



Triple consent? Parties, people and Parliament: reforming the Belfast/Good Friday Agreement

David Torrance

Constitutional Specialist, House of Commons Library

Correspondence email: davidtorrance@hotmail.com

ABSTRACT

This article examines the political and legislative hurdles which are necessary to clear before reforming the 1998 Belfast/Good Friday Agreement. It does so by looking at the Agreement itself and subsequent changes, most notably the St Andrews Agreement (2006), *New Decade, New Approach* (2020) and *Safeguarding the Union* (2024). To summarise, there are generally three requirements for change:

- 1 Agreement between political parties represented in the Northern Ireland Assembly. If substantial agreement does not exist, then the Belfast/Good Friday Agreement cannot be reformed.
- 2 Agreement between London and Dublin. Given that the United Kingdom (UK) and Ireland are viewed as co-guarantors of the Agreement, bilateral consent is also essential.
- 3 Agreement between the main Great Britain parties at Westminster (usually Labour, the Conservatives and Liberal Democrats), given that any changes often require primary legislation in the UK Parliament.

After examining the origins of the Belfast/Good Friday Agreement and subsequent revisions, the article posits that a hitherto overlooked constitutional convention guides the process of amendment.

Keywords: Belfast/Good Friday Agreement; Ireland/Northern Ireland; devolution; constitutional convention.

HISTORICAL BACKGROUND

Speaking in February 1992 at a joint press conference with the then Taoiseach, John Bruton, the then Prime Minister of the United Kingdom (UK), Sir John Major, said:

No proposals for the future would be workable, let alone successful, without the consent and the active support of the people of Northern Ireland, it is they who are the people who will carry them out and whose lives would be affected by them. And that is why an eventual settlement must be agreed by the parties, supported by the people of Northern

Ireland in a referendum and approved by Parliament, a triple consent procedure.¹

Sir Patrick Mayhew, the then Northern Ireland Secretary, called this a 'triple lock'. He said the Prime Minister had 'constantly reiterated the triple lock of people, parties and Parliament'.²

Sir John and the late Sir Patrick were obviously talking about the long process which culminated with the 1998 Belfast/Good Friday Agreement more than a quarter of a century ago, but arguably this 'triple-consent procedure' can be stretched forward to encompass later changes to the Agreement, mainly to Strand One, which established power-sharing democratic institutions.

The Belfast/Good Friday Agreement consists of a political agreement between the UK Government, Irish Government and political parties in Northern Ireland (the Multi-Party Agreement or MPA) and a bilateral treaty between the UK and Ireland (the British–Irish Agreement or BIA). The reforms under discussion usually referenced the MPA rather than the BIA and were thus political agreements, not treaty changes.³ The MPA component of the Agreement anticipated possible changes. This stated that:

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.⁴

Technically, this only committed the UK and Irish Governments to 'consulting' political parties in Northern Ireland before making any changes to Strand One institutions, although, as we shall see, in practice they have only ever made significant changes having secured agreement from all the parties represented in the Northern Ireland Assembly. In addition, the UK and Irish Governments and the political parties in the Assembly were to 'convene a conference 4 years after the agreement comes into effect, to review and report on its operation'. A Joint Declaration by the UK and Irish Governments in April 2003 referred to such a review in September of that year, but this does not appear to have taken place.⁵

1 John Major, '[Mr Major's joint press conference with John Bruton](#)' (John Major Archive 22 February 1995).

2 [HC Deb 1 February 1995](#), vol 25,3 col 1091 (Northern Ireland (Rules of Engagement)).

3 The 2006 St Andrews Agreement also produced a formal treaty.

4 Northern Ireland Office, [The Belfast Agreement](#) (Command Paper, Cm 3883 1998) 26.

5 UK Government/Irish Government, '[Joint Declaration by the British and Irish Governments April 2003](#)' (CAIN Archive 2003).

CONSTITUTIONAL CONVENTIONS

According to Albert Venn Dicey, ‘conventions of the constitution’ consist of ‘customs, practices, maxims, or precepts which are not enforced or recognised by the Courts’.⁶ In the main, Dicey believed these conventions to be rules ‘for determining the exercise of the [royal] prerogative’,⁷ but it is now generally accepted that they have a broader application, working – as the Constitution Unit has put it – ‘across all branches of government—legislative, judicial, and executive’.⁸ Furthermore, conventions are not static but can ‘evolve’; ‘and when conventions are stress tested at times of political or constitutional crisis, they can evolve quite rapidly’.⁹ Thus conventions ‘form the oil that enables the machinery of state to adapt to political circumstance’.¹⁰ Even more vividly, Ivor Jennings viewed them as providing ‘the flesh which clothes the dry bones of the law; they make the legal constitution work; they keep in touch with the growth of ideas’.¹¹

Given the inexact nature of conventions, the methods by which they are created or established are important. Geoffrey Marshall identified three methods: (a) precedents; (b) ‘deliberately created either by unilateral pronouncement’ (usually by the government or Prime Minister) or by agreement by the relevant actors; and (c) what he called ‘general underlying principles’.¹² Ivor Jennings’ test for establishing whether a constitutional convention existed asked:

First[ly], what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule?¹³

The best-known conventions are now described in formal texts such as *Erskine May, The Cabinet Manual* and in the UK Ministerial Code.¹⁴ What might be called ‘devolution conventions’, however, have not been

6 A V Dicey, *Introduction to the Study of the Law of the Constitution* 8th edn (Liberty Fund 1982) 277.

7 *Ibid* 285.

8 ‘What are constitutional conventions?’ (The Constitution Unit nd).

9 Robert Hazell, ‘The United Kingdom’ in Brian Galligan and Scott Brenton (eds), *Constitutional Conventions in Westminster Systems* (Cambridge University Press 2015).

10 Philip Norton, *Governing Britain: Parliament, Ministers and our Ambiguous Constitution* (Manchester University Press 2020) 49.

11 Ivor Jennings, *The Law and the Constitution* 5th edn (University of London Press 1959) 81–82.

12 Geoffrey Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability* (Clarendon Press 1986).

13 Jennings (n 11 above) 136.

14 See also Jacqy Sharpe, *Parliamentary Conventions* (The Constitution Society 2020).

as well charted. Although the devolution statutes codify many of the conventions in place at Westminster – for example the ‘election’ of a First Minister in Scotland and Wales – legislation does not capture everything. There exist, arguably, Scottish conventions regarding each party’s ‘turn’ to hold the position of Presiding Officer or Speaker, or that which gives the single largest party the first chance to form a government, as in Scotland in 2007.

Only one devolution convention, the Sewel Convention has been the subject of extensive commentary. This originated with a statement by Lord Sewel in the House of Lords in 1998, although during this he acknowledged its origins in a self-denying ordinance which had also existed during the first period of devolution in Northern Ireland between 1921 and 1972. Under the present Sewel Convention, the UK Parliament does ‘not normally’ legislate on devolved matters without the consent of the relevant devolved legislature.¹⁵ This is recognised in statute without being legally binding.¹⁶

Going back to Jennings, the case of *Evans v Information Commissioner* applied his test to determine whether an ‘education convention’ existed in the context of letters that had been written by the then Prince of Wales (Prince Charles, now King Charles III) to various government ministers.¹⁷ This expanded upon the three elements thus:

Precedents

Jennings described constitutional conventions connected with internal government as arising ‘by the gradual crystallisation of practice into binding rules’, although in *Evans* Professor Rodney Brazier (a constitutional law academic) believed a ‘single precedent with a good reason may be enough to establish the rule’.

Actors believe themselves to be bound

In *Evans*, Professor Brazier argued that this requirement applied to both sides, so that both the then Prince of Wales and UK government departments would need to consider themselves bound by the ‘education convention’ for it to exist.

¹⁵ Cabinet Office, ‘Memorandum of Understanding’ (1 October 2012) para 14.

¹⁶ See (as amended) *Scotland Act 1998*, s 28(8), and *Government of Wales Act 2006*, s 107(6). There is no equivalent provision in the Northern Ireland Act 1998. For the Supreme Court on Sewel, see *R (Miller) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5.

¹⁷ *Evans v Information Commissioner (Correspondence with Prince Charles in 2004 and 2005)* [2012] UKUT 313 (AAC) para 72.

Reason for the existence of the convention

In the third and final element, Professor Brazier quoted Jennings himself:

As in the creation of law, the creation of a convention must be due to the reason of the thing because it accords with the prevailing political philosophy; it helps to make the democratic system operate; it enables the machinery of state to run more smoothly and, if it were not there, friction would result.¹⁸

The remainder of this article will adopt a similar approach in applying the three elements of the Jennings test to the existence of the mooted triple-consent convention. Three precedents are explored, while evidence from the discourse points to a general belief that the main actors considered themselves to be bound by the convention (although admittedly this is difficult to demonstrate explicitly). Finally, the reason for the existence of the convention was the necessity of reaching agreements with broad enough political buy-in for them to endure.

IRELAND AS CO-GUARANTOR

Another concept that requires some context is that of the UK and Ireland as ‘co-guarantors’ of the Belfast/Good Friday Agreement. Although this language is not explicit, the concept flows from the treaty component of the Agreement, which was agreed between the two Governments in 1998. The Anglo-Irish Agreement of 1985 also recognised that Ireland had a say in the governance of Northern Ireland, as guarantor of its ‘minority community’.¹⁹

The Belfast/Good Friday Agreement translated the 1985 arrangement into a role for Ireland as co-guarantor over the peace process. Northern Ireland remained part of the UK but, as Colin Murray has observed, ‘shades of grey were introduced into the constitutional picture which today support some unique settlement for Northern Ireland as part of Brexit’.²⁰ The term ‘co-guarantor’, however, is only infrequently used by the UK Government and is not a legal term of art in either domestic or international law.²¹

Events between 2000 and 2002, however, highlighted the scope for unilateral legislative action by the UK Government. The Northern

18 Jennings (n 11 above) 136.

19 Irish Department for Foreign Affairs, *Anglo-Irish Agreement 1985*, Arts 4(c) and 5(c).

20 Colin Murray, ‘Brexit and the “Constitutional integrity” of the United Kingdom’ (*UK Constitutional Law Association* 25 September 2018).

21 The term has greater purchase in the context of loan agreements between individuals or states.

Ireland Act 2000 as enacted provided for suspension of the devolved institutions – something known as ‘direct rule’ – as well as their restoration. This was the case between February and May 2000, and again after October 2002 following an outbreak of sectarian violence. Although it seems likely Dublin was kept in the loop by the UK Government, there was no formal process of consultation either with Northern Ireland political parties or with the Irish Government. Speaking in the Dáil in 2000, Taoiseach Bertie Ahern ‘greatly’ regretted something he nevertheless acknowledged was solely a decision for the UK Government.²² This indicates that the triple-consent convention had certain parameters: the main actors in the UK and Ireland believed themselves to be bound only in relation to institutional changes falling within Strand One of the 1998 Agreement, not decisions as to whether those devolved institutions should operate in a particular security or political context.

DEVELOPMENT OF THE NORTHERN IRELAND CONVENTION

A formal review of the Belfast/Good Friday Agreement began in early 2004 which involved Northern Ireland’s political parties. These talks broke down several times and on 8 December 2004 Tony Blair and Bertie Ahern published ‘Proposals by the British and Irish Governments for a Comprehensive Agreement’. Among other matters, these covered changes to the process by which a First Minister and deputy First Minister were to assume office – nomination by parties rather than joint election by the Assembly – and provided for a statutory Ministerial Code. Annex C contained proposals from the UK and Irish Governments for changes in Strands Two and Three institutions such as the North–South Ministerial Council and the British–Irish Council.²³ This highlighted the continuing importance of what in the 1970s had been called the ‘Irish dimension’, namely, a say for the Republic of Ireland in the affairs of Northern Ireland. This can be folded into the ‘people’ part of John Major’s triple-consent formulation: not just the people of Northern Ireland but citizens of the Republic (via their elected Governments).

At this stage, the consent of all the parties was not forthcoming, with both the Social Democratic and Labour Party (SDLP) and Ulster Unionist Party (UUP) refusing to support a reformed devolution settlement on the basis proposed. Peter Hain, the then Secretary of State

22 Brendan O’Leary, *A Treatise on Northern Ireland, volume III: Consociation and Confederation* (Oxford University Press 2019) 308–312.

23 UK Government/Irish Government, ‘Proposals by the British and Irish Governments for a Comprehensive Agreement’ (2004).

for Northern Ireland, pursued a ‘devolution by deadline’ strategy, and set 8 March 2006 as the date by which parties were to agree legislative changes to the operation of the Assembly and the Executive.²⁴ That deadline was missed. As before, direct rule legislation at Westminster appears to have been considered a unilateral matter for the UK Government.²⁵

On 6 April 2006, Messrs Blair and Ahern made another joint statement, this time in Armagh, in an attempt to move things along. This warned that, if there was no agreement, then the UK and Irish Governments would develop ‘partnership arrangements’ to develop the ‘structure and functions of the Belfast Agreement’.²⁶ Peter Hain, however, emphasised that this did not mean ‘joint authority or joint governance’. Confirming the third strand of the ‘triple-consent’ procedure, the agreement of the main political parties in Great Britain, Hain added that if there was agreement, then emergency legislation to amend the Agreement would be introduced at Westminster.²⁷

Intensive talks were held between 11 and 13 October 2006 in St Andrews, Scotland, between the UK and Irish Prime Ministers and the Northern Ireland political parties. On 13 October the *St Andrews Agreement* was published. This bore some resemblance to the Comprehensive Agreement of December 2004, including changes to the appointment of the First Minister and deputy First Minister, a statutory Ministerial Code and codification of the attendance of ministers at the North–South Ministerial Council and British–Irish Council. The political parties were to respond by 10 November 2006. They concurred, and on 20/21 November the UK Parliament legislated to give effect to agreed changes to Strands One and Three of the Belfast/Good Friday Agreement – the Northern Ireland (St Andrews Agreement) Act 2006.²⁸

The Northern Ireland Assembly met on 24 November 2006 to nominate – rather than elect – a Democratic Unionist Party (DUP) First Minister, Ian Paisley, and Sinn Féin deputy First Minister, Martin McGuinness, and in March 2007 Assembly elections were held, something considered an ‘endorsement’ of the reformed Agreement

24 ‘Row as NI talks session collapses’ (BBC News 20 February 2006).

25 The Northern Ireland Act 2000 (Modification) Order 2006 extended the power for Westminster to legislate for Northern Ireland via Statutory Order in Council for a further six months.

26 House of Commons Library, *The Northern Ireland (St Andrews Agreement) Bill 2006-7* (Research Paper 06/56 2006) 12–13.

27 HC Deb 18 April 2006, vol 445, cols, 24–25 (Northern Ireland).

28 Northern Ireland (St Andrews Agreement) Act 2006, s 11, provided for an Assembly committee to request that the Secretary of State make certain changes to the Northern Ireland Acts by Order, although this does not appear to have been used.

by the electorate.²⁹ The triple-consent procedure outlined in the 1990s had been followed to the letter and a nascent convention could already be said to exist: the reason for the St Andrews Agreement was clear (restoration of devolved government), while all the main actors considered themselves bound by it. And, while there was at this stage no precedent, to quote Rodney Brazier in *Evans* (as noted above), a ‘single precedent with a good reason’ was ‘enough to establish the rule’ which would be followed in 2017–2020 and again in 2022–2024.

NEW DECADE, NEW APPROACH

After a relatively stable decade of devolved government, the Northern Ireland Assembly and Executive collapsed in January 2017 when Martin McGuinness, the deputy First Minister, withdrew his support for power-sharing. The primary cause was the UK’s decision in a referendum to leave the European Union (EU) (contrary to majority public opinion in Northern Ireland), although a scandal over the Renewable Heat Incentive (RHI) also played a part.³⁰ An extraordinary Assembly election took place in March 2017, but this failed to produce an electoral situation in which the devolved institutions could be restored.

Several deadlines for Executive formation (statutory) and party agreement (non-statutory) passed, and as before the UK Parliament legislated to extend the necessary time limits, a unilateral act which appears to have lain – as with direct rule – outwith the usual triple-consent procedure. Significantly, direct rule was not reimposed from Westminster (as in 2002–2007), rather the Assembly was not held to be ‘fully functioning’ and the UK Parliament legislated as necessary, most importantly as regards public expenditure in Northern Ireland.³¹

Following the UK general election of June 2017, which brought the DUP into a confidence-and-supply arrangement with the Conservatives, a third round of party talks took place. Agreement seemed close following a fifth round in February 2018, but the then DUP leader Arlene Foster said a deal proved impossible due to the ‘standalone’ Irish Language Bill sought by Sinn Féin.

Finally, on 9 January 2020, Julian Smith, the then Secretary of State for Northern Ireland, and Simon Coveney, the then Tánaiste, published the text of a deal, entitled *New Decade, New Approach* (NDNA). This

29 Northern Ireland Assembly Research and Library Services, *Northern Ireland Assembly Election 2007* (Research Paper 01/07 2007).

30 ‘Martin McGuinness resigns as deputy First Minister of Northern Ireland’ *The Guardian* (London 10 January 2017).

31 House of Commons Library, *Northern Ireland (Executive Formation) Bill 2017–19* (research Briefing CBP8607 2019).

sought to place the devolved institutions on a more sustainable footing, reduce the use of petitions of concern – which had become perceived as a ‘veto’ deployed by the two largest parties – and enhance the statutory Ministerial Code in the wake of issues emerging from a public inquiry into the RHI. NDNA also addressed issues around investment in public services alongside rights, language and identity, the last of those being an undelivered aspect of the 1998 Agreement.³² This meant further legislative changes to the Northern Ireland Act 1998.

Between 9 and 11 January all the Northern Ireland parties declared their support for the deal, and on Saturday 11 January 2020 an Executive was formed two days before the statutory deadline. Partly due to the disruptive effect of the Covid-19 pandemic, it took some time for the UK Parliament to legislate to give effect to aspects of the NDNA agreement. However, during 2022 Westminster passed the *Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022* and the *Identity and Language (Northern Ireland) Act 2022*. The former Act attempted to avoid future institutional collapse by extending the existing time limits for Executive formation.

Here, the triple-consent procedure followed a different pattern than in 2006: the consent of the parties and, eventually, Parliament was present, but the ‘people’ component was weaker. Although the Irish Government was involved, there was no electoral ‘endorsement’ of the deal, as in 1998 and 2007. The next Northern Ireland Assembly election would not be held until 2022, and then during another period of limbo for the devolved institutions. Nevertheless, as in 2006 there existed a clear precedent, reason (restoration) and continuing belief that all the main actors were bound – Julian Smith had made a point of foregrounding Simon Coveney when NDNA was agreed. The Jennings test was again met.

SAFEGUARDING THE UNION

The most recent agreement for the restoration of power-sharing in Northern Ireland was published in January 2024 as the Command Paper *Safeguarding the Union*. Although this revealed the triple-consent process to be under some strain, the requirement for inter-party agreement from parties represented in the Assembly as well as support – however tacit – from the Irish Government remained necessary components.

The context was as follows. Paul Givan announced his resignation as the DUP First Minister of Northern Ireland on 3 February 2022.

32 Northern Ireland Office, ‘Deal to See Restored Government in Northern Ireland Tomorrow’ (9 January 2020).

This meant Sinn Féin deputy First Minister Michelle O'Neill also relinquished office. Brexit was again the chief catalyst, this time the DUP's objections to the Protocol on Ireland/Northern Ireland, which essentially kept Northern Ireland, but not Great Britain, within the EU single market and customs zone.³³

An Assembly election took place, as scheduled, on 5 May 2022. But on this occasion, the 'people' of Northern Ireland were not giving their 'consent' to a package of reforms to the 1998 Agreement. Sinn Féin emerged as the largest party and the DUP the second largest. Significantly, this meant Sinn Féin was entitled to nominate a First Minister and the DUP a deputy First Minister, an historic first.

When the two main parties again failed to reach agreement on the restoration of power-sharing, the Secretary of State was no longer under an immediate obligation to call an election as the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 had received royal assent on 9 February 2022. Between the 2022 election and February 2024, there were seven unsuccessful attempts by the Assembly to elect a Speaker – a legally necessary first step on the road to Executive formation.³⁴

Here, one of the main parties – the DUP – was essentially withholding its consent for the restoration of power-sharing. There followed unilateral legislative action by the UK Parliament to extend the deadline for Executive formation and to make essential provision for Northern Ireland, chiefly budgetary. As before, this did not directly involve the Northern Ireland political parties or the Irish Government, so fell outside the triple-consent procedure.

As an important aside, the *Windsor Framework* was agreed between the EU and the UK on 27 February 2023. This further augmented 'democratic consent' procedures for the Northern Ireland Assembly introduced under the earlier *Northern Ireland Protocol*. Under this process, the Assembly was to vote by the end of 2024 on continuing application of certain EU customs laws, and at regular periods thereafter. Several parties in Northern Ireland were critical of the Framework, but Ireland's Taoiseach Leo Varadkar told the Dáil that the Irish Government was 'comfortable and satisfied with the outcome', adding that it was reasonable that the DUP should be allowed 'a little bit of time to consider the agreement'. Varadkar also noted the strong cross-party support in both the UK and Ireland for the new Framework and said he hoped 'that allows us to proceed and to open a new chapter in relations and particularly to allow the Government to function

33 'DUP: NI First Minister Paul Givan announces resignation' (BBC News 3 February 2022).

34 For details, see House of Commons Library, *Developments in Northern Ireland, 2022–24* (Research Briefing CBP9913, 2024) 7–12.

again in Northern Ireland'.³⁵ This indicated that Dublin considered its consent as necessary if not sufficient to the success of the Framework.

Things only got moving towards the end of 2023, when the five largest Northern Ireland parties met the Secretary of State, Chris Heaton-Harris, at Hillsborough Castle to discuss public finances. In a statement on 20 December, Mr Heaton-Harris provided details of 'a new plan that reasonably and generously responds to the parties' concerns and provides Northern Ireland Ministers with an offer for a restored executive worth in excess of £3bn'. He added that: 'From our perspective, those talks on all the issues of substance have reached a conclusion ... It is now time for decisions to be made.'³⁶ This was a return to devolution by deadline.

The statutory deadline for Executive formation passed at midnight on 18 January 2024. In a statement the following day, the Secretary of State pledged new legislation taking 'a pragmatic, appropriate and limited approach to addressing the Executive Formation period and support Northern Ireland Departments to manage the immediate and evident challenges they face in stabilising public services and finances'.³⁷ The *Northern Ireland (Executive Formation) Act 2024* once again extended the deadline for Executive formation.

The DUP met on the evening of Monday 29 January 2024 to consider the Secretary of State's offer. At around 1am the following morning, Sir Jeffrey Donaldson, the then DUP leader, announced that his party had endorsed the deal. Mr Heaton-Harris briefed the other political parties on the deal at Stormont Castle on Tuesday 30 January. Simon Coveney, now Ireland's Minister for Enterprise, Trade, and Employment, said the Irish Government had not seen a draft of a deal but that it had:

been given reassurance that any new arrangements that are being put in place won't do anything to undermine the Windsor Framework or the trade agreements that have been put in place to facilitate trade between Ireland and UK and the EU and the UK.³⁸

This was another tacit expression of Dublin's consent. Hilary Benn, the then Shadow Secretary of State for Northern Ireland, welcomed what he called 'a very significant moment'.³⁹

35 'DUP should be given "time and space" to consider Windsor Framework, Varadkar says' *Irish Times* (Dublin 28 February 2023).

36 Northern Ireland Office, 'Secretary of State statement at Hillsborough Castle' (20 December 2023).

37 Northern Ireland Office, 'Secretary of State's statement on the NI Executive Formation Deadline' (19 January 2024).

38 'Northern Ireland: Stormont stage set for return of devolution' (*BBC News* 30 January 2024).

39 *HC Deb 31 January 2024*, vol 744, cols 878–879 (Northern Ireland Executive Formation).

On this occasion, the triple-consent procedure came under strain. As Alan Whysall, a former Northern Ireland Office civil servant and honorary senior research associate at the Constitution Unit, has observed, an ‘unusual’ feature of the *Safeguarding the Union* Command Paper was that it had been ‘essentially the product of a private discussion between London and one party’ (the DUP) rather than the product of negotiations with all the main political parties in Northern Ireland. He further argued that this ‘process’ and ‘tone’ of the paper sat ‘uneasily’ with the commitment in the Belfast/Good Friday Agreement that the UK Government would exercise its power ‘with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions’.⁴⁰

At the same time, it appeared that the other Northern Ireland political parties had at least implicitly consented to the deal, or rather its outcome: the restoration of power-sharing. Only the Traditional Unionist Voice party with its single Member of the Legislative Assembly (MLA) objected, although in its case it would not have been in a position to nominate any members of the Executive. Only later did the SDLP, which had formed the official opposition in the Assembly, indicate dissent. Speaking at Stormont, SDLP leader Colum Eastwood said the SDLP believed the deal had ‘moved far beyond the principles set out in the Good Friday Agreement’.⁴¹ The SDLP was by this stage also unable to nominate any Executive Ministers, which perhaps indicates that the crucial parties in reaching any agreement were those of sufficient electoral strength to have that right.

On this occasion, there was no primary legislation at Westminster, but instead two statutory instruments were debated and agreed without a division in both Houses of Parliament during February 2024. In addition, both Houses affirmed their commitment to the 1800 Acts of Union and rejected the prospect of ‘joint authority’ over Northern Ireland via an humble Address to the Crown, an arguably novel use of that parliamentary device. This was largely symbolic but clearly contrived to appeal to the DUP.⁴²

Following a meeting at Stormont shortly after the Executive was restored, Number 10 Downing Street said UK Prime Minister Rishi Sunak had thanked the then Taoiseach Leo Varadkar for:

the Irish Government’s support for the UK Government efforts to see restoration of devolution in Northern Ireland. This had been a challenging time, but patience had proved key to a deal. Now that

40 Alan Whysall, ‘*Devolution returns to Northern Ireland*’ (*The Constitution Unit* 6 February 2024).

41 *Northern Ireland Assembly Official Report* (3 February 2024).

42 For details, see House of Commons Library, ‘*Northern Ireland Devolution: Safeguarding the Union*’ (Research Briefing CBP9954 2024) 13–18.

the institutions were up and running again, he wanted to see all three strands [of the Belfast/Good Friday Agreement] functioning equally well. The sense of relief and optimism from people in Northern Ireland had been very striking and made it all worthwhile.⁴³

Again, this spoke to the necessity of Dublin ‘support’ or acquiescence in any deal. As with the *New Decade, New Approach* agreement of four years earlier, however, ‘people’ in Northern Ireland had played only an implicit part in the consent procedure. Another Assembly election was not due until 2027, although opinion polling clearly demonstrated support for fully functioning institutions after a two-year hiatus.

LEGACY ISSUES

By way of a contrast, the Northern Ireland Troubles (Legacy and Reconciliation) Bill illustrated the extent to which UK legislation could circumvent the triple-consent procedure, in this case because legacy issues do not appear to have been considered integral to the Belfast/Good Friday Agreement. Resolving these had long preoccupied successive UK governments, and in July 2021 the Conservative Government led by Boris Johnson said it was:

increasingly of the view, after long and careful reflection, that any process that focuses on the lengthy pursuit of retributive justice will severely hold back the successful delivery of a way forward focused on information recovery, mediation and reconciliation that could provide a sense of restorative justice for many more families than is currently achieved through the criminal justice system.⁴⁴

The UK Government’s proposals were met with criticism and anger from Northern Ireland’s political parties, the Irish Government, the families of victims of the Troubles on all sides, as well as campaign and human rights groups.⁴⁵

The Northern Ireland Troubles (Legacy and Reconciliation) Bill introduced to the UK Parliament in 2022 sought to end legal proceedings concerning Troubles-related conduct and provide conditional immunity from prosecution for those who co-operated with investigations conducted by a newly established Independent Commission for Reconciliation and Information Recovery. Despite the objections mentioned above, royal assent was granted in 2023. The

43 Prime Minister’s Office, 10 Downing Street, ‘PM meeting with Taoiseach Varadkar of Ireland’ (5 February 2024).

44 Secretary of State for Northern Ireland, *Addressing the Legacy of Northern Ireland’s Past* (CP 498, July 2021).

45 ‘Northern Ireland Troubles: controversy Legacy Bill passes through Commons’ (*BBC News* 6 September 2023).

Irish Government later initiated legal action in Strasbourg,⁴⁶ while, separately, the High Court in Belfast concluded that certain provisions in the Act were incompatible with the European Convention on Human Rights,⁴⁷ a judgment later largely confirmed by Northern Ireland's Court of Appeal.⁴⁸

In its 2024 manifesto, the Labour Party said that as 'a guarantor of the Good Friday Agreement', a Labour Government would 'uphold both the letter and the spirit of the Agreement' and 'repeal and replace' the Legacy Act 'by returning to the principles of the Stormont House Agreement, and seeking support from all communities in Northern Ireland'.⁴⁹ The King's Speech of 17 July 2024 confirmed that:

In consultation with all parties, measures will be brought forward to begin the process of repealing and replacing the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.⁵⁰

This promise to consult with 'all parties' suggested the UK Labour Government which assumed office in July 2024 intended to abide more strongly by the triple-consent convention, even in instances where that did not explicitly apply. This impression is arguably underlined by Labour ministers' repeated emphasis on upholding the rule of law.⁵¹

REFORMING THE BELFAST/GOOD FRIDAY AGREEMENT

Something that further illuminates the triple-consent procedure outlined above are reform proposals which have *not* progressed, in most cases because they have failed to satisfy either the 'parties' or Irish Government aspect of the 'people' tests.

The Alliance Party of Northern Ireland has long argued that the First Minister and deputy First Minister ought to be renamed 'Joint First Ministers', which it argues more accurately reflects their constitutional status. This would require legislative action and was later supported by the House of Commons Northern Ireland Affairs Committee (NIAC) in a report published in December 2023. NIAC also recommended:

46 'Troubles Legacy Act: Ireland takes human rights case against UK' (*BBC News* 20 December 2023).

47 *In re Dillon and Others – NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NIKB 11. The UK Government appealed the decision, but this was later dropped following the 2024 general election.

48 *Dillon and Ors v Secretary of State for Northern Ireland* [2024] NICA 59.

49 Labour Party, *Change Labour Party Manifesto 2024* (June 2024) 113.

50 Prime Minister's Office, 10 Downing Street, 'The King's Speech 2024' (17 July 2024).

51 See, for example, Attorney General's Office, 'Attorney General's 2024 Bingham Lecture on the Rule of Law' (15 October 2024).

- legislation to amend the Northern Ireland Act 1998 so that the Speaker of the Northern Ireland Assembly is elected by MLAs on a supermajority basis of two-thirds;
- legislation to amend the 1998 Act so that the two holders of the (renamed) office of Joint First Minister are elected by the Assembly on a supermajority basis of two-thirds, with nominations open ‘to any two MLAs of any two parties who run on a joint slate’; and
- the establishment of a Northern Ireland Citizens’ Assembly which would, as its first undertaking, examine the ‘issues of institutional reform discussed in this inquiry’.⁵²

Carla Lockhart and Jim Shannon, then two DUP members of NIAC, dissented in a minority report,⁵³ while Sinn Féin, the Alliance,⁵⁴ and the Ulster Unionists were more positive. The then UUP leader Doug Beattie said: ‘Any changes to the process of governing must be put before the people of Northern Ireland. The principle of consent needs to be at the heart of any change.’⁵⁵

Such proposals, therefore, could not hope to progress as the ‘parties’ element of the triple-consent procedure had not been satisfied. A direct endorsement from the ‘people’ was also overlooked, although in March 2023 Micheál Martin, the then Tánaiste, said his position was that before any reform was ‘contemplated’ an Assembly election had to be ‘vindicated’ in the ‘form of the election [sic] of a First Minister and deputy First Minister, in accordance with what the majority decided’. Speaking in March 2024, the then Taoiseach Leo Varadkar also said that any changes to the Belfast/Good Friday Agreement – such as the capacity for a single party to exercise a veto over power-sharing – should happen ‘before voters go to the polls again’. Varadkar added that the Stormont parties would (first?) need to agree to any such reforms,⁵⁶ which provides further evidence that inter-party agreement was an essential component of the triple-consent convention.

52 House of Commons NIAC, *The Effectiveness of the Institutions of the Belfast/Good Friday Agreement* (HC 45 2023) 73–80.

53 Ibid 81–90.

54 ‘Sinn Féin and DUP fail to support MPs’ Stormont reform recommendations’ *Irish News* (Dublin 6 December 2023).

55 Ibid.

56 ‘Leo Varadkar: reform Stormont political institutions “before elections”’ (*BBC News* 13 March 2024).

CONCLUSIONS

It was A V Dicey who first emphasised the importance of non-justiciable ‘constitutional conventions’ in the constitution of the UK, or ‘England’, as he mostly called it. These are usually considered in Westminster terms, with only the Sewel Convention featuring prominently on the territorial landscape.

As this article has attempted to show, another such convention now exists when it comes to reforming the Belfast/Good Friday Agreement. Like most conventions, it has evolved over time and has been inconsistently applied. Nevertheless, the broad outline of the ‘triple-consent procedure’ outlined by Sir John Major in the mid-1990s has been followed each time major changes have been made – usually to Strand One – of the Agreement: following negotiations in 2006 (St Andrews), 2020 (*New Decade, New Approach*) and, most recently, in 2024 (*Safeguarding the Union*). In each case the consent of Northern Ireland’s parties proved an essential basis for agreement.

The explicit consent of the people of Northern Ireland formed a clear part of the St Andrews process, but not thereafter, although the indirect consent of the people of the Republic of Ireland, via their elected government, was present in each case. Finally, given that Northern Ireland remains a devolved part of the UK, legislation at Westminster was necessary on each occasion, usually primary, but more recently delegated. This can be understood as the third leg of the triple-consent convention – the consent of the main Great Britain parties. Even in the generally fractious post-Brexit atmosphere, this proved forthcoming from all the major parties represented in the House of Commons. So, although the most recent deal, *Safeguarding the Union*, represented a significant weakening of this convention in that it was rejected by two smaller parties in the Northern Ireland Assembly, it nevertheless remains substantially intact, and indeed likely to be followed in future.

To return to the definitions provided by Geoffrey Marshall and Ivor Jennings, the triple-consent convention is an example of one created by agreement by the relevant actors, in this case by the UK and Irish Governments via the Belfast/Good Friday Agreement and subsequent practice. The mooted convention also fulfils all three limbs of Jennings’ test in that it now has clear precedents and its main actors clearly believed in each case they were ‘bound by a rule’. The third limb also seems clear, for the ‘reason’ for the rule is to achieve changes to the Belfast/Good Friday Agreement which represent the greatest possible degree of consensus among people, parties and Parliament.

This is arguably of considerable importance in the context of future changes to the devolved institutions established under Strand One of the 1998 Agreement. If Alliance or NIAC proposals were to progress,

a much greater degree of agreement between the Northern Ireland parties would be necessary for the triple-consent convention to be followed successfully, from which would flow primary legislation in the UK Parliament or the Northern Ireland Assembly (or perhaps both). The lesson of the first 25 years of (restored) devolution in Northern Ireland is that political and institutional stability cannot be taken for granted. To channel Jennings one last time, without a fully restored triple-consent convention which enables the machinery of state to run more smoothly, further friction might prove inevitable.