
***Response by the Parades
Commission for
Northern Ireland to
the Draft Code of
Conduct: Public
Assemblies, Parades
and Protests Bill***

INTRODUCTION

1. The Parades Commission welcomes the opportunity to comment on the draft Code of Conduct. Our comments should be regarded as an accompanying document to our response on the Draft Public Assemblies, Parades and Protests Bill.

GENERAL COMMENTS

2. The most striking aspect of this draft and one that requires immediate comment is that it simply does not contain what the Parades Commission would regard as a transparent, open, accessible, 'Code of Conduct'. There is no Code of Conduct therein setting out a clear list of mandatory and prohibited behaviours and stating unambiguously that failure to abide by any section therein will constitute a criminal offence.
3. While there is mention of the potential to commit offences through infringements, these appear to relate to failure to meet notification requirements or requirements set out in determinations by the arbitration panel; or they relate to acts of disruption or harassment in the context of parades and protest. All of this is already covered by the Public Processions (Northern Ireland) Act 1998, while behaviour outside this scope is also addressed through existing legislation.
4. The Commission believes that many who have been interested in dealing with behaviour around parades and related protests will feel that an opportunity to 'give teeth'

to a Code of Conduct, which both major communities have argued for years, has not been taken. This is very disappointing.

PERMITTING BEHAVIOURS

5. Critically, rather than addressing all antisocial behaviour associated with parading and protesting, it appears that attention in the draft has been largely focused on that which may occur solely at sensitive locations. As a result we note, for example, that participants should not wear clothing or uniforms or articles referring to paramilitary organisations involved in the recent conflict in a way that can be identified within sight of the sensitive location. Does this mean that this does not apply where they are 'out of sight'? Is it permissible for people to parade outside sensitive areas in this very same clothing and regalia?

6. There seems to be similar latitude, or at the very least an unwillingness to be absolute in the condemnation of bad behaviour, in other areas. We are told, for example, that participants should not use words or behaviours which are threatening, abusive or insulting, at a place which is in the vicinity of the route or proposed route and at about the time the assembly is being held. Why is there a need to qualify when these forms of words and behaviours should not be used? The Commission would advocate that they simply should never be used regardless of the time or the place. The Commission cannot imagine such words or behaviours ever having an accepted place within our society and sees anything other than unqualified condemnation as a dangerous signal suggesting that in some contexts they are not as unacceptable. The concern

should be to lift 'standards' amongst all those involved in parades and protests generally so that offensive behaviour is unacceptable to them and to everyone, everywhere.

7. The Commission does not believe that this is the way to approach parading and related protests in Northern Ireland. This cannot be the case if one accepts, as the Working Group states, that the drive is to work towards a normalisation of these events.

8. Again the Commission does not understand, in the absence of any provided rationale, why one should refrain from playing music between 22.00-7.00 at a sensitive location which is in the immediate vicinity of 'the route' whereas playing may take place elsewhere up to 23.00. Do not children who live at 'non-sensitive' locations go to bed at the approximately the same time as those others and enjoy the same rights and freedoms? Should their sleep and the sleep of their parents and neighbours, be any less valued or respected? The Commission acknowledges that the draft does state that music can continue to 23.00 where there is agreement. Unfortunately, there is no indication as to with whom that agreement has to be made.

A LACK OF CLARITY

9. There is much in the draft that lacks clarity. A further example lies at page 25 where we are told that if one does not enter into 'face to face' engagement the person or body concerned must fully justify the exceptional circumstances that prevent them from so engaging, to the satisfaction of the Adjudication Body. However, there is no indication as to what happens if the Adjudication Body is

not satisfied. We are told that the Body may take this into account but it will not be a key or determining factor. There is no rationale as to why it 'may' take it into account as opposed to it 'must' take it into account. In the interests of transparency openness and fairness, a key principle within which we are told this code is drafted, one must ask, under what circumstances will such a failure not be taken into account, and if taken into account, how will it be taken into account?

10. Throughout the draft there is reference to what 'should' be done, or 'may' be done, or that which is encouraged to be done. However, there is very little statement as to what must be done – what conduct must be adhered to and in what contexts, with a clear statement as to how failure to abide by requirements will leave perpetrators open to criminal sanction.

11. One often looks for positive behaviours to be promoted by organisers and their stewards. Again, it is unclear as to how this will be achieved. At page 26 the Commission notes that stewards should be briefed and trained to a suitable standard. However, no reference is given as to what constitutes a suitable standard. Therefore, it will prove extremely difficult for interested parties to know in advance of an event whether or not the standard achieved by the stewards is a suitable one and one which will give them some confidence in believing that the event will be well managed. Only after the event, in the light of difficulties experienced, may locals and others learn that training was not to the 'suitable standard'.

12. This draft document is not so clearly written to promote better public understanding. However, the Commission appreciates that this is a draft and therefore does not see

merit in drawing attention to every point of poor grammar, misprint or lack of consistency, as in referring to alcohol in one part and intoxicating liquor in another (do the drafters see a significant difference between the two?). Nonetheless, drafters are cautioned to revisit the text to ensure that legal ambiguities do not arise though a looseness of language as may, for example, occur at part 5 on page 35 where from the text it is unclear whether the reference to consuming alcohol publicly is subject to where the place and timing of the licence exists or to where the consumption itself takes place.

FLAGS AND EMBLEMS

13. Finally, the draft lays out the flags which may not be used in a list contained in Appendix 4. They are headed as those 'which make reference to, in any context, the following organisations'. Thereafter, there is a list of a number of terrorist organisations currently proscribed under UK legislation and identified by the Home Office as 'proscribed Irish Organisations' (although, interestingly the draft does not include Fianna na hEireann which is also proscribed). As it is stated that the no reference may be made to these organisations, 'in any context', it seems clear that this will disallow the flying of any flag referring to the UVF, including those which are carried in commemoration of engagements during World War One. This will be problematic. It may be unclear, in some contexts, how to judge whether or not a flag is actually making reference to any one of the organisations in the list given those cases where the flag does not carry any added numbers, letters or symbols.

14. The Starry Plough, for example, is a flag which may be associated with the Irish National Liberation Army, (a proscribed organisation), but may also be carried by nationalist, republican, socialist and labour supporters who have no connection with proscribed groups. How is 'the flag' itself to be seen as making a reference to a particular organisation? In a sense much of concern arising from flags (and paramilitary clothing) is already covered by section 13 of the Terrorism Act 2000 which states that:

(1) A person in a public place commits an offence if he:
(a) wears an item of clothing, or
(b) wears, carries or displays an article,
In such a way or in such circumstances as to arouse reasonable suspicion that he is a member or a supporter of a proscribed organisation.

15. The Commission is of the opinion that there should be space created for a structured discussion on flags and emblems with an aim towards garnering broad party and community agreement as to what is acceptable. This should be driven by a willingness to promote inclusion through tolerance of those symbols and emblems that have meaning and value to others that are not in themselves deliberately provocative or offensive. The Commission is moved by the argument that it is better to widen our views of what we are prepared to accept, so as to encompass those of others as they encompass ours, than to narrow what is 'permissible' down to that which is of so little interest or significance to us that it offers us no challenge to show respect and tolerance in the interest of creating a pluralist society.
