

Briefing note on the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill: The Petition of Concern and Stormont's other safeguards and vetoes

House of Commons Second Reading, June 2021

1. CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.
2. CAJ is also the co-convenor, alongside UNISON, of the Equality Coalition, a network of over 100 NGOs and trade unions that aims to promote and advance equality in Northern Ireland.

The Petition of Concern

3. Under the Belfast/Good Friday Agreement (GFA) Executive and Legislative authority was to be “subject to safeguards to protect the rights and interests of all sides of the community”.ⁱ The Petition of Concern was a central safeguard to this end linked 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 European Convention on Human Rights (ECHR) and the NI Bill of Rights.
4. In practice however these provisions were not properly put into place and, far from being a safeguard grounded in objective equalities standards, the Petition of Concern instead became a political veto exercisable without recourse to objective criteria.
5. The use of the Petition of Concern to block equality and rights initiatives, and for party political purposes, increasingly brought the mechanism into disrepute. Further to the New Decade New Approach (NDNA) agreement, we welcome that the current bill will provide a level of legislative reform intended to return the Petition of Concern to its intended GFA purpose.
6. The Petition of Concern will not be able to fully operate as intended until the NI Bill of Rights is also progressed through Westminster legislation. Further to NDNA we welcome the renewed focus on the Bill of Rights through the Ad Hoc Assembly Committee.

Beyond the Petition of Concern: the ‘St Andrews Veto’ and Executive Agenda veto

7. It is notable no Petitions of Concern were tabled in the year since NDNA.ⁱⁱ However, the problems that prompted the need for its reform have not dissipated. Rather the same mischief has manifested itself through the use of alternative veto mechanisms, whose deployment has had the same impact of allowing one larger party to make the functioning of the Stormont Executive unworkable and dysfunctional.
8. By contrast to the Petition of Concern the ‘St Andrews Veto’ has continued to be regularly used since NDNA. This veto relates to the changes made to the structures

under the GFA further to the 2006 St Andrews Agreement. This augmented the role of the NI Executive to require most ministerial decisions to additionally require the support of the full Executive if they were ‘controversial’ or ‘significant’. Further changes meant that three ministers could require an Executive vote to be taken on a ‘cross community’ basis (in which ‘Other’ Ministers have no vote).ⁱⁱⁱ

9. A CAJ Freedom of Information request in November 2020 revealed that post-NDNA the DUP had invoked cross community votes under this mechanism on six occasions:
 - In three votes in April 2020 the veto was used to in relation to “*Options for Introducing a Limited Early Medical Abortion Service for Women in Northern Ireland during the COVID-19 Emergency Period*” blocking provision despite a legal obligation to provide abortion services.
 - In November 2020 the veto was used twice, on the 10th & 11th November to block measures brought forward by the UUP Health Minister relating to Covid 19 restrictions and other interventions to deal with the pandemic.
 - On the 1 June 2020 the veto was used to block an SDLP request to make representations on extending the Brexit transition period.^{iv}
10. We do not presently have figures for use of the St Andrews Veto since November 2020. Information released about the mandate of 2016-2017 illustrates that the ‘St Andrews veto’ was used once – to block a Consultation on Equal Marriage.
11. Under the 2011-2016 Mandate the veto was used six times.^v This included to block Policy Proposals for an Irish language bill, and to block Irish language and Ulster Scots Strategies, despite the adoption of such strategies being a legal obligation, with a consequent decision by the High Court that the Executive had acted unlawfully.^{vi}
12. The increased use of the ‘St Andrews Veto’ at the beginning of the current mandate (the same number of times as during the whole 2011-2016 mandate) could ultimately be indicative of a ‘displacement’ towards using this veto rather than the Petition of Concern. The actual exercise of the ‘St Andrews Veto’ will constitute the tip of the iceberg as to its actual impact. Its very existence will prevent Ministers from taking forward policy initiatives in the knowledge that they will be vetoed.
13. There was some reform of the ‘St Andrews veto’ after NDNA, with planning decisions removed from its scope, and limitations on its use in ‘cross cutting decisions.’ Its use however remains intact on matters any party deems ‘significant’ or ‘controversial’ that is outside the Programme for Government (PfG).^{vii} (notably despite a draft PfG having been published in NDNA, no PfG has been adopted in the current mandate.)
14. A second mechanism that has now been regularly misused concerns the framework providing for items to be placed on the agenda of the NI Executive. Under paragraph 2.11 of the NI Ministerial Code the inclusion of ministerial proposals on the agenda for the NI Executive must be agreed by both the First and deputy First Minister giving, in practice, either a veto.^{viii} A commitment further to a *Fresh Start* providing that an item may not be blocked for more than three meetings is not reflected in the binding ministerial code.
15. Under the current mandate this veto has been used to prevent any discussion and progress on a range of issues. To give some examples: a recent 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

Executives' agenda;^{ix} According to a statement from the Finance Minister the draft NI Executive budget was tabled on the 10th December but was blocked from inclusion on the agenda from this and every other meeting until its belated approval on the 18 January;^x more recently the Communities Minister 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.^{xi} Whilst there may be many more examples the Executive Office has declined to disclose information on use of this veto.^{xii}

16. This mechanism, coupled with the expanded remit of the NI Executive under the St Andrews veto, can therefore be used by a larger party to entirely derail the work of the NI Executive.

Recommendation

17. We welcome moves to seek to return the Petition of Concern to its intended purpose but are also conscious the same problems that have led to the current legislation can simply manifest themselves through alternative veto mechanisms. We would therefore urge MPs to also examine changes regarding the 'St Andrews veto' and the procedures for NI Executive Agenda items in the context of the present bill.

CAJ, June 2021

Committee on the Administration of Justice (CAJ)
1st Floor, Community House, Citylink Business Park
6A Albert Street, Belfast, BT12 4HQ

Tel: (028) 9031 6000

Email: info@caj.org.uk

Website: www.caj.org.uk

ⁱ GFA, strand 1 paragraph 1.

ⁱⁱ The Second Report on the Use of the Petition of Concern Mechanism in the Northern Ireland Assembly, CP 362, January 2021. <https://www.gov.uk/government/publications/the-second-report-on-the-use-of-the-petition-of-concern-mechanism-in-the-northern-ireland-assembly>

ⁱⁱⁱ <https://caj.org.uk/2020/11/18/stormonts-vetoes-in-the-context-of-a-pandemic-an-equality-coalition-briefing-note/>

^{iv} FOI request from CAJ to The Executive Office TEO ref / 2020 – 102 request of 18 November 2020, response 3 March 2021.

^v FOI request from CAJ to The Executive Office TEO ref / 2021 – 013 request of 8 March 2021, response 26 May 2021.

^{vi} S28D of the Northern Ireland Act 1998 (as amended) places duties on the NI Executive to adopt Irish and Ulster Scots strategies respectively. <https://www.legislation.gov.uk/ukpga/1998/47/section/28D> In Conradh Na Gaeilge's Application the NI Executive was found to have acted unlawfully for its failure to adopt such a strategy [2017] NIQB 27 <https://www.judiciaryni.uk/judicial-decisions/2017-niqb-27> 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.

^{vii} <https://www.legislation.gov.uk/niu/2020/4/section/1/enacted>

^{viii} <https://www.northernireland.gov.uk/topics/your-executive/ministerial-code>

^{ix} [MIN-LANG \(2021\) IRIA 1, paragraph 176.](#)

^x [Ministerial Statement Public Expenditure: Draft Budget 2021-22, NI Assembly](#), 18th January 2021.

^{xi} <https://www.irishnews.com/news/northernirelandnews/2021/06/18/news/dup-accused-of-consciously-delaying-vital-legislation-to-close-welfare-loop-holes-pushing-people-further-into-poverty--2359101/>

^{xii} FOI request from CAJ to The Executive Office TEO ref / 2021 – 023 request of 30 March 2021, response 11 May 2021.