



Stormont: from rights-based safeguards to political vetoes – has the intention of the Good Friday Agreement been turned on its head?

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ABSTRACT

In a speech at the time of the 1998 Good Friday Agreement (GFA), Mary Robinson, then United Nations High Commissioner for Human Rights, remarked that the new Agreement was ‘conspicuous by the centrality it gives to equality and human rights concerns’. The GFA expressly provided that Executive and Legislative authority was to be ‘subject to safeguards to protect the rights and interests of all sides of the community’. Such safeguards included the codified incorporation of the European Convention on Human Rights (ECHR) into Northern Ireland law, undertaken through the Human Rights Act 1998 and the devolution statute. The GFA also provided for an ECHR+ ‘Bill of Rights for Northern Ireland’, envisaged as a similar set of objective human rights legal safeguards binding in a similar manner. In turn, these were to link into the flagship safeguard over the legislature – the ‘petition of concern’ (PoC) – the tabling of which was to trigger an Ad Hoc Committee on Conformity with Equality Requirements to scrutinise conformity with the ECHR and Bill of Rights. The GFA also led to Northern Ireland public authorities being bound by what became the ‘section 75’ equality duty, envisaged as an objective policy appraisal tool to equality impact assess whether proposed policies risked discriminatory detriment against nine protected grounds, and if so to prompt consideration of alternative policies.

This article will reflect, over a quarter of a century on, as to the fate of these commitments and subsequent developments. The Bill of Rights was never legislated for and remains outstanding. The PoC was ‘mis-legislated’ for to the extent it has never once been able to trigger the specialist committee. During the 2011–2016 mandate it became the veto of choice, being tabled over 100 times, including to block rights and equality-based measures. To a chorus of criticism from the Council of Europe, the ‘section 75’ duty also regressed following the invention and integration of ‘good relations’ impact assessments within its paradigm, which in turn

provided a blocking mechanism for rights-based policy deemed politically contentious. Furthermore, a new veto over ministerial decision-making was introduced by the St Andrews Agreement, not grounded in objective-rights based criteria but rather on whether a decision was ‘significant’ or ‘controversial’. This ‘St Andrews Veto’ required such decisions to be taken by the full Northern Ireland Executive, with three ministers able to compel a ‘cross-community’ vote, and as such was used to veto proposals on same-sex marriage, reproductive rights and minority language rights. In 2014, legal certainty over a new minority rights veto in local councils (‘call in’) was also set back when a PoC blocked definitional secondary legislation. This increased the risk of call in becoming a further political veto over rights.

Combined, these developments prompt the question as to whether the intention of the GFA has been turned on its head. This article will further explore the experience of each of the mechanisms (ECHR/Bill of Rights; PoC; St Andrews Veto; Executive Agenda Veto; call in; equality impact assessments and the ‘good relations’ duty; and the revised Ministerial Code) and their impact on the governance and viability of Stormont.

Keywords: Belfast/Good Friday Agreement; St Andrews Agreement; petition of concern; Stormont; Stormont reform; good relations; Ministerial Code; minority rights.

INTRODUCTION – THE GFA INSTITUTIONS AND SAFEGUARDS

The main (Good Friday Agreement) GFA implementation legislation, the Northern Ireland Act 1998 (NIA 1998) established the Northern Ireland Assembly, with its seat at Stormont, as a power-sharing unicameral legislature presently composed of 90 Members of the Legislative Assembly (MLAs). MLAs must designate as (British) ‘unionist’, (Irish) ‘nationalist’ or ‘other’. The power-sharing Executive has involved five main parties. The largest unionist party, the Democratic Unionist Party (DUP), and the largest nationalist party, Sinn Féin, are entitled to the offices of joint First and deputy First Ministers. Other parties who have been in the Executive are the Ulster Unionist Party (UUP) (unionist), Social Democratic and Labour Party (SDLP) (nationalist) and Alliance (other). Other ministers are allocated to parties in accordance with party strengths, save the Justice Minister, who to date has been appointed by the Assembly on the basis of a cross-community vote, and is presently a member of Alliance. Under the GFA, the United Kingdom (UK) Parliament retains competence to legislate in areas devolved to the Assembly where required to meet international obligations.¹

1 Para 33(b), Strand 1 GFA, providing that the UK Parliament will: ‘legislate as necessary to ensure the United Kingdom’s international obligations are met in respect of Northern Ireland’. The Secretary of State also retains powers to direct a Northern Ireland Minister to take or refrain from taking action to ensure compliance with the UK’s international obligations. Such directions are through legally binding orders – see s 26 NIA 1998.

In addition to the mandatory nature of power-sharing, there are also other particular characteristics of the constitutional arrangements. As observed by Deb:

the Executive Committee is not an executive body but a committee of the Assembly with the power to call up witnesses and take evidence, like other Assembly committees ... Individual departments in the Executive also have their own distinct legal personalities as decision-makers.

Pointing to the justiciable nature of Stormont's Ministerial Code, Deb also observes that the NIA 1998 'is unique in the UK in that it is a very legalised constitutional settlement'.²

The following sections will examine provisions within these structures that can be considered either as safeguards or vetoes, namely:

- European Convention on Human Rights (ECHR) and Northern Ireland Bill of Rights (legislature and Executive);
- petition of concern (PoC) (legislature);
- St Andrews Veto (Executive);
- Executive Agenda Veto (Executive);
- call in (established by Stormont for local government);
- equality impact assessment (EQIA) and the good relations duty; and
- Ministerial Code.

The institutions and structures of the GFA are not set in stone and can be subject to review and amendment. The GFA itself includes various review mechanisms, such as the British–Irish Intergovernmental Conference, and, in particular, where difficulties arise which require remedial action, a specific provision on the 'Review Procedures Following Implementation'.³ The St Andrews Agreement 2006, which restored the power-sharing institutions after a lengthy period of suspension in a context where the DUP and Sinn Féin had become the largest unionist and nationalist parties, made significant changes to the Stormont structures to accommodate the DUP (who had opposed the GFA), including the St Andrews Veto.

2 Anurag Deb, 'The Northern Ireland Executive: politics, law and a rethink of judicial intervention' in *Could rights-based safeguards make Stormont functional?* (Report of a seminar hosted by the Equality Coalition and the Transitional Justice Institute, supported by the LSE Gender, Justice and Security Hub, Ulster University 2023).

3 GFA, 'Validation and implementation', para 7: 'If difficulties arise which require remedial action across the range of institutions, or otherwise require amendment of the British-Irish Agreement or relevant legislation, the process of review will fall to the two Governments in consultation with the parties in the Assembly. Each Government will be responsible for action in its own jurisdiction.'

The Northern Ireland (St Andrews Agreement) Act 2006 also amended the NIA 1998 to provide for the establishment of an Assembly committee to review the functioning of the institutions: the Assembly and Executive Review Committee (AERC).⁴ Post-St Andrews, the AERC became a forum for significant discussion, producing a 230-page 2014 report on the PoC, albeit these recommendations were not taken forward. In the current mandate, the AERC has initiated a further review of institutional reform.⁵

THE INTENDED SAFEGUARDS OF THE GFA: THE ECHR AND NORTHERN IRELAND BILL OF RIGHTS

The GFA provided for the codified incorporation of the ECHR into Northern Ireland law, specifying ‘direct access to the courts’ and ‘remedies for breach(es)’.⁶ This commitment was taken forward through the Human Rights Act (HRA) 1998 and devolution statute, the NIA 1998.

Whilst this legislation remains intact, in recent years Conservative Governments have regularly threatened to repeal the HRA or even to leave the ECHR entirely, ambivalent or oblivious to any such move being in breach of the GFA. This included the proposals spearheaded by the then-Justice Secretary Dominic Rabb to repeal the HRA and replace it with a British Bill of Rights Bill.⁷ This Bill fell with the change of Prime Minister to Liz Truss and Rabb’s consequent replacement. Nevertheless, the then Government continued to roll back the GFA-required incorporation of the ECHR in a piecemeal fashion through separate Bills. Legislation dealing with legal liability for overseas military operations (the Overseas Operations (Service Personnel and Veterans) Act 2021), covert police operations (Covert Human Intelligence Sources (Criminal Conduct) Act 2021) and the Northern Ireland Troubles (Legacy and Reconciliation Act 2023 – the Legacy Act) removed the GFA-required ‘direct access to the courts’ and

4 S 29A NIA 1998.

5 [Assembly and Executive Review Committee Review into Assembly and Executive Reform](#).

6 GFA 1998, ‘Rights, safeguards and equality of opportunity’, para 2: ‘The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.’

7 See ‘[CAJ responds to Human Rights Act Consultation](#)’ (10 March 2022).

remedies for ECHR breaches in their provisions.⁸ The Safety of Rwanda (Asylum and Immigration) Bill 2023, which sought to designate Rwanda a safe country in response to a ruling of the Supreme Court, took this approach much further, expressly disapplying provisions of the HRA, with ministers openly requesting the UK Parliament to legislate regardless of ECHR compatibility.⁹ Related legislation, the Illegal Migration Act 2023, was challenged in a judicial review taken by the GFA-established Northern Ireland Human Rights Commission (NIHRC) and an individual (JR295). The court found the Illegal Migration Act incompatible with both the HRA and GFA rights given the continued legal underpinning of the latter by Article 2 of the Windsor Framework.¹⁰ The election of a Labour Government in the July 2024 election led to a discontinuation, for now, of the threats to repeal the HRA from the party of Government. Whilst this means this key GFA safeguard therefore remains in place, both the Conservative

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- 8 Overseas Operations (Service Personnel and Veterans) Act 2021. The Joint Committee on Human Rights raised issues of ECHR compliance in relation to the Bill's provisions limiting liability for criminal acts or human rights violations committed in military operations overseas relating to Articles 2 and 3 procedural requirements to conduct effective investigations into deaths and torture; and Article 13 rights to effective remedies; Covert Human Intelligence Sources (Criminal Conduct) Act 2021 – see 'Briefing for Second Reading, Reprieve', the Pat Finucane Centre, Privacy International, the Committee on the Administration of Justice, and Rights and Security International (October 2020); the Bill allowed criminal offences committed by CHIS to be 'lawful for all purposes', and hence limiting legal remedies, without precluding acts which themselves would constitute ECHR violations (eg torture, kidnap, killings); the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 – this Bill prohibited further inquests and civil cases relating to the NI conflict and hence 'direct access to the courts'. These provisions were subsequently found to be incompatible with the ECHR by the Court of Appeal in Northern Ireland in *Dillon and Others*. This aspect of the judgment was appealed to the UK Supreme Court by the Secretary of State whose ruling is awaited: see *In the matter of an application by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus for Judicial Review (Respondents)* UKSC/2025/0013.
- 9 See CAJ, 'Written Evidence on the Safety of Rwanda (Asylum and Immigration) Bill 2023', setting out the HRA provisions the Bill was to disapply. The usual ministerial declaration under s 19(1)(b) HRA that a Bill is deemed compatible with the ECHR was replaced with the following text from Secretary of State James Cleverly: 'I am unable to make a statement that, in my view, the provisions of the Safety of Rwanda (Asylum and Immigration) Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill.'
- 10 For analysis, see Anurag Deb and Colin Murray, 'The Illegal Migration Act and its inevitable fate in Northern Ireland: Re NIHRC & JR295's applications for judicial review' (*UK Human Rights Blog* 30 May 2024).

and Reform UK parties in opposition have taken a position that they will withdraw from the ECHR if they win power.¹¹

The Article 2 safeguard was introduced as part of the Northern Ireland Protocol (renamed Windsor Framework) to the UK–EU Withdrawal Agreement as a commitment to non-diminution in certain GFA rights as a result of Brexit.¹² What this safeguard has in common with the GFA-mandated incorporation of the ECHR through the HRA is the manner in which it is directly legally binding and enforceable. Breaches of GFA rights protected by Article 2 Windsor Framework go further, leading to the disapplication of the offending provisions.¹³ Whilst this safeguard proved successful in shielding Northern Ireland from two of the most contested policies of the previous Conservative Government (the Legacy Act and Illegal Migration Act), notably, the current Labour Government has continued to appeal the *Dillon and Others* rulings against the Legacy Act to the extent to which they relate to the Windsor Framework.¹⁴

Whilst the commitment in the GFA to incorporate the ECHR was implemented, a second commitment for a similarly framed but broader ‘ECHR+’ safeguard, in the form of a Bill of Rights for Northern Ireland, remains unimplemented. The purpose of the Bill of Rights was, through Westminster legislation, to incorporate additional protections beyond those in the ECHR that related to the ‘particular circumstances of Northern Ireland’. This contrasts with Dominic Rabb’s British Bill of Rights, with its express purpose of rolling back ECHR incorporation.

The Northern Ireland Bill of Rights, as with the incorporation of the ECHR through the HRA, was to therefore constitute an objective legal safeguard drawn from human rights standards. As such, there would be a significant degree of legal certainty and objectivity over the interpretation of the scope of rights in the Bill of Rights, as with the ECHR.

The GFA incorporation of the ECHR and Bill of Rights were also expressly linked and essential to the functioning of the GFA’s PoC, the primary safeguard which could be triggered within the legislature. This is further explored below.

11 For an explainer on the relationship between the GFA and ECHR, see Colin Murray and Aoife O’Donoghue *The Belfast/Good Friday Agreement 1998 & European Convention on Human Rights: Explainer* (CAJ, September 2025).

12 *Protocol on Ireland/Northern Ireland: Article 2* (*Gov.uk* 7 August 2020).

13 See Anurag Deb and Colin Murray, ‘The Dillon judgment, disapplication of statutes and Article 2 of the Northern Ireland Protocol/Windsor Framework’ (*EU Law Analysis* 8 March 2024).

14 See Secretary of State for Northern Ireland Hillary Benn MP, ‘Written Ministerial Statement – Legacy – Northern Ireland’ (*Gov.uk* 7 October 2024).

The NIHRC, in accordance with its mandate under the GFA, last advised on the content of the Bill of Rights in 2008.¹⁵ Despite being pressed to do so by, among others, the United Nations (UN) human rights mechanisms,¹⁶ successive UK Governments have not legislated for the Bill of Rights. The reason behind this has been unionist and, more recently, DUP opposition, with the rationale for not discharging the commitment framed as a requirement for cross-party consensus on its content before the Bill of Rights is legislated for. The UK authorities recently went as far as telling the UN Human Rights Committee this was ‘always envisaged’ in the GFA.¹⁷ This, however, is not the case. The GFA makes no such reference to cross-party consensus and instead expressly defers to the NIHRC, not the political parties, for the content of the NI Bill of Rights.¹⁸ The absence of the Bill of Rights, civil society organisations including the Committee on the Administration of Justice (CAJ) have contended, has contributed to the instability and dysfunctionality of Stormont institutions.¹⁹

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- 15 Professor Monica McWilliams, Chief Commissioner, ‘[Advice to the Secretary of State for Northern Ireland](#)’ (NIHRC 10 December 2008).
- 16 For example, in 2016, the UN Human Rights Committee expressed regret that the ‘bill of rights for Northern Ireland has not yet been adopted, as provided by the Belfast (Good Friday) Agreement’ and urged the UK ‘to take all necessary measures to expedite the adoption of a bill of rights for Northern Ireland’. [E/C.12/GBR/CO/6 Concluding Observations on the UK](#) (2016) paras 9–10. The Committee in 2024 also expressed concerns ‘about the lack of significant progress in the development of the Bill of Rights in Northern Ireland’ and urged the UK ‘to expedite the process of the adoption of the Bill of Rights for Northern Ireland ...’: [Concluding Observations on the UK](#) (CCPR/C/GBR/CO/8 2024) paras 4, 5.
- 17 [CCPR/C/GBR/8 Eighth Periodic Report submitted by the United Kingdom](#) (11 November 2021) para 14.
- 18 The full text of the GFA commitment at ‘Rights, safeguards and equality of opportunity’, para 4 is: ‘The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be: the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.’
- 19 See CAJ and UNISON, ‘[Written Evidence to the NI Assembly Ad Hoc Committee on the Bill of Rights from the Equality Coalition Co-Conveners](#)’ (23 October 2020).

The 2020 ‘New Decade New Approach’ (NDNA) deal, between the UK and Ireland and Northern Ireland parties, which restored the institutions after three years of suspension (2017–2020), provided for a new process for progressing the Bill of Rights.²⁰ NDNA led to the establishment of an Ad Hoc Committee of the Northern Ireland Assembly. Its work was limited by political blockages, but the Committee nevertheless produced a final report.²¹ As observed by the Council of Europe Commissioner for Human Rights Dunja Mijatović:

... the Ad Hoc Committee agreed it supported the creation of a Bill of Rights for Northern Ireland, but it made any further decisions contingent on the advice from a panel of experts, which would have to be created for this purpose. This panel was not established due to political disagreement. The Committee delivered a report in February 2022, but could not make a decision on what approach a Bill of Rights for Northern Ireland should take in view of the afore-mentioned issues.²²

Four of the five parties in the Northern Ireland Executive stated their support for the Bill of Rights in this process (the exception being the DUP).²³ Beyond the parties, there is broad cross-community support for the Bill of Rights.²⁴ Yet the then UK Government in practice granted a *de facto* veto over the NI Bill of Rights through the requirement of all-party consensus, albeit this should be viewed in the context of the administration’s broader antipathy to incorporating rights protections. The incoming Labour administration has also not shown any appetite to date to move forward on the Bill of Rights, dropping a previous direct reference to it from its 2024 Manifesto.

20 UK Government and Irish Governments, ‘New Decade New Approach Deal’ (2020).

21 Ad Hoc Committee on a Bill of Rights, ‘Report of the Ad Hoc Committee on a Bill of Rights’ (NIA 156/17-22 14 February 2022).

22 Commissioner for Human Rights, ‘United Kingdom: Commissioner warns against regression on human rights, calls for concrete steps to protect children’s rights and to tackle human rights issues in Northern Ireland’ (9 December 2022).

23 Ad Hoc Committee (n 21 above) para13.

24 Human Rights Consortium, ‘Polling shows public demand stronger rights protections following Covid-19’ (23 June 2021).

THE PETITION OF CONCERN

The GFA provided that Executive and Legislative authority was to be 'subject to safeguards to protect the rights and interests of all sides of the community'.²⁵ The PoC was a central safeguard to this end. Whilst set out in a section on key decisions being taken on a cross-community basis, indicating a consociational purpose, the procedural provisions envisaged linking the Petition to conformity with 'equality requirements' and a Special Procedure Committee (Ad Hoc Committee on Conformity with Equality Requirements) to scrutinise the compliance of a measure with, in particular, the ECHR and the Bill of Rights. In practice, however, these provisions were not properly put into place and use of the PoC to block equality and rights initiatives, and for party-political purposes, brought the mechanism into disrepute.

Each PoC was supposed to trigger the specialised Assembly Committee to consider if the legislation etc that the PoC was tabled against infringed the ECHR/Bill of Rights. Instead, the PoC was not set up in this manner. Rather a structure was embedded that allowed any 30 MLAs to call for a 'cross-community vote' without any objective criteria. The establishment of the Special Procedure Committee was to be mandatory when a PoC was tabled (unless there was a cross-community vote to the contrary).²⁶ However, the Committee has never been convened as a result of a PoC.²⁷

Prior to the 2017–2020 suspension, a study by *The Detail* mapped the use of the PoC in the mandates that ran to 2016. In the first (1998–2003) mandate the PoC was only used seven times. From 2007–2011 it was used 33 times. The use of the PoC, however, reached 115 times in the 2011–2015 mandate. Table 1 below sets out usage by party. Rather than operating as a counter-majoritarian safeguard, it was predominantly used by the then largest party.

25 GFA, Strand 1, para 1.

26 GFA, Strand 1, para 13: 'When there is a petition of concern as in 5(d) above, the Assembly shall vote to determine whether the measure may proceed without reference to this special procedure. If this fails to achieve support on a cross-community basis, as in 5(d)(i) above, the special procedure shall be followed.' Paragraph 11 provides a broader permissive provision regarding this special procedure whereby the Assembly may appoint the Special Committee at any point to examine and report as to 'whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights'. It is para 13 that makes this a mandatory provision when a PoC is tabled – unless there is a cross-community vote to the contrary.

27 The Committee was convened to consider the Welfare Reform Bill, but not as a result of a PoC.

PETITIONS OF CONCERN 2011-2016	
Party	Number signed
DUP	86
Sinn Féin	29
SDLP	29
Green	4
Alliance	3
UUP	2
NI21	2
Independent Unionist	1

Table 1: POC usage by party (Claire Smyth ‘Stormont’s petition of concern used 115 times in five years’ (The Detail 29 September 2016).

Legislation and motion	Number of petitions of concern	Year tabled
Welfare Reform Bill	49	2015
Education Bill	10	2014
Local Government Bill	7	2014
Marriage Equality	5	2012 - 2015
Criminal Justice Bill	4	2013
Assembly and Executive Reform (Assembly Opposition) Bill	4	2016
Planning Bill	3	2013
Justice Bill	3	2015
Complaints against MLAs	3	2012 / 2014 - 2015
A5 Dual Carriageway Project	2	2011

Table 2: POC usage by legislation and motivation (Claire Smyth ‘Stormont’s petition of concern used 115 times in five years’ (The Detail 29 September 2016).

Table 2 above sets out what PoCs were used for. The PoC was used 49 times by the then largest party the DUP on 47 separate amendments to the Welfare Reform Bill alone. It was also used five times to block same-sex marriage equality initiatives.

The post-St Andrews AERC, considered, and reported on PoCs in 2014. As part of its Terms of Reference, the Committee specifically considered ‘provisions for voting on an Ad Hoc Committee on Conformity with Equality Requirements prior to the vote on a Petition of Concern’. A proposal to amend the NIA 1998 to give a legislative basis for practice of the Special Committee *not* being convened was supported by the DUP and UUP. By contrast, Alliance, the SDLP and Sinn Féin favoured options of convening the Special Committee. There were also discussions on limiting PoCs, to ‘equality issues’, but this was

opposed by the DUP. There were also differences of view on replacing the PoC with an alternative mechanism. The DUP and Alliance were in favour of a weighted majority vote but the SDLP and Sinn Féin were opposed. There was also discussion on the restriction of the PoC to certain areas, including not using them for private members' motions.²⁸

There was no agreement hence on changes resulting from this AERC process. Further crisis talks on a range of issues which had destabilised power-sharing in 2014 and 2015 led to the 2014 Stormont House Agreement and 2015 Fresh Start Agreement, the latter of which included implementation of issues within Stormont House which had stalled.²⁹ Among the topics were institutional changes to the Stormont institutions, including reducing the number of Assembly members and Stormont departments, provision for an official opposition, and the PoC. However, reform of the latter was limited to a voluntary Protocol provided for in the 2015 Fresh Start agreement. This was ineffective and the growing controversy over the use of the PoC led to its reform becoming a key part of the negotiations for what became the 2020 NDNA agreement that restored Stormont after the 2017–2020 suspension. Reform was progressed through the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022.³⁰ This included one party no longer being able to table a PoC on its own and misconduct sanctions against ministers and MLAs being outside the scope of PoCs. NDNA also provided that reasons must be stated when tabling a PoC.³¹ Northern Ireland Office ministers argued these reforms would return the PoC to its intended purpose under the GFA and 'prevent one party from blocking measures or business'.³²

28 Assembly and Executive Review Committee, Review of Petitions of Concern (NIA 166/11-15 25 March 2014)

29 Other issues dealt with by Stormont House included transitional justice mechanisms to deal with the legacy of the conflict and Fresh Start measures to deal with ongoing paramilitary activity. The crisis talks took place in the context of contestation over finances and welfare reform.

30 Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022, s 6.

31 NDNA (n 20 above) annex B, para 2.2.1. This is not presently reflected in the provisions for PoC in the 'Standing Orders of the Assembly', 'Petition of concern', para 28.

32 The Secretary of State for Northern Ireland stated at second reading: 'Clause 5 reforms the Petition of Concern mechanism to reduce its use and *to return it to its intended purpose as set out under the Belfast/Good Friday Agreement*—a safeguard to ensure that all sections of the community can participate and work together successfully in the operation of the Northern Ireland institutions and are protected when the Assembly legislates, and *to prevent one party from blocking measures or business ...*' HC Deb 22 June 2021, vol 697, col 779 (emphasis added).

The reforms under the 2022 Act expressly dealt with the controversy over misconduct sanctions and broader procedural issues. The relationship to rights-based scrutiny was tied with the revival in NDNA of reference to the Ad Hoc Committee on Conformity with Equality Requirements, and scrutiny against the ECHR/Bill of Rights.³³ NDNA, however, recorded that: ‘Most parties supported wider reform of the Petition of Concern.’³⁴ The proposed ‘broader reform’ was to grant the NIHRC an adjudicatory role as to whether a PoC was valid (in the sense of whether the legislation etc that it was tabled against actually infringed the ECHR or other equality/human rights standards).

Following these reforms, the PoC notably fell out of use for most of the 2020–2022 Assembly mandate. Ultimately, only one PoC was tabled, by the DUP and Traditional Unionist Voice (TUV), against the Integrated Education Bill. It fell, as they collectively only had 29 MLAs.³⁵

Following the 2022 Assembly elections, the number of DUP MLAs fell to 25, well below the threshold of 30, meaning that the DUP would require the support of at least one other major party to table a PoC. Sinn Féin had 27 MLAs, Alliance 17, the UUP 9 and SDLP 8.³⁶

In practice, post-NDNA reforms have led to the dropping away of concerns over the misuse of the PoC. That said, it remains the case that neither has it functioned as originally intended as a mechanism which would trigger consideration of conformity with ‘equality requirements’. Post-NDNA concerns over other veto-mechanisms operational within the Northern Ireland Executive have been more prominent.

ST ANDREWS VETO

The St Andrews Agreement 2006 made changes to the GFA, including the introduction of a new veto over the exercise of powers by individual Northern Ireland ministers. The St Andrews Veto augmented the role of the Northern Ireland Executive to require most ministerial decisions outside the terms of a Programme for Government (PfG) to instead require a decision by the full Northern Ireland Executive if they were ‘controversial’ or ‘significant’. Three ministers could also require an Executive vote to be taken on a ‘cross-community’ basis (in

33 NDNA (n 20 above) annex B, ‘Petition of concern’, paras 2.27–2.3.

34 Ibid pt 2, para 11.

35 Jonathan McCambridge and David Young, ‘Assembly passes integrated education Bill after UUP refuses to back petition of concern’ *Belfast Telegraph* (Belfast 9 March 2022).

36 ‘Northern Ireland Assembly Election Results 2022’ (*BBC News* 2022).

which ‘other’ ministers have no vote).³⁷ The criteria of ‘significant’ or ‘controversial’ do not relate to rights-based thresholds and include many rights issues.

In the year following NDNA (when no PfG had been adopted), this veto was invoked at least six times by DUP ministers. On three occasions it was used to block provision for early medical abortion services (relating to a ruling of the UN Committee for Elimination of Discrimination Against Women – CEDAW); and twice to block public health measures to deal with the coronavirus pandemic. Freedom of information (FOI) requests then revealed that in previous mandates DUP ministers used the veto to block a consultation on same-sex equal marriage, policy proposals on Irish language legislation and an Irish language strategy.³⁸ The High Court subsequently found that the Executive had acted unlawfully in not adopting the Irish language strategy.³⁹

The increased use of the St Andrews Veto in the first year of the 2020–2022 mandate (the same number of times as during the whole 2011–2016 mandate) could ultimately be indicative of a ‘displacement’ towards using this mechanism rather than the PoC.

There was some reform to this veto following NDNA, mostly focusing on removing its scope from planning decisions.⁴⁰ This followed decisions by the courts on the application of duties to refer planning decisions to the full Executive in *Buick*.⁴¹

The actual exercise of this St Andrews Veto arguably constitutes the tip of the iceberg, as its existence prevents ministers from taking forward measures they consider would likely be subject to the St

37 For further details, see ‘Stormont’s vetoes in the context of a pandemic – an Equality Coalition Briefing Note’ (CAJ November 2020).

38 For further detail, see CAJ, ‘Written Evidence to the UK Parliament Public Bill Committee: Northern Ireland (Ministers, Elections and Petitions of Concern) Bill’ (June 2021).

39 S 28D of the Northern Ireland Act 1998 (as amended) places duties on the NI Executive to adopt Irish and Ulster Scots strategies respectively. In *Conradh Na Gaeilge’s Application* [2017] NIQB 27 the Executive was found to have acted unlawfully for its failure to adopt such a strategy for the Irish language. Other uses of the veto in this period included in votes on public service pensions; the crime and courts bill; and an unspecified procedural issue.

40 Executive Committee (Functions) Act (Northern Ireland) 2020, s 1.

41 Anurag Deb, ‘Buick: two courts, two approaches and no government’ (*UK Constitutional Law Blog* 16 July 2018).

Andrews Veto.⁴² It should be noted also that no PfG was adopted at Stormont between the PfG adopted for the 2011–2015 mandate and a limited PfG adopted following the restoration of devolution in 2024. The absence of a PfG, or such a limited PfG, augments the scope of the St Andrews Veto, as it usually cannot be exercised in relation to matters within a PfG.⁴³

The exercise of the St Andrews Veto by DUP ministers in 2020 against the proposal of the then UUP Health Minister Robin Swann MLA to extend Covid-19 public health measures led to considerable and very public contestation over the use of the St Andrews Veto.⁴⁴ Until this point, in contrast to the PoC whose use occurs in plain sight on the floor of the legislature, the use of the St Andrews Veto had largely been shrouded in the confidentiality of Executive business.

Notably, following this contestation, there were no *uses* of the St Andrews Veto *requiring cross-community* votes in the rest of the Executive's mandate that ultimately ran until February 2022.⁴⁵ This does not, of course, mean that the St Andrews veto did not continue to shape and significantly constrain how individual ministers took decisions, in the full awareness that any significant or controversial decision would have to be referred to the full Executive, which ministers may feel is pointless if the St Andrews Veto is likely to be exercised.

What is notable is the considerable body of caselaw that has built up regarding the St Andrews Veto. Courts have considered, on several occasions, the legality of decisions relating to use, or lack thereof, of the veto, focusing principally on clarifying the meaning of 'cross-cutting', 'significant,' or 'controversial' action.

Among the matters which must be referred to the Executive Committee are those which are 'cross-cutting'. This has always been the function of the Executive Committee under the GFA and it pre-dates the St Andrews Veto. More recently legislation has, however, sought to limit the scope of the concept. The 2020 amendment to the NIA 1998 dictates that a matter is cross-cutting where it 'affects the exercise of the statutory responsibilities of one or more other Ministers more than

42 The veto also means such decisions cannot be taken at all during periods of 'caretaker ministers' (as was the case following the election in 2022) as no Executive exists to take the decision. During this time one MLA argued that even a Stormont Department launching a consultation (in this case the Department of Justice, relating to the minimum age of criminal responsibility) should have required Executive consultation (AQW 3991/22-27 Mr Jim Allister MLA). The scope of application of the St Andrews veto is much greater when no PfG is in place.

43 NIA 1998, s 20(4).

44 For further details see: [Stormont's Vetoes in the Context of a Pandemic – An Equality Coalition Briefing Note](#) (CAJ, November 2020).

45 The Executive Office, 'Response FOI 2024-0046 from CAJ' (14 August 2024).

incidentally’ adding that: ‘A matter does not affect the exercise of the statutory responsibilities of a Minister more than incidentally only because there is a statutory requirement to consult that Minister.’⁴⁶ Judicial decisions have confirmed that the relevant question is one of degree, focusing especially on the requirement of more than mere incidental impact of a decision on the duties of other ministers and departments.⁴⁷ The *Rooney* decision established that practical or logistical difficulties in implementing a policy were insufficient to render an action cross-cutting, noting that these difficulties ‘could not reasonably be said [to] “affect the exercise of statutory responsibilities of one or more Ministers more than incidentally”’.⁴⁸ In 2024, *No Gas Caverns* determined that the relevant action, the grant of a licence to install a 500 million cubic metre underground gas cavern storage facility in Larne lough, was more than incidentally cross-cutting because it fell within the context of the Path to Net Zero, a cross-government climate policy which implicates broad climate action beyond the instant decision by the Department of Agriculture, Environment, and Rural Affairs.⁴⁹

What constitutes a significant ministerial act has similarly been the subject of judicial reasoning and interpretation. The *Safe Electricity* case established standards of significance. The court reasoned that the term ‘significant’ is ‘not merely used as the antonym of ‘insignificant’’. Rather, it relates to a matter of some importance and noteworthiness, judging that against the ‘gamut of other responsibilities the Minister has’.⁵⁰ Significance may arise ‘because of the financial implications of the matter (either in terms of cost or benefit)’; ‘because of the effects it will have on the citizens in Northern Ireland’; or ‘because of its symbolic or precedent value’.⁵¹ Ultimately, however, the court in *Safe Electricity* determined that ‘the category of “significant” decisions is likely to be open-ended’, requiring that determinations be made on a case-by-case basis.⁵²

46 Executive Committee (Functions) Act (Northern Ireland) 2020, ss 8–9.

47 See *Safe Electricity A&T Ltd’s Request for Judicial Review* [2021] NIQB 93; finding that there was not sufficient evidence that the Department of Infrastructure’s plan to build a North–South electricity interconnector cut across the Department for the Economy’s responsibilities more than incidentally.

48 *Rooney v Department for Environment, Food, and Rural Affairs (DEFRA)* [2022] NIKB 34, para 211.

49 *No Gas Caverns Ltd and Friends of the Earth Ltd’s Application for Judicial Review* [2024] NICA 50, paras 82–84.

50 *Safe Electricity* (n 47 above) para 73.

51 *Ibid* paras 73–78.

52 *Ibid* para 73.

Prior to the 2024 mandate, ministers were given much latitude to determine the significance of matters relating to their duties, considered by the courts to be best-situated to classify decisions.⁵³ Courts would, however, review the rationality of Executive Committee determinations of significance.⁵⁴ While the determination of the Executive Committee was considered persuasive, courts could conclude that they were *Wednesbury* irrational depending on the circumstances.⁵⁵

An additional check on Executive and ministerial decisions was instituted in *No Gas Caverns* through an extension of rationality analysis to a ministerial decision. Where a minister decided against referring a decision to the Executive Committee, the court determined that this implied the minister believed the matter to be insignificant. Applying a rationality test to the decision and relying on evidence of ‘the strategic and economic significance of the project’⁵⁶ and its ‘impact on current and emerging climate policy’,⁵⁷ the court adjudged the minister’s belief in the insignificance of the *Gas Cavern* irrational.

Judicial interpretations of what constitutes a ‘controversial’ matter have undergone transformations. Originally, courts considered a policy to be controversial if the Executive Committee treated it as such.⁵⁸ The trial judge in *Safe Electricity* noted that ‘controversy *within* the Executive Committee’ is a particularly important factor in determining whether a policy is controversial.⁵⁹ Subsequently, controversy analysis expanded to include controversy between political parties or amongst the public. In *JR65*, the court held that a policy prohibiting men who had sex with men from donating blood was controversial because it ‘generated much publicity and public debate’ and ‘views on the issues are highly polarized’.⁶⁰ Similarly, in *Buick*, the court ruled that planning permission of a waste treatment centre was controversial because of Sinn Féin’s well-documented opposition to the project.⁶¹

In the 2022 *Rooney* decision, however, the High Court drew a distinction between political controversy and legal controversy.⁶² The Court acknowledged that the Northern Ireland Protocol, and its

53 Ibid para 74.

54 Ibid paras 74–76.

55 Ibid para 77.

56 *No Gas Caverns* (n 49 above) para 63.

57 Ibid para 66.

58 See *Central Craigavon Ltd’s Application for Judicial Review* [2010] NIQB 73, para 26; see also *Minister of Enterprise, Trade and Investment’s Application for Judicial Review* [2016] NIQB 26, para 47.

59 *Safe Electricity* (n 47 above) para 82.

60 *JR65’s Application for Judicial Review* [2013] NIQB 101, para 150.

61 *Buick’s Application for Judicial Review* [2018] NICA 26, para 49.

62 *Rooney v Department for Environment, Food, and Rural Affairs* (n 48 above) 209.

requirement to implement checks on goods from Great Britain, was politically controversial. But ‘this does not mean that it is controversial as a matter of law’.⁶³ Where a minister has a clear legal obligation to enact a policy, the mere fact that the policy is politically controversial does not automatically necessitate Executive Committee approval.⁶⁴ *No Gas Caverns* built on this precedent. The court noted that “controversial” is not just satisfied if there have been objections to a project. Otherwise, on their own, objections from lobby groups or others could stymie perfectly valid projects.⁶⁵ The court established a base-level requirement for controversy that could legitimately give rise to referral to the Executive Committee, citing the objections of three major political parties and numerous well-respected independent bodies to conclude that a categorisation of the matter as uncontroversial was irrational.⁶⁶

Whilst the Courts have therefore placed some parameters on the scope of the ‘significant’ and ‘controversial’ concepts within the St Andrews Veto, which mitigates against such obligations applying to practically all ministerial decisions, the subject matter of *Rooney* provides a broader and curious context to examine the potential for the St Andrews Veto to create complex and dysfunctional governance scenarios.

The origins of the case lie in a decision by the then DUP Agriculture Minister Edwin Poots MLA in February 2022 to instruct officials to cease all checks on animal and agri-food goods moving from Great Britain into Northern Ireland required by the Northern Ireland Protocol (renamed Windsor Framework). The stated legal basis for the Minister’s instruction lay in the St Andrews Veto. Minister Poots argued that the Minister who had taken the decision to commence the checks had erred and overstepped their powers in doing so as the decision, given its significant and controversial nature in the context of the Protocol, would under the terms of St Andrews Veto have required the then Minister to refer the decision to the full Executive Committee for a decision. Minister Poots advanced this argument despite the minister who had originally taken the decision to commence the port checks being Minister Poots himself. In essence the Minister Poots was retrospectively challenging his *own* decision to authorise checks, on the basis he had erroneously taken a decision that should have been referred to the Executive. Paradoxically, Minister Poots’s subsequent 2022 decision to instruct the discontinuation of the port checks, particularly in the light of clear legal obligations to

63 Ibid.

64 Ibid.

65 *No Gas Caverns* (n 49 above) para 73.

66 Ibid para 78.

undertake them, by the same rationale would also fail to be considered ‘significant’ and ‘controversial’ and hence also be a decision beyond the competence of an individual minister. The instruction to cease the checks was then challenged by three applicants, one an unnamed member of Sinn Féin, *Rooney*, and Belfast City Council. The Court found that the contention that retrospective Executive agreement was required for the continuation of checks was incorrect given the clear statutory obligation to ensure their implementation. It noted that the checks had been carried out by the minister’s department for 13 months during which the Minister had himself accepted that was the clear legal position. The Court ultimately held that the Minister’s Instruction was motivated by political, not legal, considerations (namely opposition to the Northern Ireland Protocol) and quashed the Ministerial Instruction.⁶⁷

At the time of writing there is a further case being taken by the activist Jamie Bryson against the Minister for Infrastructure, in relation to a ministerial decision to erect bilingual (English–Irish) signage at Belfast’s new Grand Central Station. The applicant contends the ministerial decision should have been referred to the full Executive for a decision, with the Minister contending the decision was not ‘controversial’.⁶⁸ It is possible that this case may test as to whether a ministerial decision taken in line with international treaty-based obligations (in this case those relating to promotion of the Irish language) should be considered ‘controversial’.

THE EXECUTIVE AGENDA VETO

A further mechanism that can be used to thwart consideration of decisions by the Northern Ireland Executive sought by departmental ministers is what could be termed the ‘Executive Agenda Veto’. This mechanism, in practice, means either the First or deputy First Minister can prevent a decision being taken by the Northern Ireland Executive through declining to place it on the agenda of the Executive to be discussed *at all*.

Under paragraph 2.11 of the Northern Ireland Ministerial Code, the inclusion of ministerial proposals on the agenda for the Northern Ireland Executive must be agreed by both the First and deputy First Ministers. This gives in practice either minister a veto.⁶⁹

67 ‘Court delivers decision on the challenge to the Instruction of the Minister of Agriculture, Environment and Rural Affairs to cease OCR checks’, Summary of Judgment (Judicial Communications Office 15 December 2022).

68 Alan Erwin, ‘No work to install Irish language signs at Belfast station for at least six months, court told’ *Belfast Telegraph* (Belfast 30 April 2025).

69 Northern Ireland Executive, Ministerial Code.

Notwithstanding the general role of the First and deputy First Ministers in shaping an Executive agenda, other ministers have complained it has been used as a blocking mechanism on a range of issues. Written Evidence to the UK Parliament in 2021 by CAJ⁷⁰ recorded a number of controversial incidents whereby ministers had raised concerns about the failure to include items on the Executive's agenda:

- A UK submission to a Council of Europe treaty body states that ministerial submissions to take forward the Irish and Ulster Scots strategies had been blocked from inclusion on the Executive's agenda.⁷¹
- According to a statement from the Finance Minister, the draft budget was tabled on 10 December 2020 but was blocked from inclusion on the agenda from this and every other meeting until its belated approval on the 18 January 2021.⁷²
- In June 2021, the Communities Minister Deirdre Hargey MLA stated that amendments required to close loopholes in welfare legislation that are pushing people further into poverty had been blocked 17 times by the DUP from inclusion on the Executive agenda.⁷³
- The same concern was also raised by then Health Minister Robin Swann MLA who expressed frustration that laws for opt-out organ donation were being blocked by the DUP from the Northern Ireland Executive agenda. At the same time, then Justice Minister Naomi Long MLA stated that legislation designed to tackle up-skirting and strengthen protections for victims of sexual abuse had also been blocked at the Executive by the DUP.⁷⁴ Only after high-profile public intervention were the measures given passage, the latter in reduced form.

Whilst there may have been more examples, the Executive Office at the time declined to disclose information on use of this mechanism.⁷⁵

70 For examples, see CAJ, 'Written Evidence to the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill Committee' (7 February 2022) para 20.

71 [European Charter for Regional or Minority Languages \(MIN-LANG \(2021\) IRIA 1\)](#) para 176.

73 [Bimpe Archer, 'DUP accused of "consciously delaying" vital legislation to close welfare loopholes "pushing people further into poverty"' Irish News \(Dublin 18 June 2021.](#)

74 [Jayne McCormack, 'Organ donation opt-out laws to proceed after Stormont talks' \(BBC News 24 June 2021\).](#) In relation to the latter example, it is not clear which particular mechanism was used to delay introduction of the Bill.

75 'FOI Request from CAJ to The Executive Office' (TEO ref/2021-023 request of 30 March 2021, response 11 May 2021).

Reforms in the Fresh Start agreement to seek to prevent the blocking of items from inclusion on the Executive's agenda were taken forward in a non-binding manner and are not reflected in the binding Ministerial Code.⁷⁶

In August 2022, the High Court in Belfast ruled for a second time that the Executive had acted unlawfully in not adopting an Irish language strategy. Among the factors in reaching this decision, the Court records that the minister sought, but was thwarted from, including the strategy on the Executive agenda at over 30 meetings. The Court ruled that: 'It is difficult to avoid any conclusion other than that the issue was being blocked from substantive consideration at the Executive Committee.'⁷⁷

CALL IN – LOCAL GOVERNMENT

Whilst the above mechanisms apply to decisions by the legislature and the exercise of ministerial power, the Stormont institutions themselves, through the Local Government Act (Northern Ireland) 2014, have also legislated for a safeguard mechanism to apply to Northern Ireland local councils. The mechanism was framed in terms of minority rights protections but ultimately was legislated for with limited legal certainty.

The mechanism in question is the call in provision, introduced as part of local government reform in 2014. This provided that key decisions by councils can be 'called in' by 15 per cent of representatives. If a call in meets the criteria, a vote will be reconsidered and only approved if passed by a 'qualified majority' of 80 per cent of municipal representatives. As well as procedural grounds, the criteria for doing this is when the decision in question would 'disproportionately affect adversely a section of inhabitants of the local government district'.⁷⁸

Decision-making as to whether this threshold has or has not been met is deferred to a lawyer selected by the council who produces a legal determination. If the threshold is met, a qualified majority vote of 80 per cent+ is required, otherwise the original decision stands on the basis of a simple majority. Councillors tabling a call in are required to state the nature of the alleged disproportionate adverse impact and which section of the community it impacts.

Secondary legislation was presented to the Northern Ireland Assembly in 2016 that would have tied the definition of 'disproportionately affect adversely' to decisions that risked incompatibility with the ECHR, European Union law, or equality provisions of the Councils'

76 'A Fresh Start for Northern Ireland', para 62.

77 *Conradh na Gaeilge's Application (No 2)* [2022] NIQB 56, para 15.

78 *Local Government Act (Northern Ireland) 2014*, s 41, and the related *Local Government (Standing Orders) Regulations (Northern Ireland) 2015*.

Equality Scheme.⁷⁹ Whilst this legislation was supported by four of the five parties (Sinn Féin, UUP, SDLP and Alliance), it was blocked by the DUP tabling a PoC.⁸⁰ Whilst the opportunity to expressly tie the power to human rights standards was therefore missed, the concept of ‘adverse impact’ is found in Northern Ireland equality law and relates to discriminatory detriment.⁸¹

One example, exposed following a legal battle by CAJ, Conradh na Gaeilge and the Public Interest Litigation Service (PILS), encapsulates how this mechanism risks becoming a further political veto, rather than a safeguard tied to objective and legally certain criteria.⁸²

In this instance the call in mechanism was used by DUP representatives in Belfast City Council in late 2021 to block a decision to place bilingual English–Irish signage in a leisure centre. The call in contended that the signage would ‘disproportionately adversely affect’ the ‘Protestant community’, the ‘British community’, the ‘Northern Irish community’, and the community in one of the areas near the leisure centre, citing sentiments expressed at one community meeting for ‘English Only signage’ and concerns that ‘good community relations’ would be damaged.⁸³ None of these factors would be indicative of a discriminatory detriment from having to see Irish alongside English on a sign. The legal determination procured by the council, however, determined that the call in threshold had been met. As was routine, the council declined to release the documentation setting out this reasoning into the public domain, a decision initially upheld by the Information Commissioner. As a consequence, Conradh na Gaeilge, the representative group for the Irish-speaking community, represented by CAJ, took legal challenge to the Freedom of Information Tribunal, with support from PILS. CAJ raised concerns regarding the legal certainty of the interpretation of the call in concept, arguing that: ‘It cries out for an explanation how a decision can be reached that having to place Irish on a sign alongside English could constitute discriminatory treatment.’⁸⁴ A hearing was ultimately held on the

79 (Proposed) Local Government (Standing Orders) Regulations (Northern Ireland) 2016.

80 The proposed Local Government (Standing Orders) Regulations (Northern Ireland) 2016.

81 Namely, in the public sector equality duty in s 75 of the Northern Ireland Act 1998.

82 Alan Erwin, ‘Legal advice which stalled erection of Irish signs at Belfast leisure centre should be disclosed in public, tribunal hears’ *Belfast Telegraph* (Belfast 24 August 2023).

83 Belfast City Council, ‘Call in’ requisition form 24 September 2021: ‘2(f): Consultation on Signage – Andersonstown, Lisnasharragh, Olympia and Templemore Leisure Centres – Options Paper.’

84 Erwin (n 82 above).

matter on 15 January 2024 in Belfast and heard from witnesses in the Irish-speaking community who introduced themselves in Irish, in the context of the ban on Irish in court documents under legislation from 1737 (that has now been repealed under the Identity and Language (Northern Ireland) Act 2022). This hearing may have been the first time Irish has been permitted to be spoken in a Belfast court for decades, if not longer.⁸⁵ The Tribunal issued a decision on 1 February 2024, overturning the decision of the council and Information Commissioner not to disclose the legal determination. The case centred on whether the ‘public interest’ in releasing the documentation outweighed the public interest in not doing so. The Court ruled that it did, citing, *inter alia*, the public interest in compliance with treaty-based obligations to the Irish language.⁸⁶ Once the documentation was released, it became clear that the call in determination had not relied on the concept of discriminatory detriment imported from equality law, but rather a lay notion of asserted adverse impacts on ‘good relations’, a concept further explored below, reliant on information provided by the council to inform the decision.

Following the Information Tribunal case, Belfast City Council retook the decision in favour of erecting bilingual signage in the leisure centre. This decision was again called in by the DUP but, on this occasion, the legal determination, which was published by the Council, finding there was no merit in the contention that the decision would ‘disproportionately affect adversely any section of the inhabitants of the district’.⁸⁷

EQIA AND THE GOOD RELATIONS DUTY

The GFA provided for the section 75 statutory equality duty on public authorities operating in Northern Ireland. Its primary purpose is to preclude ‘adverse impacts’ on equality and to better promote equality across nine protected characteristics (in summary: age, disability, sex, ethnicity, religious belief, political opinion, disability, dependants and sexual orientation).⁸⁸

85 Niamh Browne, ‘Irish language spoken in Belfast courtroom for first time in 300’ (*Hotpress* 18 January 2024).

86 *Conradh Na Gaeilge (Appellant) and Information Commissioner + Belfast City Council* [2024] UKFTT 00097 (GRC) Information Rights IC-174101-Q3M4.

87 *Belfast City Council in the Matter of a Call-in Wholly or Partly Under Section 41(1)(b) of the Local Government (NI) 2014*, Opinion, 17 October 2024.

88 Northern Ireland Act 1998, s 75.

The concept of ‘adverse impacts’ is similar to ‘discriminatory detriment’ on a protected characteristic.⁸⁹

The equality duty legislation requires that new or proposed policies are equality tested for equalities impacts on the nine protected characteristics. It requires, where such impact assessments identify ‘adverse impacts’, that alternative policies or mitigating measures are considered.⁹⁰

Whilst not provided for in the GFA, the legislation added a second good relations limb to the equality duty. The duties in the legislation to conduct impact assessments only apply to the equality limb of the duty and not the good relations limb. A proposal advocated by the DUP to amend the duties to also include ‘good relations impact assessments’ was included in the draft T:BUC (Together: Building a United Community) community relations strategy but was strongly opposed by equality groups and not legislated for. Many public authorities have nevertheless started to conduct good relations impact assessments, with the acquiescence of the Equality Commission.⁹¹

There is no definition of ‘good relations’ in the Northern Ireland legislation. The same concept was subsequently defined in Great Britain in the Equality Act 2010, which explicitly frames the focus of the duty as ‘tackling prejudice and promoting understanding’.⁹² In Northern Ireland, however, the concept has been interpreted in a lay sense to block policy decisions, including on equality and rights provision, on grounds they are politically opposed and hence would lead to ‘community tensions’ and be ‘bad’ for good relations. Whilst obstruction of provisions for the Irish language and resource-allocation

89 The national equality body – the Equality Commission for Northern Ireland – has produced the following definition of adverse impact: ‘Adverse impact: Where a Section 75 category has been affected differently by a policy and the effect is less favourable, it is known as adverse impact. If a policy has an adverse impact on a Section 75 category, a public authority must consider whether or not the adverse impact is unlawfully discriminatory. In either case a public authority must take measures to redress the adverse impact, by considering mitigating measures and/or alternative ways of delivering the policy.’ This definition is incorporated into Council equality schemes, see, for example, [Equality Scheme for Belfast City Council](#).

90 Most public authorities have adopted a two-stage methodology for this. The first stage is an ‘equality screening’ assessment and if this produces evidence of a possible discriminatory impact of a policy on a protected equality group, a full Equality Impact Assessment (EQIA), including a three-month consultation, will be conducted. Public authorities adopt statutory ‘Equality schemes’ setting out their commitments to comply with the duties that are enforceable through a complaint to the Equality Commission or in certain circumstances to the courts.

91 For details, see CAJ, ‘[Response to Belfast City Council draft EQIA on bilingual signage](#)’ (27 September 2023).

92 Equality Act 2010, s 149.

based on objective need have borne the brunt of such an approach, this good relations approach has also stretched as determining same-sex marriage or even providing for women's reproductive rights will constitute 'adverse impacts' on good relations.⁹³

Despite international standards⁹⁴ and the Equality Commission⁹⁵ providing conceptualisations of how good relations *should* be interpreted, patterns persist of the use of a lay concept of 'good relations' as a blocking mechanism. A Council of Europe minority rights treaty body has raised concerns that the good relations duty had appeared to take priority over wider equality and minority rights initiatives on grounds they would lead to 'community tensions', noting that the lack of proper definition in law in Northern Ireland allows good relations to be used 'as a "tool" to set aside politically contentious issues, such as legislating on the Irish language, and to justify a "do-nothing" attitude, eventually based on "perceptions" rather than objective criteria'.⁹⁶

93 An impact assessment of Northern Ireland Office proposals to provide abortion services in NI further to a ruling by the UN CEDAW Committee held abortion services would constitute 'adverse impacts' on 'good relations' on grounds of religious belief and political opinion. The decision was reversed following a complaint from the CAJ, trade unions and women's rights and LGBT groups: 'Screening Decision Review Request on the Provision of a new legal framework for accessing abortion services in NI submitted on behalf of CAJ, NIPSA, UNISON, NIWEP, Transgender NI, Here NI, Alliance for Choice, NIRWN and ICTU'.

94 The European Commission against Racism and Intolerance (ECRI) General Recommendation 2 has provided an authoritative interpretation of how 'good relations' should be interpreted: 'Promoting good relations between different groups in society entails fostering mutual respect, understanding and integration while continuing to combat discrimination and intolerance.' [ECRI General Recommendation No 2 \(revised\), explanatory memorandum](#) (7 December 2017) para 21.

95 The Equality Commission for Northern Ireland has a statutory function to advise on the s 75 duties and has promoted the 'tackling prejudice, promoting understanding' definition from the Equality Act 2010 in Great Britain. In addition, also drawing on legislation in Britain in guidance to NI councils, in 'Equality Commission advice on good relations in local councils' (2015), the Equality Commission elaborates that: 'Good relations can be said to exist where there is a high level of dignity, respect and mutual understanding; an absence of prejudice, hatred, hostility or harassment; a fair level of participation in society.'

96 ACFC/OP/IV(2016)005 4th Opinion on the UK (adopted on 25 May 2016) paras 7, 11, 84, 85

COMPLIANCE WITH THE MINISTERIAL CODE

Section 28A of the NIA 1998, as amended at St Andrews, requires a Stormont minister (including junior ministers) to act compatibility with the Ministerial Code.⁹⁷ Beyond the justiciability of this provision a new statutory remedy for breaches of the Ministerial Code came into force on 22 March 2021, which extended the remit of the Assembly Commissioner for Standards to deal with complaints against ministers. The Commissioner already had competency to examine alleged breaches of the MLA's Code of Conduct.

The extension of the Commissioner for Standards' powers resulted from the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021.⁹⁸ This was introduced as a private members' Bill by the TUV MLA Jim Alister in 2020 in light of the Renewable Heat Incentive scandal which had precipitated the 2017–2020 collapse of Stormont.⁹⁹

Shortly after commencement, on 16 April 2021, the first complaint to the Commissioner for alleged breach of the Ministerial Code was issued by CAJ and Conradh na Gaeilge, the organisation representing the Irish-speaking community. The complaint concerned the then Junior Minister Gordon Lyons not attending the North–South Ministerial Council (NSMC) Language Body meeting. The Minister's non-attendance meant the meeting, dealing with funding and appointments, could not take place. Whilst the Minister had put forward other reasons for declining to attend, the complaint contended that the decision was part of a DUP strategy to boycott the NSMC meetings in protest at the Northern Ireland Protocol.

The Standards Commissioner's investigation concluded in October 2022, but the report sat in abeyance in the context of the then collapse of the Assembly, meaning there was no Committee on Standards and Privileges to submit it to. The Committee was re-established along with the Assembly in February 2024. There were then further delays as the Committee sought legal advice over its role in ministerial complaints and then the pre-election purdah period.¹⁰⁰ Ultimately, the report was published the day after the UK 2024 General Election. It upheld

97 NIA 1998, s 28A. The duty is without prejudice to the duties under NIA 1998, s 24, on ministers to, *inter alia*, not act incompatibly with ECHR rights. The Ministerial Code can be found in sch 4 NIA 1998 as amended.

98 Amending s 17 Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011.

99 For background and details of the Private Members Bill, see Jack Pannel, 'Northern Ireland Functioning of Government Act 2021' (*Institute for Government* 15 April 2021).

100 Committee on Standards and Privileges, [Report on a complaint against then Junior Minister Gordon Lyons MLA](#), Order by the Committee on Standards and Privileges to be published on 26 June 2024.

the complaint that the Minister had breached the Ministerial Code of Conduct.¹⁰¹

The complaint tested ambiguities as to the extent of the Commissioner's powers to adjudicate over certain sections of the Ministerial Code, namely whether the powers extended to provisions of the Code that required NSMC attendance *per se* and compliance with the Pledge of Office. The Commissioner held that this was 'unlikely' to be the correct interpretation of the scope of her powers but that she could investigate alleged breaches of paragraphs 1.5 and 1.6 of the Code, covering the 'Ministerial Code of Conduct' *per se* and the Seven Principles of Public Life. The complaint alleged breaches with duties to 'take decisions solely in terms of the public interest' and 'be as open as possible about all the decisions and actions that they take'. Deliberations ultimately focused as to whether the Minister had been honest about the reasons for not attending the NSMC rather than attendance *per se*.¹⁰² By contrast the Ministerial Code provisions on NSMC attendance are enforceable through judicial review, as illustrated by a ruling in October 2021 on the same subject matter, where the courts held the failure to attend has been unlawful.¹⁰³

The Commissioner in upholding the complaint concluded that the Minister 'by his actions and decisions, showed a lack of leadership, openness, selflessness and accountability in breach of paragraph 1.5(iv) and 1.6 of the Ministerial Code of Conduct when he failed to attend the NSMC Language Body meeting' (or to notify of his absence sufficiently ahead of time) and by attempting to defend his actions by arguing that the meeting and agenda were not officially confirmed, an argument the Commissioner found 'unconvincing'.¹⁰⁴

The Commissioner's adjudicatory remit was demonstrated in this and a subsequent complaint against other DUP ministers regarding NSMC attendance. However, Standing Orders were not modified to allow the Standards and Privileges Committee to make a recommendation to the Assembly on sanctions. Rather the Committee's role is limited to receiving and publishing the report. The application of sanctions by the Assembly (which could relate to the exclusion of a minister from office for three to 12 months) would require a cross-community vote in the Assembly and hence would not carry without

101 Report by the Assembly Commissioner for Standards on a complaint against Gordon Lyons MLA by the Committee on the Administration of Justice (CAJ) and Conradh na Gaeilge (CnG) (July 2024).

102 See n 96 above. See also CAJ, 'Commissioner for Standards investigates ministers for breaching the Code of Conduct – but sanctions remain out of reach' (*Just News* (Belfast September 2024))

103 *Napier (Sean) Application* [2021] NIQB 120.

104 See n 96 above.

DUP support. A motion for an assembly resolution on sanctions must either be moved by the First Minister and deputy First Minister acting jointly or by 30 MLAs. Ultimately, an SDLP non-binding motion on the Commissioner's reports (rather than a sanction) was debated on 18 November 2024, the motion was passed with a simple majority, with the support of nationalists and others, and opposition from unionist parties.¹⁰⁵ A more recent motion of no confidence in a minister has led for calls from the official opposition party at Stormont to prevent a minister's party from being able to veto sanctions for breaches of the Ministerial Code.¹⁰⁶

CONCLUSIONS

Equality and rights provisions were prominent within the GFA. Arguably, the primary devolved-power focus of the GFA was, however, on consociational structures (and there can undoubtedly also be tensions between rights and power-sharing which have been explored elsewhere).¹⁰⁷ However, notwithstanding this, it is evident that core safeguards envisaged under the GFA were rights-based mechanisms designed to constrain the exercise of power through the binding application of human rights standards. This is evident in the requirement to incorporate the ECHR and in the GFA provisions adoption of an ECHR+ Bill of Rights. Scrutiny against both of these safeguards was meant to underpin the PoC mechanism, within the devolved legislature.

As this article has shown, a quarter of a century on, these safeguards have still not been implemented as intended, and instead an alternative framework has evolved, particularly from the time of the 2006 St Andrews Agreement.

The ECHR was incorporated and has proved to be a significant safeguard. The ECHR+ Bill of Rights that was intended to supplement it has, however, not been put into place. The PoC mechanism is therefore not tied to the Bill of Rights. The specialist scrutiny committee on

105 Northern Ireland Assembly, 'Motion: Breaches of the Ministerial Code of Conduct'.

106 Matthew O'Toole, 'Stormont must beef up ministerial accountability following Givan scandal' (*SDLP* 10 November 2025).

107 For further discussion, see Christine Bell, 'Power-sharing and human rights law' (2013) 17(2) *International Journal of Human Rights* 204–237; Kris Brown and Fionnuala D Ní Aoláin, 'Good fences make good neighbours: assessing the role of consociational politics in transitional justice' in Allison McCullough and John McGarry (eds), *Power-Sharing: Empirical and Normative Challenges* (Routledge 2017); Rory O'Connell, Fionnuala Ní Aoláin and Lina Malagón, 'The Belfast/Good Friday Agreement and transformative change: promise, power and solidarity' (2023) *Israel Law Review* 1–33.

equality requirements, which the PoC was to defer to, has also never been triggered in the absence of clearer mandatory provisions for its convening. The PoC itself prompted controversy, particularly in the 2011–2015 mandate, when regularly used by the then largest party alone as a veto without any substantive criteria needing to be met. The PoC has been subject to a level of reform, and no one party currently has the numbers to trigger the PoC on its own, and to date since this time its use has been limited. Notably, however, it has never functioned as originally intended. Furthermore, most parties during the NDNA talks wanted PoC reforms to go further and grant the GFA-established Human Rights Commission an adjudicatory role over whether the threshold of non-compliance with rights standards had been met in relation to a PoC. This was presumably to guard against a scenario whereby non-binding advice from the Commission was ignored and a PoC voted through regardless of a measure not interfering in rights-standards.

Perhaps the largest shift away from safeguards grounded in more legally certain rights standards has been the advent of the St Andrews Veto, requiring Stormont ministers to refer ‘significant’ and ‘controversial’ decisions to the full Executive if outside the PfG. This provision more than any other provision reshaped Stormont’s governance structures. Its reach and impact, which have been subject to some constraints by the courts, continue to be extensive. In addition, the *de facto* position whereby either the First or deputy First Minister can permanently prevent ministers from having items placed on the agenda of the NI Executive for decision at all further compounds a situation whereby a larger party is able to veto decisions on its own. This is the case when even a majority of the Executive and Legislature support the proposed decision and the decision does not infringe anybody’s rights. Indeed, such mechanisms have been deployed to block rights-based policies, including legal obligations.

Whilst the section 75 statutory equality duties were legislated for, the misapplication of the section 75(2) good relations limb of the duty as a further *de facto* veto raises more governance issues. It has also raised concerns among Council of Europe human rights treaty bodies dealing with minority rights commitments.

The extension of the remit of the Assembly Commissioner for Standards allows for a statutory remedy for breaches of the Ministerial Code, which also remains justiciable. There is, however, no provision to ensure breaches of the Code can lead to sanctions when committed by larger parties.

Arguably the failure to legislate for the legally certain safeguards envisaged by the GFA, and their displacement by subjective vetoes, has been a significant factor in the instability, dysfunctionality and lack

of delivery by the Stormont institutions. A reform agenda to address the issues set out in this article could be relatively straight-forward, at least in legal and GFA-compliance terms. The GFA-mandated Bill of Rights could be legislated for as was originally intended, the St Andrews Veto concurrently repealed and the PoC reformed in the manner suggested by the majority of parties in the recent NDNA deal. Such a process could follow the reform mechanisms provided for under the GFA, which would, of course, require the political will of the two Governments. Achieving such changes may result in a more functional governance structure at Stormont. Whilst such reform may not be presently on the agenda of the two Governments, a fresh crisis within devolution would likely place it back on the table.