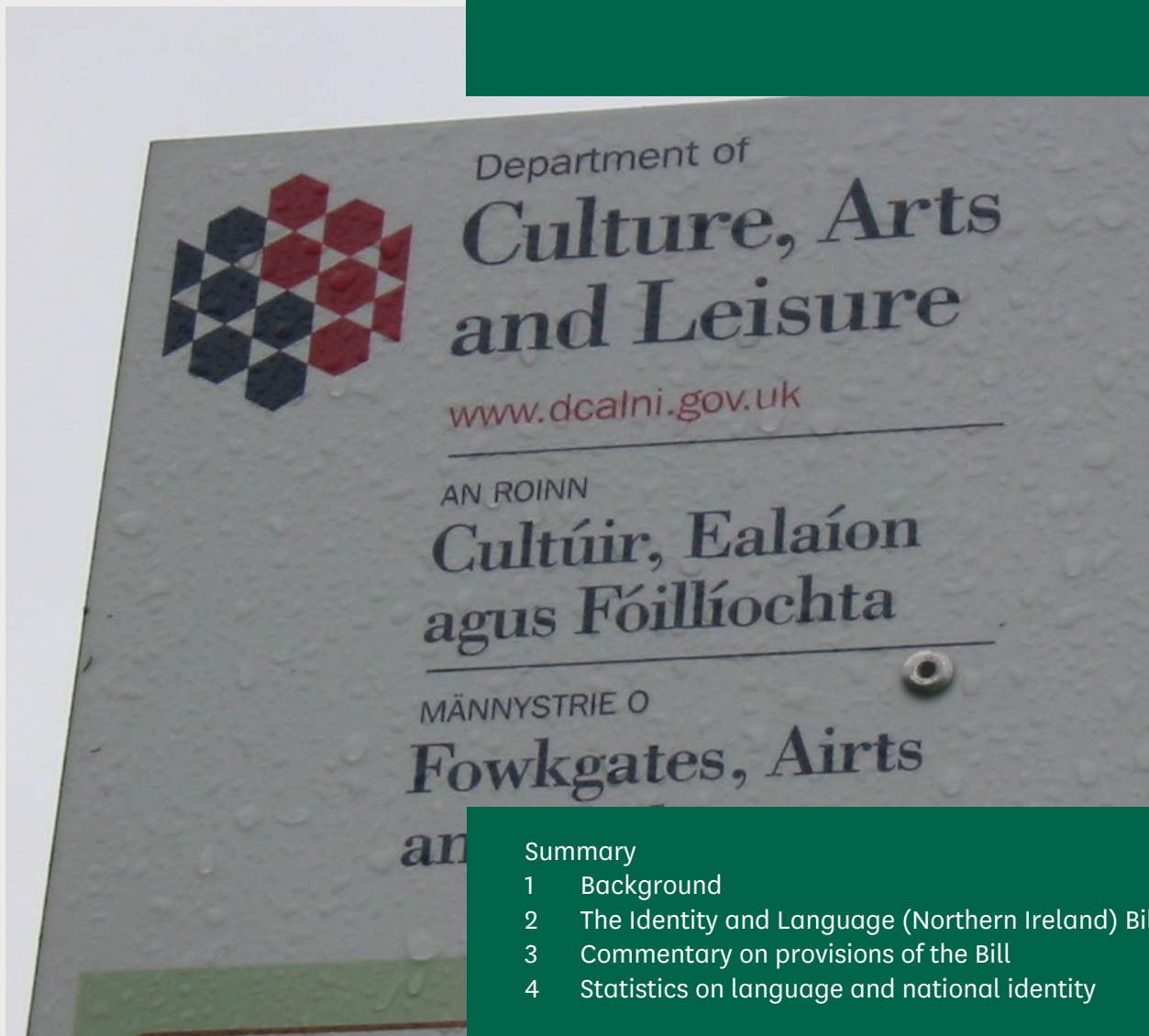


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30 September 2022

Identity and Language (Northern Ireland) Bill 2022-23



Summary

- 1 Background
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- 3 Commentary on provisions of the Bill
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Summary

The [Identity and Language \(Northern Ireland\) Bill 2022-23](#) was introduced to the House of Lords on 25 May 2022. It received its third reading there on 13 July and its first reading in the House of Commons on 14 July. The Bill's second reading in the Commons is due to take place on Wednesday 12 October 2022.

It will implement aspects of the January 2020 [New Decade, New Approach](#) agreement, which relate to devolved institutions in Northern Ireland. These include:

- Requiring specified public authorities to have due regard to “national and cultural identity principles” when carrying out their functions;
- Creating an Office of Identity and Cultural Expression to promote awareness of these principles while monitoring and encouraging compliance by public authorities;
- Providing for official recognition of the status of the Irish language (Gaelic) in Northern Ireland;
- Appointing a commissioner for the Irish language and for Ulster Scots language, heritage and culture.

The agreement – negotiated by the five main political parties in Northern Ireland, and by the UK and Irish governments – intended that legislation would be introduced in the Northern Ireland Assembly by the Northern Ireland Executive. When this did not prove possible the UK Government indicated its intention to legislate at Westminster.

In the [Northern Ireland Census 2021](#), 12.4% of respondents reported some level of ability in Irish (around 229,000 people) and 10.4% of respondents (around 191,000 people) reported some ability in Ulster Scots.

The text of the Bill and Explanatory Notes are available on the [Bill pages](#) on the Parliamentary website.

1 Background

Legislation to protect and promote the Irish language (Gaelic) in Northern Ireland has been a long-standing feature of power-sharing negotiations in Northern Ireland.

The [2006 St Andrews Agreement](#) included a commitment to Irish and Ulster Scots language legislation, and [a draft strategy was published in February 2015](#). This was not adopted by the then Northern Ireland Executive and the late Martin McGuinness cited this as one of the reasons for his resignation as deputy First Minister of Northern Ireland in January 2017.

1.1 Position of political parties in Northern Ireland

[Sinn Féin](#) supports the restoration of Irish Gaelic as the spoken language of most people in the island of Ireland. It argues for the right to use Irish in courts, in the Northern Ireland Assembly, and by other public bodies including the police. The party also argues for the appointment of an Irish language commissioner; the establishment of designated [Gaelteachts](#) in Northern Ireland (areas where Gaelic is the main language); the right for education through the Irish language; and bi-lingual signage on roads and public buildings.¹

The [Social Democratic and Labour Party](#) (SDLP) also advocates greater use of the Irish language in Northern Ireland. The [Alliance Party of Northern Ireland](#) has argued for legislation covering various languages used in Northern Ireland, including sign language.

In an April 2017 article, the writer and journalist Eamonn Mallie analysed the views of the [Democratic Unionist Party](#) (DUP) regarding these aims:

Attitudes in the DUP break down into two broad divisions – firstly that section which detests the Irish language, the GAA [Gaelic Athletic Association] and anything else Irish. The second group includes those who are less strident in their opposition to the language as a language but take the view that Irish has been in their parlance ‘weaponised’ by Sinn Féin and to entreat with it would be, to be contaminated.²

In August 2017 Arlene Foster, the then First Minister and leader of the DUP, [called for “a new cultural deal”](#) which included an [Ulster Scots](#) commissioner

¹ [Explainer: What is the Irish Language Act and why is it causing political deadlock in Northern Ireland?](#), The Journal, 14 February 2018.

² [The DUP and the Irish Language Act](#), Irish Times, 1 April 2017.

as well as one for the Irish language, but Sinn Féin maintained its support for a standalone Bill dealing with the Irish language.³

Given this disagreement, a further round of talks on restoring Northern Ireland's devolved institutions collapsed in February 2018.⁴

1.2 New Decade, New Approach agreement

A section on “Rights, language and identity” formed part of the January 2020 [New Decade, New Approach](#) agreement. This inter-party agreement led to the restoration of devolved institutions in Northern Ireland following a hiatus of three years.

The agreement committed the Northern Ireland Executive to sponsoring and overseeing “a new framework both recognising and celebrating Northern Ireland's diversity of identities and culture and accommodating cultural difference”.⁵ This was to comprise:

- The establishment of a statutory Office of Identity and Cultural Expression, with its director appointed by the First and deputy First Minister acting jointly;
- Legislation to create a Commissioner for the Irish language;
- Repeal of the [Administration of Justice \(Language\) Act \(Ireland\) 1737, which banned the use of Gaelic in Irish courts;](#)
- Legislation to create another Commissioner “to enhance and develop the language, arts and literature associated with the Ulster Scots / Ulster British tradition in Northern Ireland”;⁶
- The establishment of a central Translation Hub to provide services for the Executive, local government and other public bodies;
- A change to [Assembly Standing Orders](#) to allow business to be conducted through Irish or Ulster Scots.⁷

Paragraph 5.23 of the agreement stated that three draft Bills were to be published on the day of the (re)formation of the Executive and presented to the Assembly for consideration within three months of the restoration of the devolved institutions.

³ [Sinn Féin rejects Arlene Foster's Irish language proposal](#), The Journal, 31 August 2017.

⁴ [Explainer: What is the Irish Language Act and why is it causing political deadlock in Northern Ireland?](#), The Journal, 14 February 2018.

⁵ [New Decade, New Approach](#) agreement, para 26.

⁶ Both language commissioners were also to be appointed by the First and deputy First Ministers acting jointly.

⁷ Full details were set out in Annex E of the New Decade, New Approach agreement.

1.3 Subsequent developments

The [three draft Bills were published](#) in January 2020 but the deadline for consideration was not met.

The Northern Ireland Department for Communities established the [Translation Hub](#) on 19 April 2021. On 15 June 2021, [Members of the Legislative Assembly passed a motion supporting plans for simultaneous translation services](#) in Irish and Ulster Scots in the Northern Ireland Assembly.

In August 2021 the then Minister for Communities, Deirdre Hargey, appointed two expert advisory panels to provide recommendations for the Executive's draft Irish Language Strategy and draft Ulster-Scots Language, Heritage and Culture Strategy.⁸

1.4 Expert advisory panel recommendations

The Department for Communities' expert advisory panels reported in March 2022. Both set out the key actions they believed should be included in each strategy.

Irish language expert panel

The Irish language expert panel recommended:

- that 500,000 people in Northern Ireland “have knowledge” of Irish by 2042;
- the use of bilingual signs “with letters of equal size”;
- that “10% of the wider school population be in Irish-medium education by 2042” (equating to around 35,000 pupils);
- the training of more Irish-speaking teachers;
- increasing the number of Irish speakers at a senior level in the Northern Ireland Civil Service;
- that museums and tourist attractions, such as Titanic Belfast and National Trust properties, provide Irish language tours, signs and information;

⁸ Neither draft strategy had been put out to consultation within six months of the New Decade, New Approach agreement, as intended. In April 2021 the Irish language group Conradh na Gaeilge (CnaG) said it [planned legally to challenge the Executive's failure to publish an Irish language strategy](#).

- increasing positive attitudes towards the Irish language in “all sections of the community, including the Protestant, unionist and loyalist community”.⁹

Ulster-Scots expert panel

The Ulster-Scots expert panel document said Ulster-Scots was “still under-developed and under-appreciated”. Recommendations included:

- the development of Ulster-Scots GCSEs, A-levels and university degrees by 2042;
- the creation of an Ulster-Scots College and a university-based Ulster-Scots Research Institute;
- more funding and more full-time workers in the Ulster-Scots sector;
- the introduction of more Ulster-Scots place name signs by local authorities;
- resources to support the development of Ulster-Scots societies on campus at Queen’s University of Belfast, Ulster University and, in future, at the major universities in Scotland serving Northern Irish students.¹⁰

The final language strategies require approval from the Northern Ireland Executive.

1.5

Westminster intervention

Although language and cultural matters are transferred (or devolved) matters under the [Northern Ireland Act 1998](#), under that same Act the UK Parliament remains legislatively supreme and can legislate, should it wish to do so, in respect of any Northern Ireland matter. For example, Westminster legislated on abortion and same-sex marriage in 2019, despite these also being devolved matters. Devolved institutions in Northern Ireland were not fully functioning at that time.¹¹

When [Arlene Foster resigned as First Minister of Northern Ireland](#) in June 2021, Irish language legislation formed part of the talks between Sinn Féin and the DUP. Sinn Féin said it would not support a new DUP First Minister unless Irish

⁹ See Department for Communities, [Irish Language Strategy Expert Advisory Panel Recommendation Report](#), 7 March 2022.

¹⁰ See Department for Communities, [Ulster-Scots Language, Heritage and Culture Strategy Expert Advisory Panel Recommendation Report](#), 7 March 2022. The advisory panel report hyphenated “Ulster-Scots”, other Executive documents do not.

¹¹ See Commons Library Insight, [Abortion and same-sex marriage in Northern Ireland: Do Westminster votes undermine devolution?](#). See also Commons Library Briefing Paper CBP8909, [Abortion in Northern Ireland: recent changes to the legal framework](#).

language legislation was introduced before the next Assembly election in May 2022. The new DUP leader, Edwin Poots, said he would support legislation [but not necessarily before the next Assembly election](#).

In June 2021 Sinn Féin asked Brandon Lewis, the then Secretary of State for Northern Ireland, to introduce legislation at Westminster, saying it was the “only way forward to finally resolve” the dispute. The DUP MP Sammy Wilson said the UK Government “must not interfere in devolved issues at the behest of Sinn Féin”.¹²

Speaking in the House of Commons on 21 June 2021, the Northern Ireland Secretary said that:

If the Executive has not progressed the legislation for the identity, language and culture package in the New Decade, New Approach agreement by the end of September [2021], the UK Government will take the legislation through the UK Parliament. The New Decade, New Approach agreement was endorsed by the UK Parliament, and we will introduce the legislation that delivers on these commitments in October 2021, if necessary. This will provide for the creation of an Office for Identity and Cultural Expression, an Ulster Scots Commissioner, and an Irish language Commissioner.¹³

No legislation was introduced by the UK Government during October 2021.

Speaking to the Northern Ireland Affairs Select Committee on 8 February 2022, Northern Ireland Office Minister Conor Burns said it was “very firmly the Government’s intention that we bring the legislation forward before the [Assembly] elections” due on 5 May 2022.¹⁴

No legislation was brought forward before the Assembly elections.

1.6

Collapse of the Executive

In February 2022, Northern Ireland’s then First Minister, the DUP’s Paul Givan, resigned, citing his party’s opposition to the Northern Ireland Protocol,¹⁵ which it asserted had effectively created a border in the Irish Sea.¹⁶ His resignation meant that the deputy First Minister, Sinn Féin’s Michelle O’Neill, also relinquished office. The move ultimately resulted in the Northern Ireland Executive being unable to function fully in the run-up to Assembly elections in May 2022.

¹² BBC News online, [Irish language talks back on at Stormont](#), 17 June 2021.

¹³ [HC Deb 21 June 2021 \[Northern Ireland: New Decade, New Approach Agreement\]](#)

¹⁴ Northern Ireland Affairs Committee, [Oral evidence: New Decade, New Approach: two years on. HC 1070](#), 8 February 2022.

¹⁵ See Commons Library Briefing Paper CBP9569, [Northern Ireland Protocol Bill 2022-2023](#).

¹⁶ [Givan resignation triggers fresh political crisis in Northern Ireland](#), BBC News online, 3 February 2022.

The Assembly elections were held on 5 May 2022. For the first time, these returned Sinn Féin as the largest party, with 27 seats, followed by the DUP, on 25 seats. The Alliance won 17 seats, the UUP 9 and the SDLP 8.¹⁷

However, the Assembly is not yet fully functioning. This is due to the DUP's refusal to elect a new Speaker until its continuing concerns with the Northern Ireland Protocol are resolved.¹⁸ Explaining this stance to the Assembly on 13 May 2022, Paul Givan stated that the "Irish Sea border has fundamentally undermined the Belfast Agreement [and] has changed our relationship with the United Kingdom". He said that his party had "received a mandate in the assembly election to remove the Irish Sea border" and that that needed to be respected.¹⁹

The [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#) was introduced to the House of Commons on 17 May 2022 and is currently being considered by the House of Lords. This will implement other aspects of the New Decade, New Approach agreement.

The [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2022](#) received Royal Assent on 8 February 2022. This implemented aspects of the agreement intended to reduce instability in the devolved institutions. Under its provisions, the Secretary of State for Northern Ireland is required to name a date for new Assembly elections if a First Minister and deputy First Minister have not been appointed by 28 October 2022.²⁰

1.7 The Bill is introduced

The Identity and Language (Northern Ireland) Bill was formally announced in the Queen's Speech of 10 May 2022.²¹ It was subsequently introduced in the House of Lords on 25 May 2022.²²

The Bill's publication was welcomed by Sinn Féin. Its leader, Mary Lou McDonald, said it would "finally see the repeal of archaic anti-Irish legislation and replaced with official recognition of the Irish language to enable people to access public services and the courts through Irish". She urged Westminster to pass the legislation before the summer recess.²³

¹⁷ See Commons Library Briefing Paper CBP9549, [Northern Ireland Assembly Elections: 2022](#).

¹⁸ [Northern Ireland Protocol: Assembly Speaker blocked by DUP for second time](#), BBC News online, 30 May 2022.

¹⁹ Northern Ireland Assembly, [Official Report, Friday 13 May 2022](#).

²⁰ See [section 1](#).

²¹ Prime Minister's Office, [Queen's Speech 2022: Background briefing notes](#), 10 May 2022.

²² [HL Deb 25 May 2022 Vol 822 c850](#)

²³ [UK to make Irish an official language in Northern Ireland](#), Politico, 25 May 2022.

Speaking after the Bill's inclusion in the Queen's Speech, the DUP leader, Sir Jeffrey Donaldson, criticised the Government for acting on the matter (and on Legacy issues) before addressing the Northern Ireland Protocol:

What the government do must be balanced. It must take account of the concerns of the Unionist community as well as the concerns of others [...] I reiterate my commitment to lead my party into the political institutions. I will do so as soon as the government take decisive action to deal with the protocol and remove the Irish Sea border.²⁴

However, Sir Jeffrey later welcomed subsequent Government commitments to introduce legislation “to deal with the protocol and the Irish Sea border, and to protect the Belfast/Good Friday agreement”.²⁵

Paula Melvin, president of the Irish language group Conradh na Gaeilge, welcomed the Bill but expressed some caution as to its progress:

The Irish language community has been fighting for these rights for decades and in that regard to see the Irish language be afforded official status here for the first time is indeed historic [...] But let's be clear [...] Until we see this bill fully enacted and indeed implemented in practice, we will continue to push ahead with the campaign.²⁶

Anne Smyth, chair of the Ulster Scots Language Society, has expressed concerns about the bill, believing it may hinder the promotion of Ulster Scots:

It actually adds another layer of sectarianism to Ulster politics and Ulster society. They are basically trying to hand responsibility over to academics and civil servants. I don't see us having a voice in that group and we haven't had a voice for quite some time.

She also feared the legislation would give too much power to Irish language activists to “insist on maximum representation for Irish at every turn”.²⁷

The Bill received its third reading in the House of Lords on 13 July 2022²⁸ and its first reading in the House of Commons the following day. The Bill's second reading in the Commons is due to take place on Wednesday 12 October 2022.

This briefing paper describes the Bill as amended in the House of Lords.

²⁴ [HC Deb 10 May 2022 Vol 714 c57-58](#)

²⁵ [HC Deb 25 May 2022 Vol 715 c289](#). See also [Northern Ireland Protocol: Government's pledge a good start – Democratic Unionist Party](#), BBC News online, 17 May 2022.

²⁶ Conradh na Gaeilge, [“Historic day” for Irish language community as Acht Gaeilge finally to be “introduced” in Westminster](#), 31 May 2022.

²⁷ [Irish language and Ulster Scots bill introduced at Westminster](#), BBC News online, 26 May 2022.

²⁸ [HL Deb 13 July 2022 Vol 823 cc1493-97. Second reading](#) in the Lords took place on 7 June 2022, [committee stage on 22 June](#) and [report stage on 6 July](#).

2

The Identity and Language (Northern Ireland) Bill

The [Explanatory Notes](#) for the Identity and Language (Northern Ireland) Bill state that it aims to deliver “a carefully balanced package of identity, language and culture legislation”. The Bill 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;
- Create an Office of Identity and Cultural Expression which will promote awareness of the national and cultural identity principles and monitor and encourage compliance by public authorities;
- 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 to enhance and develop the Ulster Scots and Ulster British tradition in Northern Ireland;
- Require the Northern Ireland Department of Education to encourage and facilitate the use and understanding of Ulster Scots in education;
- Repeal the Administration of Justice (Language) Act (Ireland) 1737;
- Confer powers on the Secretary of State for Northern Ireland to exercise, or direct the exercise of, the powers conferred on Northern Ireland Ministers or Departments and the three newly created authorities in the Bill, should it be deemed necessary.

Part 1 of the Bill would 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.

Parts 1 and 3 of the Bill also concern transferred (or devolved) matters and would normally require a legislative consent motion. This is required under the convention that the UK Parliament will “not normally” legislate on matters within the legislative competence of the Northern Ireland Assembly.²⁹ However, this will not be possible as the Assembly is not currently fully functioning.

²⁹ See Commons Library Briefing Paper CBP8883, [Devolution: The Sewel Convention](#).

3

Commentary on provisions of the Bill

The Identity and Language (Northern Ireland) Bill is made up of 11 clauses, split across three parts:

Clause 1: National and Cultural Identity

Clause 1 inserts a new Part 7A (sections 78F to 78H) and Schedule 9A in the Northern Ireland Act 1998.

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.

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.

A “public authority” is defined by reference to Schedule 3 of the [Public Services Ombudsman Act \(Northern Ireland\) 2016](#). These include the Northern Ireland Assembly, Northern Ireland Departments, educational and arts bodies as well as policing and justice bodies. The new Office of Identity and Cultural Expression (which will be added to Schedule 3 by clause 8) is not included in that definition.

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.

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. The strategic 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.³⁰

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. The First Minister and deputy First Minister will be able to direct the Office in relation to the Commissioner's functions.

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.

Section 78I was added to the Bill by the House of Lords. It makes provision for further functions of the Office of Identity and Cultural Expression to establish the Castlereagh Foundation, "a fund to support academic research through universities and other partners to explore identity and the shifting patterns of social identity in Northern Ireland".³¹

Once established, this body would be financially and operationally independent of the Office.³²

Clause 2: Irish language

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).

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.

Section 78K 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.

³⁰ The House of Lords removed the words "the enhancement and development of the language, arts and literature associated with" preceding the phrase "the Ulster Scots and the Ulster British tradition in Northern Ireland" from section 78H 3(b).

³¹ See *New Decade, New Approach*, p49.

³² [Explanatory Notes](#), paras 27-28.

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 78N). 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 wish to require the Commissioner to consider developing a particular category of best-practice standards.

Sections 78L and 78M 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.

Under Section 78M, the Commissioner must review any standards every five years from when they were first 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 certain respects).

Section 78N 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.

Section 78O makes provision for a complaints procedure. The Commissioner must investigate a complaint if received 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 the aforementioned 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.

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)).

If the Commissioner finds that a public authority did fail to comply with its obligations under 78N (viz to have due regard to best practice standards

and/or 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.

Section 78P, 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.

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.

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 Irish Language 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 Ulster British Tradition

Clause 3 inserts a new Part 7C (sections 78Q to 78T) and Schedule 9C in the Northern Ireland Act to make provision for a Commissioner (to be referred to in the 1998 Act as the Part 7C Commissioner) to enhance and develop the language, arts and literature of the Ulster Scots and Ulster British tradition in Northern Ireland.

Section 78Q provides for the Commissioner to be appointed by the First Minister and deputy First Minister acting jointly.

Section 78R 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 Ulster Scots and Ulster British tradition in Northern Ireland. 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 78S.

Guidance published by the Commissioner may include guidance on the effect and implementation of the three Treaties specified in subsection (3) and in relation to the Ulster Scots and the Ulster British tradition in Northern Ireland

(see section 78R(2)(b)(i)).³³ 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.

“Ulster Scots services” are defined as services provided in Ulster Scots or likely to be of particular interest to those with an interest in the relevant language, arts and literature.

Section 78S 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 section 78R(2)(b)(i) so far as it relates to developing and encouraging the use of Ulster Scots.

The Commissioner must investigate a complaint if received 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 the aforementioned criteria, they must provide the complainant with written reasons as to why (see subsections (1) and (2)). The Commissioner may carry out such an investigation in private if they consider it appropriate.

If the Commissioner finds that a public authority did fail to comply 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. The report must be laid before the Northern Ireland Assembly.

In section 78T, “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.

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 the reserved or excepted area.

³³ The House of Lords inserted the definite article to “the Ulster British tradition” in several clauses and also deleted “the enhancement and development of the language, arts and literature associated with the” from several sections preceding the phrase “the Ulster Scots and the Ulster British tradition in Northern Ireland”.

Clause 3(2) and Schedule 3 will amend the Northern Ireland Act 1998 to insert Schedule 9C, “The Part 7C Commissioner”. Schedule 9C makes further provision regarding the status and tenure of the Part 7C 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

Clause 4 will repeal the Administration of Justice (Language) Act (Ireland) 1737. It also amends the [Justice \(Northern Ireland\) Act 2002](#) so as to require the courts specified to make appropriate arrangements to facilitate the use of languages other than English, where it is necessary to do so in the interests of justice.

Clause 5: Use of Ulster Scots in Education

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

Clause 6 confers “exceptional powers” on the Secretary of State for Northern Ireland should s/he deem it necessary to intervene.

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 Parts 7A, 7B or 7C. 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 Parts 7A, 7B or 7C.

The Secretary of State, for example, could appoint either of the Commissioners or Director to 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.

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 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 to publish it.

The draft legislation prepared as part of the New Decade, New Approach agreement did not include any concurrent powers for the Secretary of State.

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

Subsections (1) and (2) make provision in respect of the Northern Ireland Executive. 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, the Executive will not be relevant to determining what ministers, departments or the three new authorities can or cannot do.

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

New **Clause 8**, as inserted in the House of Lords, makes provision for the Secretary of State for Northern Ireland 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 to ensure consistency with the Secretary of State's powers in Clauses 7 and 8 of the Bill.³⁴

Clause 9: Consequential amendments

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.

³⁴ [Explanatory Notes](#), para 58.

Clause 10: Commencement

Parts 1 and 2 (sections 1-8) of the Act will come into force on a day appointed via regulations by the Secretary of State for Northern Ireland. Part 3 (sections 9-12) will come into force on the day of Royal Assent.

Clause 11: Extent

This Act extends to Northern Ireland only.

Clause 12: Short title

This Act may be cited as the Identity and Language (Northern Ireland) Act 2022. The House of Lords inserted sub-clause (2) as follows:

Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.

This is known as a “privilege amendment”, which is adopted when a Bill containing charges on the public purse is introduced first in the House of Lords. It is added to the final clause of such a Bill at its third reading. It indicates the Commons’ financial privilege and is subsequently removed at the Commons committee stage.³⁵

3.1

Financial implications of the Bill

The UK Government estimates that the running costs for the three new authorities could 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.³⁶

³⁵ See [Erskine May, para 37.14](#).

³⁶ [Explanatory Notes](#), para 66.

As all provisions will be for the Northern Ireland Executive to administer, support and fund, these costs will be paid out of the Northern Ireland Consolidated Fund.

Parliamentary approval for financial costs or for charges imposed

Since Part 2 of the Bill empowers the Secretary of State to do anything that a Northern Ireland Minister or Northern Ireland Department could do under the 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). Such expenditure by the Secretary of State would require a money resolution in the UK Parliament.

The Explanatory Notes state that as the Bill does not authorise new charges on “the people” – broadly speaking, new taxation or other similar charges – then it does not require a Ways and Means resolution.³⁷

³⁷ [Explanatory Notes](#), paras 71-72.

4

Statistics on language and national identity

The Census in Northern Ireland asks respondents about topics including languages spoken and national identity.

A Census was conducted in Northern Ireland in March 2021. The Northern Ireland Statistics and Research Agency (NISRA) published [some census data on these topics](#) on 22 September 2022.³⁸













4.1

Language use and knowledge

The 2021 Census recorded English as the main language of 95.4% of usual residents of Northern Ireland aged three and over. Irish was recorded as the main language of 0.3% of the population (around 6,000 people).³⁹

Census respondents were also asked about their knowledge of Irish and Ulster Scots – whether they could understand, speak, read, or write either language. Results are shown in the table below.

It is worth noting that this is a self-reported measure of ability, and it does not capture the level of familiarity or fluency that respondents have in either language.

Ability in Irish and Ulster Scots				
Percentage of the population of Northern Ireland aged 3 and over, 2021				
	Irish		Ulster Scots	
Some ability	12.4%		10.4%	
Understand but cannot read, write or speak	4.9%		6.3%	
Speak but do not read or write	2.0%		1.4%	
Speak and read but do not write	0.5%		0.7%	
Speak, read, write and understand	3.9%		1.1%	
Other combination of skills	1.0%		0.9%	
No ability	87.6%		89.6%	

Source: NISRA, [Census 2021 main statistics language tables](#) MS-BO5 and MS-BO8

³⁸ NISRA, [Census 2021 main statistics for Northern Ireland \(phase 1\)](#), 22 September 2022.

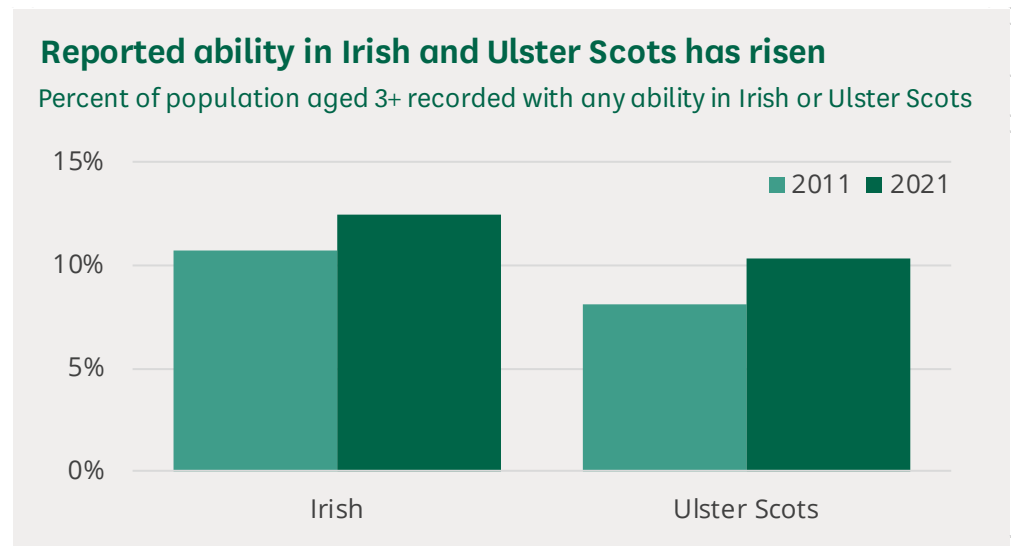
³⁹ NISRA, [Census 2021 main statistics for Northern Ireland statistical bulletin – language](#), 22 September 2022.

12.4% of respondents reported some level of ability in Irish (around 229,000 people). Around 4.9% (91,000) could understand but not read, write, or speak Irish and 3.9% (72,000) could speak, read, write and understand Irish.

10.4% of respondents (around 191,000 people) reported some ability in Ulster Scots. Around 6.3% (115,000) could understand but not read, write or speak Ulster Scots. Around 1.1% (21,000) could speak, read, write and understand Ulster Scots.

There has been an increase in reported ability in both languages compared with the 2011 Census.

The proportion of people reporting some ability in Irish rose from 10.7% (185,000 people) in 2011 to 12.4% (229,000 people) in 2021. The proportion of people reporting some ability in Ulster Scots rose from 8.1% (140,000 people) to 10.4% (190,600 people) over the course of the decade.



Source: NISRA, [Census 2021 Main statistics for Northern Ireland statistical bulletin – language \[PDF\]](#)

For further information, see NISRA’s [2021 Census statistical release on language](#).⁴⁰

4.2 National identity

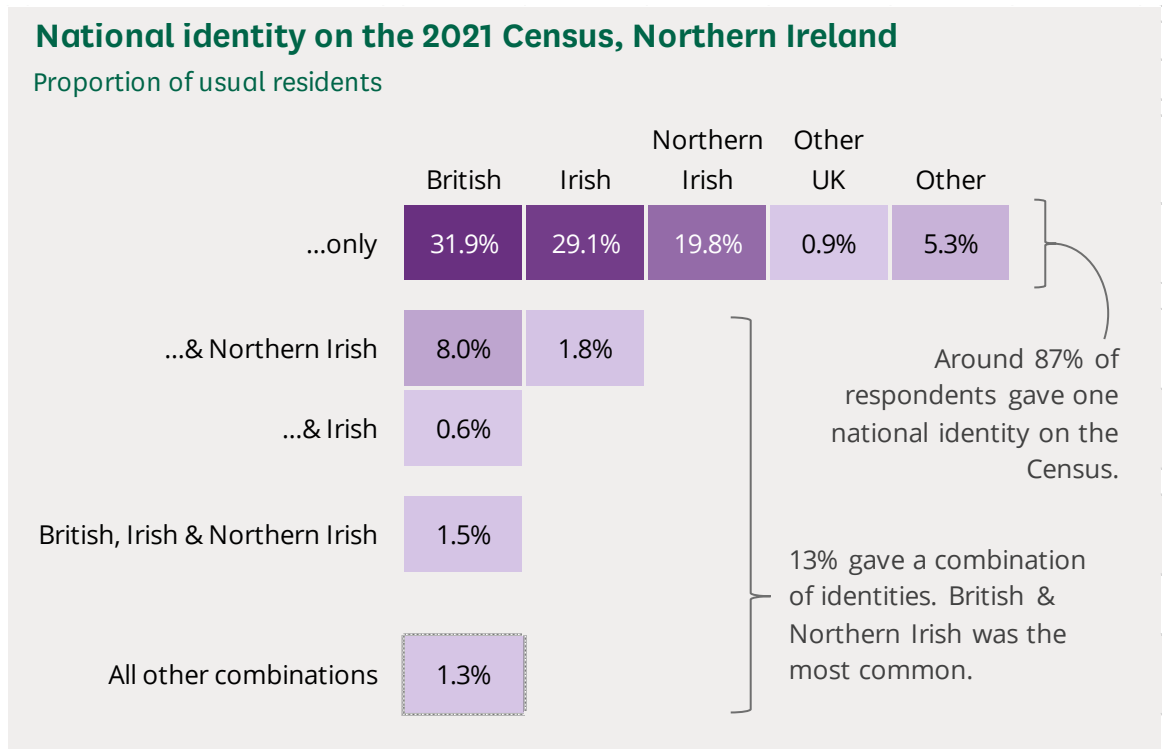
The 2021 Census also asked respondents how they would describe their national identity. Respondents were able to tick as many options as applied to them, with tick boxes for British, Irish, Northern Irish, English, Scottish, and Welsh, as well as the option to write in other national identities.

⁴⁰ NISRA, [Census 2021 main statistics for Northern Ireland statistical bulletin – language](#), 22 September 2022.

In total, 43% of usual residents had their national identity recorded as British (814,600 people), 33% had an Irish national identity (634,000) and 32% had a Northern Irish national identity (599,000). These figures include national identities given solely or in combination with other national identities.⁴¹

Between 2011 and 2021, there was a fall in the population identifying as British, from 48% to 43%. The proportion of the population identifying as Irish rose from 28% to 33%, while the proportion identifying as Northern Irish rose from 29% to 32%.⁴² The chart below shows the prevalence of different combinations of national identities.

The majority of the population (87%) only gave one national identity, with British and Irish the most common sole identities given (32% and 29% of the population respectively). Around 13% gave some combination of national identities, of which British and Northern Irish was the most common (around 8% of the population).



Source: NISRA, [Census 2021 main statistics identity tables](#), Table MS-B16

Notes: “Other UK” refers to English, Scottish or Welsh national identity. “Other” refers to national identities other than the UK nations and Ireland.

Further information is available in NISRA’s [2021 Census national identity bulletin](#).

⁴¹ NISRA, [Census 2021 main statistics for Northern Ireland statistical bulletin – national identity](#), 22 September 2022.

⁴² NISRA, [Census 2021 main statistics for Northern Ireland statistical bulletin – national identity](#), 22 September 2022.

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