



An Chartlann Náisiúnta National Archives

Reference Code: 2021/50/119

Creator(s): Department of Foreign Affairs

Accession Conditions: Open

Copyright: National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

22 October 1996

re Parades 96
cc Renew of
Parades.

Mr Robin Masefield
Independent Review of Parades and Marches
12 th Floor
Windsor House
6-12 Bedford St
Belfast
BT2 7EL

Dear Robin

I am happy to enclose herewith the Irish Government's submission to the Independent Review of Parades and Marches. The short delay in forwarding this submission is regretted.

We look forward to an early meeting with the members of the Review Body for the purpose of discussing the issues raised in this submission.

Yours sincerely,



David Donoghue
Joint Secretary

Draft

Parades Review

Confidential

Independent Review of Parades

Submission by the Government of Ireland

Introduction

The Government would like to take this opportunity to wish the Independent Review of Parades well in its deliberations on this complex and onerous task. It offers its full support in the search for a viable, fair and peaceful approach to the issue of parades and marches.

The Government believe that an agreed political settlement in Northern Ireland which establishes institutions (including a police force) which have the allegiance and confidence of both communities will greatly enhance the prospects for a long term resolution of the parades issue. Such a settlement would provide the key ingredients for resolving this issue; institutions of government with which both communities identify and to which they give their full allegiance, a sense of partnership and responsibility between both communities at all levels and a police force which retains the full confidence and respect of both communities.

In the interim, and with a view to improving the current manner in which parades and marches are dealt with by the authorities, the Government wishes to provide the following observations (Part I), assessment (Part II) and proposals (Part III) to the Independent Review.

This submission is made within the framework of the Anglo-Irish Intergovernmental Conference and it is to be treated as confidential. The Government would welcome an opportunity to meet, at official level, with the members of the Review to discuss further the issues raised in this submission and the Review group's response to them.

Part I - Observations

Drumcree

1. Since the Independent Review was prompted by the events surrounding Drumcree, the Government offers the following observations on its impact and significance.
2. It has been commonly observed that the issue of parades encompasses the issues at the heart of Northern Ireland itself or, more accurately, embodies gulf which separates both traditions. The circumstances of Northern Ireland are such that culture and its assertion can have, or be seen to have, political significance. In most societies the celebration of the past victories by one side over another (which is, inescapably, the underlying theme of the parades by the loyal orders) can today be enjoyed by the public at large; one thinks, for example, of civil war re-enactments in the United States. In Northern Ireland, where a significant minority withholds allegiance to the state, its emblems and instruments, the assertion of Protestant culture in the presence of nationalists can be seen as an attempt to dominate members of the nationalist community. For unionism, the assertion of nationalist culture can be interpreted as a provocative declaration (or reminder) of the nationalist community's alienation from the state in which it finds itself.
3. Furthermore, the very predominance of parades by the loyal orders reflects the bias practised in the past by the Stormont Government in their favour; the virtual absence of 'traditional' nationalist parades reflects the historical reality that they were not, in the main, permitted by the unionist dominated authorities. Hence, some 90% of the over 3,000 parades held each year are by the loyal orders. Indeed, that civil rights campaigners in the 1960s began to assert their objectives through marches was, in the context of Northern Ireland, itself a challenge to the authorities' bias on parades and marches.
4. The existence of the loyal orders within unionism provides a membership, resource, organisation and motive for parading. Indeed, it is hard to conceive of the loyal orders existing without marching. A comparable social phenomenon does not exist within nationalism (the Ancient Order of Hibernians, a far less significant organisation than the

loyal orders, being the exception which proves the rule). Thus marching for the loyal orders occurs without a contemporaneous cause; it occurs because of past practice or tradition rather than as responses to current political issues. That is not to say that in the speeches which attend them, political issues are not addressed or that the increase in the number of parades does not reflect current political concerns.

5. For the unionist community, parades are an intrinsic expression of Protestant tradition, culture and identity. They celebrate the political values and religious beliefs won and sustained through endurance, battle and revolution. They are primarily commemorative, a reminder of past triumphs which, in their repetition annually, help provide succour through the travails of the present. They are a focal point for reinforcing Protestant and British identity. As such they are exclusive rather than inclusive and celebrated as such by those who organise and participate in them.
6. Observers have noted that there has been a significant rise in the number of loyalist parades in recent years. This has been attributed to various factors, including the suggestion that they reflect a response to unease at developments perceived to strengthen the nationalist tradition and its aspirations and to weaken unionism politically, socially, economically and culturally.
7. Thus a short stretch of the Garvaghy Road became, in the eyes of the loyal orders and many in the unionist community, emblematic of broader political concerns; the need to walk it as an assertion of Protestant right, contrary to the wishes of the small nationalist enclave through which it runs and by implication contrary to the wishes of the wider nationalist community, became so imperative and invested with such significance that widespread lawlessness throughout Northern Ireland and a direct challenge to the RUC and to rule of law generally was seen as a necessary price to pay.
8. For the Garvaghy Road Residents Coalition and the nationalist community generally, the intensity of the demand to march down the Garvaghy Road and the concerted plan by those involved to stretch the resources of the security forces to achieve this, was

dismaying and, to a point, incomprehensible. There seemed little justification to force the issue other than sectarian obtuseness and, perhaps, an unacceptable desire to return to the patterns of the past. That it appeared to be targeted at a small and vulnerable nationalist enclave in a stronghold of hardline loyalism added to the sense that this was an exercise in intimidation and sectarianism. Mounting wide scale disruption throughout Northern Ireland to achieve this objective on behalf of an Orange Lodge that refused to meet with the local residents bespoke a total abdication of responsibility (not to mention a sense of perspective) and a serious challenge to the rule of law. For nationalists, it was no longer a question of contending rights but a question of central authority facing down a concerted challenge to the rule of law.

9. The nationalist community wholly endorsed the decision by the RUC that the parade be diverted. Indeed, many nationalists interpreted this as an historic development, heralding a significant change in the RUC, one which suggested that the RUC recognised the need for parity of esteem on the parades issue. It seemed to answer those who criticised the RUC as a force incapable of fair and impartial policing. That central authority should take a decision which, in effect if not in design, supported the views of the local residents added to the general sense of confidence that parity of esteem was becoming a touchstone in the administration of Northern Ireland. That the decisions relating to the route were taken under the provisions of the Public Order Order (i.e. considerations of public order rather than parity of esteem) did not deflect nationalists from these sentiments.

10. In these circumstances, the reversal of that decision came as a profound shock to nationalists North and South. That shock vented itself in wide scale disturbances emanating from nationalist areas, the vigorous response to which by the security forces stood in contrast to the reticence of their response to the earlier loyalist disturbances which had caused widespread disruption and intimidation. This deepened the dismay and confirmed for many nationalists that the RUC neither would nor could become acceptable to nationalists.

11. That shock was felt at different levels. The first and most immediate arose from the media images of peaceful protesters manhandled with some force off the Garvaghy Road by riot clad police officers. In a most profoundly depressing manner, it recalled images from 1969 and with it a sense that nothing had changed, that the RUC would always, inevitably, act in support of the Orange Order and, with some apparent relish, against nationalists. That sense of gloom about the possibility of change within Northern Ireland, the possibility of reconciliation and mutual accommodation at political and community levels, persists and arguably contributes to the ongoing deterioration in community relations.

12. The second shock arose from the apparent complicity of and support for the challenges mounted at Drumcree and related disturbances within the unionist community at all levels. At political level, it cast doubt - not yet dispelled - about the efficacy and sincerity of unionist commitment to the objective of the multi-party talks to agree a lasting political accommodation between the nationalist and unionist traditions. At local level, the manning of roadblocks by members of the Orange Order and its supporters was visible evidence of sectarian mobilisation and has directly given rise to the economic boycotts by some nationalists of a number of Protestant unionist businesses, particularly in the border towns and villages. Combined with the blockade of Catholic Churches in North Antrim, these developments do not augur well for agreement on contentious parades in the run-up to next year's marching season.

13. The third level at which the shock within the nationalist community, and indeed beyond it, arose from the failure of central authority to face down the challenge with which it was presented by the Orange Order and its supporters. The rule of law was successfully challenged at Drumcree. Both the nationalist and unionist communities in Northern Ireland are by definition habituated to diametrically opposed views on many profound issues. Since the proroguing of Stormont, the imposition of direct rule and the enactment of the Anglo-Irish Agreement, the nationalist community had come to expect an effort by central authority to act in a balanced manner on issues of contention between the contending interests of the two communities. The apparent partiality of central authority

in forcing the parade down the Garvaghy severely undermined this confidence. This loss of confidence has not been allayed by protestations that the decisions were made in accordance with the Public Order Order impartially administered by the RUC.

14. This combined collapse in nationalist faith in the RUC, the rule of law and the willingness of the unionist leaders to understand or even acknowledge nationalist sensitivities, underlines the significance of Drumcree for the nationalist community. It bears directly on their perception of the possibilities of mutual accommodation and respect for both traditions both now and in the longer term. In many ways, Drumcree will be the yardstick by which their future perception of their place in Northern Irish society is measured. That that assessment is set to reoccur every July underlines the importance of creating a fair and feasible *modus vivendi* on the parades issue. Time cannot be relied on to cure the wounds of Drumcree 1996. Drumcree and the parades issue will have to be addressed in a meaningful and effective way before the next marching season (just six months away). The Government firmly believe that it is better to deal with the fundamental issues now rather than let them continue to corrode the matrix of community relations on which a lasting political agreement will, perforce, rest.

Role and Conduct of the RUC

15. Drumcree begged the question whether a police force, over 90% of which comes from the Protestant community, can be expected to stand against the type of pressures exerted by fellow members of their community. For many nationalists, that question was at best left open at Drumcree or at worst resoundingly answered in the negative. This has added significantly to the demands within the nationalist community that the RUC be fundamentally reformed.
16. A further unknown element disturbing to many nationalists is the extent to which members of the RUC, including possibly senior officers, belong to the Orange Order or similar organisations and whether the conflicting interests this imposes on those officers

affects the manner in which they carry out their duties, particularly (but not exclusively) in regard to parades. It has been reported that about 2,000 RUC officers are in fact members of the Order.

17. A resolution of the parades issue requires a police force which enjoys the full support and confidence of both communities. There are provisions within the existing legislation for the RUC to consider the impact of parades on the local community and to impose conditions on parades. Neither of these considerations appeared to affect the RUC's handling of parades to any significant degree in the course of recent events. When the RUC decided to reverse its original decision on the Garvaghy Road, there was no obvious attempt to impose conditions on the marchers for example, by strictly limiting the numbers involved (possible to a token march by the local Lodge, for example, or by folding banners). Similarly on the Lower Ormeau Road, the curfew (a wholly unacceptable exercise in itself and one highly damaging to the RUC from the nationalist perspective) imposed on residents on the evening of 11 July to allow the parades the following day, effectively halted the life of the community and curtailed the very fundamental right of freedom of movement. When the parade was forced through, again there was no attempt by the RUC to impose conditions which significantly altered its character; indeed given the quite different return route, it is arguable that the parade should not have been allowed on the Lower Ormeau below the bridge on return. That it did prolonged the curfew and added to nationalist dismay.

18. The enormous volume of plastic baton rounds used by the security forces against nationalists (over 6000 over a number of days), combined with aggressive police tactics that resulted in death and serious injuries, stands in marked contrast to the manner in which loyalist disturbances were handled in the days leading to the parade on the Garvaghy (some plastic baton rounds fired). This contrast has compounded the collapse in nationalist confidence in the RUC and added to anxieties about their ability to sensitively police parades.

19. In the light of the failure by the RUC to fully explore the possibilities offered by the current Public Order Order, the question can reasonably be asked whether the RUC control and management of parades will be influenced by revised legislation. Any changes in the law will require a change in attitudes and disposition of the RUC to operate in a manner consistent with the principle of parity of esteem.
20. Most profoundly for the rule of law and confidence in it, there remains what can be characterised as the 'Drumcree test'. The efficacy of any revised approach to the issue of parades rests on whether a decision in relation to a particular parade will survive a concerted and unlawful attempt to reverse it. Will a new approach to parades be carried through with the necessary will on the part of the authorities to withstand the type of pressures which were exerted in Drumcree this year?
21. At the same time, it is only fair to question whether it is the proper task of a police force to take decisions on parades which, if they are to be fully informed of all the relevant factors, must take account of the impact on relations between the two communities. In other words, should the RUC, or indeed any police force, be tasked with taking any decisions other than ones related to matters of law and order? Should a police force be reasonably asked to take what are political decisions or at least finely judged decisions which seek to balance the rights and identities of both communities?
22. The Government do not believe that any police force, but particularly the RUC, should be put in this invidious position. The Government do not believe that the responsibilities required to create a process through which agreement on the parades issue can be nurtured should be imparted to the RUC.

Public Order (NI) Order, 1987

23. The Government do believe, however, that the RUC should act and be seen to act in a manner which is impartial and fair with policing methods that avoid unnecessary aggression, minimise the risk of serious injuries and in accord with the principle of parity

of esteem.

24. The Government consider that the current Public Order Order is not adequate to the RUC is the task of policing a divided society in that it sets out legal imperatives wholly inadequate to the issue of public order (as opposed to parades) in Northern Ireland. The Government notes that in the both Public Order Act 1986 and the Public Order (NI) Order 1987, conditions may be imposed on processions and open-air public meetings if it is reasonably believed that
- (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.
25. These standards do not address the range of factors which must be taken into account in policing parades in a sensitive and balanced manner. Furthermore, the Order provides an incentive to those organising marches and those objecting to them to assemble as large a number as possible and to convey a threat of incipient disorder should the 'other side' be allowed achieve its objective. The Order obliges the RUC to consider primarily the threat of disorder and without any regard to the impact its decisions may have on community relations (and hence the possibility of disorder on a wider scale) and confidence in the RUC itself. It should be said that the pressures exerted on behalf of the Portadown Loyal Orange Lodge at Drumcree and beyond were a logical, if unlawful, exploitation of the inadequacies of the current Public Order Order.
26. The Government wishes to draw attention to Ireland's new approach to public order in the relevant provisions of the Criminal Justice (Public Order) Act 1994. This Act overhauled and up-dated the criminal justice legislation in this area with the aim of avoiding unnecessary restraint on freedom while providing effective protection for those whose quality of life is endangered by the behaviour of others. It abolished the common

law offences of riot, rout, unlawful assembly and affray, redefined them in modern language and clearly set out the terms of penalties between each offence on the basis of their gravity. While obviously not designed to deal with public order issues as they arise in the context of parades in Northern Ireland, the legislation may nonetheless provide helpful ideas and approaches in a reconsideration of the provisions of the Public Order (NI) Order. (A copy of the relevant provisions is attached and an extract from the Ministerial statement which introduced its second reading in Dáil Éireann.)

Mediation and Arbitration

27. The Government note that there was a failure to fully explore the possibilities offered by mediation during the standoff at Drumcree. Indeed, mediation efforts were still underway as preparations were being made by the RUC to force the parade down the Garvaghy Road. It appears that those called in to assist in mediation, which included the leaders of the four main churches, were unaware that the decision to force the parade through had been made. At best, this implies a lack of communication; at worst it suggests a wilful disregard for mediation and those who, courageously, undertake it.
28. While mediation efforts were not successful in broaching an agreement in the run-up to the Apprentice Boys parades in Derry in August, they did bring the local Bogside resident group and the leaders of the Apprentice Boys into direct dialogue. Such efforts arguably contributed significantly to the desire of both sides to have the parades pass off peacefully, encouraged greater mutual understanding and set a helpful precedent for future dialogue. Mediation can, therefore, be utilised both over the long term (for example in nurturing contact between local communities and the loyal orders where confrontations have occurred in the past) and in crisis situations which are in many ways akin to hostage situations which require the intercession of expert negotiators.
29. There is no official agency to which both sides to a contentious parade can turn for assistance in dialogue, arbitration or adjudication. Nor indeed, is there a body to which the authorities can turn for information and disinterested assessment of contentious

parades and the issues which underlie them. The Government believe that the absence of such a body seriously impairs the search for agreement on parades.

Right to March

30. The Government believe that there is an inherent and fundamental right to march and to public assembly. This right is deeply and rightly valued by all free, democratic societies. It is an essential ingredient in the free expression of opinions without which the operation of democracy would be severely and unacceptably curtailed. It is enshrined as a fundamental and personal right in Article 40.6.i and ii of the *Constitution of Ireland* which states, *inter alia*, that the State guarantees liberty for the exercise of the right, subject to public order and morality, of all citizens “to express freely their convictions and opinions” and “to assemble peaceably and without arms”. The right of free speech and free assembly is also a fundamental principle of common law in Ireland and Britain.
31. The Government has surveyed the position on processions and assemblies in Europe and elsewhere and found that the approach of both Ireland and Britain is, not surprisingly, common to most Western society; the law and its interpretation by authorities focus on the right to freely march and assembly as a necessary and indeed crucial freedom in a democratic society.
32. International principles on the issue reflect this position, including those principles established by the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and the *International Covenant on Civil and Political Rights*, both of which have been ratified by Ireland and Britain. Article 11 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* states “everyone has the right to freedom of peaceful assembly....” The *International Covenant on Civil and Political Rights* states that “the right of peaceful assembly shall be recognised” (Article 21).

Constraints on the Right to March

33. The Government notes that the right of procession and public assembly is generally constrained by the need to ensure that breaches of the peace do not occur. Such a constraint is a feature of British and Irish law. It is explicitly referred to in the *Constitution of Ireland*, i.e. Article 40 (6.1.ii); “Provision may be made to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas (Irish Parliament)”. As noted, the position was recently up-dated in the Criminal Justice Act 1994.
34. The Governments’ international survey confirms that this is the common approach; the determining factor in the conditions or even the right to march and assemble is the likelihood of breaches of the peace. Within the European Union, member states take a similar approach. Where marches and assemblies are planned, the authorities commonly request advance notification (as opposed to permission) and intervene only to impose conditions where necessary in the interests of public order. Where contentions arise, a local authority (political, administrative or judicial) respected by both sides usually mediates.
35. Article 11 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* adds that “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”. Article 21 of the *International Covenant on Civil and Political Rights* states that “the right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”.

36. It will be noted that the *European Convention* and the *International Covenant* refer not only to matters of public order, but the need to ensure that this right of free assembly may be restricted in the interests of the rights and freedoms of others.
37. The Government has not found an instance where a particular route is protected by law or principle.

The Rights of Local Communities

38. The Government note that while the rights and freedoms of individuals in Northern Ireland are established in common law as amended by legislation, in the absence of a written constitution for Northern Ireland or a Bill of Rights, the rights and freedoms of local communities or indeed of the nationalist community itself, remain undefined. However, the agreed approach on this issue is established politically by both the Irish and British Governments and has been set out in three documents; the *Anglo Irish Agreement*, the *Joint Declaration*, and the *Joint Framework Document*. The British Government further elaborated on its approach in *A Framework for Accountable Government*.
39. The *Anglo Irish Agreement* commits both Governments, through the framework of the Anglo-Irish Intergovernmental Conference, to work together “for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland.”
40. The *Joint Declaration* states that it is the aim of both Governments “to foster agreement and reconciliation, leading to a new political framework founded on consent and encompassing arrangements within Northern Ireland, for the whole island, and between these islands.” It further states that the role of the British Government will be to encourage, facilitate and enable achievement of agreement which establishes peace, stability and reconciliation “through a process of dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland.” The Irish Government agree that a settlement “must, consistent with justice and equity, respect the democratic

dignity and the civil rights and religious liberties of both communities, including [*inter alia*] the right of free political thought [and] the right of freedom of expression of religion.”

41. The *Joint Framework Document* sets out the shared understanding of both Governments on the parameters of a possible outcome to the current Talks process. Both Governments take as their one of their guiding principles, “that any new political arrangements must be based on full respect for, and protection and expression of, the rights and identities of both traditions in Ireland and even-handedly afford both communities in Northern Ireland parity of esteem and treatment, including equality of opportunity and advantage.” It suggests that both Governments envisage complementing a future settlement with an explicit undertaking on the part of each Government, equally, to ensure “the systematic and effective protection of common specified civil, political, social and cultural rights.” It further suggests that both Governments would encourage the adoption by local representatives of a Charter or Covenant which would, *inter alia*, “pledge a commitment to mutual respect and to the civil rights and religious liberties of both communities, including the right of free political thought [and] the right of freedom of expression of religion.” The *Joint Framework* concludes that “the diversity of identities and allegiances could be regarded by all as a source of mutual enrichment, rather than a threat to either side.”
42. In *A Framework for Accountable Government*, the British Government describes its approach to a political settlement as one in which any new arrangements “should uphold and apply the principles of equality of opportunity, equity of treatment and parity of esteem already established by the Government.”
43. Thus the central theme underlying the approach of both Governments is the need to accord to the nationalist and unionist traditions parity of esteem and to establish structures and approaches which reflect the rights and identities of both communities on this basis. While, as noted in the introduction to this submission, the current consideration of the parades issue precedes the establishment of agreed political

structures and the principles which will guide the operation, the Government believe that the exercise should follow the precepts set out by both Governments and that it should, accordingly be one which accords with the principle of parity of esteem.

Part II - Assessment

44. In the context of both Irish and British law, the standard practice in Western societies, the agreed international principles on human rights, the need to avoid further loss of confidence in the RUC and the rule of law and the shared commitment of both Governments to the rights and identities of both communities, the particular circumstances of the parades issue in Northern Ireland can be assessed in the following terms;

- that the Public Order (NI) Order, 1987, as a virtually complete transfer of the 1986 Public Order Act crafted to meet an entirely different set of circumstances, is wholly inadequate to deal with the salient factors of the parades issue in Northern Ireland and that it must, therefore, be amended or replaced.
- that the RUC should not be tasked with making decisions which are beyond its competence, or indeed the normal competence of any police force.
- that no authority - civil, political, or judicial - currently exists in Northern Ireland which can make the fine and complex judgements required on contentious parades and which provides the resources for mediation, arbitration and adjudication which can and indeed must form a vital part of the process of agreement to resolve the parades issue.
- that the manner in which parades are policed has in the past contributed to rather than relieved the tensions surrounding the marching season and have aggravated cross community tensions and loss of confidence in the RUC.
- that the RUC should be provided with a legislative basis on which to police public order in a sensitive manner and one which accords with the principle of parity of esteem.

- that membership of the loyal orders by RUC officers establishes the appearance of a conflict of interest and that this concern needs to be addressed and allayed.
- that the vast majority of the approximately 3,000 parades which occur each year are part of a tradition of cultural expression by the unionist community and that that cultural expression is expressly safeguarded in both national and international law and practice.
- that both traditions and the communities from which they spring have the right to be accorded parity of esteem, including on the parades issue.
- that local communities have the right to be free of sectarian displays and behaviour, intimidation, discomfit, nuisance, danger and that their freedom of movement should not be unduly curtailed or impeded by parades or the security measures required to police them.
- that demographic changes have altered and will continue to alter the community complexion of routes along which parades pass and that this should be considered in a sensitive and meaningful manner by those seeking to parade along them.
- that parade organisers need to recognise that the value they place on 'traditional' routes must be weighed in the balance of the general good and the search for mutual understanding and accommodation.
- that there are no specific safeguards in either British or Irish law, nor in international law or practice, for the routes taken or desired to be taken by parade organisers as 'traditional routes'.
- that the most favoured outcome of a disputed parade is agreement between the local community and the parade organisers.

- that the acceptance of parades in areas or along routes where they are currently unwelcome can only come about by agreement.
- that local communities which find parades unwelcome should work towards mutual accommodation and understanding between both traditions.
- that mediation efforts are in themselves valuable in creating the circumstances for dialogue and greater mutual understanding.
- that Northern Ireland stands at a cross-roads in which either mutual accommodation is granted by each tradition to the other, or in which both traditions seek the exclusion of the other with a consequent and potentially tragic widening of the communal divide.

Part III - Proposals

45. The Government believe that the parades issue has the potential to be seriously divisive but that it can and should be one in which divisions are bridged and differences reconciled. It is the task of the Independent Review to help bring this about. The Government offers the following proposals to assist it in that important, indeed, critical endeavour.
46. The Government is committed to working towards a society in which both traditions and the communities from which they spring find mutual respect, understanding and accommodation. It believes that any future settlement must encompass this approach and that policies formulated in advance of that settlement should reflect and endorse it. The Government believe, therefore, that a new approach to the parades issue must be based on an accommodation of the rights and identities of both communities.
47. Such an approach will significantly advance reconciliation if it is complemented and assisted by a spirit of generosity and forbearance on the part of the two communities, particularly by those who organise parades and those local communities who regard them as unwelcome.
48. The Government believe that the parades issue cannot be resolved by pitting two mutually exclusive and incompatible set of rights. That is a recipe for inevitable conflict and confrontation in which daily life is wrenched by upheaval, community relations sundered and reconciliation postponed.
49. The Government recognise that there is deep and abiding *resistance* to parades in certain local communities and that this resistance can be endorsed in certain instances by the nationalist community as an assertion of its broader rights and identity. It equally recognises that there is heartfelt *insistence* on the right to march certain routes at certain times and that this insistence reflects genuine concerns within the unionist community.

50. The Government believe that a viable and fair *modus operandi* can be found by a thorough and judicious exploration of the range of feelings which inform both the resistance to parades and the insistence associated with them. The Government believe that the feelings associated with *resistance* can run from implacable hostility to aggrieved acquiescence, to grudging acquiescence and may, if met with a spirit of understanding, be transformed into tolerance and perhaps, eventually, acceptance, even welcome.
51. Equally, the Government believe that the feelings associated with *insistence* can be gauged in the overall context of the parades season. The insistence on certain parades at certain times is more unrelenting than for other parades at other times. If this insistence can be modulated and informed with a sensitivity to the concerns of local communities which find parades unwelcome, the Government believe that it may be possible to establish an acceptable pattern of parades which advances reconciliation.
52. The Government therefore propose the establishment of an agency to provide this exploration of, and adjudication on, the intersection of insistence and resistance at which agreement, of some kind, can be found.
53. The Government further propose that it be complemented by new legislation which seeks to ensure that the handling of parades by the police is sensitive, impartial and informed by the principle of parity of esteem.
54. The Government offers proposals for a code of practice designed to encourage mutual accommodation and respect.

New Machinery - Independent Parades Authority

56. The Government propose that an independent parades authority, operating according to a clear set of directive principles as set out below, be established to deal with parades which are deemed to bear directly on relations between the nationalist and unionist communities. The structure and possible division of functions of such a body require

careful thought. Comparable bodies include the Fair Employment Tribunal and Commission in the North and in the South the Labour Court and the Labour Relations Commission.

57. The Government proposes that this authority would be charged with the following;

- to receive notification of all planned parades and assemblies and to determine the manner in which sanction is granted (i.e. conditions to be imposed) or withheld (i.e. a recommendation to the government to ban).
- to facilitate, through the provision of trained personnel, ongoing dialogue, both long term and in crisis situations, between local communities and parade organisers on contentious parades with a view to agreement.
- in the absence of agreement, to provide for arbitration through a tribunal, the rulings of which would have the force of law.
- to appoint observers to attend contentious parades and to report to the tribunal on the extent to which the conditions set by it were adhered to; the observers would also be charged with reporting to the authority on the conduct of the RUC and the security forces in general.
- to determine, having considered the reports of its investigators and other relevant parties, whether the conditions imposed were adhered to and, if not, to impose the necessary sanctions.
- to appoint investigators to report on matters deemed relevant to contentious parades.

- to report to the Chief Constable and GOC on matters of concern (including serious incidences and general policy) which have come to its attention regarding the conduct of the RUC and other security forces.

Directive Principles

58. The tribunal would operate under the following directive principles;

- that the most favoured outcome is agreement between the parties to a contentious parade.
- that in the absence of such agreement, the authority will set conditions (or recommend banning) according to its judgement of the degree of resistance by the local community and the degree of insistence on the part of the parade organisers which reflect a balance between the rights and identities of both sides and is in the interests of society as a whole.
- that the interests of society are best served by mutual understanding and accommodation between both traditions and the communities they represent.
- that there is an inherent right to free expression including by procession and assembly.
- that local communities have the right to be free of sectarian displays and behaviour, intimidation, anxiety, danger and/or infringements of their rights (including to parity of esteem) and identities.
- that the freedom of movement of local communities will not be unduly curtailed or impeded by parades or the security measures required to police them.
- that town centres are areas common to the general public and that access to them

will be sanctioned equally.

- that mediators appointed by the tribunal will maintain the strictest standards of impartiality and confidentiality.
- that observers appointed by the tribunal will act and report in a manner which is strictly impartial and accurate.

Current Legal Provisions - Public Order (NI) Order 1987

59. As set out earlier, the Government has long held the view that the current Public Order Order is fundamentally flawed and inappropriate to the circumstances of Northern Ireland. The Government offer the following suggested amendments which it believes would considerably enhance current legal provisions. They should be considered indicative and not necessarily exhaustive;

Part II, 3/4; Advance notice of public processions/assemblies

60. The Government believe that advance notification of parades can play a key role in facilitating dialogue, mediation and arbitration on contentious parades by the independent parade authority. The current statutory requirement of 7 days notification is clearly inadequate for such a process to be possible, let alone successful. Sufficient advance notice will allow for a consideration of the marching season as a whole by the independent parades authority as it affects local communities. This is a crucial aspect of the operation of the authority in providing it with an overview of the parades issues and will help it decide the merits of individual cases in their proper context. It recommends therefore that the period of notification be not less than 90 days.
61. Given the serious consequences likely to arise from parades which prove contentious, the Government believes that the mere giving of notice should not confer a right to parade *per se*; the Government therefore proposes that sanction to parade will be forthcoming

after due consultations with relevant parties and the establishment of conditions as necessary by the independent parades authority. This does not mean that *permission* will be required since only the Secretary of State retains the right to ban a parade.

62. Furthermore, the Government believe that leadership and a sense of responsibility on the part of those organising parades should be encouraged because of the very serious consequences of confrontations on parade routes, in terms of public order at the time and in terms of the longer term impact on community relations. The Government therefore suggest that the posting of bonds, determined by the independent parades authority, be a requirement of sanction to proceed with a parade. These proposals are set out in more detail below;

- 3.(1) That notification can be made by a person or persons on behalf of a body, e.g. a local Orange Lodge or a resident's group and that responsibility for the manner in which the public process or assembly can therefore be a collective one.

That notification is required for a meeting or assembly as well as a procession; thus those organising the assembly at Drumcree would have to make due notification and undertake responsibility for its conduct.

That notification be made available to the public.

That notification requires agreement to meet with the independent parades authority, and if directed by the authority to meet with local groups under its auspices, for discussion of matters relevant to the proposed parade.

That the notification does not confer automatic sanction to hold the parade but that sanction will be granted subject to the conditions set by the authority, the necessary consultations have taken place with relevant parties.

The notice of sanction will contain written indication of the route and conditions imposed as decided by the authority, to which the parade/assembly organiser consents to in writing; sanction to proceed is contingent on this consent.

That the written notice of the conditions imposed may name individuals deemed ineligible to participate in the parade or assembly arising from a police record or reasonable belief that that individual is likely to cause a breach of the peace or to engage in behaviour likely to be provocative and/or sectarian or to cause discomfort, anxiety and fear.

- (2)(b) That the route be referred to as the 'preferred route' and that alternative routes be cited; further that the site of an assembly be notified if necessary.
- (2)(d) That bands or other groups taking part in the proposed parade/assembly be named in the notification; so that, for example, a decision can be made as to whether a band should be excluded because of a reasonable belief that that band is likely to cause a breach of the peace or to engage in provocative behaviour.
- (2) That additionally, bond be posted by the individual or by a group making the notification, the size of such bond determined by the authority to be sufficient to encourage full compliance with the conditions imposed.
- (3) That notification for parades/assemblies be given not less than 90 days; provision made to allow for processions/assemblies for which such advance notice is not possible; notification remains a requirement, however imminent the procession/assembly.

Part II, 4: Imposing Conditions

63. The Government believe that the conditions under which parades are sanctioned can play a crucial role in easing tensions, that parade organisers be given clear indications of those conditions and that they undertake to meet those conditions;

(1)(a) That issues under this head may be considered by an independent parades tribunal (see below) in consultation with relevant parties, including the police, and that this authority will set the conditions to be imposed when sanction is granted for the parade/assembly in question and that it may advise on further conditions and directions in the course of a procession or assembly.

(1)(a) That “serious disruption to the life of the community” is elaborated to include the need to ensure that the community is free from discomfit, nuisance, anxiety, danger, curtailment of free movement, sectarian displays and behaviour, and intimidation.

That in the consideration of “serious disruption to the life of the community” as amended, the measures deemed necessary to police a parade or assembly be included; i.e. if the police measures required in relation to any procession or assembly are such that they seriously disrupt the life of the community, that process or assembly will be rerouted or relocated.

(1)(b) That “intimidation” be redefined to include any acts or likely acts which would have the effect of causing discomfit, anxiety and fear or of exposing the community to sectarian displays and/or behaviour. Further, that it need not be established that intimidation as redefined is the *purpose* of those organising the procession or assembly, merely that it is the *effect*. The definition of intimidation is overly elaborate and specific;

intimidation need not be designed to have an effect other than intimidation in and of itself.

Powers and Responsibilities of Secretary of State (Part II, 5)

64. The Government agree with the general precept, accepted in Britain and Ireland and indeed in most Western societies, that the decision to ban a parade or march is very serious curtailment of the right to free speech and free expression and that, as such, it should only be made by an authority which can fully consider its political implications;

5.(1) That, given the particular and often unique circumstances which apply to individual parades and the possible political implications for both communities, the range of advice available to the Secretary of State be expanded and that he should be obliged to consult with the independent parades authority. The Secretary of State may also be directed to take into consideration the views of local political and community leaders, including those organising the procession/assembly in arriving at his decision. Equally, relevant individuals and groups may submit views which the Secretary of State would be obliged to consider and to refer to in the recital of the banning order. The Secretary of State would also be charged with demonstrating that his decision concurs with the directive principles and codes of conduct. In these circumstances, the views of all the parties to a contentious parade would have been taken into account and be seen to be taken into account by the responsible authority. Furthermore, the public would be assured that a transparent process was in hand to consider the range of issues related to the very serious decision to ban (or to decline to ban) while the responsibility for decision and its enforcement remained with the Secretary of State.

5.(1)(b) That, of the grounds cited (that a parade or assembly is likely to cause (i) serious public disorder, (ii) serious disruption to the life of the

community, (iii) undue demands to be made upon the police or military forces), "serious disruption to the life of the community" is elaborated to include the need to ensure that the community is free from discomfit, nuisance, anxiety, danger, curtailment of free movement, sectarian displays and behaviour, and intimidation and that there is no undue curtailment of the communities rights (including parity of esteem) and freedoms.

Code of Practice

65. The Government offers the following points in regard to a possible code of practice for parade organisers and participants in assemblies and the local communities which may be affected by them. These are obviously subsumed by the directive principles under which the independent parades authority would operate but which might be put forth as guidelines for self-regulation;

- that parades are organised in such a manner as to secure the agreement of the local communities through which it is hoped to pass.
- that parades are organised in such a manner as to encourage mutual respect and toleration between both traditions.
- that parades are stewarded in such as manner as to encourage cross community participation and enjoyment.
- that parades are stewarded in such a manner, including the consumption of alcohol, as to avoid displays and behaviour which others might find sectarian, intimidating and/or provocative.

October 1996