



## RESTORING CONSTITUTIONAL PROTECTIONS FOR THE UNION

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### Introduction

In the years leading up to the signing of the Belfast Agreement, including the difficult years of ceasefires and the first stages of negotiations, I stretched myself personally and the Progressive Unionist Party and loyalism more generally took brave steps in pursuit of securing a lasting peace in Northern Ireland.

This required compromise and delivering support for such compromise required significant persuasion across the loyalist family. Whilst we as political leaders within the Progressive Unionist Party succeeded in bringing sufficient numbers of our community along on this journey, it is nevertheless a well-documented fact that there was a significant number within the broad unionist family who for various reasons were resolutely opposed to the terms of the Agreement and who voted No in 1998.

As leader of our party, I am proud of the risks that were taken and the manner by which the Progressive Unionist Party contributed to securing relative peace in Northern Ireland. We did so from a place of a genuine desire to make our country a fair, equitable and prosperous place for all of those who live here regardless of social status, religious background, political aspiration or other personal characteristic.

As a committed unionist party, our support for the Belfast Agreement was rooted in the purported guarantee provided by the principle of consent. We urged support for the Agreement on the basis that the Union was safe, so long as a majority of persons living here wished it to be so.

It appears trite to point out that our understanding, and that of all pro-agreement unionists, was that the principle of consent did what it said on the tin; it protected the Union.

### **Protecting the Union in substance**

The Union is more than Northern Ireland being symbolically part of the United Kingdom, it is a Union of substance. It follows therefore that the principle of consent was understood to protect the substance rather than merely the symbolism of the Union.

However, what has transpired is that running in parallel to the text of the Agreement, and its domestic law translation via the legislative provisions of the Northern Ireland Act 1998,



there has been what has been described as the 'process', which appears to derive its legitimacy by recourse to an unspecified 'spirit' of the Belfast Agreement.

The guiding star therefore of the 'process' is an interpretation of the Agreement based not upon the text of the multi-party agreement, or the legislative provisions in the 1998 Act, but rather an interpretation of the Belfast Agreement which requires that every constructive ambiguity be resolved in favour of nationalism's political aspirations.

This is the context within which the principle of consent in practice has failed to protect the substance of the Union. Rather, it is expected that unionism will- and should- collectively participate in the incremental weakening of the Union, and any political resistance to such participation in what plainly amounts to constitutional self-harm is presented as opposition to peace.

I as leader of the Progressive Unionist Party have a duty to remain true to our guiding principles which led to our vital contribution to securing peace, but so too do I have an overriding duty to use all political and lawful tools at my disposal to ensure our party stands firm in protecting and strengthening Northern Ireland's place within the United Kingdom.

It is in that context which I feel compelled as party leader to set out my current thinking on the Belfast Agreement and the steps that are required to be taken in order to secure Northern Ireland's constitutional position. I do so against the backdrop of the imposition of the Protocol, which is a real and present threat to the substance of the Union.

I turn first to an issue I touched upon above. It is the narrative that peace is dependent upon support for a process which- if implemented in the one sided manner as it has been over the past two decades- is designed to incrementally weaken the Union. I remind readers of my earlier observations as to how this 'process' flows not from a faithful reading of the text of the Belfast Agreement or 1998 Act, but rather from a politically contrived 'spirit' of the Agreement which seeks to weaponise it in pursuit of nationalism's political objectives.

The Progressive Unionist Party took risks to secure peace, and we are entirely and unequivocally committed to the complete absence of violence and to the rule of law.

However, I as a party leader will not be morally blackmailed by virtue of political spin which seeks to impose upon unionism and loyalism a requirement to support the 'process', otherwise we are to be presented as opponents of peace.

If such a situation continues to prevail, then the logical outcome is that those who would threaten peace hold leverage over the political direction of Northern Ireland. That is not in keeping with the unequivocal commitment to peace given by all signatories of the Belfast Agreement.



The real 'spirit' of the Agreement was about removing the threat, and use, of politically motivated violence for political leverage. Sadly, the lurking threat of republican terrorism continues to be used as a wedge to manipulate the political process- hence the perpetual reference to there being a risk to peace if anyone dares to seek to impede a nationalist political trajectory.

Our party remain firm and dedicated supporters of peace, however we will not shirk from the necessity to challenge the trajectory of the 'process', using all legal and political tools at our disposal. If the 'process', as it seems, is little more than a vehicle to incrementally dismantle the Union we cherish, then the Progressive Unionist Party will be champions of peace, but firm opponents of the process.

I am disturbed by the reality that the Protocol legal challenge has definitively exposed the principle of consent to be little more than a deceptive snare.

To put it succinctly, the principle of consent- as translated into law within section 1 (1) of the Northern Ireland Act 1998- provides no protection for the substance of the Union, and rather merely acts as a symbolic provision which directs itself solely to the severing of the last tie.

If I put it another way; *you can change everything but the last thing.*

It seems obvious to me that if, as the Protocol demonstrates, you can repeal the very foundational stone of the Union in the form of the Acts of Union, and you can hand law-making powers to a foreign power- in this case Brussels- without triggering the principle of consent, then there is in fact no real substantive protection for the constitutional position of Northern Ireland at all.

Therefore, the core basis that I have set out for the Progressive Unionist Party's support for the Belfast Agreement, namely that the principle of consent secured the Union (which means the Union in substance), can no longer be said to apply in any meaningful way. It follows therefore that it would be to perpetuate an act of intellectual deceit upon our party members, and the unionist and loyalist people whom we represent, if I as party leader did not honestly and forthrightly call attention to this most serious of issues.

A Belfast Agreement which is based upon a deception on the core constitutional protection that was said to exist for our community, is not the Belfast Agreement I signed up to and urged others to support in 1998.

This party has always been about finding solutions to problems, and that is why my contribution today is not one of negativity or merely calling attention to a problem. It is rather about identifying a problem, but going further and providing a strategy and positive vision for overcoming it.



## **A strategy for corrective action – Restoring consent**

Therefore, as party leader I set out today for party members and the unionist electorate in Northern Ireland my vision for corrective action, which if implemented will succeed in not merely sustaining our cherished constitutional position in the short-term, but strengthening the Union as we move forward together to build a prosperous and fair society for all of those living in this part of the United Kingdom.

Inherent within the notion of a shared society and sustainable partnership institutions is consent. For unionists, a crucial aspect of the Agreement was- and is- the principle of consent in relation to Northern Ireland's place within the United Kingdom. This must, as I have set out in detail, protect the substance and not merely the symbolism of the Union.

This is what nationalists and republicans signed up to in 1998. That was their compromise, and our community had to make many more in exchange for this most elementary of democratic constitutional guarantees. It is fair that we accordingly demand respect for the parts of the Agreement crucial to our community. Otherwise, the trajectory will continue whereby the Agreement becomes little more than a weapon to be utilised by the nationalist community.

That is why today I set forward my proposal: *'Maintaining Our Union- Restoring Constitutional Consent'*.

This proposal is underpinned by three *Principles of Consent* and a strategic vision on how they can be fulfilled. The absence of meaningful delivery on such fundamental constitutional issues will have the effect of continuing to remove the foundational basis for the Progressive Unionist Party's support for the Belfast Agreement.

### *1. Legislative provision to protect the substance of the Union via the principle of consent*

The Protocol legal challenge has demonstrated the inherent weakness of the principle of consent mechanism as translated into our constitutional statute (which gives effect to the Belfast Agreement in domestic law). It can not be the case that the substantive core of the Union can be dismantled, without triggering the principle of consent.

Therefore, we will be beginning a lobbying and research campaign, within which we will urge other unionist parties, activists and all those who value the Union to join together to ensure the Government delivers a strengthening of section 1 (1) of the Northern Ireland Act 1998 to reflect the basis upon which unionism agreed to the Belfast Agreement, namely on the understanding the principle of consent protected the substance of the Union.

We will focus on asking the UK Government to implement a review into the working of section 1 (1) of the 1998 Act, with a view to strengthening the principle of consent.



This review should draw on the expertise of constitutional law experts from across the United Kingdom, with specific reference to Northern Ireland.

It is to be noted that the Irish Government are consistently advancing programs and policies designed to build all-Ireland consensus; it seems constitutionally negligent at best that our sovereign Government are not taking steps to explore means of strengthening the Union.

It is my view that if, as is currently the case, the constitutional guarantee is not as was promised to the unionist community, then there is no basis for unionist support for the Belfast Agreement.

### *2. The fair and equitable operation of the cross-community consent mechanism*

The principle of key decisions requiring cross community consent was clearly set out within Strand One (5) (d) of the Belfast Agreement, and translated into section 42 of the Northern Ireland Act 1998. The provision in the multi-party agreement directs itself to “*key decisions*”, whilst the legislative provision in section 42 focuses on “*a matter which is to be voted on by the Assembly*”. At no stage does it caveat the protection with the proviso that it only applies to devolved matters coming before the Assembly, rather it plainly directs itself more broadly.

Notwithstanding this reality, the 1998 Act was unilaterally amended via the insertion of section 56A and schedule 6A which, amongst other things, has the effect of disapplying the cross-community consent principles when it comes to the Protocol. It can not be the case that cross-community consent is in fact translated into meaning ‘nationalist consent’, and thus when expedient this apparently sacred safeguard can be cast aside if nationalism’s objective demands it.

Therefore, the cross-community consent mechanism must apply equitably across the board.

### *3. Equal Citizenship*

The Principles of Loyalism, coupled with long standing Progressive Unionist Party policy, draws heavily on the concept of equal citizenship. This is not only a guarantee of fairness and equality of opportunity for all citizens, but moreover is a constitutional principle.

Amongst other things, equal citizenship as a constitutional principle finds itself grounded in Article VI of the Acts of Union. This provision has two limbs; (i) a guarantee that all parts of the United Kingdom be on an equal footing in matters of trade; and (ii) that all parts of the United Kingdom be on an equal footing in treaties made.

It is trite to point out that the implied repeal of Article VI, because of the imposition of the Protocol, therefore undermines a key principle of loyalism and Progressive Unionist Party.



It should be unsurprising that the restoration of Article VI, and thus equal citizenship, is a fundamental red line for me as leader of the Progressive Unionist Party.

### **Conclusion**

It is my hope that the position I have set out today in detail, and the proposed steps towards achieving a lasting solution, will command the support of not only our party members, but the wider unionist family.

I will continue to work constructively with leaders of all other unionist parties, and key stakeholders within the unionist family, to secure the removal of the intolerable and constitutionally damaging Protocol.

In this regard, I continue to voice my public support for a unionist convention and I, and my party, intend to play our part in unionist cooperation by bringing forward ambitious and constructive ideas, which can not only sustain, but strengthen our Union.

*Councillor Billy Hutchinson*

*Leader of the Progressive Unionist Party*