



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Response to the Interim Consultative Report of the Strategic Review of Parading Review Body**

### ***Summary***

*This document responds to the interim consultative report of the Strategic Review of Parades Body (SRPB), which is open to consultation until 8 August 2008. The interim report outlines proposed new arrangements for decisions on parades and other public assemblies. The Commission's response examines issues of human rights compliance regarding the proposed arrangements.*

*The main areas of focus include a general welcome for the human rights framework set out in the interim report. However, concern is expressed regarding the implications of the planned extension of the range of assemblies that the review body proposes will fall under the jurisdiction of the mechanism set out. The Commission also highlights the need to ensure the independence and impartiality of bodies which make decisions on parades and assemblies. The Commission urges the SRPB to re-examine its draft proposals in this regard, emphasising the desirability that the proposed mechanism is compliant with Article 6 of the European Convention on Human Rights (right to a fair trial in relation to determinations on civil rights). A response is also given to the recommendations directed by the SRPB to the Commission itself.*

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup>

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.

2. The Commission welcomes the opportunity to respond to the Interim Consultative Report, issued on 29 April 2008, and engage further with the Strategic Review of Parading Body (SRPB). This submission responds to the specific recommendations contained in the interim report and assesses the broader proposals in the context of human rights compliance.
3. The Commission examines the broader issues of human rights compliance of the proposals set out in the Interim Consultative Report (interim report) under three main headings:
  - Examination of the human rights framework
  - Range of public assemblies captured by the proposed mechanisms
  - Proposed mechanism and Article 6 ECHR (right to a fair trial) compliance

## **Recommendations to the Commission**

4. The interim report makes four recommendations for the Commission:

NIHRC should seek to raise awareness of the human rights framework relating to public assemblies and the rights of others (as articulated in this report). (3.4(v))

We recommend that the NIHRC should also be responsible for providing, where required, training and advice for mediators on human rights matters. (3.4(vi))

[In reference to NIHRC advice to the Secretary of State on the Bill of Rights] the SRBP recommends that the human

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<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

rights principles articulated in this report should inform any future bill of rights. (3.7(v))

The Northern Ireland Human Rights Commission should conduct an annual review of the application of human rights standards as detailed in these proposals to be forwarded to OFMDFM. (4.9(i))

5. The Commission acknowledges the recognition, implicit in these recommendations, of the role the Commission has to play in the high-profile human rights issues dealt with by the interim report. Our response to each individual recommendation is as follows.

### **Human rights awareness-raising on public assemblies and rights of others**

NIHRC should seek to raise awareness of the human rights framework relating to public assemblies and the rights of others (as articulated in this report). (3.4(v))

6. It is clearly within the Commission's role to raise awareness of human rights matters, including those relating to public assemblies and the rights of others. Indeed, the Commission has already established a body of work in this area.
7. The extent to which the Commission would engage specifically in awareness-raising on this matter will be dependent on the strategic priorities adopted by the Commission, along with availability of additional resources for this activity. In general, terms, as detailed later in this submission, the Commission welcomes the human rights framework set out in the interim report. There is correlation between the framework and specific human rights perspectives that the Commission has previously advanced.
8. If this recommendation is taken forward it would be with the caveat that awareness-raising on this matter, while drawing on the human rights framework set out in the interim report, would be without prejudice to the Commission's own positions in relation to the appropriate human rights framework on this matter. Clearly, building on the framework set out in the document will involve taking on board evolving international standards and jurisprudence on the matter.

## Training for human rights mediators

We recommend that the NIHRC should also be responsible for providing, where required, training and advice for mediators on human rights matters. (3.4(vi))

9. The Commission understands this recommendation to be in relation to providing human rights training for mediators, incorporating materials that constitute advice or guidance. The Commission does not interpret the recommendations as a suggestion of a formal role providing an ongoing specialised advice service for mediators on how to act in individual circumstances they are dealing with. The latter would have different resource and role implications, including potential conflicts of interest should the recommendation of an annual review proceed. The scope of the role anticipated could be clarified in the SRPB's final report.
10. The Commission also seeks clarification as regards the meaning of "where required" in the recommendation. This is unproblematic if it simply refers to the Commission deciding to offer training when individuals need training. However, any legislative requirement to require the Commission to undertake a particular action has to be viewed in the context of maintaining the Commission's independence. The Commission is a national human rights institution operating in the context of the United Nations' Principles relating to the status and functioning of national institutions for protection and promotion of human rights ('the Paris Principles'); any recommendations to the Commission will be assessed against compatibility with this framework.
11. Training on this and related human rights matters is also clearly within the Commission's role and, in common with the subject matter of the previous recommendation, the Commission already has a track record in this area and is exploring how to develop this function.
12. The Commission reserves judgement as regards this recommendation. This is both in the context of clarification as to the specific nature of the role anticipated (and resources available) and compatibility with the forthcoming strategic priorities of the Commission.

## **Recommendation on the Bill of Rights**

The SRBP recommends that the human rights principles articulated in this report should inform any future bill of rights. (3.7(v))

13. The Commission's advice to the Secretary of State will be issued on 10 December 2008. Matters such as the issue under discussion form part of our deliberations on the Bill of Rights for which we will draw on the interim report as we would with other relevant documents in the public domain.

## **Annual review of application of human rights standards**

The Northern Ireland Human Rights Commission should conduct an annual review of the application of human rights standards as detailed in these proposals to be forwarded to OFMDFM. (4.9(i))

14. The Commission understands this as a review of the application of human rights standards in decisions made by the OFMDFM adjudication panel. This could be clarified in the SRPB's final report.
15. As the Adjudication Panel and other elements of the proposed mechanism operate under the auspices of OFMDFM, the Commission believes it would be more appropriate to forward such a review to the legislature (Northern Ireland Assembly) rather than to OFMDFM which is the executive office responsible for the decision-making process.
16. The Commission seeks clarification as to whether the full range of information used by the panel in reaching a decision, would be made available to those conducting such a review. This should include review of confidential information that had not been placed in the public domain but had informed the panel's decision. It would be detrimental to confidence and accountability in the mechanism if those conducting an annual review had to state they could not reach conclusions on the application of standards because they were not party to the information to which such standards were applied. The Commission has consistently argued that as much as possible of the data received by a parades deliberation mechanism, and its thinking, should be made public. However, this should not preclude the receipt of confidential information and information should not be released into the public domain at the expense of the safety of the individual who submitted it.

Clearly, those tasked with the review should similarly be entrusted not to release confidential information in this way.

17. The Commission reserves judgement as regards this recommendation. This is in the context of clarification as to the specific nature of the role anticipated (and resources available) and also compatibility with the forthcoming strategic priorities of the Commission and the compatibility with the Commission's role in accordance with the Paris Principles (see paragraph 10 above).

## **Examination of the human rights framework**

18. The Commission welcomes the interim report's placing of human rights at the heart of the framework for decision-making on parades, and its articulation that human rights are crucial to this process. The Commission also welcomes the general human rights framework set out in the interim report, which is largely consistent with Commission interpretations to date.

### **Article 11 ECHR, freedom of peaceful assembly**

19. The full text of Article 11, ECHR, including the limiting clause (Article 11(2)) is as follows:
  1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
  2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.
20. The Commission has consistently drawn attention to the importance of Article 11, ECHR, freedom of assembly, in relation to making decisions regarding public processions. Decisions made by the Parades Commission in being subject to judicial review are, in any event, bound to apply the provisions of Article 11 by virtue of the Human Rights Act 1998. The current approach therefore requires, and can deliver, human rights compliance.

21. The Commission's position has been that there should be a presumption that any form of assembly, including a public procession, should proceed without restrictions, unless there is a compelling case under 11(2). Therefore, no restrictions should be placed on the right to assembly for reasons other than those defined in Article 11(2).
22. Article 11(2), in qualifying the right to peaceful assembly, references the rights and freedoms of others and, therefore, among other human rights, includes all other relevant articles of the ECHR. The express reference to "the rights of others" in Article 11(2) makes it clear that limitations may, and in many cases should, be placed on the exercise of the right to peaceful assembly in order to protect the rights of others affected by an assembly, whether such rights are engaged by the assembly *per se*, or by measures taken to preserve public order related to the assembly.
23. Further, the Commission asserts that proportionality is an essential consideration in determining the propriety of any restriction on the exercise of a Convention right. The Commission has emphasised that persons wishing to exercise the Article 11 right should be subject to no more onerous procedures than are demonstrably necessary to satisfy 11(2). The positions adopted in this submission draw heavily on this principle.
24. The Commission very much welcomes that the proposed human rights framework in the interim report does not separate decisions made on public order from other Article 11(2) concerns. This is due, firstly, to the unrealistic nature of separating the various considerations relevant to Article 11, which are both binding on courts and need to be taken into account by the decision-making body. Secondly, in a practical sense, this would return to the pre-1998 position, when decisions were left to the police without being able to rely on a determination by an independent body. In any case, the police service has common law power to intervene if it becomes impracticable to enforce a decision.

### **Freedom of movement**

25. In relation to references to the right of freedom of movement, the Commission notes the SRPB observation regarding the ECHR being a live instrument with developing jurisprudence. While it is unclear, at present, how the matters under

deliberation engage the interpretation of the International Covenant on Civil and Political Rights (ICCPR) Article 12 on freedom of movement, as set out in the UN's respective General Comment, there may be future jurisprudence on this matter in relation to the ECHR protocol which brings this matter into relevance.

### **Sectarianism and other forms of prejudice**

26. The human rights framework in the interim report makes reference to the avoidance of sectarianism and other forms of prejudice such as racism. For example, the section on the rights of freedom from harassment lists criteria for determining whether the right to freedom from harassment is engaged, which include:

[W]hether there is evidence of sectarian or racist motivation.  
(p 50)

27. The Commission concurs that this matter is of key importance to the 'rights of others' context of public processions, and therefore provides a key determinant in distinguishing manifestations of peaceful assembly and the Article 11(2) contexts. Similar to positions stated in the interim report, the Commission has consistently pointed out that there is no "right to be offended" and, therefore, no human right to object to public assemblies simply on the grounds that they cause offence or annoyance. This is distinct from advocacy of hatred perpetrated through motivations or manifestations of sectarianism, racism, etc.
28. The interim report raises the right to freedom from sectarian harassment as set out in the Belfast (Good Friday) Agreement, with which the Commission concurs, across the spectrum of grounds of harassment. The Commission also draws attention to Article 20(2), ICCPR, to which the UK is a party, which states:
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.
29. There are already a range of criminal offences in the Public Order (Northern Ireland) Order 1987, in respect of Acts intended or likely to stir up hatred or arouse fear by reference to religious belief, colour, race, nationality (including



citizenship) or ethnic or national origins.<sup>5</sup> Such advocacy, therefore, can be seen to provide a key determinant of the rights of others in reference to Article 11(2), ECHR, in the context of evidence used to inform adjudication decisions. This is in reference to past manifestations at processions, the nature of the organising organisation and whether those organising a parade or counter-protest had taken effective measures to avoid or prevent such manifestations.

### **Standards for the conduct of public assemblies**

30. The interim report contains a code outlining required *Standards for the Conduct of Public Assemblies in Northern Ireland* for those organising public assemblies and, separately requirements applying to third party organisations, participants in public assemblies, and objectors to a public assembly. There are listed 22 paragraphs of required standards for those organising public assemblies and a smaller number of paragraphs for other categories. The interim report outlines that legislative backing for these standards is required and that failure to adhere to these standards during a public assembly will, along with legal action that can be taken, be taken into account subsequently in determination on future assemblies. Therefore, the adherence to requirements set out is both a legal liability and a matter that can affect subsequent Article 11 rights.
31. The Commission does not oppose standards that are aimed at ensuring compliance with the limitation clause of Article 11(2) while exercising Article 11 rights (which, in the context of the rights of others incorporate convention and other human rights), provided that all such measures must be necessary and proportionate to achieving this aim in the assembly under deliberation.
32. A number of the requirements set out do directly address Article 11(2) matters, whether they are necessary or proportionate will depend on the nature of the assembly. Not all of the requirements listed in the proposed code clearly address Article 11(2) matters. A number of the matters

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<sup>5</sup> The UK, through reservation to the article, has indicated that it will interpret Article 20 consistently with the rights conferred by ICCPR Articles 19 and 21 (freedom of expression, association and assembly). It states that it has already "legislated in matters of practical concern and in the interests of public order (*ordre public*)" and therefore reserves the right not to introduce further UK legislation.

covered in a code may be seen as good civic behaviour; however, there is a marked difference between guidance encouraging actions that may well be desirable, and being able to hold the organiser of an assembly legally liable for not undertaking particular actions. For these reasons, the content and application of the code of standards, as currently set out in the interim report, is problematic.

33. The Commission has also argued that it would be improper to hold organisers of parades liable for the genuinely unforeseen actions of others. For example, on adjudications in relation to provisions of estimates of numbers, while it is reasonable for the organisers of a parade to provide estimates, it is difficult to anticipate the number of individuals that may turn up.
34. The range of standards laid out in the code would appear to have been designed to deal with issues that have arisen in relation to the marching season and counter-protests. In this sense, an assessment could be made regarding the proportionality of requirements to these parades and protests. However, of great concern to the Commission is that the interim report proposes that these requirements are imposed on the organisers of a vast range of public assemblies with entirely different Article 11(2) contexts. The legal liabilities and impacts on Article 11 rights may render such requirements unnecessary and disproportionate to a range of public assemblies and, at worst, could be used to curtail, for example, legitimate political protest and to criminalise the organisers of protests. The Commission's concerns regarding the proposed broad scope of peaceful assemblies which the mechanism engages is covered in greater detail below.

## **Range of public assemblies captured by the proposed mechanisms**

### **Forms of public assembly in Northern Ireland**

35. There are a range of different manifestations of public assembly. The term encompasses public processions (parades), but also all other forms of public assembly.
36. Within the category of public processions itself, there are a range of different events. The interim report provides reference to different parades, including Loyal Order (Orange and related) parades, and associated bonfires and bands, and also Catholic Hibernian marches. It also references public processions that are more political than religious in nature,

namely, those which commemorate “specific political events or which remember local events”. There is also reference to other forms of public processions in Northern Ireland, for example, carnival or trade union parades, etc.

### **Restricting Public Assembly**

37. The Commission has consistently asserted that persons exercising Article 11, ECHR, rights should be subject to no more onerous procedures than are demonstrably necessary to satisfy the interests referred to in 11(2). Proportionality is also an essential consideration in determining the propriety of any restriction on the exercise a Convention right. This implies that there should be a presumption that any form of assembly, including a public procession, should proceed without restrictions, unless there is a compelling case under 11(2).
38. Implicit in this, is the need not to treat different forms of public assembly that have entirely different Article 11(2) contexts in the same way. It is questionable whether the same amount of detail, notice and conduct requirements ought to be required of applicants in relation to other public assemblies, as is required in relation to those parades or related protests where there is evidence indicating public order or other Article 11(2) issues.
39. The mechanism should ensure the minimal level of state intervention possible. The primary duty of the state is to ensure that everyone enjoys the substantive right to the fullest extent possible, and real ‘freedom’ of assembly in the absence of any indication that the rights of others are likely to be prejudiced. Considerations, such as an expectation of minor traffic disruption or inconvenience in parking, are certainly not sufficient to bring a routine exercise of freedom of assembly into the ambit of a tight licensing and/or policing regime; that is simply the price that we pay for enjoying that freedom.
40. The Commission is seriously concerned at the range of public assemblies that the interim report adjudication mechanisms set out in the document. The Commission feels this is unnecessary and will disproportionately interfere with Article 11 rights.

## Scope of Parades Commission mechanism

41. The current arrangements under the Public Processions (Northern Ireland) Order 1998, as amended, cover public processions and related protests (which then fall under the current Parades Commission regime). The exceptions to this are funeral processions, or a procession of a class or description specified in an order made by the Secretary of State – currently, processions organised by the Salvation Army.

## Scope of interim reports proposed mechanism

42. The interim report recommends that its proposals, as outlined in the report, should apply to all public assemblies, with the definition of 'public assemblies' set out in the report as:

[...] means an assembly in a public place of 15 or more people, all public processions and all protest meetings. (4.1 definitions)<sup>6</sup>

43. The Commission is seriously concerned that the interim report is proposing a dramatic extension of the scope of the new regime. The mechanism will not only cover all public processions and protest meetings<sup>7</sup>, but also all other forms of public assembly of more than 15 persons.
44. In parts of the document, this is indicated to be more than 15 persons on the public highway.<sup>8</sup> We are not currently clear as to the definition of 'public highway' the interim report intends. The definition of a highway generally includes roads, the pavement, car parks and other rights of way. The definition of a 'public place' is provided by the Public Order (Northern Ireland) Order 1987, as:

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<sup>6</sup> The requirement will still not apply to funeral processions or to processions, or an assembly of any kind specified in an order made by a responsible minister. This would presumably allow the present exemption for the Salvation Army to continue (4.3.i).

<sup>7</sup> The definition provided for 'public procession' as "a procession in a public place, whether or not involving the use of vehicles or other conveyances" (as per Public Order (Northern Ireland) Order 1987). The definition used for 'protest meeting' (at times termed 'related protest') is an assembly: (a) which is, or is to be, held – (i) at the location, or on or in the vicinity of the route (or proposed location or route) of a public assembly; and (ii) at or about the same time as the assembly is being or is to be held; and (b) the purpose (or one of the purposes) of which is to demonstrate opposition to the holding of that assembly.

<sup>8</sup> See definition of terms in the interim report, Appendix A, p 33.

“Public place” means any street, road or highway and any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right by virtue of express or implied permission. (Part 1, Article 2(2))

### **Level of engagement with first tier**

45. The mechanism proposed in the interim report is a tiered mechanism broken down into a number of stages. In assessing the necessity and proportionality of duties and measures being applied to persons exercising the right to peaceful assembly, it is clear that the intention is that most events which raise no Article 11(2) issues will simply need only to engage in the local discussion and notification phase.
46. The notification phase, itself, involves the following duties:
  - Notifying the local Council 35 days before the assembly (or 21 days in the case of a related protest).
  - If the notification is not given with this notice period (permitted when the assembly is a response to circumstances which “could not have been reasonably foreseen”) the organisers need to provide a notice at the “earliest possible date” and provide a full explanation of the unforeseen circumstances which made timely notification impossible.
  - The notification needs to provide the following information: contact details about the organisation and named person making the notification (Section A); Description of the assembly including: type, location, route, date, start and end time, estimated participants, number of stewards, any departure from Standards for the Conduct of Public Assemblies, awareness of any public concerns, and if so what they are, a list containing details of all third party organisations participating (this list must be kept up to date and given to the Council and PSNI if requested) (Section B); A list of ‘sensitive locations’ and action proposed to account for associated sensitivities, information on other events taking place at the same time of the assembly and any other information (Section C).
  - The notification form requires the organiser to make a declaration that states the organiser(s): have read and will abide by the Standards of Conduct for Public Assemblies (less any exceptions you have listed on the form); that the organiser has conducted a risk assessment and they have the names, place of origin and contact details of all third party organisations proposing to take part in the assembly; If the named organiser is acting on behalf of an organisation it also includes a declaration confirming that the organiser will

provide the PSNI on request a full list of office bearers of the organisation.

The declaration therefore ties organisers to abide by the 22-point Standards of Conduct for Public Assemblies. If they do not abide, they can be held legally liable for not doing so, or their right to assembly in the future can be restricted.

47. Following notification, the plan for the assembly is published by the local Council and any objection or concern raised will then trigger the further phases of the process.

### **Application of mechanism to range of public assemblies**

48. Arguments could be put forward that such measures are necessary and proportionate for the types of parades and counter-protests that the SRPB has been examining and researching, and on which it is consulting. This is due to the evidence of issues associated with such parades and counter-protests that the proposals have clearly been designed to address. This evidence pertains to a high threshold of interference necessary for matters protected by Article 11, ECHR. The problem arises if the same criteria are then applied to other forms of public assembly where none of the evidence of issues, which the mechanism has been designed to address, has been presented. Aside from our broader concerns regarding the mechanism being proposed (outlined later in this document), the application of the mechanism to a broad range of assemblies in itself constitutes a serious flaw in the proposals.
49. There other forms of peaceful assembly that could fall into such a mechanism. These include a group leader taking scouts or guides down a country lane, carol singers, political demonstrations, a village fête, a group handing in a petition, pickets and rallies, children's parties, commemorative events, demonstrations by human rights defenders, vigils, resident groups' protests, community street parties, vintage car rallies, and a range of other small scale events that do not raise issues under Article 11(2). Individuals wishing to exercise these forms of assembly may be deterred, through bureaucracy or fear of legal liabilities, from organising or participating in an assembly. In addition, persons who organise such assemblies without having engaged in the mechanism could be held legally liable.
50. Factors, such as a lengthy notice period and the detail requested for the types of parades and counter-protests which

the SRPB was examining, may be both necessary (to facilitate the various stages envisaged) and, while time consuming, generally unproblematic to organisers, given that parades tend to take place on fixed annual dates or are organised considerably in advance. However, for a number of other forms of assembly such notice periods are problematic and, indeed, for some forms of assembly will be impossible to meet. Take for example, persons assembling in the aftermath of a recent international human rights atrocity – a circumstance in which lengthy notice would not be possible, although it should be reasonably straightforward to indicate why. In the case of other events, for example, carol singing which has simply not been planned 35 days in advance, it may be less straightforward to provide justification for late notification. The requirements for late notification and fear of potential consequences of the delay may deter peaceful assembly.

51. The mechanism would also be problematic for small un-constituted organisations that do not have office bearers or a formal structure, as is the case with many small campaigning organisations. In this instance, an individual can hand in the notification, effectively on behalf of the group, and therefore be responsible for the assembly. However, the liabilities for individuals doing this may deter either the assembly, or the provision of the notification, given that the notification will itself identify the individual responsible.
52. The Commission regards it as unwise to dismiss such concerns by asserting that, by taking a commonsense approach, such issues will not arise. Wherever wide discretionary powers exist, there is the potential for them to be exercised in an unaccountable and discriminatory manner, beyond the purpose for which they were originally intended. This aspect of the proposals therefore constitutes a real risk of being misused to unduly restrict rights protected by Article 11.

### **Current concerns regarding rights to assembly**

53. Across the UK, there is already considerable unease in the human rights community that existing legislation runs the risk of the criminalisation of legitimate protest, along with concerns around the way in which powers have been exercised in practice. Indeed, in one instance, this has been recognised and acted on by the UK Government. Following criticism and consultation, the Government is in the process of

presenting a Bill to Parliament to repeal sections 132-138 of the Serious Organised Crime and Police Act 2005, which would heavily restrict the right to assembly in the vicinity of Parliament.<sup>9</sup>

### **The Commission's position**

54. It is the Commission's view that extending the proposed requirements to other forms of public assemblies is unnecessary and would unduly interfere with Article 11 rights.
55. Further, the Commission has consistently questioned the idea that those organising other types of events should be subject to the same requirements as organisers of parades or associated counter-protests, where there is an evidence of public order and other Article 11(2) issues arising. The Commission has argued that the doctrine of proportionality would indicate that there should be a clear difference of approach in relation to different categories of event. There are, of course, standard public safety issues (e.g. traffic) as to why it may be desirable to require notice of other categories of events but these do not mean all assemblies or even all public processions need to remain within the remit of the Parades Commission or any successor body. There is no merit in suggesting that even-handedness requires that the human right to assemble for one type of event has to be dealt with in precisely the same way as the right to assemble for another that presents a quite different profile in Article 11(2) terms.
56. To the extent that a case can be made for applying notice or other requirements to any events other than the parades and protests that Parliament clearly intended the Parades Commission regime to address, the bottom line would have to be that events that clearly do not engage Article 11(2) matters could be filtered out of the system at a very early stage while events that raise clear Article 11(2) issues can be escalated up the system. In principle, the organisers should have nothing further to do after giving notice, unless the Parades Commission body (of its own initiative, or acting on a referral) found that certain (published) Article 11(2) criteria appeared to be met and came back to the organisers. There should always be a presumption against intervention; i.e. the process should be evidence-based 'scheduling in' rather than imposing any obligation on the organisers to show why their

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<sup>9</sup> See: White Paper: *Constitutional Renewal: The Governance of Britain*, presented to Parliament, March 2008.



event should be 'scheduled out'. This could also allow for applying a lighter touch to the regulation of an increasing number of smaller, annual parades where no Article 11(2) issues had arisen.

57. A scheduling in the mechanism being evidence-based could rely on a range of sources including police intelligence, reports from previous gatherings (if the parade is recurrent), and objections and concerns that have been raised. The mechanism proposed in the interim report (while indicating sanctions including restrictions on future assemblies for non-adherence to the Standards of Conduct) appears only to allow for escalation when concerns or objections are lodged by third parties, whose details are then published. Such an approach may lead to events that do genuinely engage the rights of others being 'scheduled out' at stage one.
58. The proposals within the interim report correspond with the Commission's position in matters including the centrality of Article 11 and its limiting clause. A major concern for the Commission is in the range of public assemblies captured by the mechanism. The Commission has suggested the onus should be on a scheduling in mechanism for processions that raise significant Article 11(2) issues. A further key issue for the Commission is the need to ensure the independence and impartiality of the proposed mechanism.

### **Proposed mechanism and Article 6 ECHR compliance**

59. The Commission regards it as of the utmost importance that any proposed mechanism ensures compliance with any obligations under Article 6 ECHR, which might be equally held to apply to determinations on parades or protests. This involves the requirement for independence and impartiality. The full text of Article 6(1) (Right to a Fair Trial)<sup>10</sup> is:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

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<sup>10</sup> This area is also covered in ICCPR Article 14, to which the UK is a party.

60. It is clear that the Parades Commission is a quasi-judicial body which, among other functions, deliberates on rights protected by Article 11 ECHR. Further, we note the recent opinions of the Lords of Appeal<sup>11</sup> which clearly indicate the requirement for independence, impartiality and objectivity on the part of the Parades Commission. While pointing out that the Parades Commission is not a court and not going as far to indicate the need for full Article 6 compliance to its proceedings, the Lords declared that the tasks it performed were tasks which can only be satisfactorily performed by a body which is accepted as independent, impartial and objective in its approach. The Commission believes there is no doubt as to the need for the mechanisms which deliberate on rights protected by the ECHR, to be independent and impartial.

### **The Parades Commission**

61. In general terms, the Commission has been satisfied that the Parades Commission accords with human rights principles, and has had no grounds to question the adequacy or effectiveness of the current mechanism from a human rights compliance perspective. The Commission regards it as of the utmost importance that, if the Parades Commission is to be replaced, both the constitution and work of the proposed mechanisms, and their potential successors following a five-year review, accord with human rights principles including examination of independence and impartiality and any broader Article 6 engagement and compliance.

### **Movement from quasi-judicial to political sphere**

62. There are a number of references in the interim report urging reconnection with the political process and the desirability of reconnecting parading with the political process. There is clear inference of moving away, potentially in stages, from the quasi-judicial arrangements provided by the Parades Commission towards decisions being taken in the political sphere.
63. The Commission would urge the SRPB to ensure that the deliberations mechanism over rights protected by Article 11 is Article 6 compliant. Key to this, in fleshing out its proposals, is an examination of the level that each stage of its process could potentially engage Article 6 and is accordingly compliant with the same.

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<sup>11</sup> In *Duffy (FC) (appellant) (Northern Ireland)* 30 January 2008.

64. The need to maintain impartiality and independence, and protection from undue political intervention in decisions is crucial regardless of which body the anticipated mechanism is subordinate to. The same principle applies regardless of whether the parent body is the Northern Ireland Office, a Department of the Northern Ireland executive, the elected body of a Council, etc.

### **The mechanism set out in the interim report**

65. In summary, the initial mechanism proposed involves a preparation phase in which organisers should engage in local discussion and forward notification to the local Council. The local Council then informs interested parties and receives notification of any objections/concerns or related protests. If there are no objections, the assembly proceeds. The assembly also proceeds if agreement is reached at any stage of the following two stages of dialogue and mediation. The dialogue process is facilitated by the local Council. Where no resolution is reached, OFMDFM should be informed and mediation initiated (provided it is satisfied that the concerns or objections are not manifestly ill-founded on human rights grounds – third party advice and past behaviour in relation to Standards of Conduct can be factored in to this decision). Mediation will be conducted through use of a list of mediators held by OFMDFM. If there is no agreement, there is referral to a three-member OFMDFM adjudication panel. The adjudication panel will comprise one member with legal qualifications and two members nominated by OFMDFM. Decisions are reviewed after the assembly has taken place.
66. The interim report proposes that this mechanism will last for five years and then be reconsidered:

All arrangements and recommendations made in this report should be reconsidered by OFMDFM after five years and they should present their conclusions to the Northern Ireland Assembly (4.9(ii)).
67. The interim report states that as “progress towards normality” continues, many of the structures and processes can be streamlined and simplified, enabling the role of OFMDFM to be reduced over time and, it states, local Councils should then take a greater role:

[W]hilst we are carefully limiting the role of local Councils in these procedures at the present time it is anticipated that, in

the future, local authorities have an enhanced role in the administration of public assemblies. (4.3(iii))

68. Thus the role of local Councils, in both the initial and suggested models should be examined for Article 6 ECHR compliance. In relation to the initial proposals for local Councils set out in the interim report, the question as to whether the anticipated role engages Article 6 depends on whether the role is purely administrative or is a role with greater discretion which could affect Article 11 rights.

### **The role of Councils**

69. The role of Councils as set out in the interim report may be perceived as simply a post-box for notification. However, on closer examination there may be scope for discretion in some matters. For example, a council officer may be left to decide whether to 'refer up' a notification received without the 35 days notice period (or in the case of objections/concerns and counter-protests 21 days). The council officer would therefore determine whether the circumstances of 'late' notification could have been reasonably foreseen and, where appropriate, if there is time for local dialogue and mediation. A further example would be the responsibility of facilitating local discussion, determining whether satisfactory 'agreement has been reached' and/or whether to refer the matter to OFMDFM. This, therefore, draws the question as to the policy framework and direction on its interpretation that would be provided to the respective member of staff working within local government on this matter.
70. The interim report recommends that the office of the chief executive within local Councils and, therefore, council officer(s) within it are given statutory responsibility for this matter (4.3(ii)). This could mean that the operational guidance and direction on how council officers should interpret the matters in which they have some discretion could emanate from the elected body of each Council. This could lead to flexibility to develop guidance to local circumstances, but it could also lead to an inconsistent approach among local authorities.
71. However, the interim report states that the role of Councils is anticipated as an "administrative function only" performed much in the same way as the registration of births, marriages and deaths (4.3(iii)). Another way of achieving this aim would be to set up the function much in the same way as the system in use for birth, marriage and death registration. The

registrar function is run under the auspices of local Councils, but over all responsibility for the service lies with the General Register Office (GRO). The GRO is a branch within the Northern Ireland Statistics and Research Agency, which is part of the Department of Finance and Personnel (DFP). In this context, policy and direction for registrars is not decided by each Council but centrally by the GRO and, ultimately, its parent department.

72. The central issue for the Commission is the need for safeguards to ensure the independence and impartiality of the bodies responsible for decisions on parades. This is regardless of the governing organisation or structure to which the bodies would be subordinate, whether a Northern Ireland department such as OFMDFM or DFP, the elected body of a Council, or the Northern Ireland Office.

### **Separation of functions**

73. The Commission has consistently been generally in favour of the separation of the two functions of mediation/facilitation and adjudication. While there is no clear international standard on this issue, it is in line with adjudication on other rights-based matters such as the approach to discrimination, where a body, such as the Equality Commission, can provide advice and even representation but the decision as to whether discrimination has taken place is vested in a tribunal. The Commission therefore welcomes the recognition implicit in the interim report that the two functions should be separate.

### **Independence of appointments**

74. The Commission recognises that the process of appointments to the Parades Commission, or successor bodies, is of key importance to maintaining independence. The Commission welcomes the proposal in the interim report that appointments to the adjudication panel and the list of qualified mediators would be undertaken through a "rigorous... independent... objective public appointments process".

### **Learning from other jurisdictions**

75. The terms of reference of the Strategic Review of Parading include:

[D]rawing on research already conducted, consider how parades, protests and events which take place on the public

highway are regulated in other jurisdictions where there are diverse ethnic and cultural populations and traditions.

76. The interim report rightly draws on international jurisprudence in considerable detail. However, it does not go into detail regarding the way similar circumstances have been dealt with in other jurisdictions and the rights-based framework or otherwise that has been applied. Circumstances where, for example, an organisation drawn from an ethnic and/or religious group seeks a public procession through a territory predominantly inhabited by another will occur in other jurisdictions. There may be merit in further exploration of such examples in order to draw on good practice or, equally, to avoid bad practice. Such information could be examined for the final report.

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