

Chapter 1 – Executive Summary

Introduction

1.1 The sub-group has engaged in a substantial work programme in order to identify and provide a preliminary consideration of the demand for, and the practical and legal implications of, introducing a right to use Irish in legal proceedings in Northern Ireland. This preliminary report, it is hoped, will inform further Ministerial consideration or decisions in this policy area.

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Background

1.2 In March 2003, the Criminal Justice Review Group recommended that a sub-group be established to consider the scope for applying each of the provisions of Article 9(1) of the Charter in respect of the Irish language in courts and tribunals in Northern Ireland.

1.4 The sub-group is chaired by officials from Northern Ireland Court Service and includes the main Northern Ireland departments with responsibility for tribunals, together with an official from the Lord Chief Justice's office. The terms of reference are set out in full in paragraph 2.2, followed by the background to the sub-group's work. In summary the Group took forward a programme of work to consider:

- the demand for use of Irish in legal proceedings;
- the practical implications, including costs, and implications for the administration of creating a right for Irish to be used in legal proceedings;

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Background

1.2 In March 2000, the Criminal Justice Review Group recommended, “that consideration of the use of the Irish language in courts be taken forward in the wider context of the development of policy on the use of Irish in public life generally.”

1.3 The Government accepted this recommendation in November 2001 and, in its updated Criminal Justice Review Implementation Plan in June 2003, confirmed that a sub-group of the Interdepartmental Charter Group would be established to consider the scope for adopting provisions of Article 9 (1) of the European Charter for Regional or Minority Languages, which would allow Irish to be used in legal proceedings.

1.4 The sub-group is chaired by officials from Northern Ireland Court Service and includes the main Northern Ireland departments with responsibility for tribunals, together with an official from the Lord Chief Justice’s office. The terms of reference are set out in full in paragraph 2.2, followed by the background to the sub-group’s work. In summary the Group took forward a programme of work to consider:

- the demand for use of Irish in legal proceedings;
- the practical implications, including costs, and implications for the administration of creating a right for Irish to be used in legal proceedings;

- the compatibility of the Administration of Justice (Language) Act (Ireland) 1737, which requires all court proceedings to be conducted in English, with introducing a right to use Irish.

1.5 The methodology used comprised of three key elements:

- Soliciting the views of internal and external stakeholders, including the commissioning of independent research,
- Literature based research,
- Conducting research regarding comparable jurisdictions.

Preliminary findings of the sub-group

Demand

1.6 The independent research conducted by Research and Evaluation Services found that there is a majority view that there is no objection in principle to Irish language provision in legal proceedings. DCAL, the lead Department for Charter implementation in Northern Ireland, found that there is generally a low level of demand for public services through the medium of Irish, where offered, although there is some evidence that a proactive approach to promoting use of Irish leads to some increase in its use. [Chapter 6]

1.7 This low level of demand reflects usage patterns in the comparable countries considered in Chapter 5, where the number of people who exercise their right to use Welsh and Irish in legal proceedings in those jurisdictions is much lower than the proportion of people who can speak those languages.

1.8 The Group's conclusions on demand are detailed at paragraphs 6.47-6.51. In summary, the group concluded that it is unlikely that there would be a high take-up rate of any rights to use Irish in legal proceedings which may be created.

Implications and cost

1.9 Chapter 4 of the report sets out in detail the concerns regarding the practical implications, costs and implications for the administration of justice of creating a right for Irish to be used in legal proceedings. These can be summarised as concerns regarding:

- (a) the quality and accuracy of interpreters and translators,
- (b) the capacity of the translation sector, with the attendant implication of proceedings being delayed,
- (c) cost of translations and interpretations.

1.10 The skills of translators and interpreters for work in legal proceedings must be assured to avoid any negative implications for the administration of justice. To that end, the group recommends the establishment of an advisory body competent to quality assure the translators and interpreters for work in legal proceedings. The group also recommends that the advisory body be tasked with responsibility to test the various interpretation systems, including whether the simultaneous interpretation systems can be employed in each court jurisdiction. [Chapter 5]

1.11 The Group found that, in determining which provisions of Article 9 (1) could be adopted, it is necessary to be guided by the capacity of the translation and interpreter sector, to avoid proceedings being delayed. In summary, the level of provision adopted should reflect the capacity of the translation sector by reference to the level of demand. In view of the level of demand for use of minority languages in Wales and the Republic of Ireland, on balance the group considers that certain provisions of Article 9 (1) could be adopted, falling short of creating a right for proceedings to be conducted in Irish. Notice requirements and performance targets for translators are also recommended to avoid or minimise delay. [Chapter 5]

1.12 Chapter 4 sets out in detail why it is not possible to accurately predict the cost of introducing each provision of Article 9 (1). However, the group found that the cost of adopting some provisions are likely to be higher

than others e.g. creating a right for all proceedings to be conducted in Irish would be more costly than creating a right for a defendant/litigant to present their oral evidence in Irish or other admissibility provisions. Relying on the experience of Wales and the Republic of Ireland, (as detailed in Chapter 5), and taking into account current policy towards promotion of the Irish language, (as detailed in Chapter 3), the group considers that the cost of adopting some provisions of Article 9 (1) appear to be in line with Government policy. It will still, however, be necessary to identify at this stage the necessary resources for both the initial preparation and start-up costs of introducing a right to use Irish, (including the costs of any advisory body, any training required, the purchase or hire of equipment for interpretation), and the future operational costs of Irish being used in courts and tribunals.

Legislative framework for use of Irish in legal proceedings

1.13 The Group considered the provisions of the Administration of Justice (Language) Act (Ireland) 1737 and has concerns that the Act is incompatible with some, and possibly all, of the provisions of Article 9 (1). If correct, this Act requires repeal or amendment to facilitate the use of Irish in legal proceedings. In addition, it appears that express statutory provision may be required to introduce a right to use Irish in legal proceedings. The group's views on this issue are set out in detail in Chapter 7.

1.14 The group has also considered the steps presently being taken which might result in statutory protection for the use of Irish in public life through either a specific Irish Language Act or through inclusion of comparable protection in the Bill of Rights being prepared by the Human Rights Commission for Northern Ireland. These steps are set out in detail in Chapter 3.

Conclusions

1.15 On balance, adopting individual provisions of Article 9 (1), which would create a right to use Irish in legal proceedings in certain defined circumstances, was favoured by the group. Adopting individual provisions which permit oral evidence and admissibility of written material in Irish is a practical and measured response and is consistent with Government commitments under the Charter and acceptance of the recommendation by the Criminal Justice Review Group.

1.16 Due to uncertainties regarding capacity within the translation sector and the likely level of demand, creating a right for proceedings to be conducted in Irish does not appear either justifiable or feasible at present.

1.17 However there are a number of particular issues which require further consideration to inform any decision regarding the adoption of various provisions of Article 9(1) of the Charter. The most important of these are:

- a legislative framework for the use of Irish in legal proceedings,
- ensuring that the necessary resources are in place for the new service, administration of justice;
- quality assurance of the interpreters and translators to be employed for work in legal proceedings and assessment of the interpretation systems, and
- setting the adoption of provisions of Article 9(1) of the Charter in the wider context of the development of policy on the use of Irish in public life generally.

Chapter 2: Introduction and Background

Introduction

2.1 This preliminary report is compiled by the sub-group of the Interdepartmental Charter Implementation Group, responsible for implementing the European Charter for Regional or Minority Languages, ("the Charter") in Northern Ireland. The sub-group was established following a recommendation by the Criminal Justice Review Group that:

"We recommend that consideration of the use of the Irish language in courts be taken forward in the wider context of the development of policy on the use of Irish in public life generally [para 8.56"]

2.2 The sub-group commenced its work in November 2003 with the following terms of reference:

- To identify and evaluate the practical implications of applying provisions of Article 9(1) (use of language in court/tribunal proceedings) of the Charter in respect of the Irish language;
- To consider the likely cost of doing so, and any implications for the administration of justice;
- To commission research, as appropriate, into demand for the use of the Irish language in Article 9(1) proceedings;
- To evaluate the interface between Article 9(1) of the Charter and the Administration of Justice (Language) Act (Ireland) 1737;
- To make recommendations to Ministers with regard to the scope for applying provisions of Article 9(1) of the Charter in respect of the Irish language.

This report will now set out the background and context in which this issue is being considered and then turn to our findings in line with our terms of reference before providing preliminary advice to Ministers.

Background

2.3 There are 3 related reasons for consideration being given to the use of the Irish language in legal proceedings, namely:

- a. The Belfast Agreement,
- b. The European Charter for Regional or Minority Languages
- c. The Criminal Justice Review Group Recommendation.

The Belfast Agreement

2.4 The Belfast Agreement (also known as the Good Friday Agreement), "the Agreement", was reached on Friday 10 April 1998 in Belfast. The Agreement was given effect to by a Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland. In this agreement the UK Government made a number of commitments to promote the Irish language. These are contained within the section entitled "Rights, Safeguards and Equality of Opportunity, Economic, Social and Cultural Issues". Principally these commitments are:

"3. All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.

4. In the context of active consideration currently being given to 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...*

The European Charter for Regional or Minority Languages

2.5 The United Kingdom Government signed the European Charter for Regional or Minority Languages ("the Charter") on 2 March 2000, and ratified it on 27 March 2001. It entered into force on 1 July 2001. The government confirmed on ratification that the Charter would apply to Great Britain and Northern Ireland and that the regional or minority languages in the UK were Scottish Gaelic, Irish, Welsh, Scots and Ulster Scots. (In 2003 the Government then recognised Cornish and Manx Gaelic as also meeting the Charter's definition of a regional or minority language.) The Minister for the Foreign and Commonwealth Office is ultimately responsible for signing up to specific provisions in the Charter, with overall responsibility for its implementation. The Secretary of State for Northern Ireland plays a key role in Charter implementation in Northern Ireland.

2.6 The aim of the Charter is to protect and promote regional or minority languages in signatory States. It consists of three parts which in summary:

Part I contains general provisions dealing with definitions and other practical arrangements for the implementation of the Charter;

Part II sets out a number of general objectives and principles to be pursued in respect of languages recognised under the Charter. The signatory States must undertake to base its policies, legislation and practice on these principles.

Part III contains commitments to specific measures in particular areas (such as education, public services and judicial authority).

- 2.7 In the Northern Ireland context, the Government recognised Irish and Ulster Scots as regional or minority languages for the purposes of Part II of the Charter. It further specified that the more detailed provisions of Part III of the Charter would apply to Irish. The Table below sets out the current position regarding the UK Government's regional or minority languages:

Territory	Language	Protection
Scotland	Scottish Gaelic	Part II and Part III
Scotland	Scots	Part II
Northern Ireland	Irish	Part II and Part III
Northern Ireland	Ulster Scots	Part II
Wales	Welsh	Part II and Part III
Cornwall	Cornish	Part II
The Isle of Man	Manx Gaelic	Part II

- 2.8 For Irish to be accorded Part III status, it was necessary for the Government to commit to at least 35 of the specific measures in Part III of the Charter. The Government committed to applying 36 provisions of Part III of the Charter to Irish, (39 provisions to Scottish-Gaelic and 52 provisions to Welsh). The 36 provisions applied to Irish are detailed on page 60 of the first report on UK Charter compliance, annexed to this report at Tab X.

2.9 Article 9 of the Charter, Judicial authorities, outlines the various provisions which may be adopted to promote the use of a regional or minority language in the context of legal proceedings. At the time of ratification of the Treaty, Article 9 (3) was adopted for Irish. It provides essentially for, "the most important national statutory texts" to be available in Irish.

2.10 The sub-group was established to consider the scope of applying the provisions of Article 9 (1), which are:

"The Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:

a in criminal proceedings:

- i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
- ii to guarantee the accused the right to use his/her regional or minority language; and/or
- iii to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or
- iv to produce, on request, documents connected with legal proceedings in the relevant regional or minority language, if necessary by the use of interpreters and translations involving no extra expense for the persons concerned;

b in civil proceedings:

- i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
 - ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or
 - iii to allow documents and evidence to be produced in the regional or minority languages,
- if necessary by the use of interpreters and translations;

c in proceedings before courts concerning administrative matters:

- i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
 - ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or
 - iii to allow documents and evidence to be produced in the regional or minority languages,
- if necessary by the use of interpreters and translations;

d to take steps to ensure that the application of sub-paragraphs i and iii of paragraphs b and c above and any necessary use of interpreters and translations does not involve extra expense for the persons concerned."

2.11 The introductory sentence to Article 9 (1) defines three limits to the various provisions listed therein -

- jurisdictional in that any provisions adopted for the Irish language from Article 9 (1) only apply to the judicial authorities of Northern Ireland, (for example they would not apply to any appeals from Northern Ireland courts to the House of Lords);

- there is a balance to be struck between the number of people who would use the language and the implications of the various provisions, (as revealed by the terms of reference of this sub-group which examine the implications of each individual provision of Article 9 (1); and
- use of the language must not in the judge's view hamper the proper administration of justice in any particular case. (This reflects the concern to protect fundamental principles of the judicial system against abuse of the facilities for recourse to regional or minority languages, for example, where a competent interpreter advises the judge that they were unable to interpret what the person was saying as a result of the person's lack of Irish language ability.)

2.12 The European Charter for Regional or Minority Languages provides for a Committee of Experts to evaluate how the Charter is applied in each country with a view to, where necessary, making recommendations for improving its legislation, policy and practices. The Committee reports to the Committee of Ministers on its evaluation of compliance by a Party with its undertakings, to examine the real situation of regional or minority languages in the State and, where appropriate, to encourage the Party to gradually reach a higher level of commitment. The Committee of Experts' submitted their first report, evaluating the UK Government's implementation of the Charter, on 9th October 2003 to the Committee of Ministers. The recommendations by the Committee of Experts on the UK's application of the Charter were adopted by the Committee of Ministers on 24 March 2004.

2.13 In their recommendation the Committee of Ministers did not ask the UK Government to consider the introduction of Irish into legal proceedings as a priority. However, they did recommend, "that the authorities of the United Kingdom take account of all the observations of the Committee of Experts". In its general observations, the Committee of Experts commended the UK authorities on their dynamic approach to the

instrument of ratification. It expressed a hope that the authorities will extend the approach adopted in Wales "to the use of Irish and Scottish Gaelic before the courts". The Committee also observed that the "Good Friday Agreement of 1998 was an important step in the recognition of the Irish and the Ulster Scots languages as an expression of cultural wealth in Northern Ireland... At present there does not exist a language policy for Ulster Scots and Irish, which makes it difficult for its speakers to use the language in public life."

- 2.14 Chapter 3 of their report contains the Committee of Experts' findings, three of which are particularly relevant for the purposes of this report. In summary, it noted differences in approach and commitment by the authorities in Northern Ireland, Scotland and Wales and that the practical and political support varies for each language. It found that in contrast to Wales, Northern Ireland still has basic needs as regards development of language policy; however, since the movement for protecting Irish is a recent one, it did not propose any concrete recommendations for the Irish language. Additionally it found that in legal proceedings the level of formal protection for Welsh is strong, although practical take-up in the courts was low, while the level of protection for the Irish language in legal proceedings was at the lowest level possible and remarked that the UK government had not elected any undertaking providing for the use of Irish before the courts.
- 2.15 In December 2003, the Foreign and Commonwealth Office wrote to the Committee of Ministers setting out their comments and observations on the findings and recommendations of the Committee of Experts. In particular, their letter referred to the establishment of the Article 9(1) sub-group to consider the scope for applying those provisions to Irish in legal proceedings in Northern Ireland.

The Criminal Justice Review Group Recommendation

- 2.16 The Criminal Justice Review Group was set up on 27 June 1998 under the Belfast Agreement and tasked with undertaking a wide-ranging review of criminal justice (other than policing and those aspects of the system relating to emergency legislation). It reported in March 2000, making 294 recommendations for change across the criminal justice system. These covered areas as diverse as the prosecution service, courts, the judiciary, youth conferencing, community safety, victims and witnesses, law reform and international co-operation. One of the recommendations made by the Criminal Justice Review Group was that, "consideration of the use of the Irish language in courts be taken forward in the wider context of the development of policy on the use of Irish in public life generally".
- 2.17 The Group made this recommendation in their analysis of language and dress in the Courts. The most relevant sections, for the purposes of this report, are paragraphs 8.55 & 8.56 which summarise the commitments the government had made to protect the Irish language in the Belfast Agreement and which it proposed to make under the Charter. It also contrasted the current position regarding minority language use in courts in Northern Ireland with Wales. The full text of the Group's analysis can be found at Tab X of this report.
- 2.18 On 12th November 2001, the Government published its response to the Review Report, confirming that it accepted Recommendation 138 regarding consideration of the Irish language in courts. In its most recent Criminal Justice Review Implementation Plan, (June 2003), the Government confirmed that the interdepartmental Group had approved the establishment of this sub-group to consider the scope for applying those provisions of Part III, Article 9 of the Charter which relate to the use of Irish in courts. Lord Clyde, the Justice Oversight Commissioner, responsible for reviewing implementation of the recommendations of the Criminal Justice Review, reviews progress on this

recommendation, like the others, on a regular basis. His observations on the progress of implementing this recommendation are annexed to this report at Tab X.

- 2.19 In summary, the background to this issue is that the Government agreed to sign up to the Charter in the context of the Belfast Agreement, and agreed with the recommendation made by the Criminal Justice Review Group (another product of the Belfast Agreement), that consideration of the use of the Irish language in courts be taken forward in the wider context of the development of policy on the use of Irish in public life generally.

2 - Commitments by Northern Ireland political parties.

3 - Inclusion of Irish language rights in the proposed Bill of Rights by the Human Rights Commission.

The Department of Culture, Arts and Leisure

- 2.2 As DCAL is the lead department in Northern Ireland responsible for the coordination of Charter implementation by the devolved administration, it has provided a summary of the work to promote Irish in public life generally. This summary is annexed to this report at Tab X. It is helpful here to summarise broadly the main steps taken to promote the Irish language by reference to the articles as they appear in the Charter.

• Article 8 - Education

Support is provided by the Department of Education to approximately 30 primary and 3 post primary schools (or units linked to existing schools) that teach through the medium of Irish, in addition to a number of Irish language nursery schools and day nurseries. For the financial year 2002/2003, funding from the Department of Education came to £8,557,000. Additional funding is provided for training, including teacher training.

Chapter 3: Policy on the use of Irish in public life

3.1 In Chapter 2 we set out the background to the establishment of this sub-group. Essentially the Government is committed to considering the use of the Irish language in legal proceedings in the wider context of the development of policy on the use of Irish in public life generally. We detail briefly here what this wider context is. The three main strands are:

1. Charter Implementation co-ordinated by the Department of Culture, Arts and Leisure, ("DCAL").
2. Commitments by Northern Ireland political parties.
3. Inclusion of Irish language rights in the proposed Bills of Rights by the Human Rights Commission.

The Department of Culture, Arts and Leisure

3.2 As DCAL is the lead department in Northern Ireland responsible for co-ordination of Charter implementation by the devolved administration, it has provided a summary of the work to promote Irish in public life generally. Their summary is annexed to this report at Tab X. It is helpful here to summarise broadly the main steps taken to promote the Irish language by reference to the articles as they appear in the Charter.

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- Article 10 – Administrative and Public Authorities

The protections to the language provided in the Belfast Agreement and Charter mean that a number of steps have been taken to facilitate the use of Irish with Government departments, for example, citizens can write to government departments in Irish; can fill in government forms in Irish; phone departments in Irish; government publications believed to be of interest to Irish speakers are provided in Irish. (The latest guidance by the Inter Departmental Charter Implementation Group for all government departments and associated bodies, dated January 2004, can be found at Tab X to this report.) For the financial year 2003/2004, Northern Ireland Civil Service spent £312,000 on Irish translations and interpretation.

- Article 11 – Media

The Government's commitment to Irish language broadcasting include the steps taken to widen reception of TG4 (the Irish language television channel) in Northern Ireland, the increased production of Irish language television and radio programmes by the BBC, training in production techniques for Irish language speakers and the commitment of £12 million over 3 years to an Irish language Television and Film Production Fund.

- Article 12 – Cultural activities and facilities

The Government's commitment to promote the Irish language includes a range of linguistic diversity projects by a wide variety of Government departments and non-departmental public bodies which for the financial year 2002/2003 came to £8,751,000.

- Article 14 – Transfrontier Exchanges

As a result of commitments in the Belfast Agreement and the Charter, a North South Language Body was established with a remit to promote the Irish language and Ulster-Scots language and culture. The promotion of Irish is dealt with by Foras na Gaeilge and 25% of its

funding, namely £3,224,750 in 2004, is provided by DCAL. In addition the Government supports the Columbia Initiative, to foster links between Gaelic speakers in Scotland, the Republic of Ireland and Northern Ireland. It received funding of £180,000 this financial year.

Commitments by Northern Ireland political parties

- 3.3 Among local politicians there is disagreement regarding the priority to be attached to the promotion of the Irish language. Broadly speaking, those political parties described as Catholic/Nationalist are vocal in their support for much stronger promotion and protection of the Irish language while those described as Protestant/Unionist are not.
- 3.4 The two main Nationalist parties, the SDLP and Sinn Fein, in their election manifestoes, call for an Irish Language Act to give full recognition, including statutory protection, to the Irish language. Both election manifestoes are attached to this report at Tab X. The SDLP focuses on legal recognition of Irish to create parity of esteem between the English and Irish languages. The Sinn Fein manifesto is more detailed in seeking specific commitments from Government. Notably it seeks a strengthening of the clauses already signed up to in Part III of the Charter and the commitments made in the Belfast Agreement, in addition to seeking an Act which would give the Irish language the same legal status as Welsh, namely one of equivalence to English.
- 3.5 The two main Unionist parties, the UUP and DUP do not raise the issue of the Irish language protection in their election manifestoes. However, some opposed the bilingual policy operated by the Minister for the Department of Health, Social Services and Personal Services while she was in office. One prominent member of the DUP, Ian Paisley Junior described the cost of operating the policy as money that "has been wasted on this needless political extravagance".
- 3.6 It is difficult to make an informed assessment of the likelihood of an Irish Language Act being introduced, when devolution is restored,

given the lack of consensus on this issue and the priority it may or may not have.

Proposed Bill of Rights by the Human Rights Commission

- 3.7 The Belfast Agreement charged the Northern Ireland Human Rights Commission, ("the Commission"), with essentially advising the Government on a Bill of Rights, which would be supplementary to those already contained within the European Convention on Human Rights. According to the Agreement these supplementary rights are to reflect the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities and parity of esteem. The Commission's duty to advise the Secretary of State on a Bill of Rights is set out in section 69 (7) of the Northern Ireland Act 1998. (In addition section 69(3)(b) imposes a further duty on the Commission to advise the Secretary of State of the measures which ought to be taken to protect human rights in Northern Ireland.)
- 3.8 After carrying out extensive pre-consultation enquiries over an 18-month period, the Commission published a consultation document in September 2001, entitled "Making a Bill of Rights for Northern Ireland". It proposed that in relation to the Irish language, legislation be introduced "to implement the commitments made under the Belfast (Good Friday) Agreement and the European Charter for Regional and Minority Languages." In response to the consultation exercise, of those who replied on the issue of language rights, a majority expressed support for strengthening the Commission's proposal, (a summary of which the Commission published in July 2003).
- 3.9 The Commission had at this stage planned to garner cross-party political support for their proposals on the Bill of Rights. However, given the present political impasse, the Commission has since revised this approach. Accordingly on 7th April 2004, the Commission published a further report entitled, "Progressing a Bill of Rights for Northern Ireland:

An Update". In response to the support expressed for strengthening the initial proposal dealing with the Irish language, the revised proposal appears to go much further.

- 3.10 However, the Commission notes that (in common with a number of other issues in the proposed Bill of Rights) it has not yet reached consensus on the best way forward on the issue of Irish language rights. It puts forward three alternative versions to the proposed section 14(1) dealing with this issue and seeks views on the way ahead. As they advise in their updated report:

The three alternative versions of the proposed section 14 (1) are:

(1) In Northern Ireland English and Irish shall be official languages.

or:

In Northern Ireland English shall be the first official language and Irish shall be the second official language. Legislation shall be enacted to prescribe the situations in which the second official language can be used.

or:

Legislation shall be enacted to prescribe the situations in which people have the right to use the language of their choice."

- 3.11 The Commissioners also propose that, whichever version of section 14(1) is adopted, further additional measures be adopted, s. 14(2), (3) and (4) including a right to "the promotion of conditions necessary to maintain and develop their language" and to, "use their language in dealings with public bodies, where there is sufficient demand and a real need". This latter right would appear to include legal proceedings, however, the caveats of demand and need are important.

The Commission also proposes that legislation be enacted to implement the commitments made under the Belfast (Good Friday) Agreement and the European Charter for Regional or Minority Languages. (This would imply that the Commissioners believe the commitments made in the Agreement and Charter require legislative protection.)

- 3.12 Clearly the Commission's latest proposals have moved towards greater statutory protection being given to the Irish language. The remaining lack of consensus surrounds the extent of such protection. The first proposed version of section 14(1) would grant the Irish language equal status to English, (namely, the same position as Welsh in Wales). The second proposal would give Irish in Northern Ireland comparable status to English in the Republic of Ireland, save that this option seeks to define the situations in which Irish can be used, (which does not occur in the Republic, where either Irish or English can be used as they are both official languages.) The third proposal leaves to be defined at a later stage the situations in which people would have a right to use Irish.
- 3.13 The Commission has asked for responses to their latest proposals on a Bill of Rights to be returned by 1st August 2004 and the full text of their revised proposals can be found at Tab X. It then intends to issue a further paper on the subject around the end of the year.
- 3.14 If the current Commission provides its final advice to the Secretary of State before their tenure ends (March 2005), it is clear that whatever option the Commission favour, their advice to the Secretary of State for Northern Ireland is likely to include a recommendation for statutory protection for Irish language. This protection at a minimum would encapsulate the commitments made by the Government in the Belfast Agreement and in the Charter and at a maximum could promote the Irish language to the status of an official language. The inability of the

Commission to reach a consensus on this issue, after 4 years of work preparing the Bill of Rights, is perhaps indicative of the difficulties and sensitivities around reaching a consensus on language issues in Northern Ireland.

- 3.15 What is unclear at this stage is whether the Commission intends to provide its final advice to the Secretary of State on the Bill of Rights before the current Commissioners' tenure ends, (as a new Chief Commissioner and most new Commissioners will be appointed on 1st March 2005). It is equally unclear whether the new Commissioners will adopt and pursue the present proposals on the Bill of Rights by the current Commission although it would be difficult given the substantial work and consultation undertaken by the previous Commission for this work to be completely unpicked.
- 3.16 The relevance and importance of the proposals regarding an Irish Language Act and statutory protection of the Irish language through inclusion in a Bill of Rights is a matter to which we return in Chapter 7 of this report.