

CONFIDENTIAL

633/97

UNDER/ SEC -6 MAY 1997 CENT SEC

FROM: S J LEACH
ASSOCIATE DIRECTOR POLICING AND SECURITY
2 MAY 1997

in context 7.5
The SPS didn't buy this. Implication of words is to be in the Queen's speech; she wants "no uncertain notes" to be struck; a bill will be presented in the autumn (probable timing).

Yes
6.5

- cc: PS/Minister of State
- PS/PUS (B&L)
- PS/Sir David Fell
- Mr Steele
- Mr Thomas
- Mr Gray, OLC
- Mr Bell
- Mr Stephens
- Mr Watkins
- Mr Brooker
- Mrs Collins
- Mr Maccabe
- Mr Perry
- Mr Priestly
- Mr Smyth
- Mr Clarke
- Mr Webb
- Mr Strain
- Mr Warner
- Mr Carter, HOLAB
- Mr Sanderson, Cabinet Office

North Report full
[Signature]

PS/Secretary of State (B & L)

PARADES: THE WAY AHEAD

Summary

1. The Government is committed to the recommendations of the North Report. The implementation of that commitment poses a key policy decision for the new Secretary of State, and has a high potential either to enhance or damage the prospects for peace and reconciliation and the longer-term ability of the Government to achieve its goals in Northern Ireland. The decision will have a major impact on maintaining confidence on **both** sides of the community, and will bear significantly on the prospects for local accommodation on a number of disputed parades this summer, as well as touching on the Government's primary duties of preserving life, maintaining order and upholding the law. The Secretary of State will therefore wish to take the time necessary to review the issues before announcing a firm decision, and may well (using this

CONFIDENTIAL

LMcR

CONFIDENTIAL

submission as a starting point) wish to consult not only with officials but also with the Chief Constable (and the GOC), the Chairman of the Parades Commission, and political and community leaders (at least, perhaps, Mr Hume and Mr Trimble and the two Archbishops of Armagh).

2. It is largely common ground that it would be impractical to seek to implement North for the current marching season - Parliamentary time would almost certainly be unavailable, and even if it were the Parades Commission could not function effectively in the decision-making role this summer and does not want an early transfer of responsibility. Given that, this submission argues that the Government's undertaking on North would be fully met at this stage **by a commitment to introduce legislation in the autumn**. That would have the advantages of:

- reassuring **nationalists** that the Commission **would** be given powers, while removing the **unionist** fear of immediate imposition;
- avoiding a potent focus of **discontent** during the summer; and
- ensuring that when it is introduced the Bill will fully **reflect the lessons** of this marching season, in the interests of producing a more workable long-term system.

It also recommends that, while the decision-making role should remain with the police this summer, the Commission should **advise** on the community aspects of contentious parades, thus addressing for this year the key deficiency North identified in the present system.

Background

3. The Secretary of State is familiar with the background to this issue. Briefly, the central North analysis was that the current statutory criteria have been applied in such a way that public order considerations predominate, with the result that inadequate (or no) account is taken of the impact of contentious parades on relationships within the community. This should be addressed by new arrangements which would:

- give a structured opportunity for opponents of parades to make their views known;

CONFIDENTIAL

CONFIDENTIAL

- encourage mutual understanding about parades, stimulate the availability of mediation processes, and enhance the likelihood that these would lead to local accommodation;
- provide criteria expanded to include the impact of a parade on community relationships, as the basis for the determination of parades where local accommodation cannot be reached; and
- establish a new body whose authority would be underpinned by its visible independence from the Secretary of State (and the **Irish** Government), to make determinations on those wider criteria and to promote mediation.

4. The last Government set up the Parades Commission (which is now making a good start under the energetic chairmanship of Alistair Graham), with a remit focusing on promoting understanding and mediation. It also enacted an Order extending the notice period for a parade from 7 to 21 days, and introducing new controls on alcohol (two subsidiary North recommendations). The decision now to be taken centres on the further North recommendations that the Commission should take over from the police the legal power to re-route and set other conditions for parades, on the basis of the expanded statutory criteria. (The last Government mounted a consultation exercise on this core recommendation; the results - which are summarised in Annex B - show no narrowing of the community divide on this issue.)

5. Subject to the two changes noted above, the law on parades remains the Public Order (NI) Order 1987. This provides that the **RUC** may impose **conditions** (including re-routing) on a parade where a senior police officer reasonably believes that it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or that its purpose is intimidatory. The **Secretary of State** may **prohibit** a parade using the same criteria as the police; and also on the additional ground that a parade would cause undue demands on the police or Army.

The Government's position

6. The new Secretary of State has stressed two things: a determination to give the Parades Commission **statutory powers**, and the importance of encouraging **local accommodation** and compromise so that if at all possible the **use** of those powers can be avoided. This approach was set out clearly in her **Newsbreak** interview on 3 April:

CONFIDENTIAL

LMcR

228

CONFIDENTIAL

"... we are determined, early on in a Labour Government, to make sure that [the Parades Commission] has teeth, that it has the statutory powers to work as a Commission and therefore has the chance, I hope, to help in the parades procedures this year. But what's important for people to realise is those powers are ultimate for the Parades Commission. If it has to use those statutory powers, those teeth, in a sense it has come to the end of its road. What we saw on the Lower Ormeau ... where negotiation locally made a difference - that is what will make the difference to other parts of Northern Ireland on a very difficult issue in the months ahead. It is by negotiation, by compromise that we will move forward."

The Prime Minister similarly juxtaposed the **implementation of North** and the **objective of compromise and local agreement** in his **Irish Times** interview on 28 April:

"Labour will do all we can to encourage dialogue and facilitate local agreement on contested parades. The recommendations in the North Report are designed to help settle local disputes and we will implement them."

Views of the Parties

7. The way ahead on parades is an intensely political issue within Northern Ireland. The views of the main blocs can be summarised as follows:
 - (a) Unionists. Most unionists see the parades issue as encapsulating their wider fears of a continuing shift of political advantage towards nationalism; and even many moderates, who would normally find little common cause with the Marching Orders, saw Drumcree 1996 as a "line in the sand" necessary to protect their identity and culture from progressive erosion. The prospect of further constraints on parades arouses an atavistic and visceral response from the unionist community, which recognises that it has lost dominance in Northern Ireland and fears continuing erosion and subjugation. As part of that analysis, most Unionists are convinced that last year's operational decisions were driven by political considerations, and particularly by the influence of the Irish Government. At the same time many - including a significant number at senior levels in the Orders - were shocked by the physical and political damage caused by Drumcree, and wish to see some kind of honourable accommodation which nevertheless safeguards the key elements of their "traditional" rights. Again, compromises which acknowledge the importance and legitimacy of parades in Protestant culture may offer a way forward.

CONFIDENTIAL

CONFIDENTIAL

- (b) Loyalists. Hard-line unionists, as represented by groups like the Spirit of Drumcree (and - in the background - the maverick Loyalist Volunteer Force (LVF), which does not observe the CLMC ceasefire) are opposed in principle to efforts to reach accommodation. They insist starkly on the right of Protestants to march wherever they wish in Northern Ireland. They will continue to campaign actively against compromise, and may seek to use the parades issue to test the resolve of the new Government. They claim an absolute right of Protestants to march "on the Queen's highway" in any part of Northern Ireland. Support for this stance can come from many people - the "ambivalent empathizers" - who on other issues would not choose to associate themselves with the Loyalist viewpoint. While the CLMC is reluctant to be drawn into confrontation over the parades issue - and the policy of the loyalist **parties** is by no means as hard-line as the DUP's - in the event of widespread disorder grassroots paramilitaries are likely to become involved. Reaching accommodation with the Spirit of Drumcree and their ilk will be well-nigh impossible: it will be important, therefore, to avoid as far as possible actions which increase support for them in the wider Unionist community.
- (c) Nationalists. To many nationalists, the handling of the parades issue is an acid test of HMG's resolve to create in Northern Ireland a just and equitable society where the rights and aspirations of all sections of the community are respected. Opposition to Orange Parades in many areas derives from genuine popular resentment, existing for decades, which was fanned into greater anger by Drumcree 1996. The events of last summer dealt a serious blow to community relations within Northern Ireland and to the standing within the Nationalist community of HMG and the RUC. The decision to allow the parade through was widely believed to be political and was interpreted by Nationalists as caving in to Loyalist pressure. This year, moderate nationalists will be alert to any signs of a re-run and will be quick to criticise actions of the security forces and HMG. At the same time, most nationalists would favour some degree of local flexibility, and would oppose having their legitimate concerns hijacked by Sinn Fein; and the SDLP has been active in providing moderate political leadership in some areas. What many nationalists seek is recognition of their legitimate interest in negotiating decisions on parades. Willingness on the part of the Marching Orders to acknowledge the legitimacy of this interest and to engage with local residents' groups (though very difficult to achieve) could offer some prospect of successful outcomes.

CONFIDENTIAL

CONFIDENTIAL

- (d) Republicans. The Republican movement has exploited the parades problem with considerable success, and regards it as a "win/win" issue with considerable potential to unite a broad spectrum of nationalist opinion behind an issue of Sinn Fein's choosing; to enable Sinn Fein to exploit the "parity of esteem" agenda; to provoke confrontation between the police and residents, discredit the RUC and HMG, and drive wedges between HMG, the RUC and both communities. Responding to loyalist violence and intimidation also enables PIRA to portray itself as the defender of the nationalist community, while public order situations may offer opportunities for the IRA to mount attacks on the security forces. But while there is clear evidence of Sinn Fein planning to exploit residents' groups to harden attitudes and frustrate compromise where it is in their interests to do so, subsidiary aims are to promote the concept of community consent to parades and avoid being identified as the group preventing compromise. (It was the risk of exposure as the intransigent party that led to the Sinn Fein **volte face** in Londonderry last August.) Sinn Fein's freedom of manoeuvre has also been impaired by the recent RTE exposé of their role within residents' groups. Their overall approach is therefore likely to be opportunistic: where compromise is emerging, Sinn Fein will wish to avoid being identified as the party seeking to block it, and will try to claim the credit for any progress: where confrontation seems likely, however, they will seek to exploit the situation.
- (e) Irish Government. The Irish Government's concerns reflect those of moderate nationalism generally. Insensitively - and publicly - expressed, Irish views can act as a red rag to unionists: equally, they can, perhaps, with proper encouragement and preparation, be persuaded to play a constructive role behind the scenes with nationalists in encouraging compromise.

Security Force and other views

8. It is also important to record three other sets of views: those of the **Chief Constable**, the **Parades Commission**, and what polling evidence there is about **public opinion**.
9. The **Chief Constable** (unlike his predecessor) believes that the Parades Commission should assume a permanent **advisory role**, not take over the decision-making power from the RUC. He holds to this view with particular force for **this** year, in view of the fragility of the current situation on the ground (including delicate negotiations about various disputed parades), the fact that the Commission is just beginning to work itself into its mediation responsibilities, and the shortage of time to make radically different arrangements workable at this stage. He

CONFIDENTIAL

LMcR

231

CONFIDENTIAL

would also be clearly **opposed** to any early statement of intent by the Government that it would give the full adjudicatory powers to the Commission for the next marching season, on the grounds that this would undermine the prospects of the Secretary of State and the RUC (and the mediators who are currently active) using their influence effectively to achieve local accommodations, since once those involved know that new decision-makers are to be introduced next year they will have every incentive to maintain an unyielding position this summer.

10. The Chief Constable has also however raised the possibility that the **Secretary of State** might have a more direct involvement in extremely contentious parades this summer, where decisions to re-route are likely to trigger disorder throughout Northern Ireland, not simply in the vicinity of the parade. The Secretary of State will of course wish to show **political** leadership on the parades issue over the summer; but in practical terms it could well be invidious for her to become **operationally** involved in the most difficult parades, at what would probably be a late stage, with only the banning power available. However, we in fact believe that the RUC view may be based on a misunderstanding of the current legislative position, which does not in fact constrain the police to have regard only to **local** public order consequences of a parade in setting conditions on it. (Counsel's opinion is being sought on this point for a definitive ruling.)

11. The **Parades Commission** also believes that it should have only an **advisory** role this year, on the grounds that the Commission is at too early a stage of development to take on full adjudicatory responsibilities, and should focus on fleshing out its mediation role, developing contacts in the community and working out how it might actually exercise adjudicatory powers (which involve a number of difficult issues). The Chairman has suggested that an early statement should be made by the new Government indicating that fuller powers **would** definitely be provided for the Commission for the 1998 marching season (although one or two members of the Commission may have some reservations about this). The Chairman also believes that as an **interim** measure for this year, the **Secretary of State** should take the lead on parades - although the Commission has not formed a clear view on whether this should occur against the background of the **existing** 1987 Public Order Order (which would mean that the Secretary of State could only ban, not set conditions on, parades); or whether rapid legislation should be enacted to transfer the "condition-setting" powers in the Order to the Secretary of State. (It is notable that the Commission is still developing its position, and Mr Graham himself has commented that these views have a preliminary character.)

12. The most relevant **polling evidence** on the key question of who should have the decision-making power if local accommodation cannot be reached was carried out by the **North Review**

CONFIDENTIAL

LMcR

232

CONFIDENTIAL

itself (polling: October/November 1996; sample size: 1500) and the **Belfast Telegraph** (polling: March 1997; sample size: 1000). The two polls did not ask exactly comparable questions and do not show consistent results.

Who should decision-maker be?

	<u>North</u>	<u>Belfast Telegraph</u>
RUC	29% [17%C; 36%P]	18% [split not available]
Secretary of State	11% [8%C; 12%P]	[n/a]
Independent Body	49% [65%C; 40%P]	16% [25%C; 9%P]
Courts	6% [4%C; 7%P]	36% [37%C; 36%P]

It may be that the sharp decline in support for the independent body option shows a "before/after" effect: as an abstract proposition this achieves considerable support, but once crystallised in the North Report concern about the possible downside increases.

Discussion

13. Attached at Annex A is an assessment of **six possible** options for the way forward, majoring on workability rather than political impact. In practice, the discussion must focus on the modalities of taking forward the Government's commitment to North. The Secretary of State commented before the election that she recognised that full implementation could not be achieved for this year's marching season; and she therefore favoured giving a firm public **commitment** to implementation at an early date, coupled with the **introduction** of legislation in the first weeks of the new session.

14. This can be accomplished if the Secretary of State's final decision remains on these lines. We have been working on a **Bill** with the Northern Ireland Legislative Counsel (Mr Gray), and

CONFIDENTIAL

LMcR

CONFIDENTIAL

will provide separate advice on this shortly. In practice, there are a number of serious technical difficulties in putting North into statutory form, and it may therefore be impossible to reflect all the recommendations in the Bill. There are also problems in drafting the **Guidelines**, which the North Report envisaged would clarify how the Commission would apply the (expanded) criteria, and would "lead to greater consistency and transparency in decision-making" (para 13.12). In practice, if the Guidelines are to preserve the Commission's discretion to stimulate and endorse local accommodations, they may need to be cast in fairly general terms which will leave sufficient room for manoeuvre on the particular details of local agreements - too much "consistency and transparency" could in practice be highly inimical to local flexibility.

15. We would expect to be able to resolve the drafting difficulties and produce legislation aimed at establishing a system broadly on the lines envisaged by North (although subject of course to legal challenge, particularly on ECHR grounds). However the **workability** of the system in terms of maximising the chances of local settlement is a different matter. North's theme is that its recommendations would optimise the chances of local accommodation, and this view was picked up in the comments by the Secretary of State and the Prime Minister quoted earlier. But, **particularly in the circumstances of this year**, the implementation of North is in fact likely to be **seen as a pro-nationalist move**, and to work **against** the chances of local accommodation, rather than enhance them. It may be worth elaborating this:

- i. The **marching orders** (particularly the Orange Order) are opposed as a matter of **principle** to the North arrangements, arguing that these are simply designed to appease what they see as factitious republican-inspired opposition and to erode their traditional identity. But the **practical** approach of the Orange Order is far less monolithic. The largely moderate leadership, under Robert Saulters, is seeking at a number of levels to stimulate local accommodations, in the face of severe opposition from the Spirit of Drumcree. To give the Commission an adjudicatory role in the face of representations from the responsible Orange leadership would be seen as a severe rebuff to Saulters and his colleagues, and would strengthen the hand of the harder-line factions who want to spurn all attempts at accommodation.
- ii. **Sinn Fein's** efforts to increase the number of controversial parades would be **facilitated** by the implementation of the full North recommendations. Under these, a representation from one MP, or 20 signatories countersigned by 2 Councillors, would be enough to bring a march into the Commission's ambit, thus putting the onus on it to seek a local "accommodation" for many hitherto non-disputed parades. The

CONFIDENTIAL

CONFIDENTIAL

greater the number of parades which Sinn Fein could put into play, the greater the likelihood that the Commission would feel obliged to re-route some at least. This would be the nightmare scenario for the Orange Order, and would be likely in practice to lead to wider confrontation on the streets, and greater rather than less division.

- iii. This scenario would put severe strain on the **RUC**. Security force resources to maintain order this summer are finite, and there is a limit on the force which can be used. Operational success for the security forces will therefore depend crucially on concentrating resources, retaining mobility and outmassing those likely to cause disorder. An adjudicatory Commission which led to more contested parades, and the correspondingly greater likelihood of widespread loyalist counter-action, would inevitably bring a much greater danger of the security forces spreading themselves too thin and losing the initiative. The reversal of Drumcree 96 could therefore be repeated.

- iv. The **Parades Commission** is only gradually establishing contacts with the marching orders, because of their suspicions that it will become simply a vehicle for eroding traditional parades. Those suspicions would greatly increase once it was announced that the Commission **would** be receiving the full North powers, and this would in practice compromise the Commission's moral authority and ability to stimulate mediation. The North Report view that the visible independence of the decision-taker would help to legitimise controversial decisions on parades is in fact somewhat naive in the context of Northern Ireland. The fact is that as soon as controversial decisions start to be taken (which on balance are almost bound to disadvantage the majority community) then the advantages of independence will start to be lost and the Commission will begin to be represented (with the usual hyperbole) as a catspaw of Maryfield.

16. A number of these drawbacks could well be addressed by making modifications to the North proposals implemented by the Bill. The changes could include:

- i. **Dropping the public representation threshold** for involving the Commission formally in a proposed parade. The practical difficulties of such a system, coupled with the opportunity it would give to Sinn Fein to exploit the system, would appear to justify this. In practice, the Commission would be well aware of all genuinely

CONFIDENTIAL

C O N F I D E N T I A L

contentious parades in good time either from the RUC or from its own information and contacts.

- ii. Although North rejected the proposal of the Orders and the UUP that clearly **traditional parades** should be guaranteed a free passage, the Report did recommend that the fact that a parade or route was long-standing should be one of the points the Commission took into account in applying the criteria. It would be valuable, and presentationally of considerable importance, if the **Bill** included some reference to this traditionality element, to give assurance that it would indeed figure in the matrix of relevant factors which the Commission will need as an aid in reaching determinations. (Such a matrix could then support a hierarchical classification of parades, a step suggested by the UUP.)
- iii. The marching orders feel a grievance that while their parades are subject to a notice requirement (now 21 days), there is no such constraint on the **protest meetings** which opponents of a march can organise at very short notice to challenge the parade on the streets, engage the public order criteria and therefore require the police to re-route the parade. North recommended that the Commission should keep under review the possible introduction of a notice regime for protest meetings. There could well be advantage in taking the initiative to include this provision (which would address a perceived inequity in the current arrangements).

17. It would maximize political advantage for these changes to emerge from a measured process of discussion and negotiation with the UUP and the Marching Orders - provided, of course, that the Bill had not been introduced. If a Bill straightforwardly implementing North **were** introduced, this would be likely to provoke a fierce and destabilising reaction, even if the new arrangements were not intended to be operative for this summer. The Government might be accused of rushing to judgement without studying the situation on the ground or heeding the advice of the RUC - with whom, even after the expansion of the criteria, the ultimate duty of maintaining public order would continue to lie. (While the Chief Constable would be unlikely publicly to criticise the decision, he would presumably not voice active support for it.) The danger is that giving an unequivocal commitment to implement the Report as it stands **before** the major events of this marching season might not only precipitate a worse summer on the ground, but also set up the Secretary of State as a convenient scapegoat. It might thus be the worst of both worlds: all the negative unionist reaction once they realised that there was no

C O N F I D E N T I A L

LMcR

236

CONFIDENTIAL

escape from full implementation, but none of the putative benefits which might accrue from actually having the system in operation.

18. Moreover, the **immediate introduction** of a Bill as a sign of commitment, even though Parliament would not consider it until later in the session, would also make it considerably more difficult to fine-tune the legislation to take account of developments over the marching season, or further thinking on some of the technical difficulties. Government amendments could, of course, always be introduced; but then our shifts of position would be publicly calibrated, with attendant political difficulty. The Secretary of State's room for manoeuvre would be greatly reduced. (To take an extreme case, if Ministers eventually saw merit in some radical rearrangement significantly different from the North recommendations (eg the Commission remaining in an advisory and mediating role, but the decision-making function being assumed by a **Tribunal** - an option which attracted support in the Belfast Telegraph poll) then it would be necessary virtually to re-write the entire Bill.) In a very crowded early part of the session the **business managers** might also be unenthusiastic about a Bill which did not in practice need to be implemented this side of Christmas - and on which the Government might conceivably have second thoughts requiring significant amendment in the autumn.

19. The analysis must not of course focus solely on the reaction of the unionist community and the marching orders, (although this is where the initial public order challenge would probably originate). The nationalist dimension is equally important. While many nationalists are resistant to Sinn Fein's attempts to exploit this issue, and would probably accept that it is not feasible to implement North for this summer, they clearly **do** expect a statement of intent by the incoming Government to shape the system in the longer term on the lines suggested by North, in order to give a fuller voice to residents who object to parades. If pressing on with North would alienate unionists, visibly resiling from it would be just as likely to lose the confidence of the nationalist population.

20. The aim must therefore be to find a **middle way**, which would broadly maintain the confidence of both sides of the community while tending to produce a more peaceful marching season this year. Officials believe that there **is** a possible formula on these lines, which would:

- build on the largely undisputed fact that it would be impracticable to attempt to introduce North for this summer;

CONFIDENTIAL

LMcR

237

CONFIDENTIAL

- give full recognition to the Government's commitment to North, with a clear indication of intent to legislate later on in the session;
- make a virtue of the unavoidable delay by undertaking that, when the Bill is introduced in the autumn, it would fully reflect and be influenced by the experience of the rest of this marching season. (Depending on events a range of adjustments could be made to the system, some of which have been noted in para 16 above.)
- provide that **this** year, to address the key deficiency which North identified in the present system (ie the predominance of public order over community considerations in decision-taking), the Commission would take on the role of **advising** the police (with whom the decision-making power would remain) on proposed marches. Its advice (which would be **published**) would be based on all the existing statutory criteria, but with a particular focus on the current under-used one of "serious disruption to the life of the community", which, as North acknowledges (para 12.90) arguably does already permit wider community relations factors to be taken into account. (An advisory role for this summer would not require legislation.)
- the Secretary of State would take a close interest in the conduct of parades this summer. She would **not** however seek to direct the operational functions of the police (to attempt to do so without powers could precipitate a major crisis in Government/security force relations; while to take the powers would be highly controversial and would strip away a bulwark - the operational independence of the police - which all Secretaries of State have valued highly ever since police primacy was introduced by the last Labour Government). Of course, the retention of operational independence by the Chief Constable would not preclude considerable **communication** about what his operational plans actually are. The Security Policy Meeting (SPM) scheduled for 12 May will provide an opportunity for this.

21. The Secretary of State may well feel that the political viability of this strategy would depend significantly on the way in which it is **expressed**. I accordingly attach at **Annex C** a possible draft statement. This could clearly be refined, but it does I believe indicate that the line suggested is sustainable. Its merits are perhaps that:

- **nationalists** (and the **Irish**) would see the continuing commitment to legislation on parades, and a developing role for the Commission;

CONFIDENTIAL

C O N F I D E N T I A L

- **unionists and the marching orders** would see the removal of the immediate threat of full implementation, and the possibility (as they would see it) of a less onerous system eventually being introduced, subject to the events of the summer (which should be an incentive to good behaviour);
- the **RUC** would be grateful that the Secretary of State had to an extent taken their views into account and that the Bill would not have surfaced as a focus of discontent during the marching season; and
- **the Parades Commission** would benefit from the extra time to develop its current functions, without being flung into the deep end this summer, and to formulate more fully its considered views on the long-term role it should play (which will be an important factor in the final decision).

Conclusion

22. **To sum up**

- the handling of the parades issue could have a major effect on the longer-term ability of the Secretary of State to achieve her goals;
- if Ministers wish to proceed immediately to introduce a Bill implementing North, that could be done;
- but to do so might well have a significantly destabilising effect this summer and make it more difficult to produce workable arrangements in the long run;
- officials believe that a middle way, which would be politically viable with both unionist and nationalists and would help to produce a more peaceful summer, is available. This would involve a continuing broad commitment to North, an advisory role for the Commission this summer, an undertaking to legislate later on in the session taking account of experience during this marching season, and a high profile role, but no absorption of operational responsibility (apart from that already delineated in the current statutory arrangements (ie the banning power)), for the Secretary of State;

C O N F I D E N T I A L

CONFIDENTIAL

- at operational level, full discussion of what is planned for the summer with the security forces, while leaving operational **decisions** strictly to the Chief Constable.

23. The Secretary of State is **invited** to agree that the "middle way" option is preferable to the immediate introduction of a Bill. Whichever decision is taken, the Government will wish to mention its intention to legislate in this area in the forthcoming Queen's Speech (a Public Order (NI) Bill will, as an absolute minimum, be necessary to put the "housekeeping" arrangements for the Commission on an appropriate statutory basis). The debate on the Queen's Speech, beginning 14 May, will provide an opportunity fully to set out the Government's position.

[signed S J Leach]

S J LEACH
Ext: 27012

CONFIDENTIAL

LMcR

240

PARADES REVIEW: OPTIONS PAPER

1. This paper examines the main policy options for the way forward on parades, drawing out in each case the perceived advantages and disadvantages. It focuses particularly on how the options will work in the longer term.
2. Six main options have been identified; these are:
 - full implementation of North;
 - do nothing, ie restrict the Parades Commission's role to its existing remit;
 - an advisory body, with the statutory remit to advise the police/Secretary of State;
 - a decision-making body but with limited powers;
 - restriction of the Commission's role to its existing remit, giving power of determination on parades to a Tribunal; and
 - all decisions which involve re-routing or banning of parades to be taken by the Secretary of State, with advice from the police and the Parades Commission.

FULL IMPLEMENTATION OF NORTH

3. Under this option decisions on parades would, in addition to the existing criteria, also take into account the 'wider impact on relationships within the community'; and such decisions would rest with the Parades Commission rather than the RUC. A Commission determination could be overturned by the Secretary of State, but only on appeal by the Chief Constable and, on the day, a senior police officer could overrule a Commission determination on grounds of public order.

4. Advantages

- (a) The RUC would be removed from the decision-making function on parades, thereby shedding a role which last year damaged its reputation for impartiality and even-handedness, particularly among Nationalists.
- (b) The law would enable the genuine concerns of many in Nationalist areas about the impact of contentious parades on their communities to be taken into account, thus redressing the tendency hitherto to focus on the public order criteria.
- (c) This adjustment to the arrangements would enable Government to demonstrate its commitment to the concept of "parity of esteem" between the two communities.
- (d) The Commission would provide a central focus for interested parties to work towards mutual understanding and local accommodation.

CONFIDENTIAL

- (e) The Commission's power, when making decisions on parades, to take into account past behaviour by marchers and protesters, and the new offence of defying the Commission could provide an effective counterweight to the incentive to disorder in the existing legislation.
- (f) The Commission's powers to make determinations taking account of more than one parade, in more than one area, would enable wider "deals" to be done, thereby avoiding a straightforward win/lose outcome on individual parades.

5. Disadvantages

- (a) The introduction of restrictions to the freedom of assembly not based on public order would represent a significant break with past practice in the United Kingdom and would have no precedent in any other jurisdiction, including those with similar problems of contested parades.
- (b) There would, therefore, be significant potential for challenges on ECHR grounds. Counsel's advice is that, provided that the Commission does not make perverse judgements, Strasbourg would be reluctant to attack head on legislation seen as a key political priority and in the wider good. Were ECHR to be incorporated, English courts may take a more legalistic approach, increasing the risk of successful challenge. The Secretary of State has no power to review the Commission's decisions on his or her own account if they look vulnerable under ECHR.
- (c) The new criterion of the 'wider impact on the relationships within the community' is vague. Decisions will therefore need to be based on 'guidelines' setting out the factors to be taken into account. A strict checklist of factors and a mechanistic decision making process would not enable the body to take account of all the circumstances on the ground. There will therefore need to be considerable scope for the Commission to exercise judgement on the relative weight it attaches to the factors in particular cases.
- (d) This gives the Commission sweeping powers. Many of the factors identified by North require an essentially subjective judgement on facts which will be interpreted in diametrically opposed ways. There is therefore a risk that decisions could appear to be inconsistent, either with past determinations or with parallel decisions on other parades, although the Report cites a fundamental principle that 'the structure .. and .. process should be clear and applied consistently with as much openness as possible'. Real or apparent inconsistencies may be interpreted as signs of bias or manipulation, thus damaging the body's credibility.
- (e) Suspicion of the body's role is already strong. Representatives of the marching orders could be much more reluctant to engage with a decision making commission than with the police. This would damage the prospects for facilitating local agreement.

CONFIDENTIAL

LMcR

242

CONFIDENTIAL

- (f) The report's long term credibility depends on it being able to overcome incentives to violence. The proposed new offence in North to deal with this only in fact tackles threats of violence by marchers and their supporters not by protesters. Securing convictions will anyway be difficult, so it may not constitute a strong deterrent.

CONFIDENTIAL

LMcR

243

CONFIDENTIAL

- (g) The other tools at the commission's disposal is the power to take past behaviour into account in making future determinations. In practice, this could require the will to block parades or force extra parades through as a punishment for past misbehaviour by marchers or protesters respectively. But if overwhelming force has succeeded in the past, this may seem an empty threat.
- (h) If the commission is unable to impose its will in circumstances of mass defiance, the return of public order as the main criterion would reverse any confidence gains among Nationalists and possibly leave us worse off in this respect than we were before.

'DO NOTHING' OPTION

6. Under this option, the Commission would be restricted to its existing remit of education and encouraging mediation and conciliation. It would have no powers to make decisions on parades, which would continue to rest with the police.

Advantages

- (a) Those elements in the Loyal Orders who wish to avoid confrontation would be more likely to engage with a Commission which did not have decision-making powers. This could facilitate discussion and negotiation and be more likely to lead to local accommodation and agreement which, by common consent, would be the best resolution of the issue of contentious parades.
- (b) This option would recognise what is, arguably, the reality that, in the Northern Ireland context, where local accommodation cannot be reached decisions on contentious parades will inevitably have to be taken on public order grounds; and that the police are best placed to make public order judgements.

Disadvantages

- (a) The cumulative experience of Drumcree in 1995 and 1996 demonstrates the weakness of the current legislation. The existing statutory criteria provide both an incentive to cause trouble to stop unwelcome parades, and a parallel incentive to cause trouble to get any restrictions imposed overturned by "outbidding" the protesters' threat. Order was preserved up to 1995 partly by allowing marches to go ahead while reducing their numbers. This option is no longer available on the Garvaghy Road or Ormeau Road, where the choice is now starkly between walking or not walking. However well the existing system may have worked up to 1995, the lesson that threats pay has been learned, and will not be unlearned.

ADVISORY BODY

7. Under this option the power to impose conditions on parades or to ban parades would continue to rest with the RUC and Secretary of State respectively. However, the Parades

CONFIDENTIAL

LMcR

244

CONFIDENTIAL

Commission would be given the statutory role of offering advice to the appropriate decision-making authority of the Commission's view of the applicability, in any particular case, of the existing statutory criteria (in particular the criterion of "serious disruption to the life of the community"). In reaching decisions on parades, the RUC or the Secretary of State, as the case may be, would be required to take account of any advice offered by the Parades Commission, which would be published. However, they would not, of course, necessarily have to act on this advice; decisions would be taken on the basis of all the statutory criteria.

8. Advantages

- (a) The fact that the Commission's powers would be advisory only would be more likely to encourage Unionist interests to engage with the Commission than would otherwise be the case if it had the powers of determination.
- (b) Giving advice on the criterion of "serious disruption to the life of the community" would arguably enable the wider community aspects to be taken more satisfactorily into account when decisions are being taken. This would go some way towards meeting one of the main points of the North analysis, ie that the current statutory criteria have been applied in such a way that public order considerations predominate.
- (c) The fact that the Commission's advice would be published would enhance its profile and credibility and would create a useful institutional incentive for it and the RUC to seek to reach a common position, to avoid being seen to diverge in public.

9. Disadvantages

- (a) This option shares some of the disadvantages of the "Do Nothing" option in that the structural incentive to cause trouble remains.
- (b) There is a danger that, despite having received advice from the Commission about the applicability, in a particular case, of the criterion of "serious disruption to the life of the community", the RUC may continue to take their decisions purely on a public order basis, which would rather defeat the objective of the exercise and cause considerable frustration among the membership of the Commission and in the wider community. (But the RUC recognise the dangers of doing this.)

DECISION MAKING BODY WITH LIMITED POWERS

10. Under this option, the Commission would be established as a decision-making body but it would be restricted to determining conditions to be attached to a parade, for example in relation to numbers, behaviour, etc. However, it would have no power to re-route; this would remain with the police. The Commission would make its decisions taking account not only the existing criteria but also the proposed new criterion of the impact on relationships within the community. In practice, the Commission would seek the views of the parade organisers and

CONFIDENTIAL

CONFIDENTIAL

residents and then set binding conditions designed to avoid provocative conduct, offence and behaviour likely to cause fear to local residents.

CONFIDENTIAL

LMcR

246

CONFIDENTIAL

11. Advantages

- (a) This approach would recognise both the right to march as well as the key Nationalist demand for their concerns about parades to be recognised and acted on.
- (b) It would recognise the suggestion in the North Report that consultation, recognition and even-handedness are higher demands than re-routing, with fewer than 50% of Catholics insisting on banning or re-routing even for parades in areas where the population was 100% of the opposite tradition to that organising the parade.
- (c) As a consequence, this approach might find support from within moderate elements across the community and help to isolate extremists on both sides, exerting moral and political pressure towards compromise.

12. Disadvantages

- (a) There is a danger that this approach might mean the worst of both worlds. The marching orders would be confronted with a decision-making body, which they have undertaken to oppose, which, although it would have no power to re-route, could effectively impose quite restrictive conditions on parades which the marching orders would find unacceptable.
- (b) On the other hand, Nationalists might consider that Commission's powers to impose conditions but not to re-route as simply "window dressing", recognising that the real decisions will continue to be made by the RUC.

13. A variant on this option might be considered, drawing on the lessons of the Goldstone Report in South Africa which was commissioned against the background of severe intercommunal violence. The Report was unequivocal on the treatment of contested marches; it took the line that "to allow hostile parties to prevent a demonstration by threatening violence is to give them the very freedom to foreclose a fundamental democratic right which the State must deny itself ... We do not believe there is any distinction to be drawn in this regard in terms of whether the demonstrators intend to provoke their opponents by their peaceful demonstration. This is too difficult a matter to determine, and too easy a conclusion to manipulate; it should make no difference. Nor should it make a difference that demonstrators want to march through a "hostile" area. Speaking to those hostile to them is part of the democratic rights of citizens".

14. Under the variant, there would be a strong affirmation of the right to march for both sides with power for the Commission to impose conditions to avoid provocative or intimidatory behaviour. In practice, the police would be required to take legal marches through unless faced with a direct threat to life. This would apply of course not only to Orange marches, but to Nationalist parades in town centres or even in Protestant areas.

15. The advantage of this variant is that it would provide a genuinely even-handed treatment of parades organised by both sides of the community, while still through prior discussions with

CONFIDENTIAL

LMcR

247

CONFIDENTIAL

the commission giving local communities the right to express their concerns. In the longer term it has the potential to provide the stability and consistency which are lacking at the moment.

16. However, there would be considerable difficulty in implementing such an arrangement in the short term. There would probably be a major increase in the number of contested parades, with both sides testing the new approach limits. Severe violence could follow, particularly as Sinn Fein could attempt to march in Loyalist areas in order either to provoke trouble or demonstrate the one-sidedness of the new approach by forcing a re-routing on public order grounds. Many Nationalists would see the outcome as a defeat, while Unionists would be outraged at the prospect of Nationalist or still worse Republican marches enjoying the same treatment as traditional marches.

17. In addition, the police may well object to an approach which fettered their discretion and exposed them to a greater threat of civil disorder at the same time as a renewed terrorist campaign.

RESTRICT THE COMMISSION'S ROLE TO ITS EXISTING REMIT, GIVING POWERS OF DETERMINATION TO A LEGAL TRIBUNAL

18. Under this option the Commission would continue to exercise its existing remit of education and encouraging mediation and conciliation but would have no powers to make decisions on parades. Instead, these decisions would be vested in a separate Tribunal which might be judicially-based. In making decisions, the Tribunal would have regard to the existing criteria and to North's proposed additional criterion of the wider impact on relationships within the community. The Tribunal would take such evidence as it considered appropriate but in particular would have the advice of the Parades Commission and the RUC.

19. Advantages

- (a) This option would avoid an often noted conflict of interest between the mediation and adjudicatory powers of the Commission.
- (b) A decision taken by a judicially-based Tribunal might be more likely to command respect as being fair and even-handed, more so that a similar decision taken either by the Parades Commission or by the RUC.

20. Disadvantages

The main difficulty with this option would be that, in order for its decisions to have greater credibility than the Parades Commission, it would need to be judicially based and it is likely that the judiciary would be extremely reluctant to participate in such a body. In addition, while a Tribunal might be more acceptable to the marching orders than the Parades Commission, there is considerable opposition within those orders to any form of body having powers to make determinations on their parades. If this opposition were to manifest itself in mass defiance of the Tribunal's decisions, then many of the

CONFIDENTIAL

CONFIDENTIAL

disadvantages identified above in relation to the full implementation of North would apply here also.

DECISIONS TO BE TAKEN BY SECRETARY OF STATE, ON ADVICE FROM POLICE AND PARADES COMMISSION

21. Under this option the Secretary of State would assume responsibility for all decisions which involved either the re-routing or banning of parades. In making these decisions the Secretary of State would have the benefit of advice from both the Parades Commission and the RUC.

22. Advantages

- (a) As with the full implementation option, the RUC would be removed from the decision-making role on parades, thereby providing the potential for repairing the damage to its reputation for impartiality and even-handedness.
- (b) If, when making his decisions, the Secretary of State was required, in addition to the existing criteria, to take into account North's proposed additional criterion of the impact of the parade on relationships within the community, this could go some way towards meeting Nationalist concerns.

23. Disadvantages

This would represent a major burden on the Secretary of State's perceived impartiality and credibility continually on the line. Every decision would be seen as a head to head test of strength on the two communities' respective political clout. If the Secretary of State's decisions are successfully defied, many will argue the last line of defence has failed, and Northern Ireland has become ungovernable. In addition, polls have shown consistently a desire for the political overtones to be removed from this issue - in North's own survey, giving the final decision on parades to the Secretary of State was one of the least popular options.

CONFIDENTIAL

LMcR

249

CONSULTATION EXERCISE: OUTCOME

1. The consultation exercise, which ran from the end of January to the end of March 1997, produced 131 written submissions, with 22 meetings at which various parties responded to the North report.
2. Of the written submissions, 59 were sent in by various organisations (including Orange Lodges) and 72 by individuals. Eighty-one were against the implementation of North's recommendations (especially that the Commission should have adjudicatory powers) and 32 were broadly supportive of implementation. The remainder either expressed no opinion on this issue or did not come down firmly either way. Of the 81 against North, 42 are identical in wording and some are merely photocopied and signed.
3. Those submissions opposing a Parades Commission pursue very similar arguments, whether from Unionist parties, marching orders or individuals. They argue that there is a right to march, inferred from ECHR and ICCPR, and believe that their civil, human and religious rights are infringed by any attempt to restrict parades. At the same time, several, like the UUP, propose a "categorisation" of parades which would effectively underwrite only traditional parades.
4. There has been a passionate outcry against the setting up of a Parades Commission from the marching orders. They emphasise that parades are to them an expression of their traditions, culture, history and religious beliefs and see any attempt to regulate parades as an attack on Protestant culture. They are angry and frustrated that this "attack" is coming from the Government. They believe its agenda is to appease militant Nationalism by setting up the Parades Commission, but stress that residents' groups, which are simply fronts for Sinn Fein, will always come back for more. The submissions are against the creation of no-go areas and residents' veto on parades.
5. Other criticisms include the accusation that the Parades Commission itself is biased towards Nationalists - many point out that there is a prominent SDLP member on the membership and are unhappy that there are no Unionist politicians on board. They also argue that the mediation and adjudication roles are incompatible and that the Commission would be unelected and unaccountable. The marching orders claim to be implacably opposed to a commission with decision-making powers.
6. The response from those favouring a Parades Commission with decision-making powers has been less unanimous. Some give unqualified support for North's recommendations and seek immediate and full implementation. Many of those come from church groups and other from the centre ground. However, most fall into a "something must be done"

CONFIDENTIAL

attitude and see a Parades Commission as the only available, if flawed, option. There has been relatively little attempt to analyse the Report's recommendations in themselves. Rather, implementation is seen as a test of the Government's commitment to avoiding a repeat of last year's unrest.

7. There have been relatively few responses from the mainstream Nationalist community. The SDLP came out in favour of full implementation (and suggested the creation of "group offences" in a stand-off situation, avoiding the need for individual prosecutions). Nationalist submissions stress feelings of intimidation, oppression and humiliation provoked by the perceived triumphalism of Loyal Order parades. Some seek a total ban on all parades, but most would prefer that they be routed out of Catholic areas. Characteristic are calls for "reduced quantity and improved quality" of parades.
8. Those who are in favour of a Parades Commission argue the necessity of an independent commission to take decisions as the RUC are not seen as impartial by Nationalists, some pointing out the number of police officers who are members of the Orange Order. Most believe that the Parades Commission should have an adjudicatory role and that their decisions should not be subject to reversal.
9. Summaries of each submission are available from the Parades Review Project Team.

CONFIDENTIAL

POSSIBLE DRAFT STATEMENT ON PARADES

- The Labour Government is committed to helping facilitate local agreement on contested parades, through a real statutory role for the Parades Commission which reflects the analysis in the North Report.
- I know well how divisive the parades issue is. During my time as shadow Northern Ireland Secretary, I made it my business to speak to a wide range of people, of varying shades of political opinion, right across Northern Ireland; and was struck by the depth of their sincerely held convictions on this question.
- Many in the Marching Orders and the wider community see the freedom to parade peacefully as going to the core of their identity and culture; whereas many Nationalists see parades through their areas as triumphalist and threatening.
- This Government's priority will be to work to ensure that we do not see again the very serious public disorder which we witnessed throughout Northern Ireland in the summer of last year, leading to loss of life, immense disruption and the destruction of property.
- When the Report of the Independent Review of Parades and Marches was published in January, I welcomed it as a genuine attempt to bring a degree of fresh thinking to this controversial area; in particular its central recommendation that a more structured and broadly-based system was needed to encourage the local accommodation of differences about parades.

CONFIDENTIAL

- Now that we have come into Government, I have considered very carefully what immediate steps might be taken. One important principle is that, in legislating to provide a statutory role for the Commission, I am convinced that it would **not** be appropriate to proceed by way of an unamendable Order in Council. Given the sensitivity and significance of the issues involved, any legislation should be by way of **Bill**, to enable our proposals to be subject to the fullest possible scrutiny by Parliament.

- The last Government had the opportunity to legislate by Bill after North reported at the end of January. I offered the fullest co-operation of the Labour Party in achieving the legislative timetable necessary to bring new arrangements into operation for this summer. But that offer was not taken up, and the chance has gone. It would not now be possible, as a practical proposition, to legislate on these complex matters when the Marching Season is already under way. The Chairman of the Parades Commission shares this view.

- Since delay is unavoidable, I intend that we should turn it to our advantage by ensuring that, when legislation **is** introduced later this year, it will benefit fully from the experience of this marching season, as reflected in any enhancements or adjustments which it may be possible to make to the scheme to optimise the new arrangements for parades.

- I shall also myself be having a wide range of discussions on these issues with elected representatives, the RUC, the marching orders, representatives of communities affected by contentious parades, and of course the Parades Commission.

- That is the way ahead for the future. But should we proceed **this** year with broadly the same arrangements as last? I believe not. I believe that the **Parades Commission**, from its special perspective, can make a **real contribution** in **advising** the police (with whom the powers of decision will remain this summer) and indeed the Secretary of State, on proposed marches, focusing on the wider community aspects as reflected in the existing statutory criterion of "serious disruption to the life of the community". This, I feel, will

CONFIDENTIAL

CONFIDENTIAL

go some way to addressing the major shortcomings which North perceived in the current arrangements.

- I am pleased that the Commission had agreed to take on this added responsibility. It is a major development. The Commission will be able to advise **at its discretion**. And the formal advice it offers, whether to the police or the Secretary of State, will be **published**.

- For my part, I am personally committed to doing everything I can to ensure that we do not this summer witness a repeat of the appalling events of last year. I am convinced that the best way of making progress is through discussions and negotiations at local level. I encourage all who are working to achieve accommodation to redouble their efforts. They have the full support not only of the Government but also, I am sure, of the vast majority of people throughout Northern Ireland.

CONFIDENTIAL

LMcR

254