

IDENTITY AND LANGUAGE (NORTHERN IRELAND) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Identity and Language (Northern Ireland) Bill [HL] as brought from the House of Lords on 13 July 2022 (Bill 142).

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and to help inform debate on it and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill will deliver on the legislative commitments on identity and language set out in New Decade, New Approach (NDNA), the document was the basis on which the five main parties in Northern Ireland agreed to form an Executive in January 2020.
- 2 In line with NDNA, the Bill provides for a balanced package of identity and language measures that were carefully negotiated by the parties. It will:
 - Require specified public authorities to have due regard to certain principles (referred to in the Bill as the “national and cultural identity principles”) when carrying out functions relating to Northern Ireland defined in the context of the characteristics of religious belief, political opinion and racial group;
 - Create an Office of Identity and Cultural Expression which will, amongst other things, promote awareness of the national and cultural identity principles and monitor and encourage compliance by public authorities with the duty to have due regard to them;
 - Provide for the official recognition of the status of the Irish language in Northern Ireland;
 - Make provision for the appointment of an Irish Language Commissioner;
 - Make provision for the appointment of a Commissioner for the Ulster Scots and the Ulster British Tradition;
 - Require the Northern Ireland Department of Education to encourage and facilitate the use and understanding of Ulster Scots in the education system;
 - Repeal the Administration of Justice (Language) Act (Ireland) 1737 (which requires all Court proceedings to be in English);
 - Confer powers on the Secretary of State to exercise, or direct the exercise of, the powers conferred on NI Ministers or departments and the three newly created authorities in the Bill; and
 - Make provision for the establishment of the Castlereagh Foundation, either by the Office of Identity and Cultural Expression or the Secretary of State.

Policy background

- 3 The Northern Ireland Executive was restored on 12 January 2020 after a period of three years without NI Ministers and during which the Assembly did not sit.
- 4 Political talks took place in 2017, 2018 and 2019 with the aim of restoring the Northern Ireland Executive. The talks involved the Northern Ireland parties and the UK and Irish governments in accordance with the three stranded approach set out in the Belfast (Good Friday) Agreement.

- 5 Political talks concluded in January 2020 with the publication of the NDNA by the UK and Irish governments on 9 January. On that basis, NI Ministers were appointed and the Executive was restored.
- 6 The Bill aims to make provision for a balanced package of language and identity measures that were committed to as part of NDNA. These aspects of the Bill are within the devolved competence of the Northern Ireland Assembly and reflect the package set out in NDNA, which was the subject of talks between the Northern Ireland parties and formed part of the basis on which the Executive was restored in 2020.
- 7 The Bill makes provision for public authorities in Northern Ireland to have due regard to the national and cultural identity principles defined in the context of a person's religious belief, political opinion or racial group. These principles, as defined in the legislation, assert that everybody in Northern Ireland is free to choose, affirm, maintain and develop their national and cultural identity, and express and celebrate that identity in a manner that takes account of the sensitivities of those with different national and cultural identities and respects the rule of law. The principles place a duty on public authorities to encourage and promote reconciliation, tolerance and meaningful dialogue between those with different national and cultural identities with a view to promoting parity of esteem, mutual respect and understanding, and cooperation.
- 8 The Bill establishes a body corporate to be known as the Office of Identity and Cultural Expression. The principal aims of the Office will be: to promote cultural pluralism and respect for diversity in Northern Ireland; to promote social cohesion and reconciliation between those of different national and cultural identities; to increase the capacity and resilience of people in Northern Ireland to address issues related to differences in national and cultural identity; and to support and promote the celebration of the cultural and linguistic heritage of all people living in Northern Ireland.
- 9 The Bill gives official recognition of the status of the Irish language in Northern Ireland. It does so by providing for the appointment of an Irish Language Commissioner; the development of standards of best practice relating to the use of the Irish language by public authorities; and a requirement on public authorities to have due regard for such standards.
- 10 The Irish Language Commissioner provided for in the Bill will be appointed to protect and enhance the development of the use of the Irish language by public authorities, including by providing advice and guidance, and introducing, supporting and monitoring the use of best practice language standards. The Commissioner will be appointed by the First Minister and deputy First Minister as a key element of providing, under statute, official recognition of the status of the Irish language in Northern Ireland. The main function of the Commissioner will be to protect and enhance the development of the Irish language.
- 11 The Bill will also provide for the appointment of a Commissioner for the Ulster Scots and the Ulster British Tradition. The Commissioner will be appointed by the First Minister and deputy First Minister to enhance and develop the language, arts and literature associated with

the Ulster Scots and the Ulster British Tradition in Northern Ireland (“the relevant language, arts and literature”). The Commissioner’s remit will include the areas of education, research, media, cultural activities and facilities and tourism initiatives.

- 12 Since the Bill’s initial drafting, the Government recognised the Ulster Scots as a national minority under the Framework Convention for the Protection of National Minorities. The Bill was amended to reflect the distinction between the Ulster Scots as a recognised National Minority and the Ulster British Tradition in the title and functions of the relevant Commissioner. The references made in the Bill to Ulster Scots alone are in strictly linguistic terms, and as such remain unchanged as this provision is not intended to refer to the broader national minority.
- 13 The functions of the Commissioner will be to promote awareness of Ulster Scots services provided by public authorities and provide or publish such advice, support and guidance as the Commissioner considers appropriate to public authorities in relation to developing and encouraging the relevant language, arts and literature. It will promote the visibility of relevant services which are provided by public authorities in Northern Ireland. It will provide advice and guidance to public authorities, including where relevant on the effect and implementation of commitments under the European Charter for Regional and Minority Languages, the European Framework Convention for the Protection of National Minorities, and the United Nations Convention on the Rights of the Child on the relevant language, arts and literature, and investigate complaints where a public authority fails to have due regard to guidance published by the Commissioner in respect of facilitating the use of Ulster Scots in the provision of services to the public.
- 14 The Bill includes a duty on the Northern Ireland Department of Education to encourage and facilitate the use and understanding of Ulster Scots in the education system.
- 15 The Bill includes exceptional powers should the Secretary of State for Northern Ireland deem it necessary to intervene. The legislation gives the Secretary of State the ability to do anything that a Northern Ireland Minister or Northern Ireland department could do in exercise of an identity or language function. The Secretary of State, should they deem it necessary, could intervene, for example, to appoint either of the Commissioners or the Director and members of the Office of Identity and Cultural Expression, approve best practice standards and direct Northern Ireland Ministers and departments to support appointees and institutions to function effectively, should the First and deputy First Minister be unlikely to complete an appointment process.
- 16 The Bill was amended in the House of Lords to make provision for the establishment of the Castlereagh Foundation. To provide funding to establish the Castlereagh Foundation was a UK Government commitment in NDNA that formed part of the package of measures on matters of identity and language that were a matter of negotiation between the Northern Ireland parties in the talks process leading up to January 2020. The Bill accordingly gives the Office of Identity and Culture Expression and the Secretary of State the power to establish a body corporate or other organisation by that name, or provide grants for the establishment of

such a body. The Castlereagh Foundation must fund and support academic research into identity, including national and cultural identity and shifting patterns of identity, in Northern Ireland.

Legal background

- 17 Part 1 of the Bill will amend the Northern Ireland Act 1998 by inserting new Parts 7A, 7B and 7C and Schedules 9A, 9B and 9C to make provision in respect of the three new authorities and the duties conferred on public authorities. It will repeal the Administration of Justice Act (Ireland) 1737 so as to remove the prohibition on languages other than English being used in Court proceedings in Northern Ireland. It will also amend the Education (Northern Ireland) Order 1998 to insert a legal duty on the Northern Ireland Department of Education to encourage and facilitate the use and understanding of Ulster Scots in the education system.
- 18 Part 2 of the Bill confers concurrent powers and powers of direction on the Secretary of State. The Secretary of State will be able to exercise the functions of NI Ministers or departments, or direct the exercise of functions by NI Ministers or departments or the three authorities created. Consistent with these provisions, Part 2 of the Bill also confers on the Secretary of State the power to establish a body corporate or other organisation to be known as the Castlereagh Foundation, or to provide grants for this purpose to another person.

Territorial extent and application

- 19 Clause 11 sets out the territorial extent of the Bill.
- 20 Parts 1 and 3 of the Bill deal with transferred matters and therefore engage the legislative consent process in line with the convention that Westminster will not normally legislate with regard to matters within the legislative competence of the Northern Ireland Assembly without the consent of that Assembly.
- 21 See the table in Annex A of this document for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: National and Cultural Identity

22. Clause 1 inserts a new Part 7A (sections 78F to 78I) and Schedule 9A in the Northern Ireland Act 1998
23. Section 78F makes provision for “national and cultural identity principles” and requires specified public authorities (see below) to have due regard to them when exercising their functions, with reference to a person’s religious belief, political opinion or racial group.
24. A “public authority” is defined by reference to Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 although the new Office of Identity and Cultural Expression itself (which is added to Schedule 3 by clause 8) is not included in that definition.
25. The First Minister and deputy First Minister may by regulations (subject to the draft affirmative procedure in the Northern Ireland Assembly) add public authorities to, or remove public authorities from, that definition. They may also do this for a particular purpose or in relation to a particular function. For example, if a public authority was to be required to have regard to the national and cultural identity principles only in respect of certain functions, then provision for this can be made. The power to add authorities only applies to public authorities within the devolved competence of the Northern Ireland Assembly and is not applicable to institutions in reserved or excepted areas.
26. Section 78G establishes a new Office of Identity and Cultural Expression (“the Office”) and section 78H sets out the aims of the Office and confers functions on it. In particular, the Office will be required to promote awareness of the national and cultural identity principles and monitor and encourage compliance with them. It will, for example, be able to publish guidance on best practice for complying with the new duty and commission research into matters relating to national and cultural identity in Northern Ireland, including at the request of either of the new Commissioners that will be established by the Bill. The First Minister and deputy First Minister will be able to direct the Office in relation to the Commissioner’s functions.
27. New Section 78I, as amended in the Lords, makes provision for further functions of the Office of Identity and Cultural Expression to establish the Castlereagh Foundation. The Office may establish a body corporate or other organisation to be known as the Castlereagh Foundation, or provide grants for the establishment of such a body or organisation by another person. This body will be financially and operationally independent of the Office once established.
28. The principal objective of the Castlereagh Foundation will be the funding and support of academic research into identity, including national and cultural identity and shifting patterns

of identity in Northern Ireland. This provision reflects the relevant NDNA commitments. Consistent with the powers provided to the Secretary of State in the Bill, Clause 7 also makes provisions for the Secretary of State to establish the Castlereagh Foundation as set out in paragraph 58 below.

29. Schedule 9A makes provision in respect of the Office itself. It deals with matters such as membership (the Office is a body corporate), appointment of its Director by the First Minister and deputy First Minister, appointment of its staff and how it is to be funded.

Clause 2: Irish language

30. Clause 2 inserts a new Part 7B (sections 78J to 78Q) and Schedule 9B in the Northern Ireland Act 1998 to make provision for the Irish language, including the creation of an Irish language Commissioner and the official recognition of the status of the Irish language in Northern Ireland (see section 78I).
31. Section 78J establishes an Irish Language Commissioner. The Commissioner will be appointed by the First Minister and deputy first Minister and further provision in respect of their appointment is made in Schedule 9B.
32. Section 78L provides for the principal aim and functions of the Irish Language Commissioner. The principal aim of the Commissioner will be to enhance and protect the use of the Irish language by public authorities when they are providing services to the public in Northern Ireland.
33. The Commissioner will be required to publish best practice standards on the use of the Irish language in the provision of services, and public authorities will be required to have due regard to those best practice standards (see section 78O). The First Minister and deputy First Minister will be able to direct the Commissioner in relation to the Commissioner's functions. For example, the First Minister and deputy First Minister may want to require the Commissioner to consider developing a particular category of best practice standards.
34. Sections 78M and 78N make provision for best practice standards. These are written standards about the use of the Irish language by public authorities as mentioned above. They must be prepared by the Commissioner and then submitted to the First Minister and deputy First Minister for their approval. Once approved, they must be published. Different standards may be published in respect of different public authorities and when preparing them the Commissioner must have due regard to any guidance given by the First Minister and deputy First Minister, and consult such public authorities or other persons as the Commissioner considers appropriate.

35. Under Section 78N, the Commissioner must review any standards every five years from when they were published. They may be revised or withdrawn following such a review, or otherwise if the Commissioner considers it necessary or desirable to do so (this may be, for example, because they have been found to be unlawful in some respects).
36. Section 78O requires public authorities to have due regard to the published best practice standards in providing services to the public in Northern Ireland. They must also prepare and publish a plan, setting out how they propose to comply with that duty and consult the Irish Language Commissioner about it. If the best practice standards that apply to an authority are revised, it must revise and re-publish its plan.
37. Section 78P makes provision for a complaints procedure. The Commissioner must investigate a complaint if they receive one from a person claiming to have been directly affected by the act or omission giving rise to the complaint, the complaint is made within three months of when the complainant became aware of it, and the public authority concerned is aware of it and has been given a reasonable opportunity to consider it and respond. If the Commissioner decides not to investigate a complaint, which meets those criteria, they must provide the complainant with written reasons for why they are not doing so (see subsections (1) and (2)). The Commissioner may carry out such an investigation in private if they consider it appropriate.
38. If the Commissioner does investigate the complaint, then they must notify both the complainant and the public authority of that and give the public authority a reasonable opportunity to comment on the matters raised. The Commissioner must set out their findings in a report (subsection (3)).
39. If the Commissioner finds that a public authority did fail to comply with its obligations under 78O (*viz* to have due regard to best practice standards, prepare or revise a plan), their report may include recommendations as to how the public authority can remedy its failure and avoid future failures. The report must be laid before the Northern Ireland Assembly.
40. Section 78Q, defines “public authority” for the purposes of Part 7B. It is defined as an authority listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 but excludes the three new authorities themselves and the North/South Language Body.
41. As under Part 7A, the First Minister and deputy First Minister acting jointly may by regulations add or remove authorities to or from the definition of public authority (including for particular purposes or in relation to a particular function). The power to add authorities only applies to public authorities within the devolved competence of the Northern Ireland Assembly and is not applicable to institutions in the reserved or excepted area.
42. Clause 2(2) and Schedule 2 will amend the Northern Ireland Act 1998 to insert Schedule 9B “The Irish Language Commissioner”. Schedule 9B makes further provision regarding the

status and tenure of the Commissioner and other matters such as the appointment of staff, the exercise of the Commissioner's functions by staff and funding of the Commissioner by the Executive Office and keeping of its accounts. Provision is also made to enable the Executive Office to provide staff, services and facilities to the Commissioner, and for the Office of Identity and Cultural Expression to provide services for the purpose of assisting the Commissioner in the exercise of its functions.

Clause 3: The Ulster Scots and the Ulster British Tradition

- 43 Clause 3 inserts a new Part 7C (sections 78R to 78U) and Schedule 9C in the Northern Ireland Act to make provision for the creation of a Commissioner for the Ulster Scots and the Ulster British Tradition.
- 44 Section 78R provides for the Commissioner to be appointed by the First Minister and deputy First Minister acting jointly.
- 45 Section 78S sets out the principal aim of the Commissioner and the duties conferred on them. The Commissioner's principal aim is to enhance and develop the language, arts and literature associated with the Ulster Scots and the Ulster British tradition in Northern Ireland (referred to in the Bill as the "relevant language, arts and literature"). They must promote awareness of Ulster Scots services provided by public authorities and provide or publish such advice, support and guidance as the Commissioner considers appropriate to public authorities. They must also investigate complaints made under section 78T. The guidance they publish may include guidance on the effect and implementation of the three Treaties specified in subsection (3) in relation to the relevant language, arts and literature (see s. 78S(2)(b)(i)). In preparing guidance for publication, the Commissioner must consult such public authorities or other persons as they consider appropriate. The First Minister and deputy First Minister will be able to direct the Commissioner in relation to the Commissioner's functions. For example, the First Minister and deputy First Minister may want to require the Commissioner to consult public authorities in a particular way on the production of guidance.
- 46 "Ulster Scots services" are defined to mean services provided in Ulster Scots or likely to be of particular interest to those with an interest in the relevant language, arts and literature.
- 47 Section 78T makes provision for a complaints procedure. A complaint may be made by a person who claims that a public authority failed to have due regard to "published facilitation guidance". Facilitation guidance is defined as being guidance published under s. 78R(2)(b)(i) so far as it relates to developing and encouraging the use of Ulster Scots in the provision of public services.
- 48 The Commissioner must investigate a complaint if they receive one from a person claiming to have been directly affected by the failure giving rise to the complaint, the complaint is made within three months of when the complainant became aware of it, and the public authority concerned is aware of it and has been given a reasonable opportunity to consider it and respond. If the Commissioner decides not to investigate a complaint, which meets those

criteria, they must provide the complainant with written reasons for why they are not doing so (see subsections (1) and (2)). The Commissioner may carry out such an investigation in private if they consider it appropriate.

- 49 If the Commissioner finds that a public authority did fail to have due regard to published facilitation guidance, their report may include recommendations as to how the public authority might have better regard to it. They may also lay their report before the Northern Ireland Assembly.
- 50 In section 78U, “public authority” is defined as an authority listed in Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 but as in Part 7B excludes the new authorities themselves and the North/South Language Body.
- 51 As under Parts 7A and 7B, the First Minister and deputy First Minister acting jointly may by regulations add or remove authorities to or from the definition of public authority (including for particular purposes or in relation to a particular function). The power to add authorities only applies to public authorities within the devolved competence of the Northern Ireland Assembly and is not applicable to institutions in reserved or excepted areas.
- 52 Clause 3(2) and Schedule 3 will amend the Northern Ireland Act 1998 to insert Schedule 9C “The Commissioner for the Ulster Scots and Ulster British Tradition”. Schedule 9C makes further provision regarding the status and tenure of the Commissioner and other matters such as the exercise of the Commissioner’s functions by staff and funding of the Commissioner by the Executive Office and keeping of its accounts. Provision is also made to enable the Executive Office to provide staff, services and facilities to the Commissioner and for the Office of Identity and Cultural Expression to provide services for the purpose of assisting the Commissioner in the exercise of its functions.

Clause 4: Use of languages other than English in proceedings

53. Clause 4 will repeal the Administration of Justice (Language) Act (Ireland) 1737. Facilitation of languages other than English in court proceedings is a matter for the NI Courts and Tribunals Service, which in common with courts across the UK makes provision for those who cannot speak English to be provided with interpreter and translation services at their own or the Court’s cost depending on the proceedings in hand.

Clause 5: Use of Ulster Scots in Education

54. Clause 5 amends the Education (Northern Ireland) Order 1998 to place a duty on the Northern Ireland Department of Education to encourage and facilitate the use and understanding of Ulster Scots in the education system.

Clause 6: Concurrent powers and powers of direction

55. Clause 6 confers concurrent powers and powers of direction on the Secretary of State. The concurrent powers will mean that the Secretary of State may take the same actions as a Northern Ireland Minister or Northern Ireland department under Part 7A, 7B or 7C, including

any action that is ancillary to that. The Secretary of State may also direct a Northern Ireland Minister, a Northern Ireland department, the Office or either of the two Commissioners to take or not to take action that could be taken under Part 7A, 7B or 7C, including any action ancillary to that. The Secretary of State may also direct any of those authorities to take action (or not to take action) that they can otherwise take but only in the circumstances specified in subsection (3). For example, the Secretary of State could direct that the new authorities be provided with certain assistance by the Executive Office. If the Secretary of State gives a direction, they are required to lay a copy of the direction before Parliament and publish it.

Clause 7: Concurrent powers and powers of direction: supplementary provision

56. Subsections (1) and (2) make provision in respect of the Executive Committee of the Assembly. When the Secretary of State is exercising concurrent powers or powers of direction, the fact that a matter has not been referred to, or discussed and agreed by, that Committee will not be relevant to determining what Northern Ireland Ministers, departments or the three new authorities can or cannot do.
57. Subsection (4) makes provision in respect of section 44 of the Northern Ireland Act 1998. That section confers powers on the Assembly to require persons to give evidence to the Assembly in relation to devolved matters. This provision will except UK Government Ministers and civil servants from that requirement (other than civil servants who have worked in one of the new authorities – in relation to that work only) when they have taken action in connection with either the exercise of the Secretary of State’s concurrent powers or a direction given by the Secretary of State.

Clause 8: Castlereagh Foundation

58. This new clause, as amended in the Lords, makes provision for the Secretary of State to establish the Castlereagh Foundation separate to the functions conferred on the Office of Identity and Cultural Expression in Section 78I, but on the same terms as referenced at paragraph 27. This provision is made so as to ensure consistency with the Secretary of State’s powers in Clauses 7 and 8 of the Bill.

Clause 9: Consequential amendments

59. Clause 9 makes consequential amendments to section 96 of the Northern Ireland Act 1998, the Superannuation (Northern Ireland) Order 1972; the Northern Ireland Assembly Disqualification Act 1975; the Public Services Ombudsman Act (Northern Ireland) 2016 and the Freedom of Information Act 2000. These amendments are necessary to reflect the establishment of the new bodies.

Commencement

60. Section 10 provides for commencement.
61. Parts 1 and 2 (sections 1-8) come into force on such day or days as the Secretary of State may by regulations made by statutory instrument appoint.
62. Part 3 (sections 9-12) comes into force on the day of Royal Assent.

Financial implications of the Bill

63. In accordance with the commitments on identity and language contained in the New Decade, New Approach agreement and the associated draft Northern Ireland Assembly legislation, all provisions established through the Identity and Language (Northern Ireland) Bill will remain a matter for the Northern Ireland Executive and Assembly to administer, support and fund.
64. Principle 10 of the Statement of Funding Policy does not give rise to any funding responsibility for the UK Government in respect of the Identity and Language (Northern Ireland) Bill because the substance of the legislation represents a current policy decision made under the New Decade, New Approach agreement by the five Northern Ireland parties forming the Executive and the legislation is the UK Government giving effect to that policy decision.
65. The Northern Ireland Executive and Assembly will continue to have access to their Barnett-based Block Grant, to other revenue raising powers and to UK Government funding commitments set out in New Decade, New Approach.
66. It has been estimated by the Government that the running costs for the three new authorities could together amount to £9 million annually, which will include but not be limited to:
 - the production by the new authorities of the relevant standards, advice and guidance for public authorities;
 - the promotion of the National and Cultural Identity Principles and the relevant standards, advice and guidance by the new authorities;
 - the delivery of programmes and activities in accordance with the new authorities' aims and functions; and
 - the administrative costs of running and operating the new authorities.
67. Reflecting the fact that all provisions of this Bill will be for the Northern Ireland Executive and Assembly to administer, support and fund, the costs associated with the legislation will be contingent on their own business planning and approach to implementation.
68. As is usual with Lords Bills requiring Commons financial resolutions, the final provision in the Bill is a technical privilege amendment, which is intended to be removed in committee after the financial resolutions are agreed to.

Parliamentary approval for financial costs or for charges imposed

69. House of Commons Standing Order No. 49 provides that any charge on the public revenue must be authorised by resolution of the House of Commons (a "money resolution"), but this rule does not apply to payments made out of the Consolidated Fund of Northern Ireland.
70. Since the powers conferred, duties imposed and authorities established under Part 1 are concerned with transferred matters, they will be funded by the Northern Ireland Assembly and do not require a money resolution.
71. However, since Part 2 empowers the Secretary of State to do anything that a Northern Ireland Minister or Northern Ireland department could do under provision added by Part 1, there is the potential for expenditure by the Secretary of State. This might include the payment of grants to the new authorities, and other costs associated with appointments and ongoing support (see new Schedules 9A to 9C to the Northern Ireland Act 1998, to be added by Schedules 1 to 3 to the Bill). It might also include expenditure to fund the establishment of the Castlereagh Foundation. Such potential expenditure by the Secretary of State does require a money resolution.
72. The Bill does not authorise new charges on the people – broadly speaking, new taxation or other similar charges – and so does not require a ways and means resolution.

Compatibility with the European Convention on Human Rights

73. Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with Convention rights (as defined by section 1 of that Act).
74. The Secretary of State Shailesh Vara has made the following statement:

“In my view, the provisions of the Identity and Language (Northern Ireland) Bill are compatible with Convention rights.”
75. Whilst no substantive ECHR rights are engaged by this Bill, the difference in treatment between the Irish language and Ulster Scots may engage Article 14 ECHR when taken together with another substantive right in the provision of public services. However, the Northern Ireland Office is satisfied that if Article 14 is engaged, any interference will be justified in the sense that it is in pursuit of a legitimate aim and proportionate to that aim.
76. In Northern Ireland, the needs of the Irish language and Ulster Scots communities are different and are accepted to be so. Speakers of the Irish language have specific requirements and consider that its use being facilitated through public authorities in routine transactions,

where there is demand, is important in its preservation. By comparison, the Ulster Scots community considers that cultivating a wider body of language, arts and literature is important in its preservation, which constitutes a broader tradition.

77. This consideration was reflected in the position reached by the parties in the NDNA negotiations and through the three draft Bills published alongside it.

Related documents

78. The following documents are relevant to the Identity and Language (Northern Ireland) Bill and can be read at the stated locations:

- New Decade, New Approach:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf
- Office of the Legislative Counsel draft legislation:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857001/Final_Combined_Legislation_for_publication.pdf

Annex- Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion sought?
Clause 1	No	No	No	Yes	Yes
Clause 2	No	No	No	Yes	Yes
Clause 3	No	No	No	Yes	Yes
Clause 4	No	No	No	Yes	Yes
Clause 5	No	No	No	Yes	Yes
Clause 6	No	No	No	Yes	No
Clause 7	No	No	No	Yes	No
Clause 8	No	No	No	Yes	No
Clause 9	No	No	No	Yes	Yes

Subject matter and legislative competence of devolved legislatures

79. Clause 10 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. This Bill extends to Northern Ireland and forms part of the law of Northern Ireland only.
80. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. Parts 1 and 3 of the Bill relate to identity and language in Northern Ireland, which are transferred matters and as such engage the legislative consent process. Part 2 of the Bill confers powers on the Secretary of State and as such is a reserved matter within the meaning of the Northern Ireland Act 1998.
81. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

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