



**Parallel Report for the Committee Of Experts**  
**Application by the UK of the**  
**European Charter for Regional or Minority**  
**Languages**  
**Fifth Monitoring Cycle**

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## POBAL's Parallel Report for the 5<sup>th</sup> Monitoring Cycle

### **Introductory statement**

POBAL, the independent advocacy organisation for the Irish speaking community in the North of Ireland has prepared this parallel report on the application by the UK of the European Charter for Regional or Minority Languages ('the ECRML'). This is POBAL's fifth monitoring report since the ratification of the ECRML by the UK in 2000. It complements and adds to the verbal submissions made by POBAL during the on-the-spot visit to Belfast of a delegation (Dr Aleksandra Oszmiańska-Pagett, Rapporteur on the UK, committee member in respect of Poland, Prof. Dr Gerard René de Groot, committee member in respect of The Netherlands and Prof. Matthew MacIver, committee member in respect of the United Kingdom) from the ECRML Committee of Experts ('COMEX') on 14<sup>th</sup> May 2018.

POBAL made its verbal submissions at a bilateral meeting with the COMEX representatives and during two information sessions which it co-ordinated and facilitated; one on Education and one on issues arising under Articles 9 – 14 of Part Three of the ECRML.

### **1.0 The UK's Fifth Report on the Application of the ECRML (23<sup>rd</sup> January 2018)**

1.1 The UK has submitted this report five years after its previous report, and almost four years late. The Fifth report contains no reference to the central role of the UK in co-ordinating a strategic and effective application of the ECRML, nor in relation to its duties in respect of matters which remain under the control of Westminster, rather than that of the devolved administrations where these exist in Scotland, Wales and Northern Ireland. The report contains no reference whatever to the application of the ECRML in Northern Ireland. Nor does it offer any explanation for its failure of reporting in this case. POBAL believes that the extremely serious reporting failure is because, as has been the case since 2007 when the NI Assembly was re-established, the NI Assembly failed to agree the contents of the NI report and that this has not therefore been made available to the UK government. The NI Assembly is currently suspended and has been since January 2017. In these circumstances in particular, it is difficult to understand why the UK government has not made its own investigations into the application of the ECRML in respect of Irish and Ulster Scots and included its findings in its report.

The effect of this reporting failure in the case of the ECRML is that there is no information provided in the UK report in respect of the Irish language. In previous reports, the UK government has provided some information relating to Article 11, the Media since



broadcasting remains one of a number of issues which the UK government ‘reserves’ for itself. We see no reason why the UK government should be unable to report on its own activity.

1.2 It is a matter of concern to us that the UK government fails to report on any of the other duties which fall to Westminster under the ECRML. These include other ‘reserved’ matters and matters for which the UK has sole responsibility, for example, the oversight of compliance with treaty commitments; the application of the ECRML by Crown bodies, etc. We also note that the UK report does not acknowledge any reporting difficulties. POBAL is concerned that this marks an ongoing attempt by the UK government to ‘normalise’ its reporting failure in respect of Northern Ireland.

1.3 It is POBAL’s belief that the reporting failure at the NI Assembly is symptomatic of deep-rooted tensions in the application of the ECRML and in the treatment of the Irish language within the political administration since the re-establishment of devolution in 2007.

POBAL would submit that this is particularly significant in respect of Chapter 1, Background Information, parag 12 of the COMEX report adopted on 21 June 2013 in respect of the Fourth monitoring cycle:

**The Committee of Experts strongly urges the UK authorities to comply with their obligation to report on the application of the Charter in accordance with Article 15 of the Charter.**

## **2.0 POBAL’s Overview of this reporting period**

2.1 During this reporting period, the Irish speaking community has continued to strive in difficult circumstances, to promote and protect the Irish language and to expand and develop its usage. The community has continued to outreach to the general public, to break down stereotypes and increase mutual understanding with members of other linguistic and cultural communities.

2.2 At the level of the devolved institutions, following elections in May 2011, a nationalist Minister for Culture, Arts and Leisure was appointed. This Ministry (now renamed Department for Communities) has central responsibility for language matters. Carál Ní Chuilín was Minister for Culture from 2011-2016. She is a member of Sinn Féin, the second largest party in the NI Assembly. Sinn Féin states that it wishes to support the development of Irish in the North of Ireland. She was replaced following elections in 2016 by Minister Paul Givan of the Democratic Unionist Party, the largest political party in the NI Assembly, and which has consistently and publicly shown hostility to the Irish language.

2.3 Prior to her replacement, Caral Ní Chuilín initiated a consultation on strategies for the development of the Irish language and Ulster Scots, and on proposals for an Irish Language bill. The proposals for the strategies and the Bill were rejected by the NI Executive in March 2016 without discussion. In relation to a strategy for Irish, in spite of a Judicial Review finding that the Executive was in contravention of its duty under Section 28 of the St Andrews' Act 2006 in not adopting a strategy, no action has been taken and the Assembly has been in suspension since January 2017. We shall discuss these specific issues later in this document.

2.4 As Minister, Carál Ní Chuilín undertook several other initiatives, including the inception of Líofo, a project to raise the profile of Irish language classes, which are predominantly run by under-resourced Irish language community groups. Shortly after his appointment as Minister for Culture, the DUP's Paul Givan announced in December 2016, that he would end the £55,000 funding to Líofo intended to provide a limited number of bursaries for children and young people from deprived areas to enable them to attend Irish language colleges in Irish speaking areas (Gaeltachts) in the Republic of Ireland. Minister Givan was widely criticised for his decision, and three weeks later, announced that he had 'found' the funding to continue the scheme. We will discuss this further in a later section of this report.

2.5 Other DUP Ministers have also reversed more favourable policies or actions taken by nationalist Ministers before them. In 2016, Minister for Agriculture, Michelle McIlveen changed the name of a fisheries protection vessel from Irish to English, stating that this was in line with her Department's 'single language policy'. We will discuss this further in a later section. Subsequent research by POBAL reveals that even if such a policy were in line with the ECRML, no such policy had been drafted at the time of her official statement. It is worth noting that it has taken almost two years to obtain the documentation from the Department relating to this decision. The linking of actions detrimental to the use of Irish in public life with 'single-language policies' is one which the COMEX have commented on previously, in respect of the actions of then DUP Minister for Trade and Industry, Arlene Foster (now leader of the DUP and First Minister until January 2017) and the NI Tourist Board. POBAL reported on the refusal of the NITB, at the behest of the then Minister, to fund bilingual signage at tourist sites in Newry and Mourne.

2.6 The 1737 Administration of Justice Act (Language)(Ireland) remains in force and we concur strongly with the COMEX statement in its 2014 report that this represents an unjustified distinction on the development of Irish. In this monitoring period, calls for repeal of the act have been rejected by Ministers from the Alliance party. In response to first draft proposals for an Irish Language strategy, Alliance Party's, David Ford, then Minister for



Justice commits to examine, 'the financial and operational implications of changes to the 1737 Act'.<sup>1</sup> However, by September 2014, in response to revised strategic proposals, Ford states, 'At no stage have I given any commitment to repealing the Act.' Referring to a costing exercise carried out by his officials, he contends, 'I have decided that the financial impact would be prohibitive, particularly in the current difficult financial climate, and especially where demand would be insufficient to justify this expense.' He continues, 'The proposal to repeal this legislation could potentially see demands for the use of other languages in any court documents or proceedings as a matter of choice. This could give rise to adverse implications which would not be in the interests of justice.'<sup>2</sup>

**POBAL contends that in addition to indicating negative reception of the strategy for Irish, Minister Ford's refusal to repeal the 1737 Act represents an ongoing unjustifiable restriction on the use of the Irish language in public life. We are not aware of any efforts by the UK government since publication of the 2014 COMEX report to explain the continuing operation of the act.**

2.7 In 2013, POBAL flagged up concerns relating to the funding position of a number of Irish language organisations in Northern Ireland. In 2014, with the agreement of the Minister for Culture in the North and the Minister for Arts, Culture and Heritage in the south, the cross border body for the Irish language withdrew all core funding from Irish language organisations, including POBAL. Instead, a 'competition' was organised and through this mechanism, all funding was awarded to six organisations based in Dublin. No Irish language organisation based in Northern Ireland was awarded funding under this scheme. This has impacted on the work and independence of the Irish language sector in Northern Ireland and has decreased co-operation between some Irish language organisations since it has in effect sought to legitimise the duplication by others of the well-established roles of some organisations based in the North.

2.7 At a political and institutional level, UK neglect allows deep-rooted sectarian attitudes to the Irish language to continue to dominate the treatment of the language. The structures of the con-sociational Assembly, ostensibly established to create and maintain 'balance' between two sections of society have appeared at times to magnify and focus historical

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<sup>1</sup> 1737 Administration of Justice (Language)(Ireland) Act. As POBAL has previously reported, this Act prohibits the use of any language other than English in the courts of Northern Ireland. In effect, since interpretation is provided by users of ethnic minority languages on a regular basis, this effectively represents a restriction on the use of Irish. The continued operation of the 1737 Act has been called 'an unjustifiable restriction' on the use of Irish, likely to undermine its development by the COMEX (April 2010, pg 19, parags 117-121)

<sup>2</sup> Ford, David, Minister for Justice, in correspondence with Carál Ní Chuilín, 22<sup>nd</sup> September 2014.



division. The built-in double veto at the NI Assembly has repeatedly and demonstrably prevented progress on the Irish language, leading to frustration and anger. In January 2017, the NI Assembly was suspended when Sinn Féin refused to nominate a successor to Deputy First Minister, Martin McGuinness, citing the failure to implement outstanding Treaty commitments, including the adoption of the Irish Language Act.

2.8 During thirteen months of political talks, with the Irish language act being a central feature, many negative and hostile statements were made by unionist politicians in relation to the Irish language. This has been a consistent feature of political discourse here for many decades prior to the ratification of the ECRML. It has never abated<sup>3</sup> and in recent months it has been intensified. Occasional comments by unionists seemingly intended to moderate debate have been inconsistent and have made little impact on the overwhelmingly negative and insulting approach of the party.<sup>4</sup>

2.9 POBAL raised this issue with members of the DUP including its leader, Arlene Foster, when we met them in April 2017. We explained the background to the legitimate demand for the Irish language act and presented our proposals for legislation. Unfortunately, there was no positive outcome to this meeting.

2.10 On 14 February, after 13 months of political talks between Sinn Féin and the DUP and the UK and Irish governments, the DUP collapsed the talks process, saying that they would not agree to an Irish language act.<sup>5</sup> We will discuss the issue of the talks' negotiation and the Irish language in the next section of this report.

### **3.0 Key issues arising from the UK Application of the ECRML**

#### **3.1 UK Treaty commitment to Introduce the Irish Language Act**

3.1.i It is POBAL's contention that the UK government and the devolved institutions have failed in their duty to implement the ECRML in respect of the Irish language. This is because of the ongoing refusal to implement the 2006 Treaty commitment in the St Andrews'

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<sup>3</sup> BBC News, 4/11/2017, 'Curry my yoghurt': Gregory Campbell, DUP, barred from speaking for day, <http://www.bbc.co.uk/news/uk-northern-ireland-29895593>

<sup>4</sup> BBC, 6/2/2017, DUP will never agree to Irish language act, says Foster, <http://www.bbc.co.uk/news/uk-northern-ireland-38881559>;

<sup>5</sup> The Irish Times, North Talks collapse over Irish language, 14.2.18 <https://www.irishtimes.com/news/politics/north-talks-collapse-over-irish-language-1.3392149> (downloaded 5.3.18)



Agreement to introduce Irish language legislation, and the failure of the authorities to take action in relation to the Committee of Ministers' Recommendation 2014,

2. adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation providing statutory rights for the Irish speakers;

3.1.ii The St Andrews' Agreement gives an unequivocal commitment by the UK government that it will introduce Irish language legislation in the North of Ireland. However, following delay due to the instigation of a second consultation process on the issue, once the devolved institutions were re-established in May 2007, the UK government denied responsibility for the legislation, referring it back to the NI Assembly.

3.1.iii The largest party in the con-sociational Assembly, the Democratic Unionist Party (DUP) publicly and consistently opposes Irish language rights, including a promise to end the Irish language Act as a 2007 election manifesto commitment. POBAL contends that the UK government is fully aware of the stance of the unionist parties and its failure to enact the legislation either before devolution or since through its parallel legislative competence is in contravention of its duties under the ECRML.

3.1.iv In May 2011, for the first time since the re-establishment of the devolved institutions in NI, a nationalist minister was appointed to the Department of Culture, Arts and Leisure. Sinn Féin's Carál Ní Chuilín succeeded 3 DUP Ministers of Culture, Arts and Leisure who had refused to enact the Irish Language legislation, as noted in previous POBAL reports. In 2016, she was replaced by the fourth DUP Minister in the renamed Department for Communities, having been unsuccessful in attempts to introduce proposals for an Irish language bill and an Irish language strategy.

3.1.v POBAL has brought the failure to fulfil the commitments of the St Andrews' Agreement in respect of the Irish language Act to the attention of international human rights bodies including the United Nations Committee on Economic, Social and Cultural Rights. In its 2009 Concluding Observations, the Committee stated,

37. The Committee is concerned that there is still no protection in respect of the Irish language in Northern Ireland, whereas the Welsh and the Gaelic languages are protected by the Welsh Language Act 1993 and the Gaelic Language (Scotland) Act 2005, respectively. (arts. 15 and 2)

**The Committee recommends that the State party, or the devolved administration in Northern Ireland, adopt an Irish Language Act, with a view to preserving and promoting minority languages and cultural heritage, and invites the State party to provide detailed information on the progress made in its next periodic report.<sup>6</sup>**

In 2016, the Committee reiterated this recommendation,

67. The Committee remains concerned about the lack of effective measures adopted by the State party to promote the use of the Irish language in Northern Ireland (art. 15).

**68. The Committee reiterates its previous recommendation (see E/C.12/GBR/CO/5, para. 37) and recommends that the State party adopt an Irish language act.<sup>7</sup>**

3.1.vi We have also raised the issue of the Irish language Act with the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities. In its February 2017 report, the AC comment,

105. The Advisory Committee sees appropriate legislation by the Northern Ireland Assembly as a necessity to protect and promote the Irish language and calls on the UK Government to help create the political consensus needed for such adoption.<sup>8</sup>

8

3.1.vii As noted, the approach of Sinn Féin Minister Carál Ní Chuilín to the Irish language was different from her predecessors and the DUP's Paul Givan who was appointed in 2016. In 2015, Carál Ní Chuilín announced a further official consultation on legislative proposals (previous consultations were held in 2006 and 2007). Although her draft proposals drew heavily on POBAL's recommendations, there were a significant number of gaps and omissions. The Departmental report<sup>9</sup> of responses to the consultation, published in December 2015 by the Department, indicate similar levels of support for the Irish language Act as demonstrated previously in 2006 and 2007. Some 94.7 % of respondents supported the legislation with over 60 % of these highlighting the legislative model put forward by POBAL in the document *The Irish Language Act Issue 2*,<sup>10</sup> as the best approach to the Act. The proposals in the POBAL document have been agreed with the Irish speaking community

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<sup>6</sup> UN Economic and Social Council, E/C.12/GBR/CO/5, 22 May 2009

<sup>7</sup> UN Economic and Social Council, E/C.12/GBR/CO/6, 14 July 2016

<sup>8</sup> Advisory Committee on the FCPNM, ACFC/OP/IV(2016)005, 27 February 2017

<sup>9</sup> DCALNI, Report of the Consultation, <https://www.dcalni.gov.uk/sites/default/files/publications/dcal/report-of-the-consultation-on-proposals-for-an-irish-language-bill.PDF>

<sup>10</sup> POBAL, *Acht na Gaeilge TÉ, Eis 2 / The Irish Language Act Issue 2*,





after prolonged community consultation. *The Irish Language Act Issue II* was prepared with the generous advice of internationally renowned experts in language and law, including Professor Robert Dunbar, University of Edinburgh; Professor Colin Williams, University of Cambridge; Professor Wilson McLeod, University of Edinburgh and Professor Fernand de Varennes, University of Monckton, Ca. The proposals have also been overwhelmingly endorsed during three government-led public consultations in 2006, 2007 and 2014.

3.1.viii In a written response to an Oral Question in 2016, Minister Ní Chuilín confirmed that she put proposals for an Irish Language Bill to the Executive.<sup>11</sup> Former DUP Minister for Culture, Arts and Leisure, the DUP's Gregory stated on BBC Radio Ulster's Talkback programme on 26 January 2016 that the item would not be tabled and that Carál Ní Chuilín had failed to move the issue of the Irish language Act forward because of unionist opposition. On 10 March 2016, the then Minister issued a statement through her party to the effect that the proposals she had submitted had been rejected<sup>12</sup> by the unionist parties and the Alliance Party. Officials in the Department of Culture, Arts and Leisure confirmed their understanding that the proposals for an Irish Language Bill were rejected at Executive level. POBAL understands that no formal Ministerial statement was issued on this matter in line with NI Assembly practice regarding Executive business.

9

3.1.ix As noted, in January 2017, the NI Assembly was suspended. Thirteen months of political talks followed, primarily involving the two main parties, Sinn Féin and the DUP. Key issues for resolution included the outstanding Treaty commitment to legislate for the Irish language. During the talks, POBAL expressed disappointment at weak legislative proposals and extremely low cost projections promoted by some political parties and one Irish language organisation, Conradh na Gaeilge. POBAL contends that weak, inadequately resourced legislation would increase tensions and frustration. On 14 February 2018, the DUP collapsed the talks and called for the restoration of Direct Rule from the UK. The party cited disagreements over an Irish language act as its primary reason for withdrawing from the talks.<sup>13</sup>

### 3.2 The talks' negotiations and the Irish language

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<sup>11</sup> NI Assembly, AQO=20, 9560/11-16, 28/01/2016

<sup>12</sup> Sinn Féin Press Release, Carál Ní Chuilín, 'Failure to support Acht na Gaeilge a missed opportunity – Ní Chuilín', <http://www.sinnfein.ie/contents/38990> downloaded on 15.3.2016

<sup>13</sup> The Irish Times, North's Talks Collapse over Irish language, 14.2.18 <https://www.irishtimes.com/news/politics/north-talks-collapse-over-irish-language-1.3392149> (downloaded 5.3.18); also BBC, Power-sharing talks collapse at Stormont, 14.2.18, <http://www.bbc.co.uk/news/uk-northern-ireland-politics-43064009> (downloaded 5.3.18)

3.2.i Following the collapse of the talks, the respected journalist, Eamonn Maillie published a leaked document which purports to be the final draft of a negotiated agreement between Sinn Féin and the DUP.<sup>14</sup> Since publication, Sinn Féin has publicly stated that this document represents the level of agreement reached by 9<sup>th</sup> February 2018 between the two parties. The DUP has denied this. Both parties continue to state that the Irish language act was central to the log jam.

3.2.ii Under parag 2, *Respecting Languages and Culture*, the 'Draft Agreement' proposes three pieces of legislation,

The Respecting Language and Diversity Bill will contain general language and cultural clauses. The Irish (Respecting Language and Diversity) Bill and the Ulster Scots (Respecting Language and Diversity) Bill will contain Irish language and Ulster Scots language and heritage clauses respectively and will amend the Respecting Language and Diversity Bill.

3.2.iii There then follows a Set of Principles and a number of clauses describing what would be included in The Irish (Respecting Languages and Diversity) Bill.

3.2.iv POBAL has undertaken an analysis of the document as it pertains to the Irish language, and has drawn comparisons with the Basic Principles for Irish language legislation which underpin our document *The Irish Language Act Issue II*. In the matter of the proposal for 3 pieces of legislation, an Irish language bill, an Ulster-Scots bill and a 'Respect and Diversity' bill, POBAL believes that It is unclear what the influence of the 3 bills would be on each other, or what the final legislative format would be. All languages and dialects are entitled to respect. The circumstances and needs of each language are not the same however and it is not to the benefit of the Irish language to be bound either to Ulster Scots or to any other language or culture, a point made by the COMEX in its 2011 report.

3.2.v The Irish Language Act must make Irish an Official language in NI but there is a lack of clarity about this in the wording of the 'Draft Agreement' at clause 2.3.i) ('The Irish {Respecting Languages and Diversity Bill} will include clauses dealing with the following: Official recognition of the status of the Irish language in Northern Ireland'). It is not clear that 'official recognition of the status of Irish' and making Irish an Official language in NI are one and the same.

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<sup>14</sup> 20th February 2018, Eamonn Maillie, <http://eamonnmallie.com/2018/02/full-draft-agreement-text/> (downloaded 15.5.18)

3.2.vi The Irish language act must take a rights-based approach. Unfortunately, the clauses in the 'Draft Agreement' do not create any rights at all for the Irish speaking community. In order to create rights, the act itself would have to create a significant number and range of guaranteed rights in political institutions, local authorities, administration of justice, education and media

3.2.vii The act must outline the Irish language services that government and public bodies must provide and within what timescale. Instead of this, clause 2.3.ii) of the 'Draft Agreement' places emphasis only on the creation of the Office of an Irish language Commissioner, and there are no details as to what the contents of the 'Best Practice Standards' mentioned might be.

3.2.viii Instead, according to clause 2.3.iii) the Commissioner would be responsible for 'introducing' the 'Best Practice Standards' rather than these being established in legislation and in this case, they would simply be proposals, which in the contested atmosphere around the Irish language, would be unlikely to provide adequate clarity

3.2.ix The 'Best Practice Standards' would have to be agreed after public consultation and then agreed by the First Minister and Deputy First Minister. This means that the political system at Stormont would still have the power to impede the protection of the Irish language.

3.2.x The document describes a 'dual' role for the Commissioner – agreeing 'Best Practice Standards' with public and government bodies and then 'policing' them. The experience of Wales shows that this 'dual' role is not effective.

3.2.xi POBAL has also expressed concern about some of the sub-points in section 2.2. ('a set of principles').

- at sub-point 1, there is reference to 'desires and sensitivities of the community'. There is a danger in Northern Ireland that the concept of the 'sensitivities' of the unionist community could be misused to place obstacles in front of the development of the Irish language
- at sub-point 4, there is reference to 'due regard to economy and efficiency' and again, there is a danger that this concept could be misused
- at sub-point 5, there is reference to 'interdependence' in relation to cultural policy. There is a danger that this concept could be misused to bind Irish to Ulster Scots in a way that is not beneficial to either



3.2.xii At clause 2.2 ii) there is a reference to the repeal of the 1737 Administration of Justice (Language) Act (Ireland). We would welcome the repeal of this act, but in the document, reference is made to the facilitation of the use of Irish (and other languages) 'when deemed necessary by the courts'. The Irish language act must create a significant number and range of guaranteed rights in the administration of justice, rather than leave the use of Irish to be determined by the courts themselves.

3.2.xiii POBAL notes that the validity of the 'Draft Agreement' document has been contended. Nonetheless, we feel that it is important to state that in our view, the legislative model laid out in the 'Draft Agreement' is flawed and partial. It would be a bad basis for any Irish language act for NI. We recommend that future discussion of Irish language legislation return to the POBAL proposals contained in the document 'The Irish language Act Issue II'.<sup>15</sup>

**It is POBAL's contention that the two-track, sectarian treatment of the Irish language at NI Assembly level can once more be clearly be seen within this monitoring period, as it has been since 2007. The UK government has also failed at all levels in its duty to take resolute action to protect and promote the Irish language. Now with the Assembly still in suspension, the UK government cannot continue to neglect its duties. We respectfully urge the COMEX to strongly encourage the UK government to take clearly timetabled action at Westminster to fulfil its treaty commitment in respect of the Irish language act. We recommend that the legislation be based on POBAL's proposals in the document 'The Irish Language Act Issue II'.**

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3.3. Duty in the St Andrews' Act (2006) to adopt an Irish language strategy

3.3.i Both the St Andrews' Agreement and the 2006 St Andrews' Act place a duty upon the devolved institutions to adopt a strategy to enhance and protect the development of the Irish language (and a strategy for Ulster Scots). In 2013, following several years of work by POBAL in support of COMEX recommendations in 2009 and 2011, and the drafting of community proposals for an Irish language strategy, Sinn Féin Minister for Culture, Arts and Leisure, Carál Ní Chuilín carried out a public consultation on strategic proposals for Irish and a separate strategy for Ulster Scots.

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<sup>15</sup> <http://www.pobal.org/gaeilge/wp-content/uploads/2013/03/Acht-na-Gaeilge-Eis-2-Edition.pdf>

3.3.ii Correspondence between the Department for Culture, Arts and Leisure and other Departments in the NI Assembly regarding the implementation of the Irish language Strategy proposals, obtained by POBAL following Freedom of Information requests, indicate that reactions to Irish language strategy proposals largely follows party political lines. Ministers from nationalist parties, SDLP and the Minister's own party, Sinn Féin respond more positively to the preparation of the proposals, whilst Ministers from the DUP, UUP and Alliance party display varying degrees of negativity. No response is available from DUP First Minister at the time, Peter Robinson (nor from Deputy First Minister, Sinn Féin's Martin McGuinness).

3.3.iii DUP Ministers Sammy Wilson (Finance and Personnel) is dismissive. Nelson McCausland (Social Development) records a 'nil response'. Edwin Poots (Health, Social Services and Public Safety) and his successor in 2014, Jim Wells state opposition. Poots, a former Culture Minister who failed to publish proposals for either an Irish language Act or an Irish language strategy, asserts that, 'there would be little popular support for investing the limited resources that are available in seeking to expand the use of Irish or Ulster Scots in public services.' He goes on to note, 'I very much welcome the recognition that negative and divisive consequences have resulted from the politicisation of the language.'<sup>16</sup> His successor Jim Wells writes in October 2014, 'I must question whether expanding the use of Irish and Ulster Scots in public services should be an Executive priority.'<sup>17</sup> Arlene Foster (now First Minister), Minister of Enterprise, Trade and Investment states that expenditure on public services in Irish and Ulster Scots, 'could not be justified given the current economic climate'.

3.3.iv Ulster Unionist Party Minister for Regional Development, Danny Kennedy, makes no comment on any section of the strategic proposals except in relation to public services, which it opposes on the basis of costs, and in relation to the tasking of DRD to produce a positive plan for Irish language road signage. Referring to an initiative carried out by his Sinn Féin predecessor, he states, 'DRD consulted on limited bilingual traffic signing in 2011, but given the lack of operational requirement and no general consensus in favour, it was hard to justify further consultation nor indeed the exorbitant costs, estimated in the

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<sup>16</sup> Poots, Edwin, Minister for Health, Social Services and Public Safety, in correspondence to DCAL Minister Carál Ní Chuilín, 4<sup>th</sup> September 2013

<sup>17</sup> Wells, Jim, Minister for Health, Social Services and Public Safety, in correspondence to DCAL Minister Carál Ní Chuilín, 7<sup>th</sup> October 2014

millions, associated with provision of traffic bilingual signs.<sup>18</sup> POBAL notes that based on information received from DRD in 2011, the consultation responses overwhelmingly supported the use of Irish in signage (70 responses in favour, 8 responses neutral, 19 opposed). Minister Kennedy gives no information on who has estimated costs of signage as ‘millions’.

3.3.v The Alliance Party’s Stephen Farry, Minister for Employment and Learning questions the development of a separate strategy for Irish and another for Ulster Scots. In his response to first draft proposals, he calls for one joint strategy for Irish and Ulster Scots together. He indicates willingness to instruct DEL officials to engage with DCAL on the proposals. In October 2014, following this engagement, he reiterates his preference for one integrated strategy, and asks for detailed costings and a ‘final overview of the equality/human rights screening’. He concludes, ‘I regret therefore that I am not yet in a position to agree to {the proposals}’ publication.<sup>19</sup>

3.3.vi As noted in a previous section, in response to first draft proposals, Farry’s Alliance Party colleague, David Ford, Minister for Justice commits to examine, ‘the financial and operational implications of changes to the 1737 Act’.<sup>20</sup> However, by September 2014, in response to revised strategic proposals, Ford states that he will not commit to repealing the 1737 act and goes on to oppose its repeal on the grounds of cost, lack of demand, and rather confusingly, the danger that there could be too much demand.<sup>21</sup>

3.3.vii Nationalist responses to the proposals at both first and second draft stages are generally more positive. As might be expected, the Culture Minister’s party colleagues in Sinn Féin are supportive, although it is clear that Education Minister John O’Dowd required considerable re-drafting of the Education proposals prior to agreeing them. The SDLP’s Mark H. Durkan, Minister for the Environment, recommends that high level action plans should be developed to provide more detail of approaches.

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<sup>18</sup> Kennedy, Danny, Minister for Regional Development in correspondence to Carál Ní Chuilín, 13<sup>th</sup> August 2013

<sup>19</sup> Farry, Stephen, Minister for Employment and Learning in correspondence to Carál Ní Chuilín, October 2014 (no more specific date given on correspondence)

<sup>20</sup> 1737 Administration of Justice (Language)(Ireland) Act. As POBAL has previously reported, this Act prohibits the use of any language other than English in the courts of Northern Ireland. In effect, since interpretation is provided by users of ethnic minority languages on a regular basis, this effectively represents a restriction on the use of Irish. The continued operation of the 1737 Act has been called ‘an unjustifiable restriction’ on the use of Irish, likely to undermine its development by the COMEX (April 2010, pg 19, parags 117-121)

<sup>21</sup> Ford, David, Minister for Justice, in correspondence with Carál Ní Chuilín, 22<sup>nd</sup> September 2014.

3.3. viii As noted, the St Andrews Agreement Act 2006 places a statutory duty on the NI Executive to adopt a strategy to enhance and protect the Irish language. In March 2016, the above proposals (along with proposals for an Ulster Scots strategy and for an Irish language act) were put to a meeting of the NI Executive. The meeting rejected all proposals for strategies and for the Act without discussion.

3.3. ix In March 2017, on foot of a Judicial Review, the High Court in Belfast found that there was a statutory obligation on the Executive to adopt an Irish language strategy.<sup>22</sup> However, no action has since been taken and the NI Assembly has now been in suspension for 13 months.

#### **4.0 Part III of the ECRML**

##### **4.1 Article 8 Education**

4.1.i Pre school education / Early Years. There is a need to change the teacher-pupil ratio in IME, in respect of the extra subject being taught and the acquisition of a second language. In IM Early years, nursery provision is for 2 years. (One year playgroup and second nursery). This is essential for language acquisition and as a foundation for Primary 1.

4.1.ii The role, different skills sets and training required by Early Years practitioners is not always adequately recognised. It would be helpful if the COMEX would consider making a clarifying statement in respect of the wording of the ECRML to indicate that its provisions include Early Years practitioners as well as ‘teachers’.

4.1.iii POBAL contends that in spite of the vibrancy of the Irish Medium sector, there are deficiencies in provision which should be rectified under the ECRML. The IM sector is arguable the fastest growing sector in NI education, but it appears that very little appropriate pre-planning is being carried out by government to maximise the potential of the sector or deal with issues pertaining to growth and capacity.

4.1.iv The Irish Medium is still relatively young and teachers in the sector tend to be younger and have fewer years of experience than their counterparts in English Medium education. In 2017, the IM School Support Service CASS (Curriculum Advisory Support Service) team was cut. Previously the IM CASS team consisted of 1 full-time co-ordinator and 2 seconded teachers for Literacy and Numeracy. The loss of this service has been a backwards step for

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<sup>22</sup> High Court NI, Queen’s Bench Division, MAG10220, Delivered 3/3/17, 2016 No: 28528/1

the sector, in particular because the significant expertise of the team was lost to the sector when their posts were terminated.

4.1.v In relation to Special Educational Needs in IME, POBAL has long argued that children in Irish-medium schools suffer disadvantage because they cannot access appropriate or timely intervention regarding their special educational needs. This is particularly acute in respect of children presenting with specific learning difficulties, including dyslexia, where the lack of suitable standardised tests greatly impedes identification and subsequent intervention. Current criteria used by Educational Psychologists, for example, are exclusively in English, meaning that children being educated through the medium of Irish, cannot access them until much later in their school lives.

4.1.vi Lack of in-depth awareness among some Education Authority support staff, including of the educational and cognitive benefits of immersion education adds to difficulties. Often a bi-lingual and bi-literal setting can be beneficial to a child with special educational needs, especially when the languages have different orthographies etc. Over many years, POBAL has recorded incidences of external advisers telling parents to move children to an all English setting. Awareness, training and resources need to reflect the benefits of bilingualism and immersion education.

4.1.vii Since POBAL carried out extensive research into SEN in bilingual children in 2008 and 2010, followed by the publication of the DE sponsored Research Report, *Needs Assessment and Feasibility Study for the Development of High-Level Diagnostic Tools in Irish for Children with Special Educational Needs in the Irish-medium Sector* (2012), it has been widely recorded that SEN practitioners in the IM sector believe that children presenting with special needs in IM schools are being discriminated against, as no acceptable criteria for their diagnosis and intervention has been agreed by the relevant support agencies. The DE 2012 report concluded that there was no need for high end diagnostic assessments in IM education. This was and is not accepted by the sector. A linguistically appropriate means of early identification and intervention regarding SEN in IM schools is essential to ensure that the current inequalities are addressed as a matter of urgency.

4.1.viii There is a lack of additional support materials or their equivalent in Irish for those children with difficulties; *Reading recovery; Lexia; Catch up Maths* etc.

4.1.ix C2K Provision in IME schools – this is the online service for schools but the previous C2K contract did not include any provision for Irish-medium education, though some piecemeal work has been done retrospectively, mainly by the Irish-medium Resource Unit



(An tÁisaonad). The only provision since 2015 is An Seomra Nuachta, the IM Newsdesk. The contract for C2K was extended by another 2 years. And again, the IM sector had to lobby strongly for some level of inclusion. This meant that Irish-medium was once more not adequately provided for in spite of the best efforts of the sector. IT typifies the ‘bolt-on’ attitude towards IM education.

4.1.x Resources from Government-funded agencies produced for schools are not automatically made available in Irish for IM schools. POBAL believes that all education policies, curriculum initiatives and associated training need to be fit-for purpose and the specific needs of the IM sector. It is not appropriate to assume that resources can simply be translated for use in Irish-medium. This is not the case. Translations cause problems for IM children where English and Irish are not equivalent. Language levels, register, consistency in terminology and use of language needs to be addressed systematically by groups who understand the sector and its needs.

4.1.xi Whilst some initial work has been carried out, Lines of Development / A Language Framework for IME should be progressed urgently as a priority for the sector. The current curriculum for IM schools is a translation of that for English medium schools with some additions. It is not fit for purpose. Lines of development could assist in this issue. Immersion language schools are a developing sector and such guidelines are essential for good practice. Lines of development would help in curriculum support and assessment, and should be linked to production of relevant resources. It would provide guidance for schools and support bodies and would save time and money in resource provision.

4.1.xii Development is needed in the production of independent, non-curricular reading materials for pupils in IME. Such early reading programmes that have been developed have been done with little support from the Department of Education. This means they take longer as a result. Further programmes are needed to continue reading development and to incorporate reading strategies and skills. Children should be encouraged to be independent readers in Irish and the work of An tÁisaonad should be supported to a greater extent.

4.1.xiii Assessment: The Department of Education rely heavily on assessments at end of Key Stage (1&2) in primary and GCSE in post primary. In primary, English Medium schools are at an advantage as all the tasks relating to the levels of assessment are immediately available to them. In Irish Medium schools some tasks have been translated by CCEA, however, most remain in English only. At post primary in the IM sector, the exam papers of children doing GCSE examinations are in some instances translated from the Irish the children write in and marked by English-speaking examiners.



4.2 POBAL's new research: The Further and Higher Education, Training and Employment of past pupils of Irish Medium Education in Belfast from 1970s to the present.<sup>23</sup> POBAL has carried out new research since to date there has been a lack of base line data regarding these issues, in spite of the fact that it is now more than 45 years since the first Irish medium primary school, Bunscoil Phobail Feirste opened its doors. Our research provides a valuable information resource for educationalists, government bodies, Irish language groups, training providers and others. With adequate support for its findings it will help to build capacity and strengthen ongoing work, including opportunities for forward planning, building the local labour market and matching capacity with employment opportunities.

4.2.i A sense of ability and confidence emerges from many of the responses to the research, as does a clear picture of the success of Irish Medium Education in preparing pupils for life and work experience in both the Irish language and the English language. Nonetheless there is also an awareness of marginalisation and exclusion from the mainstream in many of the responses. The research highlights the concern of respondents at the lack of legislative protection for Irish and the paucity of Irish language services and visibility in their localities.

4.2.ii The research makes some significant findings :

- Respondents are overwhelming in their call for more services and more support for Irish speakers and for the 'normalisation' of the public use of the language through legislation, increased visibility and new and improved services.
- Whilst post code alone is not a reliable indicator of the full range of socio-economic factors, many of those attending IM schools in the past 45 years have lived in areas of recognised multiple disadvantage, and all of the schools themselves are located in such areas.
- Respondents indicate a wide range of employment experience. Our research reveals professionals, civil servants, administrators, retailers, artists, IT and digital specialists, youth workers, teachers, hospitality workers, health professionals and more. There is a high percentage of Third Level education and qualifications in an extensive range of specialisms and areas of life. Of the 141 people responding to this question on qualifications, 102 people (72.3%) had obtained degrees (4 people were still completing the course at the time of their response); 31 people had undertaken PGCEs (with one person still to complete the course at the time of responding); 2

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<sup>23</sup> May 2018, POBAL, <http://www.pobal.org/english/wp-content/uploads/2018/05/2018-F-H-Education-Training-and-Employment-B%C3%A9arla-Eis.pdf>

people had obtained LLM qualifications in Law; 8 people had Masters degrees of various kinds (one person still studying at time of responding) including masters in Electronics, Archaeology, Social Work, Clinical Dentistry, Human Rights' Law and Criminology; and 5 respondents had a PhD.

- Professional qualifications included from the Institute of Professional Legal Studies at QUB, and the Professional Qualification for Headship.
- Nineteen people had obtained various diplomas, with one person still to complete the course at the time of responding. Again, the subject areas were varied, including Executive Communications, Industrial Studies, Management and Leadership, Playwork, Language Planning, Irish, Rights and Responsibilities etc.
- Three respondents referred to Higher National Diplomas in Computing, Health and Social Care and Health and Beauty Science.
- A wide range of NVQ qualifications had been obtained, including 10 in Business Administration; Childcare, Early Years and Playwork.
- However, only a very small percentage of these courses are offered through the medium of Irish. At Further and Higher level, these are confined to courses related to the study of the Irish language / literature itself or language courses combined with another subject. Gaelchúrsaí, a small NGO, offers a limited number of NVQ and examination courses through Irish.
- The majority of respondents to the research (51.6%) are currently employed in settings where the main language of the workplace is Irish. They, along with some of the 40% who did not work in predominantly Irish speaking environments, cited using the language with colleagues (84.4%), managers (58.3%), owners of companies (28.9%), customers (68%) and Irish language groups (71.1%). This shows not only a very high level of ongoing use of Irish in the workplace from past pupils, it also gives a flavour of the range of opportunities for people carrying out their day to day business to come into contact with the Irish language.
- Use of Irish among respondents is not however confined to the workplace. We asked if respondents used Irish either often or occasionally in their personal lives. 94% said that they did. Very high percentages (86.6%) stated that they used the language with friends, on social media (69.1%) and with either their children (41.6%) or their parents (44.3%).

4.3. i Teaching of Irish in English Medium schools. POBAL supports the proposals of Gael-Linn in relation to the need for legislation which would include support for the learning of additional modern languages in primary schools.

4.3.ii Given the ending of the Primary Languages Programme in 2015, the Department for Education NI (DENI) should introduce an optional programme for learning Irish in primary schools.

4.3.iii Catering for Key Stages 1 and 2, the programme would require a specific syllabus and resources.

4.3.iv Initiatives developing the Irish language as a cross-community study area should be supported as a useful starting point for schools where Irish is not traditionally taught.

4.3.v The requirement to study a modern language at GCSE level was dropped in 2008. We share concerns regarding the substantial (26%) drop in numbers of students at GCSE and AS and A2 level studying Irish from 2008 to 2017.

4.3.vi Gael-Linn has called for the learning of an additional language at KS4 to be mandatory since emphasis on STEM subjects has undermined language teaching and acquisition.

4.3.vii Greater provision and services should be made for students to use Irish outside school, and additional financial aid should be available for children to attend Gaeltacht courses.

4.3.viii Modernised teaching resources are needed at KS3 and 4 and at AS and A2 levels. A comprehensive GCSE textbook for Irish is required to accompany the Irish language course specification recently introduced by CCEA.

5.0 Teaching of Irish at the University of Ulster. In spite of the full time undergraduate course in Irish being in high demand, the University has ended this course.

## 6.0 Article 9 The Courts

6.1.i As noted earlier, the 1737 Administration of Justice (Language)(Ireland) Act remains in force. In response to first draft proposals for an Irish language strategy, which included a proposal to repeal of the 1737 act, Alliance Party's David Ford, then Minister for Justice commits to examine, 'the financial and operational implications of changes to the 1737 Act'.<sup>24</sup> However, by September 2014, in response to revised strategic proposals, Ford

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<sup>24</sup> 1737 Administration of Justice (Language)(Ireland) Act. As POBAL has previously reported, this Act prohibits the use of any language other than English in the courts of Northern Ireland. In effect, since

stated, 'At no stage have I given any commitment to repealing the Act.' Referring to a costing exercise carried out by his officials, he contended, 'I have decided that the financial impact would be prohibitive, particularly in the current difficult financial climate, and especially where demand would be insufficient to justify this expense.' He continued, 'The proposal to repeal this legislation could potentially see demands for the use of other languages in any court documents or proceedings as a matter of choice. This could give rise to adverse implications which would not be in the interests of justice.'<sup>25</sup>

**POBAL contends that in addition to indicating negative reception of the strategy for Irish, Minister Ford's refusal to repeal the 1737 Act represents an ongoing unjustifiable restriction on the use of the Irish language in public life. As the Assembly is now suspended, we respectfully suggest the COMEX raise this matter with the UK government in the strongest possible terms.**

6.2.i Translation of legislative texts: only a handful of texts have been translated. Previously, some texts were available on the Department of Culture, Arts and Leisure (DCAL) website ([www.dcalni.gov.uk](http://www.dcalni.gov.uk)). However in 2016, a DUP Minister was given the portfolio for the newly amalgamated Department for Communities ([www.communities-ni.gov.uk/](http://www.communities-ni.gov.uk/)) which replaced DCAL. The Irish language legal texts are not carried on the new website. (The trilingual English, Irish and Ulster Scots departmental name has also been removed and replaced with English only). The existence of legal texts in Irish is not published. Their location is not publicised. The texts are not on any other Departmental websites and no information is available to the public about them. In April 2018, an FOI request was submitted to the Information Standards section at the NI Assembly by an Irish speaker, asking where the statutory texts written in Irish could be obtained. Initially, he received a response that it would take 20 days to provide this information. On 16<sup>th</sup> May 2018, he received a further reply informing him that the time limit for any response would have to be extended by approximately 5 working days, but that if that time limit could not be met, he would be furnished with an explanation.<sup>26</sup> It appears to us that this is an indication of the lack of ready availability not only of the texts, but of information about them.

6.2.ii Furthermore, it is our contention that even were these texts available, the continuing application of the 1737 Act which prohibits use of language other than English in the courts

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interpretation is provided by users of ethnic minority languages on a regular basis, this effectively represents a restriction on the use of Irish. The continued operation of the 1737 Act has been called 'an unjustifiable restriction' on the use of Irish, likely to undermine its development by the COMEX (April 2010, pg 19, parags 117-121)

<sup>25</sup> Ford, David, Minister for Justice, in correspondence with Carál Ní Chuilín, 22<sup>nd</sup> September 2014.

<sup>26</sup> 16.5.2018, Correspondence between Information Standards at the NI Assembly and É Ó Gribín.

might render moot the usefulness of texts in Irish. However, the fact that they were made available and have now been removed suggests that at best, there is a lack of commitment to making such texts available and a lack of awareness even amongst those charged with the implementation of the ECRML of their existence.

### 6.3 Article 10 Administrative authorities

6.3.i As noted, following elections in May 2016 there were changes in ministers and to the departmental portfolios selected by each political party. In addition, under an organisational review of the Assembly, several departments were co-joined, including the former Department of Culture, Arts and Leisure which was amalgamated with two other current departments, becoming the Department for Communities. The new department has a significantly larger work load. A DUP Minister, Paul Givan was appointed to this portfolio and made a number of controversial decisions in respect of Irish before the collapse of the NI Assembly.

6.3.ii In December 2016, the Minister removed funding of £55,000 for bursaries to help disadvantaged children attend Irish language courses in the Donegal Gaeltacht, in spite of the fact that a ministerial briefing paper prepared for Mr Givan by a senior Department of Communities official and obtained by the Committee on the Administration of Justice advised that, “the advantages of running the Gaeltacht Bursary Scheme are many”. The briefing paper, dated December 13, 2016, described the disadvantages of not running the scheme as “the potential for negative media attention, and less young people and adults able to afford to attend the Gaeltacht to improve their Irish this year”.

6.3.iii It also stated that the initiative enabled the department to meet several Programme for Government (PfG) commitments including building a “creative society where people can fulfil their potential”, promoting a “shared society that respects diversity”, plus giving “children and young people the best start in life”.

6.3.iv The document also stated: “Without departmental funding the majority of the 96 students who completed the course [in 2015] would not have been able to afford to take part in the scheme. Of the 100 successful applicants this year, 73 were in receipt of social security benefits, and 23 were receiving tax credits (in work benefits).

6.4.v The briefing paper concludes, “This illustrates that without government intervention it is highly likely that at least 73 per cent of successful applicants would not have been able to



afford to pay for the course and accommodation, as their parents are solely reliant on social security benefits.”

6.4.vi Freedom of Information requests from the Committee on the Administration of Justice show that the Department failed to Equality screen the proposed cut to the Líofo budget. Amid widespread criticism from the Irish speaking community and others, the minister u-turned on his decision nearly three weeks later announcing that he had found the necessary funding to keep the scheme going.<sup>27</sup>

#### 6.5 Department for Agriculture, Environment and Rural Affairs(DAERA)

6.5.i POBAL wishes to highlight the failure of the Department of Agriculture, Environment and Rural Affairs (DAERA) to comply with its duties under the ECRML with regard to their actions taken in line with a stated ‘single language policy’.

The background to the policy is as follows:

- The Department of Agriculture and Rural Development (DARD) was replaced by DAERA after the Northern Ireland Assembly elections on 5<sup>th</sup> May 2016.
- Minister McIlveen of the DUP was publicly named the Minister of DAERA on 25<sup>th</sup> May 2016.
- A Fisheries Protection Vessel called “Banrion Uladh” so named by the previous nationalist minister was changed to the name “Queen of Ulster” by the DAERA Minister on 21<sup>st</sup> June 2016.
- Minister McIlveen was asked about the name change in an Assembly question on 5<sup>th</sup> September 2016 by MLA Catherine Seeley. The question asked the Minister to detail:

*(i) the cost of changing the name of the Fisheries Protection vessel Banrion Uladh to Queen of Ulster;*

*(ii) the rationale for the decision; and*

*(iii) any consultation that took place*

The answer given by Minister McIlveen on 27<sup>th</sup> September 2016 was:

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<sup>27</sup> Reported in The Detail NI, *Stormont file shows DUP minister was warned over Líofo cut*, by Claire Smith, 26 April 2017,

<http://www.thedetail.tv/articles/nearly-three-quarters-of-young-irish-speakers-could-not-have-afforded-gaeltacht-course-without-liofa-bursary-scheme-minister-told>



'The change of lettering was carried out at a scheduled annual maintenance event involving repairs, repainting and antifouling.

DAERA is a new Department with a fresh identity and logo and adopts a single language policy, there have consequently been some necessary adaptations to assets transferring to the new Department.

The name of the patrol vessel was a matter for the former DARD Minister Michelle Gildernew and was not an issue for consultation.'

6.5.ii POBAL wrote to DAERA on 30<sup>th</sup> September 2016 under Freedom of Information legislation seeking all documentation relating to the creation of the single language policy.<sup>28</sup> DAERA did not disclose any information relying on section 35 (1) (a) of the Freedom of Information Act which relates to, *inter alia*, the formulation of government policy. In their response dated 2<sup>nd</sup> March 2017 DAERA stated that,

At this time the Department is establishing a single language policy. This will be published on the Department's website once it is finished.

6.5.iii POBAL pursued the FOI matter with the Information Commissioner's Office as DAERA failed to reply to our request for an internal review of the decision since we were concerned that the single language policy that Ms McIlveen's Department appears to have adopted may be in breach of ECRML duties. The ICO instructed the DAERA to make the information available to us. This is significant in that it creates a precedent whereby the citing of policy formulation can no longer be deemed sufficient reason to withhold information in which there is a substantive public interest. In response we were informed that Department officials sent a submission and related annexes on a DAERA language policy to the Private Office on 18 November 2016, with the purpose of bringing to the attention of the then Minister Michelle McIlveen (MLA) the issue of a DAERA language Policy. This is after the decision had been made and after the Minister's statement in which she stated that the renaming of the vessel was in line with a 'single language policy'.

6.5.iv It appears that there was no ministerial decision in respect of this submission and related annexes from officials prior to the dissolution of the Assembly and the NI Executive in January 2017. The Department remains without a Language policy, single or otherwise. Although it appears that following our FOI correspondence, officials advised the Minister that

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<sup>28</sup> The Committee for the Administration of Justice also entered into similar correspondence with the DAERA. Their experience and responses from the DAERA reflect entirely those of POBAL.





she must take into account the ECRML in formulating policy, the proposals for the policy are minimalistic.

6.5.v POBAL is concerned about this matter since the reference to 'single language policy' reflects the finding of the COMEX in 2014 that the NI Tourist Board, at the behest of the then Minister for Trade and Investment, Arlene Foster (now leader of the DUP and formerly First Minister prior to suspension of the Assembly) acted in apparent contravention of the ECRML in refusing funding for bilingual signage, citing 'a single language policy'.

**We respectfully suggest that the COMEX may wish to consider making a statement regarding incompatibility with the ECRML of single language policies in the majority language.**

## 7.0 Local Councils

7.1.i In April 2015, the Review of Public Administration was implemented and the number of local Councils in Northern Ireland was reduced from 26 to 11. A number of Councils (Newry, Mourne and Down; Fermanagh and Omagh; Mid Ulster; Belfast) have now adopted Irish language policies. These have often provoked bitter rows and negative reporting. This raises a legitimate concern that even in the new Councils, Irish Language policies continue to be perceived as 'difficult'. In turn this may lead to reluctance to engage pro-actively in the fulfilment of the ECRML.

7.1.ii Irish speakers in local areas have expressed concern that in Council areas where policies were long-established and relatively forward-thinking, the drafting of 'new' policies as opposed to the adoption of policies based on hard-fought principles have led to ground being lost.

7.1.iii The incorrect emphasis on 'Good Relations' as an overriding consideration in determining provision for the Irish language which POBAL has reported on previously continues to place obstacles to Irish language provision. Examples of this are common, as in October 2015, during a bitter debate in Mid Ulster Council. Rather than adopt the Council's draft Irish Language Policy following considerable public consultation, unionist councillors proposed it be sent to the Council's Good Relations Team for evaluation. The news media report that a Sinn Féin Councillor refers to this action as treating the need to have 'due

regard' to Good Relations as, 'a blocker's charter'.<sup>29</sup> The ironic characterisation of the controversy in the press report as 'slightly predictable' indicates the normalisation of negativity towards provision for Irish speakers within some political circles.

7.1.iv In February 2016, unionists called for an Irish language audit within Newry, Mourne and Down Council to be halted on the grounds that asking workers if they spoke Irish or wished to learn the language, 'discriminated against protestants'.<sup>30</sup>

7.1.v The issue of street signage and place name signage remains difficult in some Council areas. The difficulty in use of Irish language traditional placenames has been documented by POBAL in all our previous reports to the COMEX. It is POBAL's view that the 1995 Local Government Order (Miscellaneous Provisions)(NI) is inadequate to facilitate the use of traditional place names in Irish, the use of bilingual or Irish language street signage or the naming in Irish of new estates or streets. It should be replaced with more appropriate legislation, either as part of a comprehensive Irish language Act as promised by the UK government in 2006 in the St Andrews' Agreement or as separate legislation.

7.1.vi In 2014, a resident of Ballymurphy Drive in West Belfast took a Judicial Review against a decision of Belfast City Council to deem failure to respond to a survey on bilingual signage as 'negative' replies. The JR was lost and resulted in what appears to POBAL to be a problematic judgement.<sup>31</sup> Whilst leave to appeal the judgement was lodged, it was withdrawn following negotiation with Belfast City Council regarding a further street survey. In January 2016, a motion calling on the Council to exercise discretion and approve the request for signage was defeated.

7.1.vii On 18<sup>th</sup> February 2016, residents in Ballymurphy Drive erected an unofficial street sign in Irish. It appears to POBAL that little progress has been made in this matter since the 1980s when residents wishing to have Irish language signage in their streets were forced to take action themselves without official recognition or approval. POBAL regrets that the

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<sup>29</sup> Mid Ulster Mail, "'Slightly Predictable' debate rages over Mid Ulster Council's Irish Language Policy', 9<sup>th</sup> October 2015, <http://www.midulstermail.co.uk/news/mid-ulster-news/slightly-predictable-debate-rages-on-over-mid-ulster-council-s-irish-language-policy-1-7002703>, downloaded 16.3.2016

<sup>30</sup> The Newsletter, 'Halt Council Irish Language Audit in Newry, Mourne and Down', 11<sup>th</sup> February 2016, <http://www.newsletter.co.uk/news/halt-council-irish-language-audit-in-newry-mourne-and-down-1-7210534>, downloaded 16.3.2016

<sup>31</sup> Neutral Citation No. [2014] NIQB 129, High Court of Justice NI, Ref: HOR9455, Eileen Reid v Belfast City Council, 4<sup>th</sup> December 2014, [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/\[2014\]%20NIQB%20129/j\\_j\\_HOR9455Final.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/[2014]%20NIQB%20129/j_j_HOR9455Final.htm), downloaded 16.3.2016

judgement in this case has not been subject to appeal and that this issue in the Belfast area as in other parts of the north has not been resolved.

7.1.viii In Mid Ulster on 14<sup>th</sup> September 2017, unionist councillors opposed the first applications for dual language signage, and in spite of the policy being passed by a majority, the issue remains a source of tension.

7.1.ix In 2018, Antrim and Newtownabbey Council refused to discuss a written request from residents for bilingual signage in their area and agreed that only English language signage should be erected. Whilst Councils are allowed discretion in this matter under current legislation, we contend that this represents a 'single language policy' in respect of street signage and we should be interested to hear the COMEX opinion on this issue.

7.1.x POBAL and others have successfully used the standards of the ECRML to challenge detrimental decisions on signage and street naming policies as in the case of Mid and East Antrim, where a proposed policy was withdrawn. However, it is our contention that in many cases there is considerable delay and frustration in obtaining place name signage, street name signage and in the use of Irish in naming new housing estates.

7.1.xi Irish speakers wishing to use the Irish language form of their address have also encountered difficulties with Royal Mail and other delivery companies. Whilst Royal Mail does make some attempts to accommodate use of Irish language addresses, it will only do so where a local Council has officially adopted the Irish language version. As noted above, the adoption of Irish language street names by local Councils is often plagued with difficulties for Irish speakers. In addition, Royal Mail has acknowledged that they do not have enough Irish speakers employed in their central sorting office to deal effectively with correspondence addressed in Irish. This creates difficulties for Irish speakers and Irish language groups when they move or otherwise change address details, since it can take many months to resolve ongoing issues relating to use of Irish language versions of addresses. It appears to us that given the length of time which has passed since the ratification of the ECRML, Royal Mail should have carried out Irish language skills audits internally and taken steps to employ adequate numbers of staff with these skills to resolve ongoing practical problems.

7.1.xii Use of personal and place names remains a problem. In particular, we wish to highlight the ongoing failure of UK-wide Crown bodies to improve their ability to use the diacritic mark, the síneadh fada, used commonly on Irish language personal names, surnames, companies and organisation titles, addresses and place names.



7.1.xiii In NI, in spite of repeated contact, the Electoral Office appears unable to issue polling cards or correspondence correctly addressed in Irish. The inclusion of the diacritic mark often results in substitution of meaningless symbols into names and addresses. This can result in correspondence, polling cards and other documentation necessary in order to vote being lost.

7.1.ix Particular difficulties have occurred in respect of Companies House / Companies Register. Whilst measures are now in place to accept the use of the diacritic mark in the names of Limited Companies,<sup>[1]</sup> Companies House still require applicants to submit information only in English, and have returned both online and hard copies of forms because of the use of Irish on them.

## 8.0 Good Relations

8.1.i POBAL and CAJ have previously drawn the attention of the COMEX to the misinterpretation by administrative authorities and others of the Good Relations duty and its detrimental impact on provision for the Irish language community (see also 7.1.iii). The statements of COMEX and the Advisory Committee on the Framework Convention for the Protection of National Minorities have been invaluable in addressing this issue. In particular, we note that in 2018, the CoE (European Commission against Racism and Intolerance) re issued its General Recommendation II in the light of COMEX (and FCNM) reservations about the risks of misinterpretation and ECRI accordingly defined good relations in its final recommendation, as follows,

21. Promoting diversity means supporting a valuing of diversity and its added value in society and organisations. It includes making reasonable adjustments to take account of the practical implications of diversity. Promoting good relations between different groups in society entails fostering mutual respect, understanding and integration while continuing to combat discrimination and intolerance.<sup>32</sup>

## 9.0 Article 11 The Media

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<sup>[1]</sup> Changes were made to Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 on 31<sup>st</sup> January 2015 following threat of legal proceedings

<sup>32</sup> CRI(2018)06, ECRI General Policy Recommendation 2, ADOPTED ON 7 DECEMBER 2017



9.1.i POBAL believes that the commitment of the UK government to make adequate provision for a range of media through the medium of Irish is not being met. We are not aware of any attempts by the UK government to address the anomalous position of Irish language broadcasting in comparison with broadcasting in Welsh in Wales and in Gaelic in Scotland in terms either of funding, programming or the legislative protections available to Welsh and Gaelic broadcasting in the 2005 UK Communications Act or the 2015 BBC Royal Charter, neither of which makes reference to the Irish language, but which do make provision for protections for Welsh and Gaelic.

9.1.ii POBAL believes that the UK Communications Act and the BBC Royal Charter must be amended to include significant and meaningful commitments to Irish language broadcasting. Furthermore, we believe that an Irish language Act should also contain provision in respect of the media, as set out in POBAL's document, *The Irish Language Act Issue II*.

9.1.iii The BBC broadcasts around 5 hours of radio programmes in Irish per week and broadcasts occasional Irish language television programmes. There is no news service through Irish and any programming in Irish tends to be broadcast at irregular intervals, mitigating against a regular audience.

9.1.iv Irish speakers repeatedly complain of the failure of some television and radio presenters to pronounce Irish language names correctly. In addition, there is repeated misuse or no use of the diacritic mark in Irish where the names of interviewees, organisations etc are carried in written form under their image.

9.1.v No commercial radio stations broadcast any Irish language programmes. As part of their licensing conditions for commercial radio stations based in the Northern Ireland Region, the UK Government should require that commercial radio companies broadcast Irish language content on a regular basis.

9.1.vi The community radio station, Raidió Fáilte broadcasts a full Irish language service 24 hours every day but its transmission power is restricted, by the UK Broadcast Authority Ofcom, to a level which gives a broadcast area of approximately 5 km radius in the Belfast area. According to Ofcom figures Raidió Fáilte serves a population of some 225,000 adults in the Belfast area. Some areas within the Belfast area cannot receive the Raidió Fáilte signal. Ofcom figures suggest that 8,000 adults in the area do not receive the Raidió Fáilte signal. Areas outside of the greater Belfast area do not receive the Raidió Fáilte signal at all.

9.1.vii Raidió Fáilte will be moving to a new site in the near future and its aerial is to be moved to a higher elevation. Ofcom figures suggest that the station will be able to serve



262,000 adults in the Belfast area from the new site but that 6,000 adults in the area will still not be able to receive the Raidió Fáilte service. Overall it estimates that there will be an increase of 18% in the size of the population who will be able to receive the Raidió Fáilte signal. The move to a new site will not improve the situation for areas outside of the greater Belfast area which will continue to be unable to receive the Raidió Fáilte signal. The 5km restriction on broadcasting is an Ofcom rule and is not a requirement by legislation.

Sections (4) & (5) of Annex 8 of the Broadcasting Act 1990 (Amended), refer to this matter, and are set out below.

(4) Subject to subsection (5), OFCOM may, if they think fit, authorise the holder of a community radio licence, by means of a variation of his licence to that effect, to provide the licensed service for any additional area or locality adjoining the area or locality in which that service has previously been licensed to be provided.

(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them –

a. that to do so would not result in a significant increase of the area or locality in which the service in question is licensed to be provided; or

b. that the increase that would result is justifiable in the exceptional circumstances of the case.

9.1.viii POBAL have been informed that Ofcom have already lifted the restriction in some cases, allowing a number of community radio stations in Scotland, which serve a dispersed population, to broadcast over a wider area. These stations include: The Superstation (Orkney); Speysound (the Badenoch and Strathspey area); and Mearns FM (Stonehaven and the Mearns). Raidió Fáilte informs us that while there is some commitment from Ofcom to look at ways of extending the broadcast area of Raidió Fáilte by possibly extending the coverage from its aerial it is still the case that OFCOM state that it will only do this if it appears to them that this would not result in a significant increase of the area or locality in which the service in question is licensed to be provided, and that the circumstances are 'exceptional'. This is a matter of concern since this stipulation has been used in the past by Ofcom as an argument against extending the coverage area of Raidió Fáilte.

9.1.ix While developments with regards the possibility of Raidió Fáilte going onto a digital platform, either the NI multiplex operated by RTÉ and TG4 or the Local DAB Multiplex, which carries the BBC and other stations, there is still uncertainty about this approach particularly



considering the cost implications which could be prescriptive. The possibility of a small DAB platform being made available at an accessible cost could enable Raidió Fáilte to be heard more widely outside of the Belfast area, thus helping fulfil the UK commitments under the ECRML but only if restrictions are not placed on the area of coverage, as at present.

**POBAL should like to propose that the COMEX reiterate its finding in 2014 that the broadcast area of Raidió Fáilte be extended.**

9.1.x TG4 - and other Irish language programming from ROI - is subject to geoblocking because if you wish to watch TG4 programmes online, they can be geoblocked as the servers for the main ISPs are located in Great Britain. It appears there is a hard digital border both between NI and the Republic of Ireland and between Ireland and Great Britain. POBAL has previously argued that commitments made and paid for by the Irish government should not be cited as proof of compliance by the UK with its obligations under the ECRML. The actual situation in respect of reception of TG4 services in the North supports our view in very practical terms.

9.1.xi The Irish Language Broadcast Fund (ILBF) is successful and high achieving but has never been established on a permanent footing. As we have reported in previous monitoring rounds, in the past (2007) the Fund has been subject to ministerial decisions which we believe to have been motivated by sectarian and party political interests. There is no additional provision for Irish Language audio visual material other than the Irish Language Broadcast Fund.

9.1.xii In this financial year and for 2019-20, S4C in Wales will receive approximately £81.3m, of which around £6.8m comes from the UK Government and £74.5m from the licence fee. Funding for the ILBF in comparison now stands at £3m a year, the same level it stood at in 2005 when it was established. Demand is growing in the meantime and its target of 75 hours per year on TV is extremely difficult to realise given current levels of funding and the fact that funding is on a three-year basis with renewal not guaranteed.

9.1.xiii Earlier in 2018 a review was carried out in Wales on the future direction and funding of Welsh Language broadcasting. A similar review should be carried out in the North to scope the possible future directions for Irish language broadcasting in NI.

**POBAL respectfully suggests that the COMEX urge the UK government to ensure that there is a substantial increase in funding for the ILBF and that this is a permanent commitment to enable forward planning.**

9.1.xiv The COMEX have previously commented on the lack of an Irish language newspaper, a commitment ratified by the UK government. There is no Irish language newspaper, apart from a supplement in the Irish Independent every Wednesday, Seachtain. It does not receive any support from the UK government either directly in the form of grant aid or indirectly in the form of public advertising.

9.1.xv Foras na Gaeilge funds [tuairisc.ie](http://tuairisc.ie), an Irish language news site based in Galway. It also funds [nos.ie](http://nos.ie), an Irish language lifestyle website, whose editor is based in Dublin.

9.1.xvi The Irish Language Broadcast Fund supports [meoneile.ie](http://meoneile.ie), an online platform based in Belfast

9.1.xvii The failure to implement ECRML provisions regarding a newspaper arises from the decision of Foras na Gaeilge the cross-border funder of Irish language projects, to withdraw funding from the newspaper Lá Nua. Lá Nua, (and in previous incarnations Lá) was established in the 1980s and based in Belfast and published here. It was distributed throughout Ireland. It survived on a 'shoestring' budget with minimal financial support and through voluntary effort.

9.1.xviii While official support for Lá increased modestly as a result of the Good Friday Agreement (GFA) and the ECRML, its progress was largely due to its own initiative, raising money itself from shareholders and becoming a daily newspaper in 2003 until 2008.

9.1.xix Because of increasing financial difficulty due to lack of support from funders, Lá proposed to take publishing online in February 2008. Its funder, Foras na Gaeilge, insisted on it being printed. It was forced to close in December 2008.

9.1.xx Public advertising could have played a role in supporting the ongoing survival of Lá but because the DUP controlled the Department of Finance and Personnel during Lá's time, it was excluded. It would have saved the NI Executive considerable expenditure if it had included Lá as some bilingual advertising was being bought in English language newspapers at significantly higher rates than would have been on offer in the Irish language publication.

## 10. Article 12 Cultural facilities

10.1.i As noted, there is no additional provision for Irish Language audio visual material other than the Irish Language Broadcast Fund.



10.1.ii The economic difficulties of recent years have impacted heavily upon Library services, with a reduction in new materials, activities and opening hours. Since Irish language materials are more scarce within the existing library stock this affects Irish speakers more. In addition, because in previous years the amount of Irish language materials were more limited, particularly for some age groups, the inability to buy in new stock also impacts disproportionately on Irish speakers.

10.1.iii Funding for the Irish language arts is mainly distributed through the Arts Council NI. The Arts Council's budget has been repeatedly cut which has impacted on arts organisations across the board. However, Irish language organisations and Irish language arts represents a mere fraction of a percentage of Arts Council funding. Therefore when cuts are made, these organisations suffer disproportionately.

10.1.iv POBAL has previously reported on the establishment by Sinn Féin of a funding trust 'Ciste Infheistíochta na Gaeilge / 'The Irish Language Investment Fund') with funds negotiated from the UK government during the crisis relating to devolution of policing powers in 2010. This Trust has continued to fund a number of capital build projects throughout the North. It does not, however, provide funds for staff or programming for such new-build projects and there is no indication of where such funding will come from.

## 11. Article 13 Socio-Economic Life

11.1.i The UK government has ratified only the 'do something else' clause of the ECRML in respect of socio-economic activities which makes it difficult to assess progress.

11.1.ii In 2017, the draft Programme for Government (not adopted since the Assembly was suspended before consultation was complete) contained two proposals in respect of Irish, one for the development of An Cheathrú Ghaeltachta ('The Irish language Quarter') and another for Acadamh na Gaeilge ('The Irish Language Academy') both located in West Belfast. Whilst we welcome recognition of these projects, it appears to us that a great deal more should be undertaken by the UK government to fulfil its commitments under the ECRML.

## 9.0 Conclusions

It is POBAL's contention that the application of the ECRML in respect of Irish in Northern Ireland has been dysfunctional. In the eleven years since the re-establishment of the devolved institutions, following a commitment to introduce Irish language legislation, the treatment of Irish has been further sectarianised. This situation has been a clear contributory



factor in the collapse of the political institutions. Bitter and protracted political talks, with the Irish language act at their heart have signally failed to resolve the discriminatory treatment of Irish here in comparison with the treatment of Welsh in Wales and Gaelic in Scotland. In fact, draft proposals between the two main political parties would, we contend perpetuate the politicisation of the Irish language.

We respectfully encourage the COMEX to urge the UK government to enact a rights-based Irish language Act, grounded in POBAL proposals, *The Irish Language Act Issue II*, agreed with the Irish speaking community after prolonged community consultation. These proposals were prepared with the generous advice of internationally renowned experts in language and law, including Professor Robert Dunbar, University of Edinburgh; Professor Colin Williams, University of Cambridge; Professor Wilson McLeod, University of Edinburgh and Professor Fernand de Varennes, University of Monckton, Ca. The proposals have also been overwhelmingly endorsed during three government-led public consultations in 2006, 2007 and 2014.