

THE LEGAL POWERS OF THE GOVERNMENT TO MAINTAIN PUBLIC ORDER,
THEIR EXERCISE, AND PROPOSED MODIFICATIONS

I. LEGAL POWERS

The powers mainly exercised by the Government to maintain public order during the recent disturbances are those contained in Section 2 of the Public Order Act (Northern Ireland) 1951, copies of which are attached for convenient reference.

Section 1(1) of this Act provides that anyone who intends to organise or form a public procession shall give 48 hours' written notice of such intention, of the proposed route and of the proposed time of commencement to the R.U.C. by leaving such notice at the police station nearest to the starting point of the procession.

If the route be acceptable to the police, the organisers are informed and the procession follows the notified route. But, if not acceptable, then any officer or head constable may give directions imposing such conditions as seem necessary for the preservation of public order.

In practice, the conditions imposed have, in the main, been those specifically mentioned in the section, i.e. a prescription of the route to be taken and/or a prohibition on entering a specified place, and these have been imposed by the District Inspector for the area concerned. Occasionally, other conditions are imposed such as, for instance, forbidding the carrying of the Tricolour through certain areas along the route.

Section 2(2) of the Act confers a power on the Minister of Home Affairs to make an Order prohibiting for any period not exceeding three months all public processions or meetings, or any class thereof as he may specify, in any particular place. This is not an absolute power, but may only be exercised by the Minister when he comes to the conclusion that the exercise by the police of the powers referred to above are not sufficient to prevent serious disorder. It is thus clear that the Minister must be convinced by the information at his disposal, largely from police sources, of the inadequacy of the police powers before he can impose a prohibition.

It should be noted that whilst the statute requires notice of processions only to be given to the police and not of meetings, the Minister's veto may extend to both processions and meetings, and frequently does.

Section 3 of the Act deals with provocative conduct by those opposed to the processions or meetings being held and is wide-sweeping in its provisions.

/Section 4

Section 4 deals with the disruption of the business of a lawful meeting, and empowers the police, at the request of the chairman of such meeting, to demand the name and address of any person preventing the transaction of the business for which the meeting was called.

This section might be regarded as "spelling out" a particular facet of Section 3.

For an offence under Section 1 or Section 3 of the Act, on summary conviction a term of imprisonment not exceeding three months may be imposed, or a fine not exceeding £25, or both. For an offence under Section 2 of the Act, on summary conviction a term of imprisonment not exceeding twelve months may be imposed, or a fine not exceeding £50, or both. On indictment these maxima are increased to two years and £500 respectively, and here again both may be imposed.

It should be mentioned that the police instituted proceedings against certain persons for taking part in unlawful assemblies in Londonderry and Armagh, and that these were brought under the Criminal Law and Procedure (Ireland) Act of 1887, Section 2 of which makes it an offence, which may be tried summarily, to take part in an unlawful assembly.

None of the provisions of the Special Powers Acts or of the Regulations made thereunder was at any time invoked in relation to the recent unrest and disturbances arising from the various processions and meetings.

II. EXERCISE OF MINISTER'S POWERS UNDER PUBLIC ORDER ACT 1951

On the following occasions the Minister of Home Affairs exercised his powers under Section 2(2) of the Public Order Act by making orders prohibiting the holding of public processions and/or meetings. As stated above, these powers can be used only when the Minister is of the opinion that the powers of the police under Section 2(1) of the Act to impose conditions on the organisers of a parade, e.g. re-routing, are not sufficient to prevent serious public disorder.

1. Civil Rights Association Parade in Londonderry on 5th October, 1968

In September, 1968, the Civil Rights Association gave notice to the police of their intention to hold a parade in Londonderry on 5th October. The parade would start in the forecourt of the railway station in the Waterside part of the City and go by way of Distillery Brae, Simpson's Brae, Spencer Road, Craigavon Bridge, Abercorn Road and Bishop Street to the Diamond, which is in the walled part of the City, where a meeting would be held. On 3rd October, 1968, Mr. William Craig, M.P., who was then Minister of Home Affairs, had a meeting with Mr. J.A. Peacocke, who was then the Deputy Inspector General, and other senior

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police officers. The police were of the opinion that the parade should be prohibited as it could result in serious public disorder, but after discussion the Minister decided that the prohibition should relate only to the Waterside Ward and to the walled part of the City. He, therefore, made an Order prohibiting the holding of all public processions or meetings in these parts of the City on 5th October, 1968. A copy of the Order is attached (Document No. 1).

2. Derry Citizens' Action Committee Parade on 16th November, 1968

This organisation gave notice of its intention to hold a parade on 16th November, 1968, from Simpson's Brae on the Waterside part of the City of Londonderry, via Distillery Brae, Spencer Road, Craigavon Bridge, Abercorn Road, Bishop Street, the Diamond, Shipquay Street to the Guildhall.

On 13th November, Mr. W. Craig, M.P., then Minister of Home Affairs, had a meeting with Sir Albert Kennedy, then Inspector General, Mr. J.A. Peacocke and other senior police Officers. Following a discussion which lasted for over two hours, when many aspects of the security situation were mentioned and the advisability of allowing the parade to take part in various parts of the city was considered both on 16th November, 1968, and on subsequent days, the Minister decided to impose a prohibition on the holding of all public processions and meetings in the walled part of the City for the period 14th November, 1968, to 14th December, 1968. A copy of the Order made by the Minister under Section 2(2) of the Public Order Act is attached (Document No. 2).

On 22nd November, 1968, Sir Albert Kennedy wrote to the Minister setting out his recollection of the discussion which took place on 13th November. A copy of the letter is attached (Document No. 3). It will be noted from the latter that the police would have kept the marchers outside the walled part of the City by using their powers under Section 2(1) of the Public Order Act to re-route, while the Minister achieved the same result by imposing a prohibition under Section 2(2) of the Act on all meetings and processions in that part of the City. The Order made by the Minister did, however, impose a prohibition for a period of a month.

The Permanent Secretary to the Ministry, who was present during the discussions on 13th November, 1968, made a note on 29th November, 1968, about Sir Albert's letter in the following terms:-

"I don't believe anyone could recall or recount all the various turns which the discussion took at the meeting on 13th November or the various aspects of the Londonderry situation which were considered, but I got up from the table believing that all who took part in the discussion were agreed that a ban should be imposed on the walled part of the City for one month".

/Mr. J.G. Hill,

Mr. J.G. Hill, Senior Assistant Secretary to the Ministry, who was also present at the discussions, having expressed the view that a decision on extending the prohibition beyond the day of the march should be postponed until after the march, nevertheless accepted what he believed at the time to be the unanimous opinion of all who were present, i.e. that there should be a prohibition on all processions and meetings within the walled part of the City for one month.

3. Northern Ireland Civil Rights Oxford Campaign - Proposed Parade from City Hall, Belfast, to Stormont on 25th January, 1969

The parade was prohibited by the Minister of Home Affairs, then Captain W.J. Long, M.P., Sir Albert Kennedy having expressed the view that serious public disorder would result if the parade were allowed to process along the Albertbridge Road. A copy of the Order made by the Minister under the Public Order Act is attached (Document No. 4).

4. People's Democracy March from Belfast to the Land Boundary at Killeen, County Armagh, (en route to Dublin) on 4th and 5th April, 1969.

Notice of the proposed march was given to the police some days in advance of 4th April. Subsequently press reports indicated that the march would not take place, but as the organisers did not withdraw the notice the Minister of Home Affairs, Mr. R.W. Porter, Q.C., M.P., after discussions with the Inspector General, Mr. J.A. Peacocke, and other senior police officers, made an Order under the Public Order Act imposing a prohibition on the march between Belfast and Newry. A copy of the Order made is attached (Document No. 5). At the same time the Minister also made an Order prohibiting the holding of any meetings by the People's Democracy in certain parts of Lurgan on 4th and 5th April, 1969. A copy of this Order is also attached (Document No. 6).

5. Claudy and Portglenone Civil Rights Association - Proposed Meeting in Portglenone, County Antrim, on 5th April, 1969

The Minister of Home Affairs, after discussions with the Inspector General and other senior police officers, and having received verbal reports of intended militant opposition demonstrations in the town, made an Order under the Public Order Act prohibiting the holding of all public processions and meetings within a radius of three quarters of a mile from the centre of the town. A copy of the Order is attached (Document No. 7).

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III. TRADITIONAL PRACTICE IN RELATION TO PROCESSIONS

The traditional practice governing processions in Northern Ireland has been for each side, Unionist or Nationalist, to recognise that certain areas are within "hostile" territory and consequently processions are not routed through these. To take the best local example - an Orange Lodge does not march up the Falls Road, nor does an Ancient Order of Hibernians procession march down the Shankill Road.

Odd exceptions to this rule may apply where, for instance, a particular lodge or body may have acquired what may be called a prescriptive right to march along part of a route in their opponents' territory, which, however, is banned generally.

Again, by agreement, certain areas are regarded as "no man's land" and "orange" and "green" organisations use them as occasion requires, each without let or hindrance by the other.

Well-established marches and demonstrations are accepted by all sections of the community, do not lead to a breach of the peace and give little or no trouble to the police.

In the recent processions and meetings, however, the difficulty has been that they do not fit into the accepted pattern, and the holding, or proposed holding, of them in many areas has led to bitterness and disturbance. Whilst the organisations themselves, be they People's Democracy, Civil Rights or Citizens' Action Committee, may claim to be non-sectarian and non-religious, the Unionist population in large measure refuse to accept them as such, and regard them as hostile bodies intending to march through traditionally loyal areas.

Whether or not the claims of these various organisations to be outside politics and religion and concerned for the welfare of all creeds and classes are valid or invalid is, in a sense, irrelevant. The fact remains that in a number of areas they are rejected, and the resultant situation is one which threatens the peace of the community.

IV. PROPOSED AMENDMENTS TO THE PUBLIC ORDER ACT

The powers contained in the Public Order Act of 1951 are at present being amended in a number of respects in the Bill [Public Order (Amendment) Bill (N.I.)] at present before Parliament, copies of which are attached for reference.

Although strong opposition is being encountered to the Bill, both within and without the House, its provisions are in no way so repressive as its opponents allege and, in fact, in general they should be welcomed by peaceful marchers as well as by those whose duty it is to maintain law and order.

For the information of the Commission the amendments are now dealt with seriatim:-

(1) Section 1 of the 1951 Act makes it an offence for any person to organise, conduct, or attempt to conduct a public procession in respect of which the provisions of the section have not been observed, but no mention is made of those

taking part in such a procession.

The Bill accordingly fills this hiatus by providing that anyone who knowingly takes part in such a procession is also guilty of an offence.

This seems only equitable as it may happen that prominent persons may take part, who are not organisers, but whose presence does more to encourage a breach of the law than the conduct of the organisers. Those persons should not escape from the consequences of their wilful action.

(2) The Bill also provides that the 48 hours' notice to the police required in Section 1(1) of the 1951 Act should be increased to 96 hours.

Here, the purpose of the amendment is not repressive, but simply that experience has shown that 48 hours' notice to the police is somewhat short to enable the police to make arrangements, particularly if notices have been handed in regarding various processions in widely-spaced areas of Northern Ireland. The difficulty of police deployment in these circumstances would be eased by longer notice.

But the new provisions should also benefit those serving the notice, as it gives more time for discussion with the police, for agreeing to police conditions or negotiating with them about suggested alternatives, particularly having regard to the duty imposed on a police officer or head constable by Clause 2(1) of the Bill.

Clause 2(2) of the Bill enables the Minister of Home Affairs to permit a public procession of which due notice has been given and simultaneously prohibit the holding of any other public procession or meeting.

At present the Minister can impose only an "omnibus" ban and this has led to rival processions and meetings being notified with the sole object of preventing the holding of the original procession which, under the terms of the existing law, would have to be banned also (vide Section 2(2) of the Act). Thus a complaint of frustration by those wishing to hold peaceful, non-violent marches has been removed.

This, however, does not interfere with the existing right of the Minister to impose a general ban. This is perpetuated in the Clause and the period for which the ban may be imposed is extended from three months to twelve months.

Here again a loophole for those taking part in a procession held in contravention of an Order made by the Minister has been closed. Clause 2(4) makes it clear that they now offend equally with those organising or assisting to organise.

The new Section 3A inserted in the Act of 1951 by Clause 3 of the Bill should be generally welcomed as being directed against those who disturb or break up lawful public processions. It is in case of lawful demonstrators.

3B, which this Clause also inserts in the principal Act, has been the object of strong criticism, mainly on the ground that it deprives demonstrators of a safety valve. It is better to sit or lie down than indulge in more violent forms of protest is a theme which attracts support but, in the general interest, wilful obstruction of traffic or of a lawful activity must be outlawed. Persons

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other than those demonstrating have also rights in the community.

The third insertion (3C) in the Act which the Clause provides for has also been opposed strongly but, in present circumstances when various forms of protest are being tried, it is but right that public buildings should be protected from invasion, and those who work in them be left undisturbed.

The other two main provisions, contained in Clauses 6 and 7, prohibit the formation of quasi-military organisations and carrying offensive weapons. These have received a general welcome and should prove of great value in the task of keeping the peace.

V. ADDITIONAL DOCUMENTS

In addition to the various documents already mentioned, the following documents, of which copies are attached, may help the Commission in their Enquiry:-

1. Copy of Northern Ireland (House of Commons) Hansard of 16th October, 1968, containing speech by Mr. W. Craig, M.P., then Minister of Home Affairs (Document No. 8).
2. Copy of judgment read by the Resident Magistrate in respect of a complaint made against Eamon Joseph McCann under the Criminal Law and Procedure (Ireland) Act 1887. The complaints arose out of incidents in Londonderry on 5th October, 1968 (Document No. 9).
3. Copy of the Resident Magistrate's decision given on 12th December, 1968, in respect of complaints under the Public Order Act (Northern Ireland) 1951. The complaints arose out of incidents in Londonderry on 5th October, 1968 (Document No. 10).
4. Report sent to the Home Secretary by three members of the United Kingdom Parliament who were present in Londonderry on 5th October, 1968, as observers (Document No. 11), together with copy of the comments on the report of County Inspector Meharg, the senior police officer in charge in Londonderry on that day (Document No. 12), and copy of comments by Mr. J. A. Peacocke, the Inspector General (Document No. 13).
5. Statement made in the House of Commons on 11th March, 1969, by Captain W. J. Long, M.P., then Minister of Home Affairs, about the inquiry into police behaviour in Londonderry on 4th and 5th January, 1969 (Document No. 14). (Many complaints were made about police behaviour in Londonderry on the dates mentioned and the Inspector General directed a senior officer from police headquarters to conduct an inquiry. The officer concerned has not yet completed his report.)