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***Draft Public Assemblies,  
Parades and Protests  
(Northern Ireland) Bill:***

***A Response from the  
Parades Commission for  
Northern Ireland***

**INTRODUCTION**

1. This document is the Commission's submission to the consultation on the Draft Public Assemblies, Parades and Protests (Northern Ireland) Bill. Herein the Commission reiterates some of its comments to the Strategic Review of Parading Body (SRPB), which it considers are relevant to the current exercise. The Commission appreciates that the draft legislation, if enacted, will bring an end to the Commission and its role in the administration and transformation of conflicts around parades and related protests. The Commission has always said that it too is working towards a time in which it is no longer needed. It also recognizes that that time will come when the people involved in these same conflicts have themselves accepted and taken ownership of the related issues and problems, and are developing their own resolutions. The Commission has no selfish interest in its own perpetuation.

**A RIGHTS BASED APPROACH**

2. The Commission notes that much of the discourse around this 'new' approach has been to emphasise that it is to be 'rights based'. While this is to be welcomed, the approach is not new and it may be misleading to suggest otherwise. The Commission has been working to promote and balance human rights since its very inception. It was inspired to do so by its genesis in the North Report and it is required to do so under Human Rights law. The Commission

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*A rights based approach does not mean that rights cease to be in competition. The problem of balancing rights remains.*

has always fully recognised and carried out its responsibilities under the Human Rights Act 2000 and the European Convention on Human Rights and Fundamental Freedoms; and has done so fully informed by other International, regional and domestic human rights obligations, case law and best practices. The Commission has never been found wanting by any judicial review in its interpretation of its obligations under human rights or its application of those rights in its decision makings. This is not to say that everyone has been happy with the Commission's balancing of human rights; but it is to say that a body which promotes human rights and is compliant with human rights requirements, may not by those facts alone, be an acceptable way of resolving the conflict. Any new mechanisms to deal with parades and assemblies will also be required by law to abide by the same human rights instruments, legislation and principles which have guided the practice and processes of the Commission. Something may need to be different. The significant difference here appears to be that the proposed legislation has prima facie support from the two main political parties in Northern Ireland. This is to be welcomed.

3. We should point out, however, that protagonists too often and too simplistically believe that if there is a robust adherence to a human rights framework and principles, then this will mean 'inevitably' that their 'position' must win through. They believe it because they understand that they have human rights and expect to see a vindication of those rights in the face of challenge or opposition from the 'other side'. Both

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*It is inescapable that at times the rights of some will have to be restricted in the interests of the rights of many. This may happen even where the behaviour of the 'some' is exemplary.*

'sides' claim that they want decisions to be made which *are* firmly based on a recognition of human rights. Unfortunately, they also tend to believe that the application of any rights based approach translates into an almost exclusive focus on 'their' human rights. In this context human rights is not part of a discourse which seeks to promote tolerance, respect and understanding but rather a card to be used to trump the cards of the other players.

4. We know that the rights at play in these 'contests' are not absolute. We know that the rights at play are competing rights and that in some circumstances they may have to be subjected to restrictions. This is inevitably what happens when one operates within a human rights framework. Such a framework already exists and it is applied to every single parade and every single protest consideration, but, just as inevitably, it does not necessarily bring contentment to all concerned. The existence of certain human rights does not mean that they can be exercised completely in every situation.
5. Perhaps there has been a failure to articulate this sufficiently into a wider community debate and education by all those bodies tasked with promoting mutual understanding and human rights discourses including, but by no means only, the Commission. Democratic societies recognize few absolute rights. This is because it is often in the interests of democracy and public safety and the rights of others that, at times, the rights of some may have to be restricted. There can and should be no move away from championing human rights simply because

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Instead of the process becoming simpler and less burdensome on the public, there will be increased complexity and bureaucracy in managing parades, protests and assemblies.

some rights in some circumstances can legitimately and lawfully be interfered with. There should never be a blasé attitude in dealing with those rights which apply to parading and protest and assemblies that are so fundamental to the vitality of a democracy and stand as its very cornerstones.

6. But fundamental rights are not always best promoted and upheld by legal or quasi legal means, or by moving their responsibility from one 'official' body to another or to several other bodies. The system currently advocated in the new legislation not only increases the complexity of administrative arrangements but widens the requirement for all assemblies above a certain number to fill out forms and perhaps to be drawn into other processes. This will now increase to cover an extremely wide and disparate group of activities and events.

## **TRANSPARENCY**

7. The Commission is concerned that there is a degree of arbitrariness in the proposed arrangements which is unlikely to be fully compliant with human rights and which may run counter to broad principles of the rule of law.
8. Importantly, there has been much argument about the need to increase transparency around decision making. There must a clear understanding of how this new law itself will apply. This demands transparency and an absence of space for arbitrary

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*There is an increased potential for independence to be compromised and for decisions to be influenced by political or partisan considerations.*

decisions. To take one example, the notes to Clause 37 state that the prosecuting authorities can use discretion if for some unforeseen reason a reasonable adjustment is made to the event notified. However, the public will not know in advance whether or not their adjustment has been reasonable and as a result whether or not, if they go ahead with their event, they will be open to criminal prosecution. The discretion lies with the prosecuting authorities and no guidelines or criteria are given as to how this discretion should be applied or constrained. Is it intended that guidelines will be issued?

9. Again one notes that some events can be exempt from the application of this legislation. Exemptions will be at the discretion of OFMDFM, but there is no indication as to what criteria that office will apply in making such exemptions. If there are classes or groups who should be exempt, then we argue it is better to state these now in the draft legislation so that these can be debated.
10. Furthermore, another example of possible arbitrariness lies in the power to make prohibitions orders to prohibit assemblies under s.27. This appears to lie with the Department of Justice. However, the Department cannot make such orders unless it has the consent of both the First and Deputy First Minister. While criteria are laid down as to the conditions under which the Department may make such an order, there is no criteria listed as to what the First or Deputy First Minister must consider when making their decisions. Again this suggests a level of arbitrariness which does not promote clarity

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*The Parades Commission has no selfish interest in its own perpetuation. It does, however, have an interest in ensuring that what comes after it is at least as equally rights based, impartial and efficient.*

or transparency. This increases the potential for these decisions to be influenced by political or partisan considerations.

## **POLITICS OF PARADING AND PROTEST**

11. The Commission continues to recognize and accept the observation of the North Report that *'the parades issue is a microcosm of the political problems of Northern Ireland. This is not new. It is a complex issue which has great capacity to polarise local communities and the whole of Northern Ireland society'*<sup>1</sup>. Therefore we also accept that as the political problems of Northern Ireland are addressed locally, and as those problems change in nature and priority, then the nature of the parades issue itself will begin to change. This does not mean that the rights and practices of parading and protests are best or better served by being politicized or brought into local politics.
12. It is sometimes stated that the demise of the Parades Commission as a body is required to satisfy the demands of a particular section of the population. Therefore, what follows after the Commission matters little. It is also sometimes stated that others with no interest in the life or death of the Commission may be prepared to accept its passing by way of a 'trade-off', in return for what they may see as 'political gains'. Where this is required to stabilize or bed down the peace process, then one can see the argument for such an approach.

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<sup>1</sup>Parades and Marches in Northern Ireland, Belfast January 1997

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*There needs to be greater clarity as to the benefits and the burdens of increasing notification from 28 days for some to 37 days for many?*

13. However, the Commission suggests caution in substituting a body such as the Commission for another system which delivers only by being an alternative rather than an improvement. The Commission is not convinced that the system suggested by the OFMDFM offers any significant, material improvement, other than potentially political, over the current system. Nevertheless the Commission does not underestimate the value of political agreement.

### **NOTIFICATIONS AND TIMINGS**

14. The Commission does not see the rationale for extending the notification period to 37 days beyond simply accommodating the administration of a more complex and extensive bureaucratic process. An argument may be that this extension is required to allow greater time for mediation. However, looking at this more closely it is not evident that an extension to 37 days will prove suitably beneficial to mediation processes. The notification schedule as shown appears to indicate that a mediator may, in some circumstances, have as little as 7 working days to mediate a process before having to refer it (where it remains unresolved) to the PAPPB.

### **MEDIATION**

15. At 19(2) the OPPA must make arrangements for mediation with a mediator agreed by both organizer and objector. This may not happen until 14 days into the notification schedule.

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*Mediation processes do not begin when a parade or protest is notified and they do not end at the event's conclusion. The problems are deep seated and long lasting. Some processes have been running for years.*

These agreements will themselves require time and may be protracted. Moreover, one cannot assume that there will only be a single objector. In the light of two or more objectors, will all parties have to agree the same mediator, or will more than one mediator be involved in a number of contemporaneous processes? The time given for mediation in this schedule, if it is the only time given, may be insufficient to agree a diary date for a first meeting, let alone to complete a mediation process.

16. Most participants to disputes around public assemblies already know the likely timing of the event in which they have an interest. The extension of a notification period may not, in practice, lengthen the time available for accommodation. The Commission does not currently wait until the notification of a contentious parade before attempting to facilitate mediation.

### **MEDIATION; A SUSTAINED PROCESS**

17. The Commission has supported sustained mediation processes, some of which have continued for years and some which have still not resulted in complete resolution. It is misleading to suggest that mediation only begins at some point after the notification of a contentious event and therefore that an extension of notification of approximately 9 days will bring about an improvement in such matters.

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*For Mediation to take place, people must want mediation to take place.*

18. We believe the approach taken to mediation in this draft legislation is, in the main, highly problematic and gives rise to many questions. What qualifications will a mediator be required to have in order to be included in the meditation list held by the OFMDFM? How and by whom will these qualifications and the suitability of the mediator be assessed? As mediators tend to operate to a preferred model ( e.g. facilitative or evaluative), will their preferred approach have a bearing on their suitability for inclusion on the list? How can mediators report on the quality of engagement, given the use to which they may be put in a subsequent adjudication process, and still be perceived as impartial by protagonists for future mediations? Given the role mediation has in influencing the adjudication, this may distort the engagement on all sides, with some placing greater emphasis on appearance rather than substance. There is not enough clarity at the moment over the selection of mediators or the mediation process.

### **ACHIEVING RESOLUTION**

19. The Commission has a statutory duty to facilitate mediation as a means of resolving the conflict around parades and protests. The Commission has carried this duty out, even while some disputes continue to appear intractable. Many confuse the requirement to facilitate mediation with the objective of achieving mediation and further, achieving resolution through mediation.

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*How much does one 'reward' for engagement or 'punish' for a failure to engage?*

The reality remains that if one party is not prepared to be involved there can be no mediation. In the draft legislation it states that this will be a factor considered by the adjudication panel in its deliberation. Without greater clarity in the legislation it is difficult to see how this will be applied without a real danger of discrimination or at least a perception of discrimination.

20. A failure to engage may be for any number of valid reasons, none of which should strip a person of their own rights and freedoms, whether these are in the context of parade, protest or assembly. It is not unlikely that some parties will ostensibly engage in mediation, through fear of being penalized for being seen to do otherwise. However, the quality or genuineness of their actual engagement will remain questionable. It will be extremely problematic for any mediator to produce such an evaluation and to expect to be accepted back into a meditative role.

21. It is clear that mediation will be a completely unnecessary process for the overwhelming majority of those who seek to exercise their rights of assembly. This holds for over 95% of parades with which the Commission currently deals. This proportion will be even greater where the proposed legislation seeks to bring under its control a host of assemblies not now covered by the Public Processions (Northern Ireland) Act 1998.

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*Engagement is not the same as genuine mediation.*

## **FROM PARADES TO ASSEMBLIES**

22. While the Commission's expertise lies in the field of parades and protests and not static assemblies, it has inevitably dealt with those rights and freedoms which are at the core of all such events. The Commission is aware of the administrative burden which notification can place on groups and organisations and the dangers of any relaxation in standards to justify interference in the exercise of those rights. The Commission has admitted the limits of its own jurisdiction rather than sought a wider inclusion of events which were never envisaged as falling within the need of legislative regulation and bureaucratic control.

23. In a single week (April 2010) the Commission has been presented with notifications of bath tub races, marathons, tractor runs, sponsored cycles, buggy pushes and lorry pulls. Arguably none of these should be required to be notified in the same way as other public processions and related protests. It is likely that many such events are notified on the side of caution, and result from a concern that failure to do otherwise would leave those taking part open to criminal prosecution, as may be the case under the proposed legislation. We would caution against broadening a net to take in every assembly within the wide definition given.

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*There needs to be clarity as to what is a procession and what is not.*

## **WHAT IS A PROCESSION?**

24. This problematic area will continue to exist in the proposed legislation as there is no further articulation of procession. Other definitions used to describe key elements may also present difficulties. The Commission has raised the need in the past for greater clarity as to what constitutes a public procession. The current legislation at s.17(1)(b) of the Public Processions (Northern Ireland) Act 1998 refers to a public procession as ‘a procession in a public place, whether or not involving the use of vehicles.’. The word ‘procession’ is not defined, often leading people to question whether or not their event actually constitutes a procession. The proposed new legislation at s.6(1) defines a public procession as ‘a procession in a public place (whether or not including vehicles)’. There is an opportunity here to define ‘procession’ which should not be missed.

## **SUPPORTING OR ‘NOT PARTICIPATING’**

25. The terminology of those taking part appears to include ‘organisers’, ‘participants’ and ‘non participants’ and is liable to give rise to some confusion. It appears that there is the possibility of a further class of person present at an assembly who, while not participating, cannot be defined properly as a ‘non-participant’. They are those who are in a public place close to the

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***Where have the supporters gone? If they are now labeled as 'non-participants', then what are the non-participants who are not supporting to be called?***

participants in an assembly but who are not themselves there for the purpose of the assembly; and may be non 'non-participants'.

26. One may presume that the use of the term 'non-participant' is preferred for some reason to that of 'supporter' which features in the current parading legislation. The Commission is aware that some parade organisers objected to being held 'responsible' for the behaviour of supporters. In fact, the Commission never held organisers responsible for supporters. The Commission, however, does look to organisers, where it is within their power to do so, to attempt to influence positive behaviour by supporters.

27. Moreover, the Commission does consider the behaviour of supporters. The reason for this is clear. A parade may be well behaved and respectable, but if the event brings with it a number of supporters who misbehave seriously and therefore impact on the peaceful enjoyment of the rights and freedoms of others, then this must be considered as possible grounds for imposing restrictions. At times such restrictions may unfortunately impact on the parade itself.

### **WHAT CAN ORGANISERS DO?**

28. Under the proposed legislation it is clear that organisers are not responsible for supporters. However, the legislation goes further to state at s.26 (9) that *'a decision must not impose a requirement on organisers or participants that*

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*There is no right not to be offended; which suggests that in some circumstances offensive behaviour must be tolerated. If one accepts this then why now propose that people can be prosecuted for simply being annoying?*

*relates to the control or behaviour of non-participants'. While organisers are not required to control supporters or 'non-participants' under the legislation, they may still be required to use their good offices and resources to influence behaviour. It should be remembered that the behaviour of 'non-participants' is still a factor which will have to be taken into consideration by the arbitration body. A decision relating to behaviour could be to restrict a parade from processing part of a route likely to attract an 'uncontrollable' or provocative group of 'non-participants'. The Commission feels that it would be wrong to fetter one's discretion and to ignore the potential need to restrict rights in the interests of public order and the freedom of others.*

29. The protection from disruption offered to those taking part in a lawful assembly under s.39 of the proposed legislation is virtually the same as that offered to those taking part in parades under s.14 of the current legislation. There is one difference which may prove problematic: that is the prohibition of 'annoying' persons taking part. While we appreciate the interference to a parade, protest or assembly which can stem from 'molesting, hindering and obstructing' behaviours, we are unsure how being 'annoying' will be interpreted and made a criminal offence in this context.

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*What is the pressing social need which now exists to justify expanding the legislation to include so many activities and events?*

## **PRESSING SOCIAL NEED**

30. The Commission is not aware of any pressing social need to include all the events which the proposed legislation will encompass. The Commission is also unaware of any public argument or substantive debate in favour of this dramatic widening. The Commission is, however, aware that many within the Loyal Orders see the Public Processions (Northern Ireland) Act 1998 as having been aimed primarily, if not exclusively, at their organisations. The desire to dispel this perception by new legislation may be a reason to remove the focus from parades and related protests by including every public assembly of a certain number.

31. Some may feel that this misses the point. Contentious interfaces between communities did arise at various times and places through the dynamic of parading and related protests. Society sought to address these through special legislation. It must be appreciated that of the approximately 4,000 parades notified each year the Commission only becomes involved in less than 5%. Those organisations who parade more often than others, whether they be the British Legion or Scouts or the Orange Order, enjoy full exercise of their freedoms without any interference in the overwhelming majority of cases, and rightly so. Even in cases where parades are deemed contentious, the

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*Bonfires, football matches, barbecues, church festivals, car boot sales? Where does one start; where does one end?*

Commission may find no justification under human rights law for the imposition of any restrictions so that they too also go unhindered in the exercise of their rights - exactly as they notified them.

### **WIDENING THE NET**

32. The new legislation does not present any relaxation in the basis by which restrictions may be imposed. Indeed, there is now likely to be a focus on many other events. For example, it is likely that many, if not most, bonfire parties will need to be notified as public assemblies, and many of these will no doubt need to be mediated and adjudicated upon where objections arise.
  
33. Under the proposed legislation, there will be a massive variety and number of events which will be required to give notification. These could include open air gospel meetings, sporting events, whether professional or amateur, including everything from race meetings to the inter school football matches. It may also include open air concerts, park festivals and neighbourhood events where the numbers, made up of organisers, participants and non-participants, exceed fifty. While there may be exemptions at the discretion of the First Minister and Deputy First Minister, we submit that legislation, in order to function effectively, should not depend heavily on arbitrary and ad hoc arrangements coming in to play.

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*The independence and openness of monitors may be affected and therefore their value compromised.*

## THE COST OF THE 'NEW' SYSTEM

34. The effect of all this on the freedoms of those involved in parades and protests and assemblies is unknown but likely to be very significant. The cost to the public purse is potentially immense. There is no doubt that the costs involved in administering and policing the proposed legislation may run to many millions of pounds and will now be funded from within the Executive's budget. It may still involve a 'quango' but this time appointed by the Executive as opposed to the UK Parliament, The public may be willing to accept this increase in cost but they do need to be aware what it is likely to be at this time of unprecedented and long-term pressures on public expenditure before they can decide on any proposed change. They need to be in a position to make informed decisions.
35. The Commission uses monitors to provide it with independent reports on the conduct of parades and related protests. There is no statutory requirement for the Commission to use monitors. However, the proposed legislation will make the requirement to monitor parades a statutory responsibility. This means that the responsible office must have sufficient monitors to cover all relevant parades, protests and, now, assemblies. This will necessarily demand a substantial cadre of monitors and attendant increases in costs. It is unclear whether monitors will continue to be recruited as unpaid volunteers or whether they will continue in these roles as

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*The costs of additional panels and secretariats and greater bureaucracy and administration needs to be assessed and found to be value for money.*

salaried post holders. In the latter case, there is a real danger that their independence and impartiality will be compromised as paid officials, or because they are seen as being attached to a government office as opposed to being volunteers for an independent body. Regardless of which route is followed with regard to monitors, there will be significant increases in costs relating to expenses and administration. The fact that monitors' reports will be publically available may influence what monitors are prepared to include in their reports, e.g. for fear of personal identification or open challenge. This may impact on their utility in aiding the decision making process.

### **A FEW POINTS**

36. There are a few other 'disconnected' points which we would wish to raise very briefly but which we think are worthy of greater consideration. Firstly, there is a need to put down a definitive finishing time for public processions in all but the most exceptional of circumstances. At the moment the draft legislation suggests no playing of music after 23.00 unless previously agreed — but agreed with whom or by whom?
37. We note that the arbitration panel has no chair. If the panel disagrees, no member will have a casting vote. With five members on a panel and

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*There is an opportunity to set an end time for all parades and assemblies which take place in residential areas and impact negatively on the rights and freedoms of others.*

a requirement for the agreement of four, the panel may find itself unable to agree a decision. Moreover, without a chair it will be more unlikely that decisions will be taken on a corporate basis, or that decisions will be articulated through a corporate voice.

38. There is advocacy for a system of licensing for those who are drinking in the events to be covered. As it stands, this would appear to include people standing in their own gardens enjoying the spectacle of a passing parade, or even a large family barbecue. This needs to be revisited. Furthermore, it appears that while the appointing panel will be appointed in line with OCPA guidelines, the same requirement will not exist for the appointing panel in their appointment of members to the arbitration body. This may leave their decisions more open to accusations of partiality.
39. We question the cost of having a dedicated staff attached to an appointing panel that may not be convened to appoint anyone for a number of years. Costs are a very significant feature of the new arrangements. It may be useful to consider payment per diem rather than by annual remuneration.
40. Decisions need to be taken for the exemption of whole classes of events in a way which enables people to discuss them and produce some kind of community agreement. One example which comes to mind is that of vintage car rallies,

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*There is often a need to go out and hold a consultation exercise with those whose voices may not otherwise be heard.*

which have never proved problematic and yet will remain subject to notification procedures in the proposed legislation.

## CONSULTATION

41. The Commission concludes by referring to the current consultation process itself. It understands that the North Report was partly informed by a commissioned major survey of public attitudes regarding parades, as well as engaging directly with key interests and holding almost 100 meetings, and reviewing documents, literature, videos and analyzing over 300 submissions for varied quarters and interests. The current Commission also undertook a significant consultation exercise to inform its work which included conducting a series of public meetings throughout Northern Ireland, as well as engaging with community interests, organisations and political parties.
42. It will be recognised that this proposed legislation will affect the rights and freedoms of everyone in Northern Ireland. Its extension to cover not only protests and parades but all assemblies is a significant departure which currently appears to be without justification or indeed necessity in a democratic society. We do not see evidence of a pressing social need.
43. It is extremely important that people have their say on this document. However, it is likely that many people whom this legislation may most affect are ill equipped to respond to a dense,

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*On building and bedding in the new arrangements, use should be made of existing expertise.*

complex piece of legislation. They do not necessarily have the legal resources to unravel and explain the full implications of the document that has been laid before them. How then may they be expected to express an informed view? The Commission suggests that the Office of the First Minister and Deputy First Minister should consider the limitations of a consultation exercise in this area of fundamental freedoms that does not facilitate responses through a wide programme of public meetings and community engagements. One must inform the debate to inform the response.

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