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Public Processions in Northern Ireland

This paper summarises the current public order legislation in Northern Ireland and considers some analyses of the issues surrounding parades in Northern Ireland. It also describes the background to the introduction of the *Public Processions (Northern Ireland Bill)* [HL] [Bill 101 of 1997-98] which received a Second Reading in the House of Commons on December 18th 1997, having completed its passage through the House of Lords. The paper goes on to summarise the Bill's provisions and the Parliamentary debate on its provisions.

Mary Baber

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Summary

This paper begins by noting that there is at present no legal right to march under UK law, although the European Convention on Human Rights, which the Government intends to incorporate into UK law through the Human Rights Bill, currently being considered by the House of Lords, provides a right to freedom of peaceful assembly, subject to certain qualifications. The paper goes on to describe the current statutory arrangements for regulating processions and parades in Northern Ireland. The equivalent provisions for England and Wales and Scotland are set out in an Appendix.

The paper goes on to consider the background to the parading issue in Northern Ireland. There has been a substantial increase in the number of parades in recent years and while most cause no problems, a small number have caused controversy and conflict within the community. The previous Government responded to particular problems arising from a dispute over a parade at Drumcree in 1996 by setting up a review, under the chairmanship of Dr Peter North. The report of this review recommended, that an independent commission be established as a focus for promoting and facilitating mediation and the search for local accommodation in respect of contentious parades. It also proposed that the Commission be given legal powers to issue determinations with respect to particular parades, taking over from the police in this respect.

The North Report received support from all the major parties at Westminster and the previous Government established the Parades Commission as a mediating body on a non-statutory basis, pending legislation to give it powers to make determinations. The *Public Processions (Northern Ireland) Bill*, which has completed its passage through the House of Lords and received a Second Reading in the House of Commons, is designed to provide a statutory basis for the Commission and set out its functions, including the power to make determinations, although the Government intends that this power should only be used as a last resort. The Bill makes a number of other amendments to the law concerning public processions in Northern Ireland and restates this law in the form of primary rather than secondary legislation. This paper describes the Bill's provisions. It then goes on to consider some of the debate on these provisions in the House of Lords, before concluding with extracts from the debate on the Second Reading of the Bill in the House of Commons.

I Introduction: a right to take part in processions and assemblies

There is at present no express statutory or common law right of assembly in UK law, although the courts do sometimes refer to the existence of fundamental rights in general and to the rights of peaceful assembly and public protest in particular. The creation of powers and procedures to allow for the imposition of bans and controls on public processions and public assemblies in specified circumstances can be taken as an implied acknowledgement that there is a general right to process and assemble which may, however, be modified or diminished in certain specified circumstances. The traditional view of the common law is that it permits those acts or omissions which are not forbidden. It thus tends only to acknowledge rights in the negative rather than the positive sense. Processions, marches and demonstrations are only lawful to the extent that they do not contravene any other law, rather than because the law recognises a positive right of assembly.

Article 11 of the European Convention on Human Rights, which the Government's *Human Rights Bill* seeks to incorporate into UK law, provides a right to freedom of peaceful assembly, subject to a number of limitations. The article states that:

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.

II Current public order legislation in Northern Ireland

The principal measure of public order legislation in Northern Ireland is the *Public Order (Northern Ireland) Order 1987*¹, which came into operation in April 1987. The 1987 Order replaced the *Public Order (Northern Ireland) Order 1981*², a consolidation measure which had gathered together in a single Order provisions on a number of different issues including the holding of processions and the preservation of public order during processions.

The 1981 Order had contained provisions requiring written notice to be given of forthcoming processions³. It also enabled senior police officers to impose conditions on processions, including conditions prescribing the route and prohibiting the procession from entering a specified place.⁴ The Secretary of State also had powers under the 1981 Order to make orders prohibiting all public processions or open-air public meetings, specified classes of public procession or open-air public meeting, or permitting a particular procession or meeting while prohibiting another in the same place or area⁵.

In March 1986 the Conservative Government announced that it would be reviewing Northern Ireland's public order legislation in the light of the changes which were to be brought in for England and Wales by the legislation which became the 1986 *Public Order Act*. A proposal for a Draft Order in Council designed to bring Northern Ireland more closely into line with the rest of the UK was published on December 1st 1986. A draft Order in Council was subsequently laid before Parliament on February 19th 1987 and debated in both Houses on March 10th 1987.⁶ The Unionist parties did not participate in the debate, which took place during the lengthy protest against the Anglo-Irish Agreement of November 1985. Some Unionist Members, including Sir James Molyneaux and Rev Ian Paisley, protested at the new law by participating in a march through Belfast on April 10th 1987, but there was a low turn out for the "Day of Defiance" which had been called for the following day.

The provisions of the 1987 Order concerning parades and other processions are summarised below.

Article 3 of the 1987 Order requires a person proposing to organise a public procession, (other than a funeral procession or a procession of a class or description specified by the Secretary of State) to give written notice of the proposal to the RUC, by leaving the notice with an officer of

¹ SI 1987/463 (N.I. 7)

² SI 1981/609 (N.I. 17)

³ SI 1981/609 (NI 17) Article 3

⁴ SI 1981/609 (NI 17) Article 4

⁵ *ibid* Article 4

⁶ HC Deb Vol 212 c217-266 10.3.1987; HL Deb Vol 485 c1017-1042 10.3.1987

at least the rank of sergeant, at the station nearest to the proposed place of commencement of the procession. The notice must specify the date, time and route of the procession, the number of people likely to take part, the names of any bands which are likely to take part, the arrangements for its control being made by the person proposing to organise it and the name and address of that person.

This article originally required that 7 days notice be given, or, if this was not reasonably practicable, that notice be given as soon as it was reasonably practicable to do so. The number of days' notice which is required was increased to 21 days by the *Public Order (Amendment) (NI) Order 1997*⁷ which applies to all public processions held after May 30 1997. Under these new arrangements, in cases where less than 21 days notice is given, the person proposing to organise the procession must explain why it was not reasonably practicable to give 21 days notice. The 1987 Order required that the notice specify the number and, where reasonably practicable, the names of any bands which were likely to take part in the procession. The new arrangements under the 1997 Order require that the names of any bands which are to take part in the procession be specified.

Under the provisions of the 1997 Order notice must be given in a prescribed form, which is set out in the *Public Order (Prescribed Form) Regulations (Northern Ireland) 1997*⁸. The form must be signed by the person giving the notice.

A person who organises or takes part in a procession in respect of which the requirements of notice have not been satisfied, or which is held on a date, at a time or along a route which differs from that specified in the notice, commits an offence punishable on summary conviction by up to six months' imprisonment and a £5,000 fine. It is a defence for a person accused of such an offence to prove that he did not know of, and neither suspected nor had reason to suspect the failure to satisfy the notice requirements or the difference in date, time or route. Where the alleged offence turns on a difference in date, time or route it is also a defence for an accused persons to prove that the difference arose from circumstances beyond his control, from something done in compliance with conditions imposed by a senior RUC officer under Article 4 of the Order, or from something done with the agreement of a member of the RUC of at least the rank of inspector.

Article 4 of the 1987 Order permits a senior police officer⁹ to give directions imposing conditions on the people organising a public procession or open-air public meeting if, having regard to the time or place at which and the circumstances in which such a procession or meeting is being held or is intended to be held he reasonably believes that:

⁷ SI 1997/1181 (NI 10)

⁸ SR 1997 No.235

⁹ i.e. a member of the RUC of at least the rank of inspector or superintendent, depending on the circumstances
ibid Article 4 (3)

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(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

The senior police officer may impose such conditions as appear to him necessary to prevent such disorder, damage, disruption of intimidation, including, in the case of processions, conditions as to its route or conditions prohibiting it from entering any specified place. Where open-air public meetings are concerned the senior police officer may impose conditions as to the place at which the meeting may be, or may continue to be held, its maximum duration or the maximum number of persons who may constitute it.

A person who fails to comply with a condition imposed under this Article commits an offence punishable by up to six months' imprisonment and a £5,000 fine following summary conviction or two years' imprisonment and a fine following conviction on indictment. It is a defence for such a person to prove that the failure arose from circumstances beyond his control.

Article 5 of the 1987 Order gives the Secretary of State the power to prohibit public processions and open-air public meetings in certain circumstances. Article 5(1) states that:

5.-(1) If at any time the Secretary of State is of the opinion, in consequence of information furnished to him by the Chief Constable or for any other reason, that -

(a) the exercise of the powers conferred by Article 4 in any area will not be sufficient to prevent such disorder, damage, disruption or intimidation as is referred to in paragraphs (1) and (2) of that Article; or

(b) the holding in any area or place of any public procession or any open-air public meeting is likely to cause -

(i) serious public disorder;

(ii) serious disruption to the life of the community; or

(iii) undue demands to be made upon the police or military forces,
he may make an order -

(A) prohibiting, for such period not exceeding 3 months as may be specified in the order, the holding in that area or place of all public processions or open-air public meetings or of such classes of public procession or open-air public meeting as may be so specified; or

(B) permitting the holding in an area or place of a public procession or open-air public meeting specified in the order and prohibiting, for such period not exceeding one month as may be specified in the order, the holding in that area or place of any other public procession or open-air public meeting or of any class of public procession or open-air public meeting specified in the order.

The RUC Chief Constable may delegate his functions under Article 5(1) to another RUC officer of at least the rank of Assistant Chief Constable. Article 5(2) provides that wherever practicable the Secretary of State should consult the appropriate committee of the Police Authority for Northern Ireland before making an order under Article 5(1) although the order will not be invalid if the committee is not consulted. Article 5(1) Article 5(3) states that:

A recital in an order made by the Secretary of State under paragraph (1) as to his opinion and the information upon which that opinion was formed shall be conclusive evidence of the matters stated therein.

A person who organises or takes part in a public procession or open-air meeting which he knows is prohibited by virtue of an order made under Article 5 commits an offence punishable with up to six months' imprisonment and a £5,000 fine following summary conviction and two years' imprisonment and a fine following trial on indictment.

Article 6 of the 1987 Order allows the Secretary of State to make an order requiring the registration of bands. Such an order may provide for registration to be subject to conditions and for certain bands or specified types of bands to be excluded from registration. A person who knowingly takes part in a public procession as a member of a band which is required to be registered but is not, or which does not comply with a condition subject to which it is registered, commits an offence punishable following summary conviction by up to six months' imprisonment and a fine. This Article has not been brought into force.

Article 6A of the 1987 Order, which was added by the *Public Order (Amendment) (NI) Order 1997*,¹⁰ makes provision for the control of alcohol at public processions. It enables the police to confiscate alcohol from people who are reasonably suspected of consuming it and are taking part, or are about to take part in a public procession, or who are present in a public place at, or in the vicinity of any place on the route of the public procession. It also permits the police to confiscate alcohol from people who are in passenger vehicles which are being used for the principal purpose of carrying passengers for the whole or any part of a journey to a place in the vicinity of the route or proposed route of a public procession.

The police may also stop and search such vehicles and the passengers in them if they have reasonable grounds for suspecting that alcohol is being carried on them. A person who fails without reasonable excuse to surrender the alcohol in his possession when required by the police to do so under these provisions commits an offence punishable by a fine of up to £500.

¹⁰ SI 1997/1181 (NI 10)

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The police may only exercise their powers under this Article in relation to a particular procession between 6 hours before the start of the procession and midnight on the day on which it finishes or, if the proposed procession does not take place, midnight on the day on which the persons assembled with a view to taking part in the procession disperse.

Article 7 of the 1987 Order makes it an offence, punishable on summary conviction by up to six months' imprisonment and a £5,000 fine, for a person to try to prevent or hinder a lawful public procession or annoy people taking part in or endeavouring to take part in such a procession by hindering, molesting, obstructing, acting in a disorderly manner towards or behaving offensively or abusively towards them. The Article also makes it an offence with the same penalty for a person to act in a disorderly manner at a lawful public meeting for the purpose of preventing the transaction of the business for which the meeting was called.

In their book *Parade and Protest: A discussion of parading disputes in Northern Ireland*, published in 1996 Neil Jarman and Dominic Bryan note¹¹ that Article 9(4) of the 1987 Order requires that intent be proved. Commenting that prosecution in such cases is always difficult, they go on to suggest that this is perhaps why the legislation is not widely used.

¹¹ at p. 123

III Contested processions and parades in Northern Ireland

At the start of the “marching season” in July 1996 there was widespread civil disorder in Northern Ireland following ultimately unsuccessful attempts by the then Chief Constable of the RUC, Sir Hugh Annesley, to re-route an Orange Order parade at Portadown away from the Garvaghy Road. On July 15th 1996 in a statement to the House of Commons about these disturbances the Northern Ireland Secretary, Sir Patrick Mayhew, announced the establishment of an independent review of arrangements for handling parades and marches in Northern Ireland¹². Dr Peter North QC CBE, Vice Chancellor of Oxford University was subsequently appointed as review chairman, with Father Oliver Crilly and Reverend Dr John Dunlop being appointed as the other members of the review team.

In a written answer to a Question from Mr Worthington on February 5th, 1997 the then Northern Ireland minister, Sir John Wheeler made the following comments about the costs of public disturbances in summer 1996¹³:

It is not possible to provide a comprehensive breakdown of the costs of public disturbances over the summer of 1996 in Northern Ireland. Clearly the widespread unrest and the many instances of rioting and other violence have had a profound effect on all communities in Northern Ireland both politically and emotionally as well as financially.

However, it is possible to estimate the financial costs in some areas of public expenditure where the public order situation led to additional expenditure over what might normally have been expected. In particular, it is a matter of public record that the additional costs arising from policing parades and other demonstrations in July and August amounted to approximately £13 million. In addition, the Compensation Agency has calculated the cost of potential criminal damage claims to be approximately £20 million. Not all of these claims have been settled and the figure given is an estimate as to the possible final cost of compensation the public and industry vehicles, assessed from claims received by the agency.

These figures do not take into account other areas of unquantifiable costs such as personal injury claims, the cost of repairing damage to roads, etc., nor the loss of potential investment or tourism during this period.

¹² HC Deb Vol 281 c.789 15.7.1996

¹³ HC Deb Vol 289 c.651(W) 5.2.1997

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The Report of the *Independent Review of Parades and Marches*, chaired by Dr Peter North, which was published in January 1997, noted that¹⁴:

Northern Ireland has a particular tradition of parades. Indeed, one organisation which organises parades – the Ancient Order of Hibernians – traces its roots back to 1565. The Apprentice Boys of Derry commemorate action by thirteen young apprentices who shut the gates of Londonderry in December 1688, while the Orange Order was formed in 1795, and the Royal Black Institution two years later. In more recent times, civil rights marches played a significant part in leading to constitutional and social change in the late 1960s and 1970s. In addition, parades, processions and meetings are organised in Northern Ireland for many of the same purposes as elsewhere, for example to promote trade union activities, to support youth and church-based groups, and to commemorate sacrifices in past conflicts.

In their 1996 report *Parade and Protest: A Discussion of Parading Disputes in Northern Ireland*, Neil Jarman and Dominic Bryan of the University of Ulster's Centre for the Study of Conflict also observe that parades and demonstrations, which have been common throughout Europe, have remained particularly important in Northern Ireland. They suggest that this is a result of ongoing ethnic differences highlighted by a lack of agreement over the nature of the state. They take the view that particular types of parades are understood as forming part of a community's "tradition" distinguishing it from the other community. Jarman and Bryan see the historical position of the Orange Institution in the north of Ireland and within Northern Ireland since 1921 as having provided the environment in which loyalist parades could flourish while nationalist parades were restricted to particular areas. They therefore suggest that the "tradition" of parading has been largely based on an inequality of power. They note that following the formation of Northern Ireland:¹⁵

Both the northern and southern states developed a collective identity which was based upon the single dominant ethno-religious group. Commemorative events which reflected this political identity were enshrined by the state while others were opposed. Orange parades in the south became particularly difficult to organise as they came under threat from local IRA groups. In the north the Twelfth effectively became a ritual of state while nationalists were restricted to marching in a limited number of areas.

In their review of recent disputes over parades Neil Jarman and Dominic Bryan suggested that disputes over the "right to parade" and the "right not to suffer parades", which had dominated the marching season of 1995, looked set to continue. This proved to be the case in both 1996 and 1997. Jarman and Bryan commented that although the number of disputed parades was small the effect of those disputes on community relations was significant. Parades could be an annoyance to members of both the Catholic and Protestant communities and with the number of parades increasing the atmosphere in which the events took place

¹⁴ *Report of the Independent Review of Parades and Marches 1997* Stationery Office, Belfast January 1997 p.13 para. 2.3

¹⁵ *Parade and Protest: A Discussion of Parading Disputes in Northern Ireland* – Neil Jarman & Dominic Bryan 1996 p.5

might worsen. They noted that since 1985 the number of parades in Northern Ireland had shown an increase of over 32%, with loyalist parades increasing by 34% and republican parades by 16%¹⁶.

In his annual report for 1996 the Chief Constable of the RUC, Ronnie Flanagan, said that¹⁷:

While several parades conducted in 1996 were, and remain, the subject of understandable intense media and public concern, the vast number of parades in the year passed without incident. Throughout the year, 3,161 parades took place, 2,405 of which were categorised as Loyalist, 229 as Nationalist and 527 as "Other".

Of the total number of parades, 25 were re-routed and 7 were subjected to the imposition of certain conditions imposed on them, 19 illegal parades took place, 8 Loyalist and 11 Republican.

The 527 "Other" parades which took place passed off in the majority of cases in a peaceful and orderly manner, due to close co-operation between parade organisers and the local police¹⁸.

In a Written Answer to a Question from Mr McGrady on 14th November 1997 the Northern Ireland Minister, Adam Ingram, said that there were a total of 2,687 parades in Northern Ireland between April 1st and September 30th 1997¹⁹.

Statistics on the numbers of processions and demonstrations in the rest of the UK are not collected centrally, but as far as London is concerned, for example, the Metropolitan Police received notification of approximately 200 processions and demonstrations within the Metropolitan Police District in 1996²⁰.

Jarman and Bryan take the view that a number of political factors lie behind the large and increasing number of parades in Northern Ireland. They suggest that the number of loyalist parades may have risen because of divisions within Unionism, which, they say, have left the Orange Institution less representative of diverse unionist politics and led to an increase in the number of more diverse and localised loyalist parades, many of which are held by other groups, including marching bands. The more disparate nature of unionist politics has, they suggest, reduced the authority that senior Orangemen appear to have over the events they are organising and that the Orange Institution no longer represents, and therefore has less

¹⁶ *ibid.* p.1

¹⁷ Royal Ulster Chief Constable's Annual Report 1996 p.23-24.

¹⁸ The report notes that "Loyalist" includes LOL/RBP/App Boys parades and Band contests/parades involving the Loyalist community, "Republican" includes Sinn Fein parades, Band parades and protest parades involving the Nationalist community, and "Other" includes all other types of parades such as Youth Organisations (including the Boys' Brigade and Girls' Brigade etc.), Remembrance Day parades, Lord Mayor's Day parades etc.

¹⁹ HC Deb Vol 300 c.693 14.11.1997

²⁰ Source: Metropolitan Police

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authority over, the majority of those involved in parades. They say that parades continue to be used by politicians and political groups for their short-term political ends.

Jarman and Bryan suggest that increased political confidence within the nationalist community has led to an increase in the number of parades, particularly by republican groups and that, given the prolonged IRA campaign, many of these are seen as threatening within the Protestant community. Years of sectarian violence and tensions within Northern Ireland have, they say, reduced the acceptability of loyalist parades to many in the nationalist community and probably an increasing, although less vocal, proportion of the Protestant community, who see the parades as having become “less respectable”. They note that the sheer number of parades, particularly in predominantly Protestant towns, appear to have caused the Catholic community to feel increasingly alienated from the civic centre of those towns, that residents groups in some nationalist areas have become more confident about expressing opposition to loyalist parades, particularly after the IRA and loyalist paramilitary cease-fires, and that the parades have come to define the communal boundaries in Northern Ireland to an even greater extent than was previously the case. Some Unionist politicians and commentators have claimed that Sinn Fein and the republican movement have been orchestrating the activities of residents groups in certain areas where there have been disputed parades as a means of widening their activities and influence. Jarman and Bryan conclude that²¹:

The parading issue has proved detrimental to the relationship the RUC have with both Catholic and Protestant communities despite efforts by the police to improve their position as a police force for all the communities. Since they most often try to maintain the status quo they are perceived by nationalists, and with some justification, as sustaining the imbalances that exist in public political expression which date back to the Stormont era. On the other hand, if they attempt to reduce or re-route parades, as they have done in some areas, they are inevitably accused of attacking the “tradition” and the “rights” of the Protestant community.

The *Report of the Independent Review of Parades and Marches* chaired by Dr Peter North was published in January 1997. It summarised the case for change as follows²²:

12.2 We have pointed to widespread dissatisfaction with the Public Order (Northern Ireland) Order 1987. The main criticisms of it are that:

- a) focused on public order, it fails fully to recognise the right of peaceful assembly, the rights of those in the area through which a procession passes and those of the wider community;
- b) it places a premium on threats of disorder;

²¹ *Parade and Protest: A Discussion of Parading Disputes in Northern Ireland* – Neil Jarman & Dominic Bryan . 1996 Centre for the Study of Conflict, University of Ulster p.144-145

²² Report of the Independent Review of Parades and Marches 1997 p.133

- c) it has been implemented inconsistently, with a lack of transparency, and with insufficient rigour;
- d) it suffers from a significant number of other more minor shortcomings.

12.3 We have shown in Chapter 9 that there is a need for the legislative framework to provide a means of accommodating the competing rights which can be inferred from our international legal obligations. On the one hand, these include the “right to march”, based on the right to peaceful assembly, as qualified, in the European Convention on Human Rights. On the other hand, there are the rights of the local residents which can be inferred from various provisions in the European Convention and from the general law.

12.4 We have noted how the present machinery provides no explicit opportunity for the consideration of the views of local residents, other than through the threat of protest. Although the current criteria to which a senior police officer may have regard in assessing whether to impose conditions on a parade include a reasonable belief that there would be serious disruption to the life of the community, those who have commented to us agree that up to now it is primarily the public order considerations that have predominated in that assessment. Moreover, as we noted in paragraph 40 of Chapter 8, Mr Justice McCollum stated in his judgement (5 NIJB 72) that

"whether a parade is provocative or unnecessary is not a matter which a senior police officer has to consider, nor for the court to take into account...."

People in Northern Ireland hold their different views about the social and political desirability of the conduct of an Orange Parade through the streets of a predominantly Catholic village like Pomeroy. It is probably this aspect which gives the matter its considerable public interest. However I must emphatically state that the law does not permit that consideration to have any influence whatsoever on the decision by the senior police officer under Article 4 (of the 1987) Order whether or not to give directions imposing conditions on the organisers of a parade, and still less can it play any part in the resolution of the matter by this court".

We noted in the same chapter, at paragraph 5, the clarity of the view of Lord Scarman:

"the police are not to be required in any circumstances to exercise political judgement. Their role is the maintenance of public order - no more, and no less".

12.5 We have found widespread public recognition that significant change is required. This has come through quite clearly, in the submissions and letters that we received, in the meetings that we have held, and from the surveys that we commissioned. Further testimony comes from the efforts and initiatives that have come forward in the past two years, including those by central mediation agencies, the involvement of individuals in facilitating discussions, and the difficulties experienced by those wishing to organise parades and those seeking to articulate opposition on behalf of a local community.

12.6 As also noted before, there is a widespread view that the police should not be put in the position of making a decision about any conditions that are to be imposed on a procession or open-air public meeting, and then enforcing the outcome.

12.7 This analysis points in two directions in particular - the need for statutory criteria which take clearer account of the underlying rights and responsibilities of all concerned, and for a determination by someone other than the police as to whether

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conditions are required to be imposed in relation to contentious parades if agreement is not reached locally. There is this connection between the two points. If one takes the view that it is essential that the decision as to whether to impose conditions should take account of wider considerations, then many would argue that the police are not necessarily best placed to make that assessment. This in turn strengthens the case for some independent determination.

It went on to reach the following conclusion about the establishment of a new independent body²³:

We have concluded that the weight of the arguments points firmly in the direction of the establishment of a new independent body, with a broad remit that reflects the points that we have identified. Therefore **we recommend the creation of an independent body that would:**

- a) **allow interested parties to put their views forward about proposed parades,**
- b) **encourage them to settle difficulties locally, and where that proved impossible,**
- c) **itself come to a view on what, if any, conditions should be imposed on contentious parades after an appropriately transparent process of examination of all the relevant issues against the background of reformed legal provisions.**

²³ *ibid.* p.138

IV Proposals for change in the arrangements for resolving disputes over parades.

The previous Secretary of State for Northern Ireland, Sir Patrick Mayhew, summarised the North Report's conclusions in a statement to the House of Commons on January 30th 1997, in which he also set out the previous Government's response to its recommendations²⁴:

The report is a long and closely argued document, with more than 40 recommendations. It proposes, as the foundation of its other recommendations, that seven fundamental principles should form the basis for the development of processes and procedures governing parades. I should say immediately that the Government accept those principles, which include both the protection of the right to peaceful free assembly and the need to ensure-preferably through local accommodation-that the exercise of that right takes proper account of foreseeable effects on relationships within the community.

The report emphasises the predominant importance of reaching local agreement on every contentious parade. It goes on to recommend that an independent commission should be established as a focus for promoting and facilitating mediation and the search for such local accommodation in respect of contentious marches. It also proposes that, in default of successful mediation, the commission would have legal powers to issue a determination in respect of a contentious parade, but with a power for the Chief Constable-if he is concerned about it-to refer such a determination to the Secretary of State. The Secretary of State would then decide the matter by endorsing, revising or reversing the determination, applying the same statutory criteria as the commission.

Furthermore, it is proposed that a senior police officer could override a determination on the day of a parade if the police found that, as a result of the likely impact on public order, they were unable to uphold it. The report recommends that a new offence be created of deliberately contravening, through force of numbers or threat of disorder, a decision of the commission-for example, by seeking to block an authorised parade.

The report also recommends that the statutory criteria for making decisions on parades set out in the Public Order (Northern Ireland) Order 1987 should be enlarged to enable specific consideration to be given to the wider impact of contentious parades on relationships within the community. It also makes a wide range of further major recommendations, including, for example, the extension of the period of notice of a planned parade required to be given to the police from the current period of not fewer than seven days to not fewer than 21 days; and the preparation of a statutory code of conduct covering the behaviour of parade participants and protesters.

We recognise the report's description of the parades issue as a microcosm of the wider political problems of Northern Ireland, and as one that has the capacity to polarise the community and to engage levels of emotion and commitment that few other issues reach. Because of that, the Government have a responsibility to take the issues forward as far as possible on a basis of widespread agreement within the community so that whatever new arrangements are put in place may be recognised as fair and workable, and therefore acceptable. In that way, they stand the best chance of being effective and successful. As Dr. North and his colleagues say:

"our shared view"
is

"that the way to the complete resolution of the issue is through the community working together in search of mutual accommodation."

It is against this background that the Government have considered the proposals contained in the report.

The Government agree that an independent body could indeed play a constructive and valuable role in helping to resolve disputes concerning

²⁴ HC Deb Vol 289 c.507-510 30.1.1997

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contentious parades. The Government believe that a new body of that kind could provide a valuable focus and a catalyst for mediation and conciliation efforts at local level. In respect of these non-adjudicatory functions, the Government endorse the report's recommendations, which they believe should be implemented without delay.

At the same time, the Government recognise that the proposal that an independent body should, as

It therefore expresses no opinion on it either way, but it will seek the views of interested groups on the report's proposal that the commission should have a decision-making role of this kind and, if so, on the way in which it might be exercised. That consultation will also encompass those of the North recommendations linked directly to the role of a commission, including those directed at the possible expansion of the statutory criteria, the publication of guidelines that the commission would take into account and the creation of a new criminal offence of setting out deliberately to contravene a legal determination.

This consultation will not duplicate the consultation already conducted by Dr. North and his colleagues, but will be a precisely focused and time-limited exercise to give public representatives and others who are directly concerned the opportunity to comment on an important matter of real concern to them and those whom they represent. The Government envisage that the period of consultation will last until the end of March. In any event, implementation of the recommendation, if that were to be the decision eventually reached, would require a statutory basis. While final decisions on the way forward on this issue may fall to the new Parliament, the Government, for their part, are clear that any such provision should be provided by primary legislation-by Bill rather than by Order in Council.

The Government therefore intend to establish, as soon as possible, an independent body of five people, to be known as the Parades Commission, with the mediation, conciliation and education roles recommended in the report. We intend that the new commission should be in place ahead of this year's marching season, precisely because we recognise that it has a valuable role to play, potentially, of that character, and could also have the capacity to act as a valuable and reassuring channel of communication with all interested parties, including the Chief Constable of the Royal

part of its duties, take over the RUC's decision-making power in respect of parades is a radical and far-reaching one. The report notes the wide range of views that it received on precisely that issue. Therefore, it would not, in our view, be right for Government-without further but time-limited consultation-to reach a decision on so fundamental a proposal.

Ulster Constabulary and the Secretary of State. Further details of its operation will be promulgated when the membership of the commission is announced. Legislation will not be required for this purpose.

Turning to the report's recommendations that are not directly linked to the role of a commission and do not therefore fall to be considered as part of the consultation exercise, the Government accept them all subject to further consideration of how these might best be implemented in practice.

In particular, we agree that a code of conduct, covering parades, protests and open-air public meetings, should be prepared and published for consultation as soon as practicable. We agree that a registration scheme for bands should be introduced as soon as the necessary practical arrangements can be put in place.

We agree that the period of notice for parades should be extended from seven to 21 days, that the amendments that the report proposes to article 3 of the Public Order (Northern Ireland) Order 1987 should be implemented, and that consideration should be given to the changes suggested to articles 4(1)(b) and 7; and that appropriate provisions for the control of alcohol in respect of those travelling to both processions and open-air meetings in Northern Ireland should be introduced. We shall implement these changes as soon as practicable.

We agree that parade organisers should not be required to post bonds or provide proof of insurance cover, and that steps should not be taken to seek a contribution to policing costs from parade organisers or protesters.

The House will, I think, join me in thanking Dr. North and his colleagues for producing this report, which represents an extremely important

contribution to our consideration of these difficult and complex matters.

The events of last summer cast a pall of fear across Northern Ireland. As the report states, an abyss of anarchy opened up. All people of good will must surely demand that there be no repetition,

but no mechanisms and no procedures can be enough on their own.

There needs to be within all who live in Northern Ireland the will and the personal determination that last year's terrible events shall never again occur. To that end, the Government pledge that they will play their own part to the full.

In replying to this statement the Labour Party's then shadow Northern Ireland spokesperson Marjorie Mowlam welcomed the report and offered the then Secretary of State her party's full support in enacting legislation based on the report, which she urged him to introduce. She noted that:²⁵

At heart, the issue is about the rule of law. We believe that the rule of law is paramount, and we hope that all parties in the House will join us in fully supporting the rule of law.

She added that²⁶:

We must keep this problem in proportion. Of the many hundreds of parades that occurred last year, only a handful created problems. Every effort must be made to ensure that, whenever possible, local agreement is reached through discussion and mediation, as the report acknowledges. Only when those efforts are exhausted should other, more formal, mechanisms be employed.

To those who say that the recommendations of the report could breach their fundamental rights, I say this: the right to march is a fundamental human right. We support that right and it is fully supported in the report, which says:

"The right to peaceful free assembly should be protected".

But, as my right hon. Friend the Leader of the Opposition would say, all rights carry responsibilities. The responsibility in this case is to take account of the likely effect exercising one's right to march may have on relationships with other parts of the community.

The report is no panacea, and further examination, either by the Government or by a commission, is clearly required in certain areas, such as the content of a code of conduct, or the length of period of notice for parades. Will the Secretary of State enter into immediate discussion with us and others? By the end of February there could be consensus and continued bipartisanship on measures that could be put in place immediately in March, either legislatively or administratively,

²⁵ *ibid.* c.510-511

²⁶ *ibid*

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so that any Government would be better prepared for the 1997 marching season.

I agree with the Secretary of State that it is important to get this right: we will store up trouble for the years ahead if we do not. Unless the right hon. and learned Gentleman acts on the guts of the report, the staged approach that he recommends will be undermined.

The Social Democratic and Labour Party (SDLP) spokesman, Seamus Mallon, expressed concern that the additional period of consultation proposed by the previous Government would further postpone the date on which the Government and Parliament would have to make a decision on the question of how parades were to be regulated. He added that the matter had been discussed all his political life and had been referred to by Members from every party in discussions with the Secretary of State. In his view there were only three options; that the Secretary of State made decisions about parades, that the Chief Constable made them, or that they were made by a separate body, as recommended by the North report²⁷.

A statement setting out the preliminary Ulster Unionist reaction to the North report noted that:

Time will be needed for consideration of the North Report (256 large format pages plus appendix and summary). Careful consideration is necessary, especially because the Report makes some very radical proposals and the issue is extremely sensitive in Northern Ireland. Any implementation must be by proper legislation to allow for the necessary scrutiny.

The statement went on to say that:

Ulster Unionists consider that the central proposal in the North Report is wrong. Namely that a Commission should take over from the police the function of deciding whether a parade should be banned or made subject to conditions.

This proposal forgets that the primary responsibility for the maintenance of the Queen's peace rests with the police and the government. This responsibility cannot be shifted to another body, and certainly not to a body whose composition would, by virtue of the Anglo-Irish Agreement, be determined in consultation with a foreign government hostile to the traditions and allegiance of the greater number of the people of Northern Ireland.

²⁷ *ibid.* c.515

In any event the proposed role of the Parades Commission contains contradictions. It is suggested that the Commission should mediate in cases of disagreement, but if mediation fails the Commission should make a determination. These two roles, conciliation and adjudication, are inconsistent. They cannot be exercised by the same body without the latter role interfering with and undermining the former. They should be separated and the latter should remain with the police and the Secretary of State.

Even a mediation role could be problematic in Northern Ireland. As the Report acknowledges only a small minority of parades cause problems. Set up a complex machinery charged with a duty to go out and gather information about likely issues before they occur and there will certainly be more problems.

The North report will be yet another factory of grievances.

In February 1997 the previous Government published the *Public Order (Amendment) (Northern Ireland) Order 1997*, which amended the *Public Order (Northern Ireland) Order 1987* by increasing the period of notice required to be given of a public procession from 7 to 21 days and altered the form of, and details to be given in, any such notice²⁸. The order also gave the police powers to confiscate alcohol from people taking part in, travelling to, or present at or in the vicinity of, a public procession. Both of these measures arose from recommendations in the North Report²⁹. The Order was debated in the House of Commons on March 19th 1997³⁰, in the House of Lords on the following day³¹, and came into force on May 9th 1997.

In March 1997 Sir Patrick Mayhew, implemented another of the North Report's recommendations when he set up the Parades Commission, appointing Mr Alistair Graham as chairman. The other four members appointed were Frank Guckian CBE, David Hewitt CBE, the Reverend Dr Roy Magee MBE and Mrs Bernadette McIvor. Some unionists, including the leader of the Ulster Unionist Party, David Trimble, criticised the appointment of Mrs McIvor, who was chair of the SDLP Foyle Constituency Council in Londonderry³². On December 19th 1997 the *Belfast Telegraph* reported that the Reverend Dr Roy Magee had resigned from the Parades Commission. The news paper reported that the departure of Dr Magee, who had helped to bring about the loyalist cease-fire, had been prompted by the change of emphasis giving the Commission a role in adjudicating on specific parades, rather than simply mediating between parades organisers, residents' groups and the police³³.

²⁸ See also the *Public Order (Prescribed Form) Regulations (Northern Ireland) 1997* S.R.1997/235

²⁹ *Report of the Independent Review of Parades and Marches* January 1997 p.151 para 12.69-12.70, p.191-192 paras. 14.3-14.4 & p203 para 14.55

³⁰ HC Deb Vol 292 c.1030-1048 19.3.1997

³¹ HL Deb Vol 579 c.1163-1166 20.3.1997

³² "Parades team under attack" – *Belfast Telegraph* 26.3.1997; "Trimble says parades body slanted in favour of SDLP" – *Belfast Telegraph* 28.3.1997

³³ "Resignation shock" – *Belfast Telegraph* 19.12.1997

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The Queen's speech following the General Election in May 1997 included a commitment to bring forward legislation on parades which, amongst other things, would provide a statutory role for the Parades Commission, reflecting the analysis in the North Report. Commenting on this undertaking the new Secretary of State for Northern Ireland, Marjorie Mowlam, said the Labour Government was committed to help all those concerned to make a fresh start on parades and wanted to encourage and facilitate local agreements. She went on to set out the Government's policy on parades in Northern Ireland³⁴:

I know that many in the Loyal Orders see the North recommendations as threatening to their freedom to parade peacefully. In a parallel way, many Nationalists lack confidence that the current arrangements adequately take into account their concern about the true impact of parades on local communities, particularly where they have not been organised on the basis of consensus.

I believe that the North Report was a genuine attempt to bring a degree of fresh thinking to this controversial area; in particular in its central recommendation that more needs to be done to encourage the local accommodation of differences about parades.

I am therefore determined, in taking forward legislation to provide new powers for the Commission and a new framework for handling parades, to take into account the fears and sensitivities which these issues arouse on all sides. That is why the Queen's Speech announced that the legislation would be by way of Bill, to enable our proposals to be subject to the fullest possible scrutiny by Parliament.

In addition, since it is not possible - now that the marching season is already under way - to have new arrangements in place for this summer, we shall be ensuring that, when legislation is introduced later this year, it will benefit fully from the experience of this marching season, and the views of all those involved, to achieve any enhancements which are possible to the new measures.

I shall myself be discussing these issues with elected representatives, the Loyal Orders, and representatives of communities affected by contentious parades. The Government will be genuinely open to serious proposals for enhancing the chances of local agreement and the workability of new arrangements. And the Parades Commission will be undertaking their own activities, including the development of guidelines, procedures in respect of their new statutory role, and a Code of Conduct for participants in a parade and protesters.

That is the way ahead for the future. For this year, I believe that the Parades Commission are developing a real insight into the issues involved in contentious marches in Northern Ireland. The Chief Constable (with whom the power to set conditions on parades will remain until the legislation is enacted) will be seeking their views on a regular basis as the summer progresses.

For my part, I am committed to doing everything I can to ensure that we do not witness a repeat of the appalling events of last year. As Archbishop Eames has said, history will not easily forgive anyone who seeks to bring about such a repetition. I am convinced that the best way of making progress is through dialogue leading to accommodation and agreement at local level. As the Queen's Speech indicates, the Government will take steps to establish a comprehensive and even-handed approach to encourage this. This year, I urge all who are working to achieve accommodation to redouble their efforts. They have the full support not only of the Government, but I am sure also of the vast majority of people throughout Northern Ireland. We will work with them to ensure that the rule of law is upheld.

³⁴ Secretary of State sets out policy on parades in Northern Ireland" – P.N. Northern Ireland Office 14.5.1997

V The Public Processions (Northern Ireland) Bill [HL] (Bill 101 of 1997-98)

The Bill was introduced in the House of Lords and had its Second Reading there on October 28th 1997³⁵. It completed its passage through the House of Lords on December 9th 1997 and was passed to the Commons.

Speaking at a reception at the University of Ulster organised by the Centre for the Study of Conflict on October 17th 1997 the Secretary of State for Northern Ireland, Marjorie Mowlam, described the Government's approach to the parades issue as follows³⁶:

We are convinced that the way forward is a policy based both on rights and on the responsibilities which go with them. Rights – the right to free assembly, which includes the right to march and the right to protest against marches, peacefully and within the law. Responsibilities – in a democratic society we all have the responsibility to express our rights in a way which respects the rights and freedom of others.

She added that:

Rights underlie our approach. Because they are the natural heritage of all, regardless of political affiliation. But also because we believe a system based on transparency and recognised rights stands the best chance of success even in the vexed area of marching.

The *Public Processions (Northern Ireland) Bill* is designed to establish the Parades Commission as a body corporate with a remit to encourage mediation and education on the question of parades. The intention is that the Commission should take over from the Royal Ulster Constabulary (RUC) the responsibility for making decisions on contested parades.

A. The Parades Commission for Northern Ireland

Clause 1 and Schedule 1 of the Bill provide for the establishment of the Parades Commission for Northern Ireland as a body corporate. Like most non-departmental public bodies, the Commission will not have Crown status³⁷. It will consist of a chairman and not more than 6 other members, all appointed by the Secretary of State. The Secretary of State will have the power to make orders varying the maximum number of members. Such an order will be

³⁵ HL Deb Vol 582 c.982-1025, 28.10.1997

³⁶ "Northern Ireland Parades Bill published" – P.N. Northern Ireland Office 17.10.1997

³⁷ See *Non-Departmental Public Bodies: A Guide for Departments* – Cabinet Office and HM Treasury 1992 para. 3.3

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subject to the negative procedure, which the House of Lords Select Committee on Delegated Powers and Deregulation considered appropriate for simple amendments of this kind.³⁸ The chairman and other members of the Commission will be appointed for a term of not more than three years. Members whose terms of office have expired or who have resigned will be eligible for re-appointment. The Secretary of State will be able to provide remuneration and allowances to be paid to pay to the chairman and other members of the Commission. The Bill also aims to give the Secretary of State powers to remove from office any member (including the chairman) who has been convicted of a criminal offence, has become bankrupt or made a composition or arrangement with his or her creditors, has failed to comply with the terms of the appointment or is otherwise unable or unfit to discharge his or her functions.

Paragraph 5 of Schedule 1 of the Bill is designed to make arrangements for the procedure to be followed by the Commission. Amongst other things it provides that the quorum for a meeting of the Commission should be three and that every question at a meeting of the Commission should be determined by a majority of the members present and voting on the question. In the case of an equal division of the votes, it is intended that the chairman of the meeting should have a second or casting vote. If the chairman of the Commission is absent from a meeting of the Commission, the members present will have powers to elect one of their number to act as chairman of the meeting.

Clause 2(1) sets out the intended functions of the Commission in relation to parades. The Bill's *Notes on Clauses* explains that it is intended that the Commission should facilitate local agreement on contested parades and make determinations in respect of them should local agreement prove to be impossible. The functions of the Commission, as set out in Clause 2(1) are:

- a) to promote greater understanding by the general public of issues concerning public processions;
- b) to promote and facilitate mediation as a means of resolving disputes concerning public processions;
- c) to keep itself generally informed as to the conduct of public processions;
- d) to keep under review, and make such recommendations as it thinks fit to the Secretary of State concerning the operation of the legislation.

Clause 2(2) is designed to give the Commission additional powers, in accordance with the other provisions of the legislation, to:

- a) mediate; or facilitate mediation, between parties to particular disputes concerning proposed public processions and take such other steps as appear to the Commission to be appropriate for resolving such disputes;

³⁸ House of Lords Select Committee on Delegated Powers and Deregulation 6th Report Session 1997-98 HL Paper 32 p.5 para. 14

- b) issue determinations in respect of particular proposed public processions.

For the purposes of these functions and with the approval of the Secretary of State the Commission will also, under Clause 2(3), have powers to provide financial or other assistance to any person or body on such terms and conditions as it may determine, and to commission research.

B. The Parades Commission's Code of Conduct, Procedural Rules and Guidelines.

Clause 3 of the Bill requires the Commission to issue a code of conduct providing guidance to persons organising public processions and regulating the conduct of persons organising or taking part in public processions.

Under Clause 4, the Commission will also have to issue a set of procedural rules on the practice and procedure to be followed by the Commission in exercising its functions in relation to mediation and the issuing of determinations where local agreement has not been possible, and by other persons and bodies in their dealings with the Commission in connection with the exercise of those functions. In particular, the procedural rules may provide for a determination by the Commission of the particular cases in relation to which the Commission's functions under Clause 2(2) are to be exercised. The Notes on Clauses explain that this means the Commission will decide which parades it shall consider and whether conditions need to be imposed. The procedural rules may also prescribe the manner in which, and the time within which specified actions may or must be taken, whether by the Commission or by other persons, and require notice of specified determinations of the Commission made in the exercise of those functions to be published in a specified form and manner.

Clause 5 is designed to require the Commission to issue a set of guidelines setting out the factors to which it is to have regard in making determinations imposing conditions on parades under Clause 7.

Provisions relating to the Code of Conduct, Procedural Rules and Guidelines are set out in Schedule 2 to the Bill. In a memorandum of evidence to the House of Lords Select Committee on Delegated Powers and Deregulation the Northern Ireland Office explained that³⁹:

³⁹ *ibid.* p.11

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The reason why it is considered appropriate to make provision for a Code of Practice, a set of Procedural Rules and a set of Guidelines by means of delegated legislation is that it seems likely that the contents of a relevant instrument will need to be changed in due course to reflect experience gained by the Commission in applying its statutory functions in this controversial and sensitive field once the Bill comes into force. In addition it is considered to be an advantage that the relevant instrument will not be constrained by the formal language which is appropriate in the drafting of a statute or a statutory instrument. This will help to ensure that the matters governing the exercise of the Commission's functions will be understood easily by those affected by its decisions.

The arrangements which are intended to apply in respect of the first issues of the code, the procedural rules and the guidelines are as follows. The Commission will be required to prepare a draft of the Code, rules and guidelines, submit the instruments to the Secretary of State and make such modifications as the Secretary of State, after consultation with the Commission, may require. The Commission will then send the draft instruments to the Secretary of State, who will lay each draft before Parliament. The instruments laid in draft will not come into operation until the Secretary of State makes an order bringing them into force. Such an order will have to be approved by resolution of each House of Parliament under the affirmative procedure.

If the Commission subsequently wishes to revise the Code, procedural rules or guidelines it is intended that it should be required to prepare and publish a draft of the revised instrument, consider any representations made to it about the draft and modify the draft in accordance with these representations if it so wishes. The Commission will then be required to send a draft of the revised instrument to the Secretary of State, who will lay it before Parliament. The revised instrument will not come into operation until the Secretary of State makes an order bringing it into force. As originally drafted, the Bill provided that unlike the order bringing the first issue of such an instrument into force, the order relating to any subsequent revision would be subject to the negative, rather than the affirmative procedure. In its evidence to the House of Lords Select Committee on Delegate Powers and Deregulation the Northern Ireland Office explained that⁴⁰:

The reason why the draft affirmative resolution procedure has been chosen for the first issue of a relevant instrument is because the Bill gives the Commission extensive powers in the public order field (powers which were previously exercised by the Royal Ulster Constabulary). The relevant instruments will have a significant influence on the way the Commission exercises these powers. For that reason it is thought that Parliament would wish to have the right to debate them before they come into force. Unlike in the case of the revision of a relevant instrument, there is no provision for public consultation before a relevant instrument is first issued. That is because it is considered important that the Bill comes into force before the start of the marching season next year. And there would not be time for a formal public consultation process. However, copies of all these relevant instruments in draft will be published in the library of the House on introduction of the Bill so that the provisions of the Bill can be debated in full knowledge of the factors which will determine the way it will be implemented.....

⁴⁰ *ibid.*

Although there will have to be a public consultation procedure before a relevant instrument can be revised, it is not thought that the same degree of Parliamentary scrutiny is necessary when the instrument is revised. It is also envisaged that it will be frequently amended although these amendments are not expected to be substantive. It is for this reason that paragraph 9 of Schedule 2 combined with Clause 16(2) makes provision for the negative resolution procedure to apply in relation to revisions of a relevant instrument.

The House of Lords Select Committee said⁴¹:

The Committee considers that this is a proper case for the initial order to be subject to affirmative procedure. There is a difficulty with amendments (variations), since while minor variations may not justify that degree of scrutiny and expenditure of parliamentary time, in the case of substantial changes the affirmative procedure might be more appropriate. The House may therefore wish to consider whether the bill should be amended to allow Ministers the option of using either the affirmative or the negative resolution procedure for variation, thereby giving appropriate flexibility for the right amount of parliamentary control.

There is a further possible cause for concern in that the subject matter of the bill is a highly sensitive area, where what to some people might seem “minor” variations might to others be amendments of the utmost importance. In the event of the negative resolution procedure being used for variations it will be for members of the House to exercise vigilance in bringing areas of particular sensitivity to the attention of the House.

The Government agreed with the Select Committee’s suggestion and successfully introduced an amendment during the Bill’s Third Reading in the House of Lords which is designed to enable the Government to choose whether to use the affirmative resolution procedure or the negative resolution procedure for particular revisions of the Commission’s code of conduct, procedural rules and guidelines. In introducing the amendment the Northern Ireland minister Lord Dubs made the following comments about the option to use either the affirmative or the negative procedure⁴²:

That has up to now been a fairly unusual approach, mainly associated with European legislation; but we believe it is a helpful suggestion, and highly appropriate for this Bill. We do not believe it will be a good use of parliamentary time to require a debate on any revision of, say, the commission’s procedural rules when these may be entirely technical; but, equally, we accept that there is at least a potential of fairly substantial changes to the guidelines, for example.

Your Lordships may ask how the Government will decide which option to use. I cannot, of course, set out any fixed rules, but I can assure your Lordships that each case will be considered carefully on its merits. Our commitment to the fullest possible scrutiny has been demonstrated by our decision to use a Bill procedure rather than an

⁴¹ *ibid.* p.5

⁴² HL Deb Vol 584 c24, 9.12.1997

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Order in Council, and we shall not be seeking to smuggle major changes through without appropriate scrutiny. Depending on what we perceive to be the gravity and significance of the changes, we shall decide which procedure is appropriate. And, of course, if any noble lord or Member of the other place believes the changes are significant and should require a debate and a vote, it is open to them to pray against an order which has been laid by the negative resolution procedure.

The Code of Conduct for parade organisers and participants, the Procedural Rules describing how the Commission will operate and the Guidelines setting out how the Commission will measure the range of factors that must be taken into account in making decisions on parades were published by the Parades Commission in draft for consultation purposes on October 27th 1997⁴³.

C. Arrangements for regulating parades and processions

Clause 6 of the Bill seeks to require the organiser of a public procession to give notice of the procession to the police. It broadly re-enacts the provision in Article 3 of the *Public Order (Northern Ireland) Order 1987* described earlier in this paper⁴⁴, but extends the period of notice to 28 days. The Notes on Clauses states that the Government considers this to be an appropriate period in view of the procedures which the Parades Commission will need to follow.

Notice will have to be given to a member of the RUC not below the rank of sergeant by leaving written notice in the prescribed form, signed by the person giving the notice, at the nearest police station to the proposed starting point of the parade. It will have to be given not less than 28 days before the date of the procession, and if this is not reasonably practicable, as soon as it is reasonably practicable to do so.

As well as requiring the person giving notice to specify the date and time of the procession, its route, the number of persons likely to take part, the names of any bands which are to take part, the arrangements for its control being made by the organiser and that person's name and address, the prescribed form will require the person giving notice to specify any other matters which appear to the Secretary of State to be necessary or appropriate for facilitating the exercise by the Commission, the Secretary of State or members of the RUC of any function in relation to the procession.

⁴³ DEP 5472(3S)

⁴⁴ SI 1987/463 (N.I.7) see p.6 above

If less than 28 days' notice is given the person giving the notice will also be required to specify the reason why it was not reasonably practicable to give 28 days' notice. These requirements will not apply where the procession is a funeral procession or a procession of a class or description specified in an order made by the Secretary of State.

The Bill seeks to make it an offence punishable by up to six months' imprisonment and a £5,000 for a person to organise or take part in a public procession in respect of which the notice requirements have not been satisfied or which is held on a date, at a time or along a route which differs from those specified in the notice. It will be a defence for an accused person to prove that he did not know of, and neither suspected nor had reason to suspect these failures to satisfy the notice requirement or the difference of date, time or route. Where an alleged offence turns on a difference of date, time or route it will also be a defence for the accused to prove that the difference arose from circumstances beyond his control, something done in compliance with conditions imposed by the Commission under Clause 7 or something done with the agreement or by the direction of a member of the RUC of or above the rank of inspector.

The RUC Chief Constable will be required to ensure that a copy of the notice of the proposed procession is immediately sent to the Parades Commission.

As the Notes on Clauses explain, it is intended that the Commission should facilitate local agreement on contested parades. If local agreement cannot be reached the Bill seeks, through Clause 7 of the Bill, to empower the Commission, to make determinations on contested parades. A determination may impose on the persons organising or taking part in a proposed parade or other public procession such conditions as the Commission considers necessary, including the re-routing of the procession, or a prohibition on the procession entering any place. The Notes on Clauses state that:

This is the core provision of the Bill and provides that the Commission take over the power to make determinations on contentious parades from the RUC, [as] recommended by North (recommendation 14a). The power which the Commission will have is broadly similar to that currently enjoyed by the RUC, but the key change is the basis on which determinations can be made.

It is also intended that the Commission should have powers to amend or revoke any determination issued under Clause 7.

In considering whether or not to make a determination in a particular case, or to amend or revoke a determination it has already made, the Commission will be required to consider

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guidelines issued under Clause 5. Clause 7(6) provides that the guidelines should in particular provide for the Commission to have regard to:

- a) any public disorder or damage to property which may result from the procession;
- b) any disruption to the life of the community which the procession may cause;
- c) any impact which the procession may have on relationships within the community;
- d) any failure of a person of a description specified in the guidelines to comply with the Code of Conduct (whether in relation to the procession in question or any previous procession); and
- e) the desirability of allowing a procession customarily held along a particular route to be held along that route.

The “likely impact of the parade on relationships within the community” is a new factor, the consideration of which was recommended by the North Report.

It will be an offence punishable by up to 6 months’ imprisonment and a £5,000 fine for a person to knowingly fail to comply with a condition imposed under this provision, although it will be a defence for that person to prove that the failure arose from circumstances beyond his control, or from something done by direction of a member of the RUC of or above the rank of inspector. A person who incites another to commit an offence under this provision will also be guilty of an offence.

If the Chief Constable is concerned about any determination by the Commission, Clause 8 is designed to enable him to refer the matter to the Secretary of State, who will be required to review the determination, using the same guidelines as did the Commission. The Secretary of State will have powers to revoke, amend or confirm the Commission’s determination, having consulted the Commission beforehand where this is practicable and will be required to notify the Commission immediately where any determination is revoked, amended or confirmed. Where the determination is revoked by the Secretary of State the Commission will not be able to issue a further determination in relation to that particular procession. The Notes on Clauses state that:

The North Report recommended legislative provisions for the Secretary of State to reconsider a determination by the Commission in cases where the Chief Constable expresses his concern (recommendation 19b). The Commission will balance public order with other factors in making its determination but this clause enables the RUC to appeal a determination of the Commission to the Secretary of State, who will also take all these factors into account in considering a particular case.

Clause 9 of the Bill is designed to enable the police constables to retain their common law powers to take action to deal with or prevent breaches of the peace, thus enabling them to

retain a reserve power to take whatever action is necessary on the day to preserve public order if the situation on the ground would make it impossible to enforce the Commission's determination. The Notes on Clauses state that:

North recommended that the police should retain the power to intervene on public order grounds in cases where a determination of the Commission is defied (recommendation 20). The Commission will seek to make its decisions in advance of a parade, but it is possible that the public order situation could change considerably. The police therefore retain their common law powers which would allow them to take any action on the day which they deemed necessary to keep the peace; e.g. allow a route denied by the Commission's determination.

Clause 10 of the Bill is designed to amend Article 5 of the *Public Order (Northern Ireland) Order 1987*, which enables the Secretary of State to make orders prohibiting public processions in certain circumstances. The North Report recommended no change in the ownership of the power to prohibit processions.⁴⁵ The Parades Commission will not, therefore, have the power to prohibit processions. This power will be retained by the Secretary of State. The amended version of the power to prohibit processions seeks to enable the Secretary of State to issue an order prohibiting:

- a) the holding of a particular proposed public procession, or
- b) the holding of all public processions of a particular class or description, in a particular area, for a period of up to 28 days, or
- c) the holding of all public processions in that area for a period of up to 28 days,

if he or she is of the opinion that it is necessary in the public interest to do so.

The maximum length of a prohibition on processions in a particular area will thus be reduced from the maximum of 3 months under the current 1987 Order. An order may exempt any particular procession, or any procession of a particular class or description, from a wider prohibition on processions. The order may be subsequently revoked or amended.

Clause 10(5) provides that wherever practicable the Secretary of State should consult the Parades Commission, the Chief Constable and a specific committee of the Police Authority for Northern Ireland before making an order prohibiting the holding of any or all processions. It is intended that an order made by the Secretary of State should revoke any previous determination made by the Parades Commission respect of the processions to which the order relates.

⁴⁵ *Report of the Independent Review of Parades and Marches* January 1997 para. 14.15

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In considering whether or not to make such an order it is intended that the Secretary of State should be required to have regard to:

- a) any serious public disorder or serious damage to property which may result from the processions;
- b) any serious disruption to the life of the community which the processions may cause;
- c) any serious impact which the processions may have on relationships within the community;
- d) any undue demands which such processions may cause to be made on the police or military forces; and
- e) the extent to which the power to prohibit a single procession, or to prohibit all processions of a particular type (rather than all processions of any type), may be sufficient to tackle the problem.

The requirement that the Secretary of State have regard to “any serious impact which the processions may have on relationships within the community”, is a new factor which is designed to implement a recommendation of the North Report. It is a matter to which the Parades Commission is also to have regard in the exercise of its powers under Clause 7 to impose conditions on public processions.

It will be an offence punishable by up to six months’ imprisonment and a £5,000 fine for a person to organise or take part in a public procession the holding of which he knows is prohibited by an order under Clause 10.

Clause 11 is designed to confer on the Secretary of State the power to provide by order for the registration of bands. It is intended to replace Article 6 of the *Public Order (Northern Ireland) Order 1987* which provides a limited scheme for the registration of bands but has never been brought into force. The Notes on Clauses state that:

The North report [recommendation 38] recommended that HMG gave “active consideration” to a registration scheme for bands. The Government considers that the Commission already has sufficient powers to address the mischief caused by some bands. Should a registration scheme be required, however, the Government believes that the north Report is right to propose a court-based system. This clause amends existing provisions to give the Government sufficient vires in the event that it proves necessary to introduce a court-based registration scheme.

Clause 11 is thus intended to enable the Secretary of State to make an order providing for the registration of bands taking part in public processions. A “band” is defined in Clause 16 as “a group of two or more persons who carry for the purpose of playing or sounding, or engage in the playing or sounding of, musical or other instruments”. The statutory instrument

containing the order will be subject to the negative resolution procedure. The order may also provide specifically for:

- a) applications for registration or the renewal of registration to be made to specified courts;
- b) the procedure for the making and hearing of such applications (including the making and hearing of objections);
- c) the grounds on which such applications may be refused;
- d) the issue and duration of certificates of registration;
- e) appeals against decisions made in relation to such applications;
- f) the cancellation of registration and the procedure in relation thereto;
- g) registration to be subject to such conditions as may be specified in or determined under the order;
- h) the order not to apply to such bands or bands of such descriptions as may be specified in or determined under the order;
- i) such other matters as appear to the Secretary of State to be necessary or expedient for the proper functioning of the system of registration provided for by the order.

If this provision is brought into force it will be an offence, punishable by up to six months' imprisonment and a £5,000 fine, for a person knowingly to take part in a public procession as a member of a band which is subject to a registration requirement but is not registered, or which does not comply with a condition of its registration.

Clause 12 of the Bill is designed to re-enact Article 6A of the *Public Order (Northern Ireland) Order 1987*⁴⁶ which, as was mentioned earlier,⁴⁷ was added to that order by the *Public Order (Amendment) (Northern Ireland) Order 1997*⁴⁸. It gives police constables powers to require the surrender of alcohol by persons at, or in the vicinity of, or travelling to, a public procession. The Notes on Clauses state that:

This measure was recommended in the North Report [recommendation 42]. It is designed in part to tackle the problem of "hangers-on" whom the marching organisations may not be able to control. This clause follows provisions in Great Britain for the control of alcohol being taken into sporting events such as football matches as well as the recent act for the confiscation of alcohol from young people.

The Clause seeks to enable a police constable in uniform to require certain persons whom he reasonably suspects of consuming intoxicating liquor to surrender anything in their

⁴⁶ SI 1987/463 (NI 7)

⁴⁷ see p.9

⁴⁸ SI 1997/1181 (NI 10)

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possession which is, or which the constable reasonably believes to be, intoxicating liquor and to state their names and addresses. This requirement is to apply to any person:

- a) who is taking part in a public procession; or
- b) who is among those who have assembled with a view to taking part in a public procession; or
- c) who is otherwise present at, or in the vicinity of, a place on the route or proposed route of a public procession and is in a public place, other than licensed premises.

Clause 12 also seeks to prevent people participating in public processions from bringing alcohol with them. Clause 12(3) is intended to enable a constable in uniform to require a person whom he reasonably suspects of being in possession of intoxicating liquor (rather than simply to be consuming it) to surrender anything in his possession which is, or which the constable reasonably believes to be intoxicating liquor and to state his name and address. This requirement is to apply to people who are in passenger vehicles (defined in Clause 16 as being motor vehicles adapted to carry more than 8 passengers) used for the principal purpose of carrying passengers for the whole or any part of a journey to a place in the vicinity of the route or proposed route of a public procession. Police constables will also be have powers to stop passenger vehicles which are being used for such purposes and search them and any persons in them if the officers have reasonable grounds for suspecting that intoxicating liquor is being carried on the vehicles.

It will be an offence punishable by a fine of up to £500 for person to fail without reasonable cause to comply with a requirement imposed under the powers set out in Clause 12. A constable who seeks to require a person to surrender alcohol or state his name and address under these provisions will have to inform that person of his suspicion and of the fact that the person will be committing an offence if he fails without reasonable cause to comply.

Clause 12 (5) seeks to permit police officers to dispose of anything surrendered to them under these provisions in such manner as they consider appropriate.

It is intended that the powers set out in Clause 12 should only be exercisable in relation to a particular procession in the period beginning 6 hours before the proposed starting time of that procession and ending at midnight on the day on which the persons taking part in the procession. Where the procession does not take place but people assemble with a view to taking part in it the period will end at midnight on the day on which the people assembled with a view to taking part in the procession disperse.

Clause 13 is designed to re-enact the provision in Article 7 of the *Public Order (Northern Ireland) Order 1987*⁴⁹ which makes it an offence punishable by up to 6 months' imprisonment and a £5,000 fine for a person to disrupt a lawful public procession. The Notes on Clauses state that the offence is intended to cover those who try to prevent a procession from taking place or from marching in a particular area. It is designed to apply to any person who, for the purpose of preventing or hindering any lawful public procession, or of annoying any persons taking part or endeavouring to take part in any such procession, hinders, molests or obstructs, acts in a disorderly way towards or behaves offensively and abusively towards those persons or any of them.

Clause 14 seeks to enable police constables in uniform to arrest without warrant any persons they reasonably suspect of committing any of the offences set out in the Bill.

D. The debate in the House of Lords

In opening the debate on the Second Reading of the Bill in the House of Lords the Northern Ireland minister Lord Dubs said⁵⁰:

Over the past few years, tensions surrounding disputed parades have left deep scars on Northern Irish society, revealing unprecedented sectarian distrust and division and at times presenting a serious threat to public order. The tensions surrounding disputed parades threaten to overshadow the fact that the vast majority of parades are both uncontentious and peaceful. Of over 2,900, only a handful of parades are disorderly. Fewer than two dozen needed restrictions imposed on them this year. But those which have led to trouble have posed a serious problem which we are determined to tackle.

The task is all the more important given the current real prospects for political progress. For the first time in three quarters of a century, we have an inclusive political talks process based on principles of democracy and non-violence and including representatives of all strands of opinion. We need to give the talks and the new structures which may emerge from them the best possible prospects of success. It is hard to imagine a more

important contribution to that than tackling the tensions surrounding the marching season.

The parades issue is both complex and sensitive. It touches questions of rights and responsibilities which lie at the heart of our civil society. Balancing conflicting rights is always one of the greatest challenges in a democratic society. But the issue is all the starker in Northern Ireland given the strong emotions, entrenched positions and the sometimes dangerous consequences of friction. No provision can legislate those difficulties away. But the events surrounding parades at Drumcree and elsewhere have focused attention on the current mechanisms for handling disputed parades. We believe that those arrangements are no longer either adequate or appropriate.

The Government took office earlier this year just as the tensions of the marching season were rising once again. Clearly, urgent action was needed. The Secretary of State, with her officials and the many people of goodwill, spared no effort to find an accommodation to head off potential disaster.

⁴⁹ SI 1987/463 (N.I. 7)

⁵⁰ HL Deb Vol 582 c.982-984, 28.10.1997

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Although, as we now know, the very worst did not happen this year, local accommodation did prove impossible at Drumcree. The police were again placed in the no-win position of having to make decisions on public safety grounds-and enforce them-in a highly volatile atmosphere in which they were likely to be condemned no matter what action they took. The Secretary of State made it clear at the time that the chief constable had her full support in taking those difficult decisions. Subsequently, some courageous decisions were made. In particular, the Orange Order's decision to call off a number of marches on 12th July in the wider interests of tranquillity in Northern Ireland has rightly been widely applauded.

I am in no doubt that we are moving forward in Northern Ireland and that the political progress for which we will continue to strive could transform the atmosphere for the marching season next year. But we cannot just wait and hope. As the Secretary of State said when she announced the Bill, we need a parades policy which can win everyone's allegiance because it is based on clear principles, because it represents a threat to neither side and because it recognises the rights, aspirations and responsibilities of everyone.

After the events at Drumcree in 1996, the then government commissioned Dr. Peter North and two colleagues to produce an independent report on the parades issue. The Bill before your Lordships is the legislative expression of our commitment to that report. I welcome this opportunity to pay tribute to Dr. North and his two colleagues for the enormous amount of work they put into producing their report, which deals in an admirably fair and balanced way with what is an extremely difficult issue.

Before coming to the substance of the Bill, I shall, with your Lordships' permission, briefly summarise the findings of the report. The North Report revealed major problems with the way in which public order legislation was working in Northern Ireland and recommended some radical and far-reaching changes. In particular, it concluded that current legislation, by focusing mainly on public order issues, provided a perverse incentive to those who threatened to act outside the law.

The North Report recommended setting up a new body, the Parades Commission, with the task of

working to achieve agreement on contentious parades. It also recommended that that body should take over from the police the power to issue determinations when local agreement was not possible. In addition, the report recommended that the commission should take into account wider factors, including,

"the impact of the parade on the relationships within the community".

The North Report summarised the problem of parades as one of competing rights: the internationally recognised right to march; the right of local residents not to suffer intimidation in their own neighbourhoods and to be free of unreasonable disruption; and the right of all to be free from the threat of serious public disorder. The vital task of the Parades Commission will be to balance those rights, which may at times conflict.

The commission has already started its work under the limited mandate given to it by the previous government, and performed invaluable work throughout the last marching season. Under the dedicated and determined chairmanship of Alistair Graham, the members of the commission quickly got to grips with this most difficult of issues, making themselves known to the very many groups and individuals involved and working tirelessly to facilitate agreement. We owe Mr. Graham and his colleagues a debt of gratitude for their work, and I assure them of the Government's wholehearted support for the challenge ahead.

The commission has demonstrated in its work this year the importance of efforts to facilitate local agreement. While the commission will have power to make binding determinations, it will do everything it can to avoid having to do so. No decision-making process can match an amicable agreement on the ground. The commission will have wide powers to encourage and facilitate such agreement. In particular, it will wish to stimulate early constructive debate on particular parades and help to diffuse tensions, thereby making it more likely that local accommodation can be reached. It is therefore important to understand that the commission's powers to make determinations represent a final stage in that process-something of a last resort and in some senses a sign of failure. The commission will have succeeded fully in its task if the powers granted to it in this Bill never need to be used.

This Government have said all along that we would examine our commitment to implement North in the light of the experience of this year's marching season. We have done so, and we maintain our view that the implementation of the report's findings remains the right way forward. However, through that process of examination, we have identified some enhancements to the arrangements which are included in the Bill. I propose to draw your Lordships' attention to those in my summary of the Bill's, main provisions, to which I shall now turn.

Clause 1 establishes the Parades Commission for Northern Ireland and refers to Schedule 1, which makes provision for its membership together with

their term of office, remuneration, and other ancillary provisions relating to the commission.

Clause 2 sets out the functions of the commission in relation to parades. In particular, the commission will have the duty to promote greater understanding of issues concerning parades, seek to facilitate local agreement on contested parades, and make determinations with respect to those should local agreement not be possible. The clause also enables the commission to provide financial and other assistance, and commission research.

The Bill was welcomed by most of the peers who spoke in the Second Reading debate, although the former leader of the Ulster Unionists, Lord Molyneux of Killead, noted that he had expressed concern to the North Committee about the hasty implementation of measures of a permanent nature, given what he saw as the tendency of the IRA to move on to another target once they had succeeded in attaining a particular objective⁵¹. The Conservative peer Lord Cope of Berkeley welcomed the statutory basis for the Parades Commission and the fact that the Government was implementing the North Report's recommendations in the form of a Bill rather than an order. He went on to say that⁵²:

The Bill, when implemented, will lead to statutory mediation to try to deal with the problems in advance. It will also mean that regulations, both in general and for specific parades, will normally be settled by the commission and not by the police who have to enforce them. It will not insulate, however, either the police or ministers from decisions on some of the most difficult parades.

The ultimate decision to ban is, rightly, not open to the commission. Sometimes those who wish to obstruct a legal march or those who wish to hold a march to mark an anniversary or to protest about something may set out to show the strength of their feelings by deliberately escalating events to the stage where the commission process cannot deal with them. There are precedents for that kind of thing happening in Northern Ireland. The buck will then stop with the police and Ministers.

⁵¹ *ibid.* c.1004

⁵² *ibid.* c.990

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He added that⁵³:

This bill will help to minimise the threats to law and order and, we hope, the genuine offence that can be given to people of both traditions by decisions on parades. But the Royal Ulster Constabulary will still need to hold the line, as it has done so gallantly over the years.

Lord Fitt also expressed concern about whether or not the legislation would be effective, noting that⁵⁴:

The commission may sit and perform its functions, but at the end of the day the RUC will have to police all the demonstrations. The RUC will be the body in the middle, as it has been for many years.

Clause 3 of the original version of the Bill provided for the Parades Commission to have functions not only in relation to public processions, but also concerning the law and practice relating to “expressions of cultural identity” by members of a section of the community, which took place in a public place wholly or partly open to the air and appeared to the Commission to have, or to be likely to have, an adverse impact on relationships within the community. These activities were not to include processions or sporting events. The Notes on Clauses stated that it was not presently the Government’s intention to commence this provision immediately.

The North report had not proposed giving the Parades Commission this wider role and a number of peers, including Lord Fitt, the Liberal Democrat peer Lord Holme of Cheltenham, the leader of the Alliance Party of Northern Ireland, Lord Alderdice, and subsequently the Conservative peer Lord Cope of Berkeley, strongly criticised the inclusion in the Bill of a Clause giving the Commission such a role. They expressed concern that such a measure would diminish the Commission’s effectiveness in dealing with parades. During the Second Reading debate on the Bill in the House of Lords Lord Alderdice said⁵⁵:

I can only assume that the Orange Order, the Black Preceptory and the Apprentice Boys assumed that the purpose of the commission was to ban a certain number of marches - enough to appease those who did not want the marches. I have a different view. Where Orange marches or Apprentice Boys marches are inappropriate or

insensitive and should be banned or re-routed, then so be it. But there could well be unreasonable requests by residents who are simply trying to stir up trouble. In such cases the Orange march should be allowed to go its course with legal backing; the police should not have to make the determination but simply ensure that the march went through.

⁵³ *ibid.*

⁵⁴ *ibid.* c.1007

⁵⁵ *ibid.* c.1013

Unfortunately, I have the feeling that unionist people assumed that the commission was going to be anti-unionist and suggested to the Government that some balancing clause would need to be put in.

The term "cultural identity" tends to be one used more by nationalists in Northern Ireland, at least in the past. Therefore the connoting of other forms of cultural identity in the Northern Ireland context is the kind of language used to describe what unionists might think of nationalists and therefore something that could be banned on the other side.

In a previous debate in your Lordships' House I pointed out that the way forward was not to produce two sets of rights which would always have to be balanced one against the other because there would always be a dispute as to who was on the short end of the stick. The way forward is to produce one set of rights which applies to everybody: one commission for parades, no matter who sets them up, to adjudicate between the paraders and the residents, no matter which side of the community they come from.

When you introduce expressions of cultural identity, you do two things. First, you identify cultural identity with political allegiance. That notion has bedevilled politics in Ireland for the last 100 years: the insistence that if you are a Protestant you have to be a unionist and, at best, light on your Irishness; and if you are a Catholic you have to be a nationalist and certainly would put Irish at the top of the tree.

Clause 3 of the original version of the Bill was removed, along with a number of consequential provisions, by a Government amendment introduced by the Northern Ireland minister, Lord Dubs, and an amendment moved by the Conservative peer Lord Cope of Berkeley, during the Third Reading debate on the Bill in the House of Lords. Lord Dubs said⁵⁶:

The Government's decision to remove Clause 3 follows extensive discussion in this House at all stages, and the emergence of a clear cross-party consensus that the clause as drafted would not have the desired effect.

When we include in a piece of legislation a commitment that cultural identity will be some kind of balance to the commission on parades, which is mostly concerned with Orange parades, we fall into that very trap. It is a particular foolishness because, as the noble Lord, Lord Fitt, pointed out, while unionists, Orangemen and others might well think the commission will find itself applying cultural expression mostly to representations of Gaelic/Catholic/nationalist identity, I can guarantee that there will be those sophisticated enough in the nationalist community to say, "Here is another stick with which to beat unionists". And there will be a list of every Orange arch, not to mention the gaily painted kerbstones, gable walls and other things. Outdoor concerts and goodness knows what else will be dragged into the whole business. The outcome will not be the one intended by the Government, not the one that I suspect was intended by those who promoted it from the unionist side, but rather something that will drag into the mire all kinds of other issues which are at this stage relatively less political and certainly way outside the remit of parades. The Parades Commission, instead of becoming something that helps to solve a difficult problem, will become mired down in it. No one will want to be a member of such a commission. It will be made into a kind of sin-bin, asked to solve all the impossible problems of defining cultural, political identity and nationalism.

⁵⁶ HL Deb Vol 584 c.13, 9.12.1997

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He added⁵⁷:

But it is highly important that people do not see removal of this clause as leaving us with a Bill which is straightforwardly anti-parading and targeted to the culture of one particular part of the community. We shall continue to consider carefully all suggestions as to how our commitment to implement the findings of the North report can be carried out in a balanced and even-handed way.

As originally drafted the Bill provided a maximum penalty of 2 years' imprisonment and an unlimited fine following conviction on indictment for the offences under what is now Clause 7(7) and (8) of knowingly failing to comply with a condition imposed by the Parades Commission or inciting another to commit such an offence. The same maximum penalty was provided for the offence under what is now Clause 10(8) of organising or taking part in a public procession the holding of which the accused person knows is prohibited by order of the Secretary of State. This compared with a maximum penalty of 6 months' imprisonment and a £5,000 fine for those convicted of the offence under what is now Clause 6 of organising or participating in public processions in respect of which the notice requirements have not been satisfied, or which do not comply with the notified date, time or route, and for the offence under what is now Clause 13 of breaking up a public procession. This anomaly was noted and criticised by a number of peers, including the former Ulster Unionist leader Lord Molyneaux of Killead, who suggested that the higher penalty might be lowered, and the Conservative peer Lord Cope of Berkeley, who moved and subsequently withdrew an amendment during the Bill's report stage in the House of Lords which would have raised the maximum term of imprisonment for holding a procession without having given the appropriate notice from 6 months to 2 years⁵⁸.

In response to this amendment the Northern Ireland minister, Lord Dubs, said he recognised the anomaly and that the Government was still considering whether to raise the maximum penalties for all these offences to 2 years (which would have resulted in their being triable on indictment and well as summarily), or to lower the maximum penalty for all the offences to 6 months' imprisonment⁵⁹. The Government went on to choose the latter option and Lord Dubs moved amendments designed to lower the maximum penalties for the offences under what are now Clauses 6 and 13 from 2 years imprisonment and an unlimited fine to 6 months' imprisonment and a £5,000 fine⁶⁰. These offences will also now be triable summarily only.

⁵⁷ *ibid.*

⁵⁸ HL Deb Vol 583 c.1196-1198, 1.12.1997

⁵⁹ *ibid.* c.1197-1198

⁶⁰ HL Deb Vol 584 c.20-21 & c.23, 9.1.1997

E. The debate in the House of Commons

In the course of his speech opening the debate on the Second reading of the Bill in the House of Commons, the Northern Ireland Minister, Adam Ingram, said⁶¹:

When the report was published, we said in opposition that we accepted its findings and would implement its recommendations. With the Bill, the Government are making good our pledge. The Government's feelings on the issue were reinforced by my experience and that of my right hon. Friend the Secretary of State this summer. No Secretary of State could have done more to bring about accommodation and a peaceful resolution of the dispute between the two sides in Portadown this year. However, as my right hon. Friend has acknowledged, she failed, but it was not for the want of trying against what proved to be impossible odds.

As in previous years, the Chief Constable, the RUC and the Army were once again caught in the middle of two competing, inflexible forces. As the Chief Constable said so graphically at the time, the fact that public order considerations were the only ones to be taken into account meant that he had to choose between the lesser of two evils. The Bill is an attempt to ensure that no future RUC Chief Constable is boxed into that position again.

He went on to make the following comments about the Government's strategy⁶²:

The Government's approach, like the North report, is based on recognising rights and responsibilities. My right hon. Friend the Home Secretary recently published a White Paper on the incorporation of the European convention on human rights into law in Britain and Northern Ireland. The convention provides for the protection of the right to peaceful assembly which, in Northern Ireland terms, protects the right to march. It is a basic right that the Government fully recognise, but, as the convention also recognises, it must be exercised with regard to the rights and freedoms of others. Like all rights, it brings responsibilities with it.

People also have the right to live their lives free from fear and intimidation, and there is a fundamental right to demonstrate and protest peacefully against events to which one is opposed,

but that too brings with it the responsibility to respect the rights and freedoms of others.

As the North report recognised, in Northern Ireland we have starkly competing rights. When that results in a dispute, as it does in a small number of the 3,000 or so parades each year, an accommodation has to be sought. The first goal of the Parades Commission, which will be properly established by the Bill, is to enable and facilitate the finding of such an accommodation.

The commission was set up last spring by the previous Government and chaired by Alastair Graham. It was not at that time given the full remit that North recommended, but I hope that hon. Members will agree that it has performed important work in seeking to encourage local agreement in the months since its establishment.

⁶¹ HC Deb Vol 303 c.495-496, 18.12.1997

⁶² *ibid.* c.495-496

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Despite the best efforts of Alastair Graham and his team, there is no doubt that, in the future, as in recent years, attempts to find an accommodation

can be frustrated if there is no willingness on either side to seek compromise.

Mr Ingram said he hoped that the Parades Commission's power to make determinations when agreement could not be reached would always be a last resort. He added that⁶³:

In itself, it will be a signal of failure, but not, I stress on the part of the Parades Commission: it will be a failure of those on both sides of the dispute who did not succeed in reaching that desired accommodation. In making such determinations, the Parades Commission will be empowered to take account not only of public order considerations but of the wider impact that the procession may have on relationships within the community. The commission will also be able to take into account the failure of any specified person to abide by a code of conduct.

In commenting on the Bill's purpose and the cross-party consensus which had developed on a number of issues during the Bill's passage through the House of Lords the Northern Ireland minister stressed that the Government was determined to ensure that the legislation was even-handed⁶⁴.

However, the Government's determination to ensure that the legislation is even-handed remains undiminished. We will continue to consider carefully all suggestions to ensure that our commitment to implement the findings of the North report is fulfilled in a balanced and even-handed way. The Government remain open to advice from hon. and right hon. Members of all parties to that effect both before and during Committee.

It is worth pointing out that several other useful amendments were made in the other place that are generally acknowledged to have improved the workability and acceptability of the Bill. Full and constructive debate led to a cross-party consensus on a number of issues, such as the need for an equalisation of the maximum penalties that can be

imposed for the various offences under the Bill, and a return to the original definition in the Public Order (Northern Ireland) Order 1987 of "public procession", which now makes it clear that it includes processions involving vehicles and other conveyances.

At this juncture, it is important to pay tribute to my noble Friend Lord Dubs who was responsible for the Bill in the other place. I also pay tribute to the Lords who spoke on behalf of the Ulster Unionist party, the Conservative Party, the Alliance party and the Liberal Democrat party, all of whom made major contributions in reaching agreement in these important areas. The Bill is the better for their input. I hope that we can achieve the same level of co-operation in this House

⁶³ *ibid.* c.496

⁶⁴ *ibid.* c.498

The Bill received cross-party support from the Conservative Party, the Liberal Democrats and the Social Democratic and Labour Party (SDLP). Speaking for the Conservative Party, Mr Andrew MacKay began by noting that⁶⁵:

It is probably true to say that marches, and the so-called marching season, in Northern Ireland are one of the aspects of society there which the public in Great Britain find the most difficult to understand: they find the whole thing baffling. They watch with amazement marches commemorating events of 100, 200 or even 300 years ago. On the whole, they find the whole thing unnecessary and provocative.

Rarely do the people of Great Britain try to understand, in short, why their fellow countrymen in Northern Ireland see the necessity to march. That view is born of the luxury of security: we are secure in our ability to express our cultural traditions, secure in our national identity, and secure in our ultimate constitutional status.

The House cannot simply dismiss the marches in Northern Ireland, however. Above all, we have a duty to understand their significance to a great many people there. That is not just because of the contentious nature of some of the marches, or because a small minority of them are attended by public order problems-as witnessed in Londonderry last weekend. The reasons go much deeper than that, because to understand the numerous parades and processions that take place every year, and to understand why they do, is to come close to a proper understanding of the nature of the problems of Northern Ireland. I shall develop that point briefly.

Parades and processions provide us, in effect, with a microcosm of the historic struggle between Unionism and nationalism-not just over the past 28 years, during the current troubles, but over the centuries. ever since the titanic religious and constitutional struggles of the 17th century. They are about displays of identity. They are about defiance - a siege mentality on both sides, which has yet to be resolved. Above all, they are about territory - the mosaic of settlement - on what is described as the "narrow ground", which has done so much to forge the patterns of conflict that have

characterised almost every stage of the so-called Ulster crisis.

When violence erupts, it is a reminder to us all of the real tensions and insecurities that are constantly there below the surface of society in Northern Ireland. Only when the ancient insecurities are lifted and a new accommodation between the two divisions in Northern Ireland has been forged, will the parades and processions take on the form that everyone in the House and elsewhere desires: displays of cultural traditions that can be respected, and even enjoyed, by all parts of the community in Northern Ireland. That is what the current talks process is all about, so we wish it well.

However, the immediate background to the Bill is one of the ugliest manifestations of the divisions in Northern Ireland: the violently disputed march, every July, at Drumcree in the constituency of the leader of the Ulster Unionist party, the hon. Member for Upper Bann (Mr. Trimble), and the subsequent stand-off and violence.

Drumcree is only an example of the increasing number of disputed parades throughout the Province. There are several others. The Orange and Black Preceptory parades on the Ormeau road in Belfast, the Apprentice Boys annual parade in Derry and the Orange parade in Magherafelt in County Tyrone are a few examples.

However, undoubtedly Drumcree has encapsulated the difficulties of the parades issue. Drumcree was the catalyst for the previous Conservative Government to establish the North review, to consider the issue of parades in Northern Ireland and to recommend ways in which they might be handled in future. I should like to place on the record once again our gratitude to the North review and to associate the official Opposition with the broad thrust of its conclusions.

Two principles guided our approach to the issue of parades when we were in government, and they continue to guide us now. First, let me be

⁶⁵ *ibid.* c.504-505

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unequivocal. The official Opposition support the rights of organisations to hold parades in Northern Ireland. On both sides of the community, they are

perfectly legitimate, not to say colourful, means of cultural expression. They are, within the law, an integral part of a free society.

Mr MacKay went on to say that ⁶⁶:

Coupled with the right to march are the rights of residents of a different tradition who object - sometimes violently - to what they regard as triumphalism and intimidation or, in effect, an invasion of territory that they regard as their own.

I understand the suspicion of some hon. Members especially from Northern Ireland about the nature of many of the residents' associations that seem to have proliferated in recent years and the fact that many of them appear to be manipulated by Sinn Fein-IRA, as the hon. Member for Lagan Valley (Mr. Donaldson) well illustrated in an intervention, but residents' rights must be respected.

Today we are trying to strike a balance between those two elements: the right to march and the rights of residents, which are at the heart of the struggle at Drumcree. They are at the heart of the Bill.

Mr Mackay concluded his speech by saying that a number of the concerns his party had about the Bill, which had been widely shared in the House of Lords, had been satisfactorily resolved by amendments introduced there and that in the light of changes already accepted by the Government, his party intended to give the Bill an unopposed Second Reading⁶⁷.

The Liberal Democrat spokesman, Lembit Opik, said his party welcomed the Bill, but added⁶⁸:

We Liberal Democrats also have some concerns about the Bill. First, according to the Bill several parades cannot be treated as a unit. We feel that it would be more helpful if the commission were able to treat marches in groups so that they could negotiate with the various marchers and decide on the merits of each march. Marchers would be able to march and local residents would be pleased to have severely cut the number of marches in some situations. That would acknowledge the reality of the situation in Northern Ireland, with a certain amount of negotiation always taking place in the background.

At present, as the commission cannot take into account the pattern and frequency of marches, if it

were to allow one march along a particular route, it should be inclined to allow identical marches the following week in order to keep things balanced. As the Bill stands, the commission could be forced to give all-or-nothing verdicts rather than the balanced compromises that are so desperately needed in these delicate situations. I understand why this proposed change might be incompatible with the European Convention on Human Rights and the forthcoming United Kingdom human rights Bill. We should like to consider this aspect and I would welcome the views of the Under-Secretary of State when he winds up the debate.

⁶⁶ *ibid* c.508

⁶⁷ *ibid*.

⁶⁸ *ibid*.c.534-535

The SDLP member Eddie McGrady expressed the following concerns, while noting that he and his party supported the Bill⁶⁹:

I suggest that it is not good practice for a body that is engaged in mediation to make decisions about parades also. The commission should certainly assist and facilitate mediation, but I do not believe that it should make determinations. I fear that that would compromise the commission's role and might lead to unnecessary confusion, unwarranted allegations and a diminution of regard for any final determination regarding a parade.

A theme seems to run through clause 3, which deals with the code of conduct, clause 6, which deals with advance notice of parades, and other parts of the Bill. I shall refer to that specifically on another occasion. However, in almost every circumstance-whether it be determination of a parade, the conditions for a parade, the registration of bands or offences for interrupting parades-the Bill allows for power to filter back eventually to the Secretary of State or through the Chief Constable to the Secretary of State. As I said this morning, it looks as if one is keeping a dog and barking oneself.

I thought that the Bill would provide for a commission that would take out of the political-security arena the decision making regarding parades. However, it seems to keep introducing that power into controversial areas. Almost every part of the Bill, including clauses 3 and 6, goes into some detail about referring power back to the Secretary of State.

Clause 7(6)(e) refers to a matter that the commission must consider when determining whether a parade should go ahead and under what conditions. The clause refers to

"the desirability of allowing a procession customarily held along a particular route to be held along that route."

The vexing question of traditionality has been raised in the debate. I have an anecdote about my experience of traditionality. There were some problems with a small parade that was held in an area not far from my constituency - I shall not name it, as that would only exacerbate the situation. The parade caused some offence and residents went to the police to request assistance. The police said that they could not do anything about it, because it was a traditional parade.

One would imagine that a traditional parade had some tradition. However, this parade took place on a new housing estate along a hammerhead cul-de-sac 150 yd long. It was a green-field site two years ago and there was no proper road, but the police allowed the parade to go ahead on the basis of traditionality. It devalues the concept of traditionality to allow parades to take place in local areas such as that.

I thought that the underlying purpose of the Bill was to take away from the Secretary of State and the Chief Constable the decisions regarding parades and the conditions attached thereto, yet every part of the Bill inexplicably pushes the problem back to them - I was looking forward to a more positive and dynamic new dimension.

I have highlighted several concerns that large sections of the community in the north of Ireland have about some of the details of the proposed legislation. I hope that, in his winding-up speech, the Minister will address my concerns about referral of powers to the Secretary of State and the Chief Constable and the suggestion about bringing the Police Authority on to the scene at some stage. Perhaps the Government will amend the Bill in Committee.

⁶⁹ *ibid.* c.512-513

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The Ulster Unionist Party (UUP) and the Democratic Unionist Party (DUP) opposed the Bill. The UUP member William Ross called it foolish and ultimately dangerous. He added that he believed it would fail as the party procession legislation of the previous century had failed⁷⁰. He added that⁷¹:

What is the end result of this? It is, of course, to get the Government, the police and the business community united yet again in their demand that the loyal orders talk directly to the IRA. We heard the same theme in the opening speeches of today's debate. It runs through the proposed legislation from beginning to end. It runs through all the events leading up to it. It is a consequence of not understanding that this aspect of the multi-faceted reign of terror that we have lived with is but a tactic in one battle in a terrorist war to remove Northern Ireland from the United Kingdom.

When Ministers point us in that direction, whether they know it or not, they are informing Sinn Fein - IRA that the Government are relinquishing control of the streets to the terrorists' demands. I know that the Government will deny that - they always do - but I have set out the practical outworking of following the path laid out in the Bill. If only the Government would look with care at the real reason for the terrorist assault, they will see that it is all about sovereignty over the territory of Northern Ireland. It is not about rights. It is not about jobs. It is not about parades or religion. It is about which nation governs and controls the six counties of Northern Ireland.

In his speech the Rev. Ian Paisley of the Democratic Unionist Party (DUP) said⁷²:

The IRA can hold its celebrations in front of the city hall in the very heart of Belfast. Not only that, but a councillor can bring three of them into the city hall and those men can go up on the roof and start to paint slogans, and then lay what was supposed to be a bomb, all wired up; it all happened.

On the other side, the people sitting at the table who are supposed to represent the Ulster Defence Association, the Ulster Volunteer Force and other elements come down to the city hall and hold a meeting wearing the uniforms of outlawed organisations, and nothing is done. It will not be a surprise to see armed IRA men in uniform at the city hall. If the one side does it, so will the other. It is time to have a law that everyone must be made amenable to. That can be done only when the law is seen to be fair and to set out not to attack anybody, but to make people behave properly.

Public order legislation is inadequate and must be replaced with more practical legal formulations. In particular, the law should be recast to

⁷⁰ *ibid.* c.515

⁷¹ *ibid.* c.518-519

⁷² *ibid.* 527

reintroduce the protection for traditional parades. Parades that have gone ahead for 100 years on a public road should not be banned. Of course, no parade should go into a housing estate that opposes it, but we are talking about public roads. As was made clear earlier, there is only one point at which the housing by the Garvaghy road abuts onto the road, and at that point there is no opposition whatever.

We should recognise the fundamental right to march, except where a march or parade is organised by or in support of an illegal organisation or for illegal or subversive activities. Those should be the criteria. People should not be allowed to hold a parade if it is in the interests of subversion or to support criminal activities. Those criteria must be introduced into the law. The right to march must not be hindered by those who oppose the marchers' identity and threaten public disorder.

He added that⁷³:

If we study history, we will find that British Government after British Government have decided that they can do something about parades. They have banned them and they have imprisoned people for taking part in them. They have introduced legislation and they have used the sword on them. Yet what has happened? People are still there and still marching. It would be far better for us to arrange measures tonight to enable people to march in peace and enable those who want to make their protest to realise that it must be made within the law. When that is established properly, people will have to live with a march passing for 10 minutes on a road.

He concluded that:

The Bill is not the solution. We will come back to this again and see that it is not the solution. The solution is to face up to the real difficulties. People must know that, as long as we are in this House, Northern Ireland is going to remain in the United Kingdom. The Government can have as many talks with Gerry Adams at Stormont as they like, and make as many concessions to him as they like, but the vast majority of the Northern Ireland people-and according to Priest Paul of Dungannon, some 15 per cent of the Roman Catholic people - say that we are going to remain in the Union. The sooner that that is recognised and we start legislating with that in mind, the sooner we will move to something that can bring a real solution to this problem.

In winding up the debate on the Bill's Second Reading in the House of Commons the Northern Ireland Minister, Tony Worthington, made the following comments, some in response to points raised during the debate:⁷⁴

⁷³ *ibid.* c.529-530

⁷⁴ *ibid.* c.542-545

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The hon. Member for Montgomeryshire (Mr. Opik) raised a number of issues. We welcome the support that he has given to the Bill. I have already given assurances about the conduct in Committee. We noted the point that he made - Lord Alderdice also made it - about package measures for parades. I admit that when I first became involved with this issue it seemed an attractive proposition to introduce restrictions if a number of parades take the same route each year. However, I am advised, and I see the sense of it, that once we have incorporated the European Convention on Human Rights into our law, problems will arise in terms of accountability for each parade. Moreover, it might be difficult to implement the measure in terms of offences. However, that is a Committee point, as are the hon. Member's questions about annual reports and scrutiny within the House.

I am convinced that the Bill is a step forward, but, like all Bills that the House passes, it will depend on the consent of the people. I was interested to hear the hon. Member for North-East Cambridgeshire (Mr. Moss) say that polls show that an overwhelming percentage of people within Northern Ireland want independent arbitration to be introduced. They realise that the police have been put in an impossible position. The overwhelming majority of people in Northern Ireland detest seeing the rule of law threatened or the law being broken.

This year's marching season was less damaging than last year's because many statesmanlike decisions were taken, which shows that it is possible to achieve accommodation on this difficult issue. The Labour party is not naive about the forces that are at work, but we believe that we must act above all in the interests of the great majority of law-abiding people in Northern Ireland, who want to stay at home during the marching season rather than have to take their holidays then because of the threat to them. They want the rule of law to be asserted. The structures that we are putting in place will help that to happen.

We all know that the word "parades" is invested with a significance for both sides of the community that can sometimes seem mysterious to people on the mainland. There is bitterness and distrust well evidenced tonight by the speech by the hon. Member for West Tyrone (Mr. Thompson) both sides about the issue. We are seeking to create new

structures to tackle the disputes. We hope that eventually those new structures will win the allegiance of all.

The events of the past few years have been unacceptable. The rule of law must prevail in the United Kingdom. Some disputes have made people realise that the Public Order (Northern Ireland) Order 1987 contained a perverse incentive by making it possible for the group that threatened to create most mayhem to get what it wanted. That is not acceptable in any part of the United Kingdom.

If we believe in the rule of law, we must face up to the fact that, when any law-including the one before us-is passed, after a full debate and full consideration in Committee, a duty rests on all hon. Members to support the law. That is an aspect of equality before the law, and I trust that all hon. Members will uphold that duty.

I endorse the tributes that the hon. Member for Bracknell (Mr. MacKay) paid to what happened in the other place. For the sake of brevity, I shall not list the people who were mentioned, but I believe that all their lordships made useful contributions.

I believe that, as the hon. Member for Bracknell implied, the core of the Bill is in clause 7, which is well expressed in terms of balanced rights and responsibilities. Many of the contributions that were made by Unionist Members caused me to think that every time they spoke they strengthened the argument for an objective independent commission. The issue is political; it is about force; it is about territory. I do not believe that the police should be dragged into a quasi-political issue; they have said that that makes their lives intolerable, so we must find an alternative.

I support the comments about the contribution of the police, who have been placed in a no-win situation. However difficult it is, we must - as the hon. Member for Bracknell said in a good contribution - build consensus in the House, as was done in another place. We shall conduct the Committee stage in this Commons in a similar spirit of trying to improve the Bill.

I said that the hon. Members who spoke from the Unionist side seemed to strengthen the case for a

commission, but I emphasise how much the Bill is not an anti-parades Bill. What emerges from the North report, and what all Labour Members believe, is that a balance should be achieved between rights and responsibilities. There has never been, in any country, at any time, the right to march where one likes, when one likes-and there should not be. What exists is a right to process and a right of assembly, but we must always take other people into account.

In the past few years, it has become obvious that we must take the Royal Ulster Constabulary out of the judgment about what can be allowed under what conditions. I resist what was said by the hon. Member for West Tyrone; we are not removing the Chief Constable's powers to decide how to police. The operational freedom on the day is still there, and must be there, to react to the circumstances. We are merely performing a traditional role of the House, and of judicial or quasi-judicial bodies: setting the framework within which the police operate.

Mr. Thompson: Is it not a fact that under the Bill the power of the police resorts to what it was before 1936? Their power to ban parades will be under common law; they will have lost the statutory law in that respect.

Mr. Worthington: I am concerned with the current situation. The past few years have shown us that the 1987 order was not adequate and we must tackle that issue.

The hon. Member for East Londonderry (Mr. Ross), who is not in his place, said that all existing traditional parades should be allowed, but that new parades should be looked at carefully. Clearly, that would be difficult to enshrine in law, particularly once we have incorporated the European convention on human rights into our law. The fact that a parade is new would not allow different considerations to be applied to it and a moment's thought would show that we could not have a law whereby certain practices were allowed for traditional but not non-traditional parades.

The hon. Member for South Down (Mr. McGrady) raised a couple of important issues. He was right to say that this is about human relationships-that most difficult and obstinate of characteristics. In the end, it comes down to whether people are willing to accommodate differences. We do not claim that the Bill is the

answer, because any law can be broken by people who are not willing accommodate it, but it is a step forward.

The hon. Gentleman raised points of detail about clause 2(2)(a) and (b), which grant two powers to the Parades Commission: the first is mediation and the second is determination. That is exactly the sort of issue that can be thrashed out in Committee. One can see why that is proposed-because of the involvement of the commission-but one can also see that there could be a confusion of identities. That must be explored in Committee.

The hon. Gentleman said that the Bill gave powers to the Secretary of State and asked why she could not have that responsibility taken away from her. We must accept the fact that the Secretary of State for Northern Ireland is ultimately responsible for law and order in Northern Ireland, and one cannot take that power away. She is also referred to in terms of the mechanisms for parliamentary scrutiny of various aspects of codes with which she must deal.

I am delighted to see the hon. Member for North Antrim (Rev. Ian Paisley) in his place. I pay tribute to him for being in his place, for reasons that he knows. I have already dealt with some of the issues that he raised. He asked why the penalties under the Bill had not been equalised before. That is another matter which was dealt with in another place. It is simply a re-enactment of the provisions in the Public Order (Northern Ireland) Order 1987, in which their lordships saw that there was an inconsistency. That is generally welcomed. The hon. Gentleman also said that it should be an offence to break up a lawful parade. It is already an offence to do so by virtue of article 7 of the 1987 order, which will be re-enacted in clause 11.

My hon. Friend the Member for Greenock and Inverclyde (Mr. Godman) raised a number of issues. I agree with his first point that civil rights should not be pushed to one side. That goes back to the point about the balance between rights and responsibilities.

My hon. Friend asked why bands should be registered. That is taken as a reserved power. It was felt that there could be circumstances in which one might need the force of law if bands misbehaved in a particular way. He asked whether Scottish bands going to Northern Ireland would

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have to be registered. If we introduce that power, those bands will have to be registered, but it will depend on whether the power is taken. We hope that it will never have to be taken. We note my hon. Friend's comments about the need for someone with a legal background to be on the Committee.

Appendix: Controls on processions in England and Wales and Scotland

Statutory provisions for the regulation of public processions and assemblies in England and Wales and the circumstances in which processions may be banned or subjected to controls are set out in Part II of the *Public Order Act 1986*. Some provisions in the 1986 Act apply to Scotland, but the scheme for the regulation of processions in Scotland is set out in the *Civic Government (Scotland) Act 1982*⁷⁵.

A. Notice requirements

Section 11 of the *Public Order Act 1986* requires the organisers of public processions to give the local police written notice of any proposal to hold a public procession intended to demonstrate support for, or opposition to, the views or actions of any person or body of persons, to publicise a cause or campaign, or to mark or commemorate an event, unless it is not reasonably practicable to give any advance notice of the procession. This provision does not apply to funeral processions or processions commonly or customarily held in the area concerned. The notice must be delivered by hand or by registered post to a police station in the police area in which the procession is to start⁷⁶, at least 6 clear days before the date on which the procession is to be held.

The organisers of a procession (but not the participants) can be fined up to £1,000 if the notice requirement is not satisfied, or if the date, starting time or route of the procession differs from the date, starting time or route set out in the notice, although a number of defences are provided in Sections 11(8) and (9). It is a defence for a person accused of this offence to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy these requirements. To the extent that an alleged offence turns on a difference of date, time or route, it is also a defence for the accused to prove that the difference arose from circumstances beyond his control or from something done with the agreement of a police officer or by his direction.

In Scotland, section 62 of the *Civic Government (Scotland) Act 1982* requires the organiser of a procession in public to give written notice of his proposal to the local authority (or authorities) in whose area the procession is to be held and to the chief constable. The notice must specify the date and time at which a procession is to be held, its route, the number of persons likely to

⁷⁵ as amended by the *Public Order Act 1986* Schedule 2, para 3 and the *Local Government (Scotland) Act 1994* Schedule 13 para. 129

⁷⁶ or, where the procession is to start in Scotland and cross into England, in the first police area in England on the proposed route.

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take part in it, the arrangements for its control being made by the person proposing to hold it, and the name and address of that person. The notice must be posted to the local authority and the chief constable so that in the normal course of post it might be expected to arrive not later than 7 days before the procession is due to be held, or be delivered by hand to those offices not later than 7 days before that date. In certain circumstances the local authority may, after consulting with the chief constable, make an order dispensing with the requirement concerning the time limit for giving notice. This is intended to enable a local authority to permit the holding of a procession at short notice.

The local authority may, after consulting the chief constable, exempt from the notice requirement any person proposing to hold a procession or any class of processions specified in the order. The requirement to give notice does not apply to processions commonly or customarily held, although a local authority may, after consulting with the chief constable, order that it is to apply to any such procession or class of processions in its area. The Stair Memorial Encyclopaedia on *The Laws of Scotland* notes that⁷⁷:

This enables many traditional processions which pose no threat to public order to proceed without formality, but reserving the right to the local authority to apply the Act in any particular case if problems are anticipated.

Orders made under section 62 may be made subject to certain specified conditions. They may also be varied or revoked by subsequent orders.

A person who holds a non-exempted public procession in Scotland without having given the appropriate notice or otherwise than in accordance with the particulars of the date, time or route is guilty of an offence punishable on summary conviction by up to 3 months' imprisonment and a £2,500 fine. A person who takes part in such a procession and refuses to desist when required to do so by a constable in uniform is guilty of an offence punishable by a fine of up to £1,000.

Commentators note that requiring organisers to give notice to the police in England and Wales, or to the police and local authorities in Scotland, of proposed processions, is not the same as requiring them to obtain express permission to hold processions, as the authorities to whom they have to give notice do not have express powers to refuse permission to hold the procession, as is the case in some other jurisdictions. Once the notice is given the onus passes to the police or local authority to determine whether conditions should be imposed or further steps taken to prohibit the procession. If the police or the local authority do not impose conditions or take steps to prohibit the procession, an organiser who has complied with the notice provision may go ahead without further formality, subject only to the particulars

⁷⁷ Vol. 14 para 567

concerning the date, time and route specified in the notice and to the general criminal law, including the law relating to public order and obstruction⁷⁸.

B. Imposing conditions on processions.

Section 12 of the 1986 Act, which extends to England and Wales and Scotland, gives senior police officers the power to impose conditions on public processions where they reasonably believe that the processions will result in serious public disorder, serious damage to property or serious disruption to the life of the community, or where they believe the organisers' purpose is to intimidate others.

A person who organises a public procession and knowingly fails to comply with a condition imposed under Section 12 commits an offence punishable by up to three months imprisonment and a £2,500 fine, as does a person who incites another person to take part in a public procession and knowingly fail to comply with such a condition. A person who takes part in a public procession and knowingly fails to comply with a condition imposed under Section 12 commits an offence punishable by a fine of up to £1,000. A defence is available to organisers and participants accused of these offences where the failure to comply with a condition arises from circumstances beyond their control.

In Scotland, section 63 of the *Civic Government (Scotland) Act 1982* also permits a local authority to impose conditions on the holding of a procession, including conditions relating to the date, time, duration and route of the procession and prohibitions on the procession entering specified public places. A local authority may subsequently vary such an order, or revoke it. If it revokes the order it may make another. If a local authority decides not to make such an order it may still make one later, after having consulted the chief constable. Under section 64 of the 1982 Act an appeal may be made to the sheriff against an order made under this provision. Such an appeal may only be upheld if the sheriff considers that in arriving at its decision the local authority erred in law, based its decision on any incorrect material fact, exercised its discretion in an unreasonable manner or otherwise acted beyond its powers. An appeal may be made from the decision of the sheriff to the Court of Session on a point of law. The appeal must be made within 28 days of the sheriff's decision.

A person who holds a procession in public in Scotland in contravention of an order made by a local authority imposing conditions on it procession is guilty of an offence punishable by up to 3 months' imprisonment and a £2,500 fine. A person taking part in such a procession who refuses to desist when required to do so by a constable in uniform is guilty of an offence punishable by a

⁷⁸ See *Offences against Public Order* – ATH Smith 1987 para 8-04 p.133 and *The Laws of Scotland* Stair Memorial Encyclopaedia Vol. 14 para 570.

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£1,000 fine. A constable may arrest without warrant a person whom he reasonably suspects of committing or having committed either of these offences.

C. Prohibiting public processions

If a chief officer of police in England and Wales reasonably believes that particular local circumstances mean that the powers granted to him under Section 12 of the *Public Order Act 1986* to impose conditions on public processions will be insufficient, he may apply to the local council under Section 13 of the 1986 Act for an order prohibiting any or all public processions in the area for up to three months. A council must obtain the consent of the Home Secretary before making such an order. The Metropolitan Police Commissioner and the Commissioner of Police for the City of London may make such orders themselves, with the consent of the Home Secretary.

In Scotland a local authority may, after consulting the chief constable about a notice of a proposal to hold a public procession or an application to dispense with the requirements concerning time limits for giving notice of proposed processions, make an order under section 63 of the *Civic Government (Scotland) Act 1982* prohibiting the holding of the procession. Like the orders imposing conditions on processions under section 63 orders prohibiting processions may be subsequently varied, or revoked and replaced by new orders and a local authority which initially decides against making such an order may make it at any time afterwards, following consultation with the chief constable. The same provisions for appeals to the sheriff and the Court of Session apply to orders prohibiting processions as apply to orders by local authorities imposing conditions on processions. Holding a prohibited procession is an offence punishable by up to 3 months imprisonment and a £2,500 fine, while taking part in one and refusing to desist when required to by a police constable is an offence punishable by a fine of up to £1,000.