

**SUBMISSION TO THE UNITED NATIONS'
COMMITTEE ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS**

**Parallel Report on the Fifth Periodic Report
of the United Kingdom
under the International Covenant on
Economic, Social and Cultural Rights**



**NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION**

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Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA

Telephone: +44 (0)28 9024 3987
Textphone: +44 (0)28 9024 9066
SMS Text: +44 (0)7786 202075
Fax: +44 (0)28 9024 7844
Email: Hinformation@nihrc.org
Website: [Hwww.nihrc.org](http://www.nihrc.org)

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Introduction

1. The Northern Ireland Human Rights Commission (the Commission) is accredited with 'A' status by the International Co-ordinating Committee of National Human Rights Institutions as the NHRI for Northern Ireland. The Equality and Human Rights Commission is the 'A' status accredited NHRI for Great Britain, except in respect of matters devolved to Scotland, which has also established a Human Rights Commission. The present submission is solely on behalf of the Northern Ireland Human Rights Commission.
2. Since its creation in 1999 (by the United Kingdom Parliament, through the Northern Ireland Act 1998), the Commission has engaged extensively with United Nations and regional treaty monitoring processes, and has submitted parallel reports under all UN human rights treaties to which the United Kingdom is a party. The Commission is grateful for the opportunity to provide a parallel report to the Economic, Social and Cultural Rights Committee.
3. The Commission welcomes the engagement between the devolved administration in Northern Ireland and the central UK Government in compiling the UK's reply to the Committee's list of issues. While there are some gaps, there has been progress in ensuring that information in relation to Northern Ireland has been included. In accordance with its competencies as a NHRI, the Commission is working to contribute appropriately to the preparation of UK treaty reports in a manner consistent with the Paris Principles. The Commission also welcomes the intention of the devolved administration to engage with NGOs in Northern Ireland in respect of treaty monitoring.
4. The Belfast (Good Friday) Agreement of 1998 (the Agreement) followed multiparty negotiations during the peace process, and was endorsed by an international treaty and by referendum. Under the terms of the Agreement, powers in relation to a range of economic, social and cultural functions are devolved to the Northern Ireland Assembly and its Executive. Positions in the power-sharing Northern Ireland Executive are allocated in proportion to party strengths represented in the Assembly. While the Assembly and Executive have faced long periods of suspension since the Agreement, devolution was restored in May 2007.

A Bill of Rights for Northern Ireland

5. The development of proposals for a Bill of Rights for Northern Ireland emerges from the Agreement. The Committee's previous UK Concluding Observations stated:

The Committee strongly recommends the inclusion of effective protection for economic, social and cultural rights, consistent with the provisions of the Covenant, in any bill of rights enacted for Northern Ireland.¹

6. In accordance with its mandate set out in the Agreement and under domestic legislation,² the Commission delivered its final advice on the content of a Bill of Rights for Northern Ireland, to the UK Government on 10 December 2008.³
7. The Commission's advice on the Bill of Rights for Northern Ireland includes recommendations for the effective justiciable protection for economic, social and cultural (ESC) rights. Many of these provisions are modelled around the provisions of the Covenant. These include the right to work, the right to just and favourable conditions of work, the right to strike, the right to social security, the right to an adequate standard of living, the right to the highest attainable standard of physical and mental health, the right to accommodation, identity and culture rights, children's rights and minority language rights.
8. The Commission's mandate was to advise on rights supplementary to the European Convention on Human Rights, reflecting the particular circumstances of Northern Ireland. The inclusion of economic and social rights in the Bill of Rights has been one of its most discussed facets. The Commission agreed a detailed methodology as to how it should address the particular circumstances of Northern Ireland, and through this found a strong evidence base for the inclusion of ESC rights. The methodology included examination of whether the rights in question had been abused, neglected or restricted in a distinct manner in Northern Ireland, whether the area that the proposed right covered had been a cause, source or location of the conflict, and whether the area had been referenced in the Agreement.

¹ E/C 12/1/Add 795 June 2002 (Concluding Observations), paragraph 29.

² Rights, Safeguards and Equality of Opportunity, paragraph 4, Belfast (Good Friday) Agreement 1998; and Section 69(7), Northern Ireland Act 1998.

³ Northern Ireland Human Rights Commission (2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland*, 10 December 2008. Available at: http://www.nihrc.org/index.php?option=com_content&task=view&id=12&Itemid=17.

9. Bringing forward legislation for the Bill of Rights for Northern Ireland is now a matter for the UK government. The government has indicated that consultation on possible legislation is expected to take place in 'late spring'.⁴ This would allow draft legislation to be presented to Parliament in late 2009. Government has yet to indicate whether it supports the inclusion of ESC rights. If the process is not commenced promptly, the opportunity for the Bill to be enacted in the 2009-10 parliamentary session may be lost.

The Committee may wish to recommend that the UK enacts promptly a Bill of Rights for Northern Ireland inclusive of ESC rights, and set out its timetable for doing so.

Single Equality Act

10. Under Article 2(2) of the Covenant (non-discrimination) the Committee asks about progress in the UK to adopting a single equality Act consolidating and enhancing existing laws.⁵ The Government response covers progress only in relation to a single equality Act for Great Britain.⁶ Equality law there differs from Northern Ireland, where in addition to laws on gender, racial and disability discrimination there has been a range of 'fair employment' laws aimed at dealing with sectarian discrimination. The introduction of a single equality bill, though extensively discussed in recent years, is not included in the Northern Ireland Executive's current (2008-2011) Programme for Government.⁷
11. The Commission would expect the process of developing a single equality Act to harmonise upwards across relevant grounds as well as addressing gaps in present legislation.

The Committee may wish to ask the UK about progress in relation to a single equality Act for Northern Ireland.

Migration and asylum

12. Under Article 2.2 (non-discrimination) and Article 6 (right to work) of the Covenant the Committee asks a number of questions in relation to asylum and the situation of migrants. In particular, the Committee asks the UK for:

⁴ Baroness Royall of Blaisdon, House of Lords Written Answer HL1720.

⁵ E/C 12/GBR/Q/5 10 June 2008 (list of issues), number 4.

⁶ E/C 12/GBR/Q/5/Add 1 6 March 2009 (UK reply), paragraphs 19-20.

⁷ *Building a Better Future*: Northern Ireland Executive Programme for Government 2008-2011.

- Details of legislative, regulatory and policy measures adopted ... to eliminate racial discrimination and increase community cohesion
- Information on the measures ... adopted to tackle discrimination against documented/undocumented migrants
- Information on measures adopted to protect migrant workers from discrimination and abuse in the workplace
- Information on the situation of asylum seekers and refugees.⁸

High Level Strategies: Northern Ireland

13. Two key high level strategies under the auspices of the Northern Ireland Executive have the potential to significantly address a number of these matters, namely the Programme of Cohesion and Integration for a Shared and Better Future for All, and the Racial Equality Strategy for Northern Ireland.
14. The Racial Equality Strategy, published as a five-year strategy (2005-10), was inherited from the previous Executive. The strategy is referenced in the present Northern Ireland Programme for Government (2008-11) as is the intention to introduce a Programme of Cohesion and Integration which has yet to be published or consulted on.⁹
15. The UK made a number of commitments following the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban in 2001. This included the introduction of a National Action Plan Against Racism (NAPAR) covering a range of areas. Government subsequently abandoned the process of developing the NAPAR, opting instead for a 'community cohesion strategy'.

The Committee may wish to ask the UK when it plans to publish the Programme of Cohesion and Integration, and seek assurances that Northern Ireland's high level strategies will cover the full range of commitments arising from Durban.

16. The Commission draws attention to four specific areas of UK policy impacting on the areas under examination, namely:
 - Worker Registration Scheme / 'No recourse to public funds'
 - Reforms to settlement and British citizenship
 - Introduction of an additional 'Migrant Tax'
 - Support to destitute asylum seekers.

⁸ E/C 12/GBR/Q/5 10 June 2008 (list of issues), numbers 3, 5, 6, and 12.

⁹ *Building a Better Future*: Northern Ireland Executive Programme for Government 2008-2011.

In addition to Articles 2.2 and 6 of the Covenant, these matters also engage Articles 10 (protection of family), 11 (adequate standard of living) and 12 (health).

Worker Registration Scheme / 'No recourse to public funds'

17. The Commission is currently conducting an investigation into homelessness affecting individuals with no or limited access to public funds. The investigation focuses on non-UK nationals who are prevented from accessing homelessness assistance and social security benefits due to immigration status. The investigation will be published in summer 2008.
18. At present, persons entering the United Kingdom from outside the European Economic Area (EEA) may be subject to the 'no recourse to public funds' condition. This rule means that persons who are subject to immigration control may not be entitled to income related benefits or housing support. Any attempt to claim benefits could result in a criminal offence and an end of the person's entitlement to remain in the UK. The 'no recourse to public funds' condition raises a number of key human rights concerns. Persons residing in the UK with no entitlement to public funds may be forced to endure exploitative working conditions rather than face unemployment without entitlement to benefits. Persons with no entitlement to work or claim benefits may be forced to work in the informal sector to survive, or face destitution.
19. In the course of the Commission's investigative work the plight of women suffering from domestic violence was highlighted. The 'no recourse' rule means that often women are left financially dependent on their abusers whether they are family, partner, employer or trafficker. Women with 'no recourse' are legally denied access to refuge accommodation since most refuges rely on public funding. Access to benefits or employment may be denied as a condition of their right to remain in the country. Such women are not eligible for income-based benefits. With no safe space and no financial help, non-national victims of domestic violence are trapped in abusive relationships. There is limited assistance from non-statutory agencies: community and voluntary groups are only able to provide advice, support, accommodation and financial assistance where their means allow. The Committee on the Elimination of Discrimination against Women recently

urged the UK to review the 'no recourse to public funds' policy to ensure protection of and support to victims of violence.¹⁰

The Committee may wish to ask the UK how it intends to protect non-UK nationals from violence and exploitation.

20. The Worker Registration Scheme (WRS) was introduced in 2004. It applies to individuals from eight European Union countries, the central and eastern European accession states, who are working in the UK on or after 1 May 2004.¹¹ The WRS prevents access to essential services such as homelessness assistance and welfare benefits for individuals out of work who have not completed a continuous 12-month period of registered work. The Commission is concerned that the consequences of failure to comply with the WRS are disproportionate and have the potential to engage fundamental human rights including the right to life and the right to be free from inhuman and degrading treatment. The scheme was due to expire on 30 April 2009; however, contrary to the Commission's recommendation, Government has extended the WRS for a further period of two years until 30 April 2011.¹² The decision to extend the WRS is based on advice contained in the report of its Migration Advisory Committee, which does not take account of the human rights impact of the scheme.¹³
21. Information obtained during the Commission's current investigation indicates that the WRS has caused considerable suffering. In addition, the Government concedes that the WRS has not been effective in achieving its broader aim and purpose of monitoring and regulating access to the labour market. The UK has already had five years since the introduction of the WRS to fulfil this aim and it is therefore difficult to understand how further monitoring is required. Moreover, successive official reports have cast doubt on the

¹⁰ CEDAW/C/GBR/CO/6 2008 (concluding observations), paragraph 48.

¹¹ The 'A8' accession states are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, and Slovenia.

¹² Under the European Union Accession Treaty 2003, the Accession (Immigration and Workers) Regulations 2004 allows government to extend the WRS for two years if there are 'serious disturbances to the labour market or a serious threat thereof'. The Government announced the extension of the scheme on 8 April 2009.

¹³ Migration Advisory Committee (2009) *Review of the UK's transitional measures for nationals of members states that acceded to the European Union in 2004*.

effectiveness of the WRS as a labour market monitoring tool.¹⁴

The Committee may wish to ask the UK why the WRS has been extended and to outline how it has taken account of the human rights implications of the scheme.

Reforms to settlement and British citizenship

22. The UK is about to implement, through the Borders, Citizenship and Immigration Bill 2009 and accompanying regulations, changes to the process of naturalisation as a British citizen. One of the UK Government's intentions is for migrants to spend considerably longer periods as *de facto* temporary residents within a new 'probationary citizenship' phase prior to obtaining citizenship *or* settlement. At present, settlement can be applied for following lawful temporary residence for a stipulated period of time (usually two to five years). The intention is to extend this period by a minimum of one to three years for those seeking to become a British citizen, and by three to five years for those seeking to settle long-term as permanent residents.
23. A practical impact is that migrants during these extended time periods will have no access to social protection (income-based social security, housing assistance, etc.)¹⁵ and so will be more vulnerable. While the absence of social protection is set out by government as beneficial to public finance,¹⁶ the Commission is concerned that it will come at a considerable human cost. Concerns are further compounded by the inequality of the time period between those seeking permanent residence and those seeking British citizenship.
24. The UK is thus further restricting rights protected by the Covenant (including Arts. 2(2), 6, 9, 10 and 11). The Covenant applies to everyone in the UK, and steps to advance the state's positive duties should be undertaken without discrimination, and subject to limitations only when compatible with the nature of these rights and solely for the purpose of promoting general welfare. The UK has not sought to justify the further restriction of access to these Covenant rights on this basis but rather by introducing the concept that

¹⁴ UK Borders Agency (2008) *Accession Monitoring Report: May 2004 – September 2008*, Department for Work and Pensions, HM Revenue and Customs, and Department of Communities and Local Government, pp 1-2.

¹⁵ 'No recourse to public funds' and potentially other restrictions including, depending on route, employment and education.

¹⁶ UK Home Office (2009) *Impact Assessment of Earned Citizenship Proposals*, p 2.

migrants should 'earn' these rights. The Commission is concerned at the suggestion that migrants should 'earn' rights which are human rights; this implies a move away from recognised human rights towards 'citizen's rights'.¹⁷

The Committee may wish to ask the UK how the 'earned' citizenship reforms are compatible with the Covenant.

Introduction of an additional 'migrant tax'

25. At present migrants are already liable to pay full UK taxes. Despite this there are a number of restrictions on the benefits and services categories of migrant can receive, under policies such as the Worker Registration Scheme and 'no recourse to public funds'. The UK is now planning to introduce an additional 'migrant tax' to effectively charge non-European Economic Area (EEA) migrants twice for public services to which they may, or may not, be entitled.
26. The UK has indicated the purpose of the 'migrant tax' is to "help alleviate the transitional pressures we know that migration can bring".¹⁸ The planned surcharge will be raised through increases in immigration application fees (and as such will not apply to EEA nationals or refugees), and is proposed to apply each time an application is submitted, with an additional charge for migrants accompanied by children, elderly relatives or other dependants.¹⁹ The cost of each surcharge is yet to be formally set out although the fund itself is aimed at raising £70 million (€77 million) over two years.²⁰
27. In presenting the proposal, government actually recognised that migrants in fact have a positive influence on UK public finances.²¹ It is difficult to see how 'transitional pressure' can be blamed on migrants accessing services to which they are entitled and for which they are paying taxes. There is a danger in this regard that government is leaving itself open to accusations of scapegoating (non-EEA) migrants for problems that are in fact a product of inadequate and flexible planning by the state.

¹⁷ Rights that can be the preserve of citizens include matters such as voting (for example, Art 25 ICCPR).

¹⁸ Home Office (February 2008) *The Path to Citizenship: next steps in reforming the immigration system*, paragraph 11b.

¹⁹ *Ibid.*, p 207 (also in July 2008 government response to consultation, p 24).

²⁰ Department for Communities and Local Government (March 2009) *Managing the Impacts of Migration: Improvements and Innovations*, p 38.

²¹ Home Office (February 2008) *The Path to Citizenship: next steps in reforming the immigration system*, paragraph 186.

28. The introduction of an additional 'migrant tax' appears to the Commission to be incompatible with the Covenant and other international standards.²²

The Committee may wish to ask the UK how an additional migrant tax is compatible with obligations under the Covenant.

Support to destitute asylum seekers

29. The Commission opposes the UK's continued application of section 55 of the Nationality, Immigration and Asylum Act 2002. Section 55 empowers the refusal of support to a destitute asylum seeker if the application for asylum was not submitted 'as soon as reasonably practicable' after arrival in the UK. This means that an applicant with no alternative sources of support can be denied shelter, food or other basic necessities of life.
30. In the *Limbuella* case,²³ the UK's highest court found that the application of section 55 in the circumstances examined constituted inhuman and degrading treatment in violation of Article 3 of the European Convention of Human Rights. The Commission is aware that the Home Office continues to apply s55 in particular subsistence cases. The most recent set of official annual asylum statistics indicate that s55 was applied to 990 principal asylum applicants in 2007.²⁴

The Committee may wish to ask the UK if it has plans to repeal or disapply section 55.

Living standards

31. The Committee in its previous concluding observations singled out Northern Ireland in relation to "considerable levels of

²² General Comment 19 of the CESCR makes specific reference to social security and non-nationals, including migrant workers being able to either benefit from contributions they make or retrieve contributions on departure (paragraph 36). Other relevant standards include Article 6 ILO Convention C97 (Migration for Employment Convention (Revised), 1949) and Article 19(5) European Social Charter 1961; in relation to additional charges for dependents, the Convention on the Rights of the Child (rights are not dependent on immigration status or the economic contribution of parents); also see Article 48 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (although the UK is not party to this instrument).

²³ *Regina v Secretary of State for the Home Department ex parte Adam, Limbuella, Tesema* (Conjoined Appeals) 3 November 2005 UKHL 66.

²⁴ Home Office (21 August 2008) *Asylum Statistics United Kingdom 2007*, p 17.

poverty".²⁵ The potential for wider economic hardship has been heightened by the present economic downturn. The Commission draws attention to a specific policy area – water charges – with potential to impact on poverty.

Introduction of water charges

32. In interpreting the Covenant, the Committee has further elaborated on the right to water, implicit in Articles 11 and 12. This includes commenting on affordability:

Economic accessibility: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realisation of other Covenant rights...²⁶

33. In Northern Ireland, water and sewerage services have been paid for through local taxation ('regional rates'). In recent years, the introduction of an additional direct charge has been proposed by firstly by the UK Government, then, in October 2007, by the devolved Northern Ireland Executive which had also commissioned an independent review. The introduction of charges has been deferred on a number of occasions. At present, the Northern Ireland Executive has not made a final decision on the introduction of charges, their make up and measures to mitigate the impact on poorer households – a matter examined by the review.

The Committee may wish to ask the UK about adequate resourcing for water in Northern Ireland, whether additional charges will be introduced, and about measures to prevent hardship.

Right to health

34. The Committee requested further information in relation to Article 12, and the implementation of measures to reduce the existing inequalities in access to health care for persons with a mental disorder and older people.²⁷

²⁵ E/C 12/1/Add 795 June 2002 (concluding observations), paragraph 18.

²⁶ General Comment 15, *The Right to Water* (2002), paragraph 12.

²⁷ E/C 12/GBR/Q/5 10 June 2008 (list of issues), number 26.

Mental health and the Bamford Review

35. There have been significant developments in the area of mental health since the last examination in 2002, the most prominent being the initiation of an independent review of law, policy and service provision affecting people with mental health problems and learning disability, which became known as the 'Bamford Review'.²⁸ Government responded to the Review, in June 2008, providing a broad statement of policy proposals in relation to mental health services in Northern Ireland spanning the next 10 to 15 years.²⁹
36. The Bamford Review and the subsequent response from government recommended changes to existing mental health legislation and the creation of mental capacity legislation. Government proposed separate legislation relating to mental health and mental capacity, with the aim of simultaneous enactment by April 2011.³⁰ It is not apparent that there is any advantage in proceeding along this 'twin-track' approach, with potential for significant overlap in the content of the two Bills, rather than producing one comprehensive piece of legislation for mental health and capacity. Northern Ireland has an opportunity to learn from the experience of England, Wales and Scotland in harmonising the implementation of separate Acts.
37. It is proposed that the new legislation should apply, in respect of capacity, to those aged 16 and over, rather than childhood applying up to the age of 18 as set out in the Convention on the Rights of the Child.
38. One proposal is to extend the authority for compulsory admission for assessment from 14 days to 28 days, with a review after 14 days by the Mental Health Review Tribunal. The Tribunal would need to be resourced to review cases expeditiously so as to ensure compliance with Article 5 ECHR. The Mental Health Tribunal in Scotland, for example, provides a valuable service, but has reportedly experienced

²⁸ From June 2005 to August 2007 the Bamford Review of Mental Health and Learning Disability produced 10 reports with 700 recommendations.

²⁹ Northern Ireland Executive (June 2008) *Delivering the Bamford Vision: The Response of Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability*.

³⁰ [Northern Ireland] Department of Health, Social Services and Public Safety (January 2009) *A Legislative Framework for Mental Capacity and Mental Health Legislation in Northern Ireland*.

considerable problems with workload, delays and limited resources.

39. The legislation will apply a wider interpretation of medical treatment which better reflects modern practice, and this complies with international human rights standards on mental health. However, the wider scope of activities related to medical treatment also has the potential to impact on the success of community-based care if mental health services become over-reliant on compulsory Community Treatment Orders (CTOs). The main focus should be on “making services in the community acceptable to people with mental disorders and investing effort and resources in engaging them in the services”.³¹ In order for CTOs to be effective, resources will be required to ensure that intensive community-based treatments are available for the small group of people that need them.
40. As government addresses the implementation of the Bamford recommendations there has been a steady shift evident in several recent consultations from statutory provision of services to the ‘independent’ or private sector. In principle, the Commission is in favour of more integrated community services, particularly in relation to mental health. However, the move from statutory to non-statutory provision raises questions as to whether human rights protections, incorporated in domestic legislation for statutory settings, will continue to provide protection in the private sector.

The Committee may wish to address with the UK the issues of legislation, the Tribunal, and scope of human rights protections in relation to mental health service reform.

Personality disorder

41. Present proposals indicate that part of the Bamford-recommended model of services in relation to personality disorders will be available in Northern Ireland, with patients needing to travel to Great Britain for some specialist services.³²

³¹ World Health Organisation (2003) *Mental Health Legislation and Human Rights*, p 25.

³² Department of Health, Social Services and Public Safety (December 2008) *Personality Disorder: A Diagnosis for Inclusion – The Northern Ireland Personality Disorder Strategy*.

42. Official estimates outlined in consultation indicate that the prevalence of personality disorders in the prison population is around 60 per cent to 80 per cent,³³ the total prison population in Northern Ireland being in the region of 1,000.³⁴ The same document indicates that present provision is limited to a single unit, of 20 places, within the adult male section of Maghaberry Prison. The Commission has sought clarification on provision for women and young offenders.

The Committee may wish to ask the UK which specialist services will be available in Northern Ireland, and how provision will cover those in detention, respecting the principle of equivalence of healthcare.

Situation of Irish Travellers

43. The Committee asks for further information as regards Travellers, both specifically in relation to access to education and more generally as a racial minority.³⁵ Serious and persistent disadvantage faces the Irish Traveller community in Northern Ireland in all walks of life, from health care and education to employment and housing. Despite some initiatives to address the issues, the relative disadvantage endured by the Traveller community has remained evident for decades.

Unauthorised Encampments Order

44. The period since the Committee's last examination of the UK has seen the introduction of legislation that actively adds to the disadvantage facing the Traveller community, and that runs counter to the spirit of other legislation in Northern Ireland that aims to promote equality, human rights and social inclusion. The Unauthorised Encampments (Northern Ireland) Order 2005, which came into force in mid-2006, creates a disparity between the obligations under equality legislation and those incurred as a result of the Order.
45. Under the Order, a police officer is empowered to direct a person to leave land and to remove any vehicle or other property from that land. The Order creates an offence of non-compliance with the officer's directions and empowers the officer to seize the belongings of the persons being directed to

³³ *Ibid.*

³⁴ See: www.niprisonservice.gov.uk.

³⁵ E/C 12/GBR/Q/5 10 June 2008 (list of issues), numbers 3 & 32.

leave. The maximum penalty for non-compliance is three months' imprisonment, a fine of £2,500 (€2,760), or both.

46. There is no question that the primary impact of this Order has been on the Irish Traveller community, as the only indigenous minority with a traditionally nomadic or partly nomadic lifestyle. For that reason, the introduction of the legislation was strongly objected to by the Commission and other organisations. The objection was on the basis that, in the absence of government action to ensure the provision of suitable accommodation schemes for Travellers, the legislation was likely to have a very serious adverse impact on an already disadvantaged and marginalised minority. In short, the UK has introduced measures whereby Travellers can become liable to criminal prosecution for following their traditional lifestyle as best they can in the context of the inadequate provision of halting sites and other authorised accommodation. They are liable to be evicted from their homes, to have them destroyed and then to be imprisoned and/or fined. Since the introduction of the Order there has been little progress in providing Travellers who choose to be nomadic with suitable transit sites.
47. As outlined in the UK's periodic report in 2006, a decision was taken not to make the Order operative until an adequate number of sites (defined by government as five, for all of Northern Ireland) were in place. Citing 'local opposition and planning issues' the periodic report indicates this requirement is yet to be met.³⁶ Since the submission of the state report, despite ongoing concerns over the adequacy of sites, the Order has now been made operative.

The Committee may wish to ask the UK if it has plans to repeal the Unauthorised Encampments legislation and to address provision of suitable accommodation arrangements.

Regional and minority languages

48. The Committee asks for further information as to measures taken by the state party in reference to regional and minority languages.³⁷ As well as general measures, the Committee makes particular reference to broadcasting and the courts.

³⁶ E/C 12/GBR/5 31 January 2008, paragraph 161.

³⁷ E/C 12/GBR/Q/5 10 June 2008 (list of issues) numbers 34-35.

49. The UK has registered three languages under Part III of the European Charter for Regional and Minority Languages, signing up to specific commitments in areas including education, administrative authorities, media, culture, economic and social life and transfrontier exchanges. One language, Irish, is registered under part III for Northern Ireland, with the state accepting 36 specific commitments out of around 100 options identified in the Charter; the other two UK languages are Welsh (in Wales, where 52 commitments apply) and Scottish Gaelic (in Scotland, 39 commitments).
50. In addition, the UK has also registered Scots, Cornish and Manx Gaelic in their respective jurisdictions under the general provisions of Part II of the Charter, which impose no particular commitments outside general objectives and principles. Ulster-Scots, a variant of the Scots language, is registered under Part II for Northern Ireland.
51. The Commission's advice on a Bill of Rights for Northern Ireland includes a recommendation for a provision for public bodies to act compatibly with the Charter in respect of the support and development of Irish and Ulster-Scots. The inclusion of this provision is undertaken in the context that the Charter is an instrument under which the state's commitments can be progressively increased. The intention is for an evolutionary approach to be undertaken and commitments strengthened in accordance with the developing needs of speakers.

Irish language legislation

52. In Wales, the Welsh language is underpinned by the Welsh Language Act 1993 along with other overarching legislation. In Scotland, provision for Gaelic is made under the Gaelic Language (Scotland) Act 2005. In 2006, the UK made a treaty-based commitment to introduce an Irish Language Act; this has yet to be implemented.
53. The UK has given no clear indication of how it plans to legislate for the status of the Irish language in Northern Ireland. This issue engages Article 15 of the Covenant as well as Article 27 of the ICCPR; relevant UN Declarations (e.g. Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities); European regional instruments (the Charter on Regional and Minority Languages, and the Framework Convention on National Minorities); and the treaty

commitment under the 2006 St Andrews Agreement (between the British and Irish Governments) which provides:

Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming [Northern Ireland] Executive to enhance and protect the development of the Irish language.

54. The UK consulted on legislation in December 2006, and in more detail in March 2007. The options put forward did not follow a rights-based approach and did not meet full conformity with treaty commitments. Responsibility for legislation was passed in May 2007 to the devolved administration which, in October 2007, indicated that it would not enact an Irish Language Act.³⁸ There has been no subsequent indication to the contrary.
55. While treaty compliance can be achieved by regional authorities meeting relevant standards, if a devolved government does not deliver the state does not escape responsibility, and the Commission therefore expects the UK Government to ensure that legislation is enacted.

The Committee may wish to ask the UK when it plans to bring forward Irish language legislation.

Broadcasting and the courts

56. In relation to broadcasting and Northern Ireland the UK government reply to the Committee references the Irish Language Broadcast Fund (ILBF), initially funded for four years from 2005 at £12m and, following the decision by the devolved ministry to cease funding from 2009, the intervention of the UK government to provide an additional £6m to run the ILBF from 2009-2011.³⁹ The future of the ILBF after 2011 remains unclear.
57. In relation to the Committee's question regarding regional and minority languages before the courts, the UK reply details only legislation and provisions enacted to facilitate the use of Welsh in Wales and Gaelic in Scotland.⁴⁰ Circumstances are different in Northern Ireland due to the continued existence of the Administration of Justice (Language) Act (Ireland) 1737,

³⁸ Statement by Edwin Poots MLA, Minister of Culture, Arts and Leisure, to the Northern Ireland Assembly, 16 October 2007.

³⁹ E/C 12/GBR/Q/5/Add.1 6 (UK Reply) March 2009, paragraph 303.

⁴⁰ *Ibid.* paragraphs 307-312.

which prohibits the use of any language other than English in the courts.⁴¹

The Committee may wish to ask the UK about the future of the Irish Language Broadcast Fund post-2011 and ask the UK if, through an Irish Language Act, the repeal of the 1737 Act, or other legislation, it plans to provide for use of Irish before the courts in Northern Ireland.

⁴¹ In accordance with Article 6(3)(e) of the ECHR, persons not fluent in English are permitted the free assistance of an interpreter in court.