitive, dignified and seeks to avoid causing pain or hurt to others.

15.29 The Commission recommends that the NI Executive bring forward proposals for the development of a protocol, based on the CRC&HLFNI/BCC principles, to enable society to engage in respectful and shared commemorative events and activities generally.

Where Challenges Remain

15.30 This area was possibly the most challenging and sensitive that the Commission explored. In most of the public meetings that the Commission held, as well as within many sectoral meetings and submissions, the Commission was made aware of the continued hurt that can be caused across our society by practices around memorialization, remembrance and commemoration. As most of these practices are either located or take place within the public space, the hurt experienced by many people can be ever-present. In its discussions, the Commission explored a number of aspects related to memorialization, remembrance and commemoration, but was unable to reach agreement on whether or not to recommend that:

- The NI Executive consider formally endorse a Day of Reflection as an occasion where everyone who suffered as a result of the conflict in and about Northern Ireland can remember and be remembered.
- The NI Executive considers undertaking an audit to assess the number of memorials in the public space and in public buildings.

- The NI Executive works alongside political leaders, elected representatives and other stakeholders to reduce the number of paramilitary memorials in the public space.
- The NI Executive considers the best way to publicly commemorate and memorialize all of the civilians/innocent victims of the conflict in and about Northern Ireland.
- The NI Executive, political leaders and others consider an appropriate way of supporting communities in the sensitive and difficult process of addressing issues around public memorials.
- All those involved in memorializing the conflict reflect, in the spirit of generosity, reconciliation, respect and accommodation how they do so. These issues could include:
 - Removal of military images from the memorial
 - Removal of paramilitary elements such as clothing, balaclavas, combat clothes
 - Removal of references to acts of violence or acts that caused pain and hurt to others
 - Reduction in the scale of the memorial
 - Relocation of the memorial
 - Removal of the memorial
- While not wishing to encourage the erection of any new memorials, that the NI Executive considers the development of a protocol for the installation of any new memorials. Within this sensitive and challenging process, and in order to facilitate the promotion of good relations, any proposed new memorials such as free-standing plinths, murals, plaques, gardens, obelisks, windows and the naming of buildings and parks, a protocol would need to include elements such as:
 - The need to seek planning permission
 - The need to undertake consultation

- Guidelines on the content for any new memorial, including words or symbols
 - The size and location of the memorial
 - The lasting value to the community – in all its diversity – for social, cultural or historical reasons
- The NI Executive bring forward proposals for developing and resourcing a programme of ‘adding to’ within civic and public buildings, to incorporate artefacts that reflect the social and cultural plurality of our society today such as women, working class communities, minority ethnic communities and our culturally diverse communities.
- The NI Executive explores further the potential for the establishment of a creative public space, such as a museum, where shared remembering, education and history can be located.

New Decade, New Approach

15.31 The Commission notes the commitments made in the New Decade, New Approach document by the British and Irish Governments on tackling paramilitarism and funding to support the implementation of the Stormont House proposals on legacy (pages 48, 49, 52 and 53).

SECTION 4

IMPLEMENTATION AND CONCLUSION

CHAPTER 16 IMPLEMENTATION AND OVERSIGHT

- 16.1 The Commission has set out the clear areas of rights that people enjoy regarding the right to cultural expression.
- 16.2 A key element, repeated in the engagement and consultations undertaken by the Commission was that people's identity needs to be treated with respect; that cultural events need to be supported for the benefit of communities; that commemoration needs to be supported and understood; and that genuine cultural expression should not be undermined by territorialism and paramilitary influence.
- 16.3 The Commission is recommending some policy and legislative changes in order to create an enabling environment in areas of cultural identity and expression. The primary reason for doing this is to support communities and agencies in positive and pro-active engagement when it comes to cultural expression.
- 16.4 The Commission believes that in such an environment, cultural activities and events can be affirmed, respected and respectful.
- 16.5 Within the areas of exploration by the Commission, some recommendations require policy and legislative adjustments, while others relate to leadership and others still require a change in approach as to how cultural expression is developed and delivered.
- 16.6 Changes being recommended by the Commission are designed to create a positive environment for cultural and commemorative practices. Creating this change needs to be guided by rights, by the law, by good practice and by policy. It must also be guided by empowering people in local areas who want to make a positive difference.
- 16.7 The Commission considers the rule of law, and public confidence, will only be enhanced through enforcement of existing legislation, particularly section 75 of the Northern Ireland Act 1998. This requires co-ordinated efforts between all the

agencies involved in the decision-making process, including the property owner and the PSNI where appropriate.

- 16.8 Therefore, as the Commission completes its work, it is pleased to provide this report to the First Minister and deputy First Minister.
- 16.9 The Commission recommends that an Executive Action Plan is produced on how to implement the recommendations within this report as well as a roadmap to continue to explore those areas where challenges remain.

Oversight

- 16.10 Under the Government's New Decade, New Approach document, there is a proposal to establish a new Office of Identity and Cultural Expression.
- 16.11 In paragraph 5.3 (P31 – 32) it states that the strategic aims of the Office will be:
- (a) to promote cultural pluralism and respect for diversity, including Northern Ireland's ethnic, national, linguistic and faith communities;*
 - (b) build social cohesion and reconciliation, so that everyone has a sense of belonging;*
 - (c) build capacity and resilience on how we address our unresolved cultural identity issues; and*
 - (d) celebrate and support all aspects of Northern Ireland's rich cultural and linguistic heritage, recognizing the equal validity and importance of all identities and traditions.*
- 16.12 The New Decade, New Approach document outlines at (P32) paragraph 5.5.10 the need to build close working relations between this Commission on Flags, Identity, Culture & Tradition and the Office of Identity & Cultural Expression. As the former has now fulfilled its remit, it is hoped this report provides a basis for the further development of an environment of cultural plurality and respect for diversity.

Chapter 17 Conclusion

- 17.1 The Commission was asked to focus on flags and emblems and, as required, look at broader issues of identity, culture and tradition.
- 17.2 During the course of its work, the Commission explored a range of issues that emerged during the engagement and consultation exercise; a central element of its work. The Commission has made a number of recommendations in relation to these issues.
- 17.3 The Commission also identified areas where challenges remain. These include issues upon which it was not possible for the Commission to agree recommendations, or where there was no consensus on potential solutions to some of these issues.

Our Engagement Process

- 17.4 As such, the Commission developed a consultation and engagement programme to ensure those diverse voices within our society would be included in its work.
- 17.5 In its wide ranging consultation and engagement programme, the Commission met and spoke with various sections of our society for whom the issues within the Commission's remit were of great importance.
- 17.6 The Commission met and engaged with a number of youth groups and organisations, who spoke at length about how they sometimes feel that they are forced into aligning themselves with one or other of the two dominant communities, reinforcing their sense of difference. Despite that, young people displayed a keen desire to be involved in more shared cultural and civic activities, outside of the traditional 'green' and 'orange' events.
- 17.7 The Commission hopes that the next generation of civic and community leaders will operate in an environment that is less contentious, and one in which young people can carve out the future that they wish for themselves. The Commission

also hopes that this creates the environment where young people can equally feel confident and secure in their own traditional cultural identity and heritage.

- 17.8 The Commission also met many people who had suffered loss, injury and trauma as a result of the conflict.
- 17.9 The Commission heard from survivors and victims of the conflict who feel that they do not have the capacity or time to invest in engaging on issues to do with Flags, Identity, Culture and Tradition, until their own needs as survivors and victims are met.
- 17.10 The Commission hopes that the recommendations within the report go some way to creating an environment in which our society can progress in a less divisive manner and that their voice can be heard and their needs met.
- 17.11 The cultural wealth in our society can only be realised through the adequate representation of diversity throughout our public life and the provision of resources to allow and encourage all sections of our society to participate.
- 17.12 The Commission is grateful to all those who undertook to engage with us and to those who drew our attention to the challenges they faced speaking to us about issues irrespective of their age, gender, sexual orientation, ethnic or ethno-national and political background and their relationship to the conflict.

New Decade, New Approach

- 17.13 In January 2020, the political parties agreed to re-enter the Assembly and Executive. This has enabled the Commission to resume its work to bring it to completion.
- 17.14 The New Decade, New Approach document proposes significant new structures in relation to Rights, Language and Identity. At the core of these proposals is the creation of a new Office of Identity and Cultural Expression along with the establishment of the Commissioner for Irish Language and the Commissioner for Ulster-Scots/Ulster-British.

The Common Good

- 17.15 This Commission was tasked to look at the aspects of cultural identity that unite us and divide us. The Commission's work over the last number of years, has led it to conclude that while, yes, we do share much culture in common with each other, we clearly have a set of political and cultural identities, which continue to provide challenges for our society.
- 17.16 In its programme of consultation and engagement, the Commission heard of a range of issues that continue to cause tension and division within our society.
- 17.17 The recommendations made in this report are based on creating an enabling environment in which expressions of everyone's cultural identity in the public space are both respected and respectful.
- 17.18 The Commission believes that the implementation of its recommendations will develop a new enabling environment in which cultural expression can flourish, free from paramilitary influence and in a new arena of lawfulness and respect. Ultimately the Commission believes that the implementation of our recommendations will be for the common good of everyone within our society.

TABLE OF RECOMMENDATIONS

CHAPTER 3	
3.36	The Commission recommends that the NI Human Rights Commission, Equality Commission and other appropriate agencies and NGOs continue to work on the development of a culture of rights within our society. Awareness of rights related issues should also be encouraged through the education system.
3.37	The Commission recommends that the Human Rights Commission and the Equality Commission bring forward recommendations to the Executive for publicly funded measures to assist the development of capacity within groups who have not previously availed of a rights-based framework.
3.38	The Commission recommends that the legal duty of Good Relations should be clearly defined in law.
3.39	The Commission recommends that the delivery of Good Relations interventions, has reductions of sectarian and race hate incidents as key outcomes.
CHAPTER 4	
4.27	<p>The Commission recommends that all those in positions of leadership – political, civic and in public agencies - seek opportunities to publicly declare their commitment to the following vision and ambition for our community:</p> <ul style="list-style-type: none"> • <i>We are committed to creating an open, tolerant and respectful society, which seeks to increase and deepen understanding of differing cultural identities.</i> • <i>Our ambition is to become a community in which everyone’s cultural identity and its expression is both respected and respectful.</i> • <i>We will do our utmost to build a society in which everyone feels welcome and entitled to express their cultural identity, in a way that respects others, within the rule of law.</i> • <i>We wish to see our society move to a place where the development of diversity is seen as contributing to our collective cultural wealth.</i> • <i>It is our responsibility to undertake this task within a culture of lawfulness, in which everyone sees the mutual benefits of complying with the framework that govern how identity and cultural expression is marked.</i> • <i>We recognise the importance of good relationships in our communities and institutions, and that our words and actions will impact, positively or negatively, on developing and maintaining those relationships.</i> • <i>We will seek to develop and protect shared public spaces, where no area is seen as belonging to any one section of the community.</i>
CHAPTER 5	
5.31	The Commission recommends that the Department of Education be placed under legal duty to implement UNCRC Article 29.1; Article 30; and Article 31 in a manner appropriate to our society which is one emerging from conflict. In the view of the Commission this requires the Department of Education, in conjunction with CCEA, to review the curriculum and ensure that every school child learns about the key markers of cultural identity in our society. This would include expressions that reflect the three traditional strands of historic Ulster identity (English, Irish and Scots) alongside cultural expressions of British and Irish heritage. This should include wider European and global cultural influences (including recent migration patterns); and key cultural markers of minority ethnic and faith communities. The review would include consultation with educational and cultural sectoral bodies, Boards of Governors, parents and the general public.
5.32	The Commission recommends that the Department of Education, in conjunction with CCEA, institutes a core history unit running throughout Key Stage 3 (ages 11-14). This would cover, for example, the Normans in Ireland to the Good Friday Agreement and exploring multiple narratives and our shared history within Northern Ireland and the island

	of Ireland; the development of key identities within Northern Ireland; and relationships within the island of Ireland and between Ireland and Britain. The rest of the curriculum would remain flexible and devolved as at present.
5.33	The Commission recommends that the Department of Education provides resources and training to ensure that teachers feel confident in facilitating discussion of controversial issues in the classroom.
5.34	The Commission recommends that the Department for Education ensures that the remit of the Education and Training Inspectorate includes a responsibility to specifically report on their assessments to see if schools are delivering on the minimum requirement of the curriculum in relation to building mutual understanding, and provides adequate resources for it to do so.
CHAPTER 6	
6.38	The Commission recommends that broadcasters and media organisations in Northern Ireland provide cultural awareness training for their employees. The objective would be to impart a broad understanding of all sections of the community and cultural identities and how they contribute to the broad cultural output. Consideration should also be given to the drawing up of guidelines regarding the coverage of cultural activity, including music and sport, to ensure fair and balanced reporting and visibility of events.
6.39	The Commission recommends that the focus of media coverage of local issues should be broader than news and current affairs. Programming on mainstream television and radio programmes should highlight local initiatives, including the vast and varied cultural output. This should include radio, television and online broadcasting.
6.40	The Commission notes the positive role that social media (Facebook, YouTube) plays in allowing small groups to bring their activities to the attention of wider national and global audiences. However, the Commission recommends that where social media becomes a platform for hate speech, the PSNI must investigate.
CHAPTER 7	
7.25	In relation to Sport NI the Commission recommends: <ul style="list-style-type: none"> • That it includes within its Vision, Mission and Strategic Objectives an explicit reference to the role of sport, and Sport NI, in helping to build a shared society; • That it provides sporting organisations with practical guidelines on dealing with issues related to identity and division within sport, and support to implement them; • That along with other statutory bodies that fund sport, it be obliged to make any funding that it invests in sporting bodies conditional upon demonstrable implementation of good relations plans, with defined and measureable outcomes, and that funding and other support is made available to assist sporting bodies in doing so; • That in order to build on the progressive work undertaken by sporting bodies to date, it should convene a “Sport for All” group, comprising the major sporting bodies that operate within Northern Ireland, including those that operate on an all-island basis. This group would consider, in consultation with groups representing supporters, Councils and the wider community, what further steps they could individually or collectively take to create a welcoming environment for all. • That recognising the anomalous position which prevents some local competitors representing Northern Ireland at international tournaments, it should examine on a sport-by-sport basis whether there are steps that it can take to address this issue.
7.26	The Commission recommends that, notwithstanding the rights of individual organisations, all sporting bodies are supported to ensure that their policies, practices and use of public resources are in accordance with the principles of equality and good relations, equity, diversity and interdependence, and directed towards sports development and sporting activities.
7.27	The Commission recommends that the NI Executive consider the Ulster University’s research into Social Exclusion and Sport in Northern Ireland 2015 and where appropriate

	implements the various recommendations.
7.28	Acknowledging the positive impact when political leaders attend sporting events traditionally associated with parts of the community other than that which they come from, the Commission recommends that political leaders seek further opportunities to demonstrate that sport can be enjoyed regardless of any individual's political or cultural identity.
7.29	The Commission recommends that sporting bodies continue to look closely at the cultural aspects of their organisations that can be perceived as barriers to creating a welcoming and inclusive environment for people from across our society.
CHAPTER 8	
8.33	The Commission recommends that the NI Executive recognises the shared heritage of British, Irish and Ulster-Scots within our society.
8.34	The Commission recommends that the NI Executive declares that British culture and heritage (which includes the English language); Irish language, culture and heritage; and Ulster-Scots language, culture and heritage should command equal respect in our society.
8.35	The Commission recommends that public bodies be supportive and generous towards British culture and heritage; Irish language, culture and heritage; Ulster-Scots language, culture and heritage; and towards the cultural identities of other communities within our society.
8.36	The Commission recommends that the NI Executive, political parties and civil society consider how to increase positive attitudes towards British culture and heritage; Irish language, culture and heritage; and Ulster-Scots language, culture and heritage; and towards the cultural identities of other communities within our society in a manner that is appropriate to a society emerging from conflict.
8.37	The Commission recommends that education should be central to promoting mutual understanding and respect in our society around cultural diversity.
8.38	The Commission recommends that the special place of the Irish language and Ulster-Scots language, culture and heritage be resourced appropriately and that this should be audited on the basis of Equity, Diversity and Interdependence.
CHAPTER 9	
9.41	The Commission recommends that the NI Executive develop a new civic accredited arts and heritage, education, training and exhibition initiative in a dedicated space. This would enable skills development with social and cultural history, and artistic awareness through the creation and display of the arts. This would draw upon local and international experts in heritage and traditional conservation and preservation alongside applied contemporary cultural curatorial opportunities not currently catered for in the museums and heritage sector. This would facilitate and enable communities to positively and inclusively reflect the identity, culture and traditions of their neighbourhoods.
9.42	The Commission recommends that the rights, values and principles upon which society seeks to express and celebrate culture, identity and tradition, outlined at chapter 4 of this report, be used as the basis for organising events and creative expression in the public space.
9.43	The Commission recommends that the NI Executive ensures that the use of the arts in the public space is supported by an equitable and proportionate distribution of available public funds that evidences value for money.
9.44	It is recommended that the NI Executive fully appraise the direct, indirect and induced costs and benefits of arts in the public space including cultural celebrations.
9.45	The Commission believes that the common good is served by a vibrant and creative public space. This environment can best be achieved through the development of high quality event management and incentivising the learning and adoption of best-practice at a community level. The Commission therefore recommends that public bodies and

	<p>organisers work together to ensure that event organisers can avail of a range of training packages including those which provide peer learning and mentoring in:</p> <ul style="list-style-type: none"> • Steward training • Health and safety training • Risk assessment • Event and festival management • Marketing skills
9.46	The Commission was of the view that Councils should adopt a standardised plan that organisers of public events should follow, ensuring a consistency of approach across Council areas. The Commission highlights efforts by Councils and other groups to identify features that create good civic engagement and shared space.
9.47	The Commission discussed use of symbols and emblems in public space, which promote proscribed organisations. The Commission believes that event organisers should be mindful of the potential for symbols/emblems to cause offence.
CHAPTER 13	
13.23	The Commission recommends that the NI Executive recognise, that within Northern Ireland bonfires are an important aspect of the culture, identity and tradition of communities and are therefore a legitimate form of celebration or commemoration, provided they are compliant with the law.
13.24	The Commission recommends that the Department of Agriculture, Environment and Rural Affairs make bonfire materials, of wood only, exempt from being classified as controlled waste within the Waste and Contaminated Land Order, for traditional bonfires. This would enable such bonfires to occur lawfully on public land when they are undertaken as part of a cultural event and where landowners permit them to occur. As the proposed change in legislation would enable land owners to permit a bonfire on their land for such an occasion, land owners would be in a position to set the conditions upon which such permission is granted, thereby ensuring that the bonfire is safe.
13.25	Article 10 of the Recreation and Youth Services (NI) Order 1986 enables Councils to establish, maintain and manage facilities for recreational, social, physical and cultural activities, together with certain ancillary powers, including the power to provide assistance to third parties to organise such activities. Combined with the proposed amendment to the Waste and Contaminated Land Order set out above, this power would allow Councils to provide an appropriate piece of land for a bonfire when it is undertaken as part of a cultural or commemorative event within communities and in line with the conditions outlined above. The Commission recommends that the NI Executive extends the provisions of this Order to other relevant public land owners to similarly enable them to provide space for a bonfire when it is undertaken as part of a cultural or commemorative event.
13.26	As part of a wider cultural education programme, the Commission recommends that the NI Executive considers the inclusion of a programme to support positive expression of cultural heritage and commemoration, within a context that promotes a sensitivity towards environmental awareness, and highlights the risk to life and property and which causes harm to human health. Such a programme would include elements on the historic background of cultural and historical events that are traditionally marked by bonfires, and would seek to inform people from different backgrounds, as well as those people within communities where bonfire building is common. It would incorporate elements on better bonfire management and support alternatives to bonfires such as beacons. It is essential that any education programme that relates to the cultural tradition of bonfires is developed in association with established cultural organisations and is properly resourced.
13.27	The Commission recommends that the NI Executive also considers the development of a skills based arts programme that harnesses the creativity and talents of those involved in the construction of bonfires. See also 9.41.

13.28	The Commission recommends that under the leadership of the NI Environment Agency, landowners and relevant statutory organisations collectively and robustly pursue incidents of illegal dumping of tyres, rubbish and fly-tipping at bonfire sites. This will require prompt and effective interagency collaboration and engagement.
13.29	<p>The Commission recommends that the NI Executive fully supports statutory organisations where and when they have to intervene in the event of a bonfire being planned, constructed or burned in a manner that:</p> <ul style="list-style-type: none"> • Risks life and/or property; or • Causes harm to human health or the environment; or • Gives rise to an offence of hate crime; or • Encourages support for proscribed organisations; or • Gives rise to instances of Anti-Social Behaviour; or • Is being constructed without the permission of the landowner. <p>This will involve agencies complying with their legal obligations under current enforcement provision and may also include conferring powers, where they do not already exist, to enable agencies to take proactive remedial steps at a bonfire site to activate the removal of a bonfire, if this is required.</p>
13.30	<p>Within a new environment in which bonfires can occur in a legal manner, the Commission recommends that the NI Executive endorse the following set of conditions that public land owners would require bonfire builders to comply with, in order for a bonfire to be permitted. These conditions would include, but may not be limited to, the following:</p> <ul style="list-style-type: none"> • Bonfire organisers need to consider the views of those living in the immediate area where a bonfire is proposed to take place. Public bodies on whose land a bonfire is being proposed, need to gather these views and work with bonfire organisers and other agencies to act upon this. • As a minimum, the collection or gathering of any materials on a bonfire site should begin no earlier than 6 weeks prior to the bonfire being lit. • Materials to be burned should consist of wood only. Pollution and environmental damage should be minimised. • Bonfire builders and organisers must consult with the NIFRS on the size and location of the bonfire and should ensure that there is at least a 1:5 ratio of the height of the bonfire to its proximity to any physical structure such as housing. The burning of any flag, emblem, election poster or any other image or item which could cause offence is counter to the positive expression of culture and identity in a culturally diverse society and bonfire builders and organisers should refrain from this practice. This will be enforced by the land owner and other relevant statutory agencies. <p>Land owners may also wish to propose that failure to comply with these conditions may lead to permission for a bonfire in future years not being granted.</p>
CHAPTER 14	
14.23	The Commission proposes the following recommendations to support positive aspects of cultural identity within communities, while addressing the continued existence of those murals which promote coercive control and undermine a culture of lawfulness.
14.24	The Commission recommends that the NI Executive develop an accredited arts, education and training initiative in relation to murals. Drawing on local and international expertise, this initiative would combine skills development with social and cultural history, community participation and artistic awareness through the creation and display of murals. It would facilitate and enable communities to erect positive images that reflect the identity, culture and traditions of their neighbourhoods. The NI Executive might consider giving consideration to the long-term funding of such an initiative. See also 9.41 and 13.27
14.25	The Commission recommends that the NI Executive devises an appropriate way of

	<p>supporting communities to address the continued presence of murals that advertise and lend support to proscribed organisations through a process of re-imaging that would remove or replace murals. If the mural is being replaced, any public funding would be conditional upon:</p> <ul style="list-style-type: none"> • The replacement mural not advertising or lending support to a proscribed organisation; • The funding body being satisfied that the replacement mural will be of benefit to the local community for social, cultural or historical reasons; and • Genuine efforts being made by those seeking funding to ensure that the replacement mural does not cause pain or hurt to others as a result of their experiences of the Troubles.
14.26	The Commission recommends that the Executive undertakes a review of existing legislation and if necessary, introduces new legislation to empower public sector bodies to take action to remove murals, on public and private buildings, or prevent them being painted where they contravene a set of guidelines.
CHAPTER 15	
15.28	The Commission recommends that the NI Executive acknowledges that everyone has a right to remember their dead and that this should be done in a way that is respectful, sensitive, dignified and seeks to avoid causing pain or hurt to others.
15.29	The Commission recommends that the NI Executive bring forward proposals for the development of a protocol, based on the CRC&HLFNI/BCC principles, to enable society to engage in respectful and shared commemorative events and activities generally.
CHAPTER 16	
16.9	The Commission recommends that an Executive Action Plan is produced on how to implement the recommendations within this report as well as a roadmap to continue to explore those areas where challenges remain.

WHERE CHALLENGES REMAIN

CHAPTER 3	
3.40	The Commission discussed how to measure Equity, Diversity and Interdependence (EDI) within our society. However, the model of assessing EDI through respect, recognition, representation and resources was not one that the Commission could reach consensus on.
3.41	Two proposals that were discussed but could not be agreed were: <ul style="list-style-type: none"> • That the policy outcome of Equity, Diversity and Interdependence should be reflected in terms of respect for the cultural identity of all minorities in our society; appropriate representation in public life and adequate resourcing of the cultural practices. • That public authorities be audited for Good Relations, including how they have promoted and implemented the principles of Equity, Diversity and Interdependence and how they have catered for the cultural expression of minorities within their area of responsibility.
CHAPTER 8	
8.39	The Commission discussed the need for Irish and Ulster-Scots language, culture and heritage to be reflected within the representation on public bodies which are active within the cultural sphere. The Commission was not able to agree a recommendation in relation to this.
CHAPTER 11	
11.39	The Commission considers that the flying of flags to mark significant cultural or historic events is a legitimate form of cultural expression. However, as identified in paragraph 11.35 above, current legislation does not give authority for citizens to place flags on lampposts. The authority to place items on street furniture lies with the landowner (usually the Department for Infrastructure) or other designated agencies such as local councils. The exception to this is an exemption under the Roads Order for election posters to be erected during the period from when the election date is known until a short period after the election has taken place.
11.40	The Commission could not agree on whether changes should be made to current legislation in order to create a similar exemption to that which exists for election posters. Such an exemption could provide: <ol style="list-style-type: none"> (a) the authority for placing flags on street furniture and (b) the conditions under which such an exemption would operate. <p>Consequently, without any legislative changes, the Commission is not in a position to recommend a code of practice that would accompany any such legislative change.</p>
11.41	Notwithstanding 11.40, there was widespread agreement on a range of elements that could be included in any code of practice that would be introduced to sit alongside any change in legislation, should that happen. The Commission was of the view that any exemption under the Roads Order for the flying of flags, were it to come about, should only apply under the following conditions: <ul style="list-style-type: none"> • For displays of flags to be representative of significant commemorations and celebrations, displays should be kept close to the dates of those events, and apply for certain times in July, August and the Easter period. • Flags should not be placed on lamp posts, on individual property, or near a place of worship or school, in any way that could be considered intimidatory or threatening. • Flags should not be flown around places where public services are delivered (for example hospitals, health centres, leisure centres and libraries). • Flags should not be placed in positions that might be reasonably construed as antagonistic such as interfaces. • Flags should never be flown in a worn or damaged condition, or when soiled.

	<ul style="list-style-type: none"> • No national flag should ever be defiled or burned. • Residents of areas where flags are displayed can reasonably expect to know who is putting flags up and how long they will be displayed. • The placing of flags must not endanger the safety of road users.
11.42	<p>The Commission was also conscious that there are special occasions which fall outside the periods of Easter, July and August where groups and communities would wish to have flags flying for a celebratory or commemorative occasion. For the flying of flags outside of those periods, the Commission was of the view that these special occasions should have a process in place to enable authority to be granted by a designated body. In this case, the following conditions should apply:</p> <ul style="list-style-type: none"> • Notification of an intention to hang flags on street furniture outside of the specified period must be provided to an officer designated by the local Council a minimum of 10 days in advance of doing so. That notification will only be accepted as valid if the following is fulfilled: • it is signed by an office bearer in a constituted organisation or that has been accredited with the Sports Council's Clubmark; • it specifies the occasion that is being celebrated or commemorated and a stated intention to erect flags to mark this occasion; • it specifies the dates upon which the flags will be hung and taken down (which must be for the period of the occasion being marked and no longer than 5 days); • it specifies the roads/streets where the flags will be hung; • it specifies the types of flags to be hung; • it provides evidence of local community consultation and agreement around the erection of flags for the said occasion; and • the office bearer assures the Council of the organisation's commitment to full adherence to the 'code of practice' outlined in 11.41 above <p>The designated officer will inform the group if the application conforms to the criteria laid out above, within 3 days of the application being made.</p>
11.43	<p>The Commission agreed that flags supporting paramilitary organisations should not be flown. There is, in law, no such entity as a 'paramilitary organisation' only 'proscribed organisations'. However, there was no agreement on a mechanism for regulation and enforcement. The Commission discussed the means by which any permission to fly flags is created would ensure that any flag that identifies with, lends support to, advertises or can be associated with any organisation proscribed since 1968 is prohibited. In particular, two options were discussed but not agreed:</p> <p>Option A Only national flags, regional and county flags, traditional sporting flags and flags of long established official cultural organisations will be allowed. This would remove any dispute over what constituted a 'paramilitary' flag. -</p> <ul style="list-style-type: none"> • The body granting lawful authority for the flying of flags within the designated period will be the final arbitrator of the above. • Flags being flown outside of the periods of lawful authority or any flag that identifies with, supports, advertises or can be associated with any proscribed organisation will be removed by the relevant agency. <p>Option B Flags associated with proscribed organisations (or organisations proscribed during any period following 1968) should be banned.</p>
11.44	<p>In terms of option B, the Commission considered likely circumstances where there is a dispute as to what constitutes a flag that advertises or promotes a proscribed organisation. The Commission discussed whether the body granting lawful authority for the flying of flags within the designated period could, having taken advice from PSNI, be</p>

	the final arbiter of what constitutes such a flag. There were members of the Commission who felt this was unworkable and therefore preferred option A; that only national flags, regional and county flags, traditional sporting flags and flags of long established official cultural organisations should be allowed.
11.45	There was widespread agreement that the NI Executive and relevant statutory agencies should work together to promptly remove any flags flown outside of the exempted periods, that do not conform to the code of practice or which identify with any proscribed organisation.
11.46	A culture of lawfulness, and public confidence, in the erection and removal of flags will only be enhanced through prompt and consistent enforcement of legislation and/or a code of practice. This is the responsibility of the respective property owner on whose property the flag resides and should involve consultations with the PSNI where legislation or the code of practice is not being adhered to.
11.47	The Commission considered that flags used to commemorate people or historical events or cultural and sporting bodies should only be used in limited and respectful circumstances. If they are not linked to anniversaries or remain flying for significant lengths of time then they become more recognisable as markers of territory and potentially activities of coercion.
11.48	In line with its remit, the Commission was tasked with developing a Flags Protocol. While there is no lawful authority, under existing legislation for the flying of flags from street furniture, a possible code of practice is provided on page 106.

CHAPTER 12

12.24	To reflect the political reality within our society, the Commission discussed the following options that were raised in the course of its public engagement: <ul style="list-style-type: none"> a) Fly the Union Flag on a range of designated days on all Council buildings, on the headquarters of NI Government buildings, and on National Government buildings. b) Fly the Union Flag 365 days per year on all Council headquarters buildings; and fly the Union Flag on designated days (as per DCMS) on the headquarters of NI Government buildings, and on National Government buildings. c) Fly the Union Flag 365 days per year on all Council headquarters buildings, and on the headquarters of NI Government buildings; and fly the Union Flag on designated days (as per DCMS) on National Government buildings. d) Fly both the Union Flag and the Irish national flag 365 days per year on all Council headquarters buildings; and fly both the Union Flag and the Irish national Flag on designated days on the headquarters of NI Government Department Buildings. e) Fly the Union Flag and the Irish national Flag on designated days on all Council buildings and on the headquarters of NI Government buildings. f) Fly no flags from any NI Government or Council buildings.
12.25	The Commission also discussed the possibility of developing a new Civic Flag. This would not be a regional flag or a National flag, but rather a Civic flag that would be designed to be representative of the diversity of our society, including our new communities.
12.26	Such a Civic Flag would therefore incorporate representations of Britishness, Irishness and our collective diversity. If this option were developed it could add to the wider debate around the official flying of flags on public buildings, thereby widening the options available to society, such as: <ul style="list-style-type: none"> a) Fly the Civic Flag and the Union Flag from NI Government buildings and Council buildings 365 days per year. b) Fly the Civic Flag and the Union flag from NI Government buildings on designated days. In addition, fly the Civic Flag 365 days a year from Council buildings and allow Councils to decide for themselves on which days to fly the Union Flag alongside it. c) Fly the Civic Flag 365 days a year from NI Government buildings and allow Councils to decide for themselves on which days to fly the Union Flag and the Irish national

	<p>Flag alongside it.</p> <p>d) Fly the Civic Flag on designated days from NI Government buildings and allow Councils to decide for themselves on which days to fly the Union Flag and the Irish national Flag together alongside it.</p> <p>The days to be classed as 'designated' could be amended to incorporate more locally relevant and agreed commemorative or celebratory events.</p>
12.27	National Government buildings would continue with a sensitive and appropriate practice in relation to flag flying on government buildings.
CHAPTER 14	
14.27	<p>The Commission discussed but did not reach consensus on a range of guidelines that could be used in any future programmes concerning murals. The Commission has listed some possible criteria below in relation to murals:</p> <ul style="list-style-type: none"> • The need to seek permission from the property and land owners • The need to seek planning permission if appropriate; • The need to undertake consultation within the local community; • The need to ensure that the content does not advertise or lend support to a proscribed organization; • The size and location of the mural; and • The benefit of the mural to the community for social, cultural or historical reasons. • Avoidance of content that would cause pain or hurt to others as a result of their experiences of the Troubles.
CHAPTER 15	
15.30	<p>This area was possibly the most challenging and sensitive that the Commission explored. In most of the public meetings that the Commission held, as well as within many sectoral meetings and submissions, the Commission was made aware of the continued hurt that can be caused across our society by practices around memorialization, remembrance and commemoration. As most of these practices are either located or take place within the public space, the hurt experienced by many people can be ever-present. In its discussions, the Commission explored a number of aspects related to memorialization, remembrance and commemoration, but was unable to reach agreement on whether or not to recommend that:</p> <ul style="list-style-type: none"> • The NI Executive consider formally endorse a Day of Reflection as an occasion where everyone who suffered as a result of the conflict in and about Northern Ireland can remember and be remembered. • The NI Executive considers undertaking an audit to assess the number of memorials in the public space and in public buildings. • The NI Executive works alongside political leaders, elected representatives and other stakeholders to reduce the number of paramilitary memorials in the public space. • The NI Executive considers the best way to publicly commemorate and memorialize all of the civilians/innocent victims of the conflict in and about Northern Ireland. • The NI Executive, political leaders and others consider an appropriate way of supporting communities in the sensitive and difficult process of addressing issues around public memorials. • All those involved in memorializing the conflict reflect, in the spirit of generosity, reconciliation, respect and accommodation how they do so. These issues could include:

- Removal of military images from the memorial
 - Removal of paramilitary elements such as clothing, balaclavas, combat clothes
 - Removal of references to acts of violence or acts that caused pain and hurt to others
 - Reduction in the scale of the memorial
 - Relocation of the memorial
 - Removal of the memorial
- While not wishing to encourage the erection of any new memorials, that the NI Executive considers the development of a protocol for the installation of any new memorials. Within this sensitive and challenging process, and in order to facilitate the promotion of good relations, any proposed new memorials such as free-standing plinths, murals, plaques, gardens, obelisks, windows and the naming of buildings and parks, a protocol would need to include elements such as:
 - The need to seek planning permission
 - The need to undertake consultation
 - Guidelines on the content for any new memorial, including words or symbols
 - The size and location of the memorial
 - The lasting value to the community – in all its diversity – for social, cultural or historical reasons
- The NI Executive bring forward proposals for developing and resourcing a programme of 'adding to' within civic and public buildings, to incorporate artefacts that reflect the social and cultural plurality of our society today such as women, working class communities, minority ethnic communities and our culturally diverse communities.
- The NI Executive explores further the potential for the establishment of a creative public space, such as a museum, where shared remembering, education and history can be located.

ANNEX C

174 Trust	Belfast Conflict Resolution Consortium	Community Relations Council
ACT	Belfast Feminist Network	Community Restorative Justice Ireland
ACT Mid Ulster	Belfast Giants	Con Community Groups
Aims Project	Belfast Health Trust	Confederation of Ulster Bands
Ainsworth Residents Group	Belfast Interface Project	Conflict Resolution Services Ireland
Alliance Party	Belfast Jewish Community	Conradh na Gaeilge
Ancient Order of Hibernians	Belfast National Graves Association	Cookstown Irish National Foresters
Andersonstown Residents	Belfast Trades Council	Co-Operation Ireland
Antrim & Newtownabbey Borough Council	Bredagh GAC	Council for Catholic Maintained Schools
Apprentice Boys of Derry	Bridge of Hope – Ashton Community Trust	Council for the Curriculum, Examinations and Assessment
Apprentice Boys of Derry Parent Club	British Broadcasting Corporation	Corrymeela Community
Ards & North Down Borough Council	Broughderg Area Development Association	Cultúrlann Uí Chanáin
Ards Community Network	British Truth Forum	Decorum NI
Armagh, Banbridge & Craigavon Council	Cairdeas Eoghain	Department for Foreign Affairs
Armagh Bands Forum	CAP Arts Centre	Department for Infrastructure
Arts Council of Northern Ireland	Carrick Forum	Department of Education
Artsetka	Carson Project	Department of Justice
Attorney General	Catholic Church	Derry City and Strabane District Council
Avenue Road Residents Committee	Caw/Nelson Drive Action Group	Dessertmartin Community Development Ltd
Ballycarry Community Association	CBS Glen Road Fund	Droury Road Development Group
Ballycastle Church Action	Charter for Northern Ireland	Drumbeg and Carryduff Parish
Ballymena Guardian	City Grand Lodge	Early Years
Ballymoney Churches Forum	Clanmil Housing Association	East Belfast Community Initiative
Ballymurphy Residents	Clonard Residents	East Belfast Mission
Ballysillian Cultural Society	Clonoe GFC	Education Authority
Beat Carnival	Coiste	Education Training Inspectorate
Belfast City Council	Cookstown Ancient Order of Hibernians	Equality Commission
Belfast Community Relations Consortium	Committee on Administration of Justice	Extern Group
	Community Dialogue	Falls Community Council
	Community Foundation NI	Falls Residents

Family Works	Islandmagee Residents Association	NI Screen
Families Research and Policy Unit	Joint Ventures	Northern Ireland Office
Farset	Kabosh	NIRWN
Féile an Phobail	Limavady Community	North Belfast Interface Network
Fermanagh and Omagh District Council	Lisburn & Castlereagh City Council	North West Cultural Partnership
Fermanagh Rural Community Network	Londonderry Bands Forum	Northern Ireland Policing Board
Fern Trust	Lower Oldpark Community Association	NSPCC
First Larne Presbyterian Church	Lower Shankill Community Association	OFCOM
Foras na Gaeilge	Loyalist Community Council	Oifigeach Forbartha na Gaeilge
Foyle Women's Information Network	Maiden City Accord	Orange Institution Staffordstown
Gertrude Star	Maiden City Festival	Orange Trust
GRACE	Malone College	Parades Commission
Grand Orange Lodge of Ireland	Market House Culture Group	P2P Lisburn
Greater Shankill Partnership	MediateNI	PCSP
Greater Village Regeneration Trust	Methodist Church	Peace Walls Project
Greater Whitewell Community Surgery	McGurks Bar Committee	POBAL
Green Party	Mid Armagh Community Network	Presbyterian Church
Greyabbey LOL	Mid & East Antrim Council	Prime Cut Productions
Healing Through Remembering	Mid Ulster Council	PSNI
Hollywood Shared Town	Mill Community Residents Group	PUP
Humane Society International	Murray Parent Club	QUB
Hummingbird Project	National Museums NI	Rainbow Project
Iarchimí Dhoire Theas	Newry, Mourne & Down District Council	Randalstown ABOD
Indian Community Centre	Nerve Centre	Randalstown Cultural Awareness Association
Institute for Conflict Research	NICIE	Randalstown Ulster-Scots
Institute of Irish Studies	NICCY	REACT
Integrated Education Fund	NICVA	Regenerate
Intercomm	NI Electricity	Relatives For Justice
Irish Athletic Boxing Association	NI Environment Agency	Rowing Ireland
Irish Council of Churches	NI Housing Executive	Royal Black Institute
Irish Football Association	NI Human Rights Commission	Royal Yachting Association NI
	NI Football League	
	NI Local Government Association	

Rugby League Ireland	St Eugene's PS	Ulster-Scots Agency
Rural Community Network	St Malachy's Church	Ulster-Scots Community Network
Science Foundation Ireland	St Mary's UCB	Ulster University
SDLP	Strathroy Community Organisation	US Consulate
Shankill Extra	Suffolk Lenadoon Interface Project	UUP
Shankill Women's Centre	Tar Isteach	Victims Forum
Sinn Féin	Teach na Fáilte	Villages Together
South Londonderry Act	TG4	Walker Parent Club - ABOD
South Belfast Partnership Board	The Apprentice Boys of Derry Parent Club	West Belfast Athletic & Cultural society
South Belfast Residents Against Flags	The Welcome Project	Western Health and Social Care Trust
South East Fermanagh Foundation	Thornhill Duncairn Kinsella	West Winds Social & Cultural Institution
South West College	Tides Training	Women's Institute NI
Southern Regional College	TUV	Women's Resource & Development Agency
Sperrin Cultural Awareness Association	UKIP	WW1 Society
Sport NI	Ulster GAA	
	Ulster Political Research Group	

QUESTIONNAIRE USED TO GATHER INFORMATION

1. In your opinion how can we ensure that in Northern Ireland we develop a rich diverse community in which cultural expression can be celebrated?
2. Do you have any examples of positive practice in relation to displays of flags, identity, culture and tradition that have been accepted in a positive manner by communities of different backgrounds and traditions?
3. What do you consider are the issues in respect of flags, identity, culture and tradition in your community or within Northern Ireland as a whole?
4. What barriers presently exist to making progress to become a society that understands and accepts different cultures and expressions of these?
5. The Commission has been asked to examine and seek to co-design with all sections of our community innovative solutions to address the following:
 - the divisive nature of displays and expression of identity;
 - specific contentious instances-events;
 - sources of conflict which arise in displays and expression of cultural identity and in some cases of sovereignty, national identity and allegiance and which compound the reality of living in a contested society;
 - an agreed protocol around public flag displays; and
 - displays and expressions of identity, or objection to such displays and expressions being used to provide.

Please add any other relevant information to these issues.