



# An Chartlann Náisiúnta National Archives

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Parades Policy and Public Order Legislation  
in Northern Ireland

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Present Position

1. Public Order legislation as currently constituted in Northern Ireland covers three areas of central interest to the Irish Government: parades, incitement to hatred and flags and emblems. (The last is covered in a separate note). At the time of writing, the operative piece of legislation is the Public Order (N.I.) Order 1981. This has recently been reviewed extensively in the light of new British legislation (the Public Order Act 1986). The review, the first comprehensive review in over 15 years, has resulted in a draft Order (The Public Order (NI) Order 1987) which proposes a number of very important and welcome changes in the legal position governing both parades and incitement to hatred. This draft Order was laid before Parliament in December 1986. It will be debated over the next few days with a view to having it approved by the Privy Council on 18 March and implemented as and from 1 April (in time for the Easter marches). At the meeting in the Secretariat on 17 February, the British side notified some late changes to the draft Order. Two are qualifications to the requirement to give seven days' advance notice of all public processions (except funerals). The third involves an extension of the articles dealing with incitement to hatred in order to bring the provisions more closely into line with the Public Order Act 1986.

Parades Policy

2. The annual 'marching season' in Northern Ireland extends traditionally from Easter to the end of August. Over 2,000 parades take place each year, almost 90% of them loyalist. The majority of these pass off peacefully. There are, however, a number of loyalist marches which have been traditionally routed through areas which are primarily or exclusively nationalist. This has been a long-standing source of grievance to nationalists. Such marches have provided a focal point for sectarian violence and have frequently resulted in disruption, injury and damage to property.
  
3. Under the 1981 Order, a member of the RUC (not below the rank of inspector) has power to re-route or to impose conditions on a procession where there are grounds for believing that it will lead to a breach of the peace or serious public disorder. In certain circumstances, the Secretary of State has power to prohibit all parades or public meetings in an area for up to 12 months. In practice, however, this executive power to ban parades has rarely been exercised and it has effectively been left to the RUC to re-route or impose conditions on parades within the legislative framework of the 1981 Order. Controversy has arise on occasions when nationalists have perceived the RUC to be reluctant to route Loyalist marches away from predominantly nationalist areas.
  
4. Over the past two summers, however, there have been indications of a greater determination than before on the RUC's part to take nationalist sensitivities into account in dealing with Loyalist parades. A notable breakthrough

and one which was widely ascribed to the Anglo-Irish negotiations then in progress, was the RUC's decision in July 1985 to re-route the Twelfth parade in Portadown, for the first time in 170 years, away from the heavily nationalist Obins Street (or "Tunnel") area. Last summer, with the Agreement now in place, this decision was repeated (though a consequential decision, referred to below, angered many nationalists). In general terms, the RUC's handling of parades last summer was firm, professional and even-handed and won the police new respect among nationalists. Throughout last year, but in particular during July and August, the Irish Government availed of the Conference machinery to alert the British side to possible difficulties arising in relation to proposed Loyalist parades and to press for appropriate police action in order to safeguard nationalist lives and property. The results of such pressure could be clearly seen on the ground. On 11 July, for example, the RUC, acting on a request from the Irish Government, prevented Loyalist marchers from entering the exclusively Catholic Hillview Crescent area of Ballynahinch. Similarly, on the period 12-14 July, they prevented two major Loyalist parades from passing through Obins Street in Portadown. On 8 August, they prevented Loyalist marchers from entering the predominantly nationalist town of Keady. Needless to say, all such decisions incurred considerable Loyalist wrath which was, for the most part, directed against the RUC.

5. One decision which nationalists greatly resented, however, was a decision by the RUC leadership to route the Twelfth parade in Portadown along Garvaghy Road (in place of Obins Street). Despite RUC claims to the contrary, Garvaghy Road is an overwhelmingly nationalist area and the decision was seen by nationalists as a climb-down by the RUC in the face

of pressure from Loyalists anxious to save face following their exclusion from Obins Street. Although the march along Garvaghy Road was confined to eight country lodges and passed off without violent incident, there was considerable anger in the nationalist community at the decision and at the massive security presence in the area which it necessitated. The decision was widely condemned by nationalist representatives and by the Minister for Foreign Affairs (who had received private assurances from the British side that there would be no surrender to Loyalist intimidation). The RUC sought to represent the decision as a purely 'operational' and pragmatic response to a threatening situation in which there was a risk of loss of life. Many nationalists, however, saw political considerations behind it and would not accept that the Chief Constable could have (or should have) taken such a decision on his own.

#### Parades: Legislative Background

6. Following the disagreement over the handling of the 12 July Orange Parade in Portadown a special meeting of the Conference was called by the Irish side on 29 July. The main purpose of this meeting was to consider the implications for future parades policy. The Irish side emphasised the importance of developing a clearly defined policy on parades, which should be based on the following general principles:

- (i) Parades should not take place in an area or along a route where they are not welcome.
- (ii) There should be a clear evaluation by the police as to what precisely constitutes a 'traditional' parade or 'traditional' route.

(iii) The 'traditional' right to assemble peacefully must be balanced against the need to preserve public order.

(iv) Non-participants along the route of a parade have a right to adequate protection.

7. The Irish side also identified a number of specific areas where legislation would need to be strengthened. These included:

- extension of the period of notice (5 days) required by the Public Order (N.I.) Order 1981 (to enable alternative routes to be negotiated, if required);
- a requirement of written notice for all parades and deletion of the phrase 'other than a public procession which is customarily held along a particular route' from the public order legislation;
- deletion also of the requirement (Sect. 4(2)(b)) for the RUC to take into account 'the desirability of not interfering with a public procession customarily held along a particular route'.

8. When the draft Public Order Order was published on 1 December 1986, it emerged that the British legislative proposals closely followed Irish desiderata.

(i) The advance notice requirement will be extended from 5 days to 7.

(ii) Notice will be required in writing and traditional parades will no longer be exempt.

- (iii) The information required will be extended to cover the likely number of participants, bands and plans for controlling the procession (formerly only the route was required).
- (iv) Prosecutions under the new law may be brought against organisers and participants (formerly only organisers were liable) and the onus of proof in such prosecutions will be shifted from the prosecution to the defence.
- (v) The powers of the Secretary of State to ban parades will be extended to include cases where the RUC's powers to impose conditions will not be sufficient to prevent serious damage to property, serious disruption to the life of the community or intimidation. The Secretary of State will be empowered to prohibit all public processions or meetings in an area for up to 3 months or, alternatively, to permit a specified public procession or meeting but to prohibit the holding of any further processions or meetings in the area for up to one month.
- (vi) The powers of the RUC to re-route or impose conditions on parades will similarly be extended to cover circumstances where a senior RUC officer seriously believes they will result in serious damage to property, serious disruption to the life of the community or that the purpose of the organisers is to cause intimidation.
- (vii) The RUC will be given power to impose conditions on open-air public meetings and the Secretary of State will be given power to ban such meetings.

(viii) An additional amendment to the draft Order as laid before Parliament will require notice of a procession to be given "as soon as is reasonably practicable" where it is not reasonably practicable to give 7 days notice. The measure is designed to facilitate the holding of 'spontaneous' processions and it will be necessary to show that the reason for the procession arose at short notice;

(ix) A second additional amendment will give the Secretary of State power to exempt certain types of processions from the notification requirements. This measure is aimed primarily at the Salvation Army.

9. The proposed changes were strongly welcomed by the SDLP and the Minister for Foreign Affairs. Seamus Mallon welcomed in particular, the enhanced powers of the Secretary of State as a 'clear recognition that marches are not just an operational matter for the RUC and there is a need for decision by a different agency to protect the interests of the community in general'.

10. The new public order legislation has provoked an outcry from loyalist leaders. Ian Paisley has described them as 'totally intolerable' and has called for a 'simultaneous uprising' across Northern Ireland when the new order is passed. Loyalists are certain to seek to test the willingness of the RUC to enforce the new regime. It is also certain that attempts will be made to re-assert 'traditional' routes where marches have been re-routed in recent years (notably in Portadown). From the nationalist perspective, it is essential that the new legislation is fully enforced and that further progress is made in routing parades away from areas where they are not wanted.

Incitement to Hatred

11. The proposed order will strengthen considerably the provisions on incitement to hatred in a number of important respects.

- (i) It will be an offence to publish or distribute written matter which is likely to arouse hatred or fear. (It was formerly necessary to show that it was intended to do so).
- (ii) Possession of such material with a view to publication or distribution will also be an offence.
- (iii) It will be made an offence to use words or gestures likely to stir up hatred or fear. (Formerly it was necessary to show intent).
- (iv) A subsequent amendment to the draft Order will extend the offence from the spoken word and written material to cover tape and video recordings, broadcasts (BBC and IBA broadcasts excluded) and cable transmissions.

Anglo-Irish Section,  
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