



An Chartlann Náisiúnta National Archives

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DRAFT PUBLIC ORDER (NORTHERN IRELAND) ORDER

Main Changes since the publication of the Proposal

1. The main change is the substitution of ten Articles dealing with incitement to hatred, in place of the two which featured in the Proposal. The effect of the changes is to extend the offence of incitement to hatred from the spoken word and written material to cover tape and video recordings, broadcasts (except those by the BBC and IBA) and cable transmissions. Amendments with the same effect were built into the Public Order Bill at a late stage and the amendments to the Order bring it almost into line with the Public Order Act 1986. The exception is that the Order does not deal specifically with incitement to hatred through the medium of a play. The Public Order Act refers substantially to the Theatres Act which does not extend to Northern Ireland, so any extension of the incitement to hatred legislation would have required very substantial drafting. As plays have not in Northern Ireland been a source of incitement to hatred, the Secretary of State for Northern Ireland has decided that this potential problem should not be dealt with specifically in the Order. Of course, if a play demanded the use of words which might amount to incitement to hatred, the actor(s) might well be liable to prosecution under the other provisions of the Order (e.g. Article 9).

2. The other significant changes are to Article 3 of the draft Order which deals with the requirement to give advance notice of all public processions, except funerals. In response to representations, the Secretary of State has decided:

- (a) that the article should be amended to provide that where it is not reasonably practicable to give 7 days

notice of a public procession, then notice should be given as soon as is reasonably practicable. This will facilitate the holding of 'spontaneous' parades or other processions, e.g. in support of industrial action or to welcome a victorious sports personality or team, where the organisers can show that the reason for the procession arose at short notice;

- (b) that he should have a power to exempt descriptions or classes of processions from the notification requirement. This would, for example, give the Secretary of State a power to exempt the Salvation Army from the notification requirement.

3. Additionally, it has been decided not to bring "indecent behaviour in a public place" within the scope of the Public Order legislation; it will now remain in Section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968. The offence of physically obstructing any lawful activity in a public place has been amended to avoid any potential loopholes. The reference to election meetings in Article 7(4) has been amended to ensure that election meetings in all types of elections in Northern Ireland are treated on the same basis.

4. The arrest power conferred by Article 24 of the draft Order has been amended to reflect the Public Order Act in providing that only constables in uniform may exercise the arrest powers which relate to the offences associated with public processions and public meetings, but that the other arrest powers can be exercised by any constable. The draft order also follows the Public Order Act by conferring a power of arrest, and increasing the penalties, in respect of the offences in Section 7 of the Conspiracy and Protection of Property Act 1875, which include picketing a persons' home or business. Various penalties in the draft Order have also been amended, in the interests of consistency with the Public Order Act or to conform with the general principles of Northern Ireland legislation in this respect.

AnnexSection 7 : Conspiracy and Protection of Property Act 1875

Every person who with a view to compel any other person to abstain from doing or to do any act, which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority

- (1) uses violence to or intimidates such other person or his wife or children, or injures his property; or
- (2) persistently follows such other persons about from place to place; or
- (3) hides any tools, clothes or other property owned or used by such other person, or deprives or hinders him in the use thereof; or
- (4) watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or
- (5) follows such other person with two or more other persons in a disorderly manner or through any street or road,

penalty, on conviction, thereof by a court of summary jurisdiction not exceeding level 2 on the standard scale, or to be imprisoned for a term not exceeding three months.

DRAFT PUBLIC ORDER (NI) ORDER

1. The draft Public Order (NI) Order 1987 was laid before Parliament today.*

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2. A number of amendments have been made to it in the light of comments made by interested parties on the Proposal for a draft Public Order (NI) Order which was published on 1 December 1986 as a basis for consultation.

3. The Government will be seeking the approval of both Houses of Parliament before putting the draft Order forward for approval by the Privy Council.

4. The draft Order amends and consolidates public order legislation in Northern Ireland in the light of developments since the law was last amended 15 years ago (the 1981 Order was purely consolidation). In doing so it also takes account of the changes made to public order legislation in Great Britain by the Public Order Act 1986. The net result is a body of draft legislation which is fully consistent with the principles underlying public order law in Great Britain, while being tailored to the specific requirements of Northern Ireland.

5. The draft Order:

- (i) amends the law on the notification and control of public processions and open-air public meetings;
- (ii) brings the law on the prevention of incitement to hatred into line with the equivalent Great Britain provisions;
- (iii) consolidates a range of miscellaneous public order provisions; and
- (iv) provides for the repeal of the Flags and Emblems (Display) Act (NI) 1954.

6. The draft Order confers only one new - and relatively minor - power on the Secretary of State, that is the power to exempt classes or descriptions of parades from the 7-day notification requirements. It confers no new power on the police though it puts their common law power to impose conditions on open-air public meetings on to a statutory basis, as the Public Order Act 1986 did in Great Britain; and (again following the Great Britain precedent) it widens the grounds on which they may impose conditions on public processions and open-air public meetings.

7. The requirement to give notice of public processions will now extend to all processions. This will help the police to bring prosecutions against those who have previously defied the notification requirement - in some cases deliberately to provoke confrontation with the police- by claiming that their processions were "customary". The period of notice is the same as that in Great Britain and the information required in the notice broadly reflects that required in Scotland by the Local Government (Miscellaneous Provisions) (Scotland) Act 1982. In response to representations, the Secretary of State has agreed that the draft Order should be amended to facilitate 'spontaneous' processions (e.g. to welcome home a successful sports team) where it is not reasonably practicable to give 7 days' notice; and to confer on him a power to exempt classes or descriptions of processions (e.g. Salvation Army processions) from the scope of the notification requirement. In the particular circumstances of Northern Ireland where so many marches take place each year, a general requirement to notify all processions is necessary if the police are to be able to make appropriate dispositions to keep the peace.

8. Part III of the draft Order updates the law against stirring up hatred or arousing fear to bring the law in Northern Ireland fully into line with that which applies in the rest of the United Kingdom. Sadly, the existing law had not proved sufficiently effective to keep the terms of public

debate in Northern Ireland within the bounds which most people would regard as appropriate. To prevent frivolous attempts to mount prosecutions, any prosecution under Part III will (as in Great Britain) require the consent of the Attorney-General.

9. The consolidation of miscellaneous public order legislation will make the law easier to understand. It has also provided the opportunity to follow the Public Order Act by raising the penalties for the offences in Section 7 of the Conspiracy and Protection of Property act 1875, which include intimidatory picketing of a person's home or business premises.

10. The arguments for and against the repeal of the Flags and Emblems (Display) Act (NI) 1954 have been rehearsed many times but there is still a considerable amount of misunderstanding. The repeal of the Act will not affect the fact that the Union flag is the official flag of the United Kingdom and will continue to be the flag which is flown from public buildings on public occasions. There is no question of the Irish Tricolour being given equal status. It will no longer be an offence in itself to interfere with the display of a Union flag on private property, but any such interference would involve the commission of other criminal or civil offences (e.g. criminal damage) so the peaceful display of the Union flag (or any other flag) will continue to be protected. The police will also retain their general duty under common law to

take whatever steps are necessary to prevent a breach of the peace arising from the provocative display of any flag or emblem.

12. The Secretary of State commented that legislation in the field of public order was always a sensitive matter. In the particular circumstances of Northern Ireland he was anxious to give the police whatever powers were strictly necessary to enable them to prevent outbreaks of public disorder which were inherently likely to lead to wider intercommunal conflict and tension. On the other hand, he wanted to preserve the rights of people in a liberal democracy to demonstrate their views within reasonable constraints. He believed the draft Order struck the right balance and he deplored the active and conscious misrepresentation of the effects of the draft Order which may have prevented some people getting a clear idea of the issues involved.