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ANNEX B

PROPOSAL FOR A DRAFT ORDER IN COUNCIL

PUBLIC ORDER

EXPLANATORY DOCUMENT

Comments on the proposal should be sent to the address below
before 29 November 1986.

The Secretary
Law and Order Division
Northern Ireland Office
Stormont House Annexe
BELFAST
BT4 3ST

October 1986

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PART I

BACKGROUND AND SCOPE

INTRODUCTION

1. The draft Order would amend and consolidate public order legislation in Northern Ireland at present contained in the Public Order (NI) Order 1981 (1981 No 609 (NI 17)) and part of section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 (1968 Ch 28 (NI)); and repeal the Flags and Emblems (Display) Act (NI) 1954 (1954 Ch 10 (NI)).

REASONS FOR CHANGE

2. The Government has been reviewing public order legislation in Northern Ireland in the light of events in the Province and of the Public Order Bill currently before Parliament. The Government believes that it is right that the principles underlying public order legislation should be the same throughout the United Kingdom, although local circumstances require different specific provisions in Northern Ireland.

Control of processions and open-air public meetings

3. Public processions in Northern Ireland attract large numbers of participants. The great majority of such occasions are peaceful and unprovocative. Some however contain great potential for disorder, or are conducted in a way which is intended to intimidate other sections of the community. The proposed changes are intended both to bring the law more closely into line with the provisions of the Public Order Bill and to strengthen the ability of the police to deal with potentially troublesome processions and open-air meetings.

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Incitement to hatred

4. The legislation against incitement to hatred has proved to be ineffective both in Northern Ireland and in Great Britain. The Public Order Bill would strengthen the law in Great Britain against incitement to racial hatred, and the draft Order would bring the law on incitement to racial or religious hatred in Northern Ireland into line with the provisions of the Bill.

Flags and Emblems (Display) Act (NI) 1954

5. This Act makes it an offence to prevent or threaten to interfere by force with the display of the Union flag on lawfully occupied premises. It also empowers a police officer to require the removal of any emblem other than the Union flag if he believes its display may cause a breach of the peace, and authorises him to enter premises to remove such an emblem if necessary. The Act does not, as is widely believed, make the flying of the Irish tricolour illegal in Northern Ireland. The Act has not been used for many years. It is not necessary for public order purposes. The police will retain adequate powers to deal with potential breaches of the peace, and those who wish to fly the Union flag on their own premises do not need the Act to protect them from interference by other sections of the public. The Act has been criticised in the past by, among others, the Standing Advisory Commission on Human Rights, as discriminatory and offensive to some sections of the public in Northern Ireland. The Government believes that the time has come for its repeal.

PRINCIPAL CHANGES

Processions and open-air meetings

6. The Order increases the length of advance notice to be given of a public procession and adds to the matters to be notified. It widens the grounds on which the police may impose conditions on public processions to match those in the Public

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Order Bill. It widens the grounds on which the Secretary of State may prohibit the holding of processions and open-air meetings. The Order also introduces a power for the police to impose conditions on open-air public meetings.

7. The Order would also end the exemption in the 1981 Order of processions customarily held along a particular route, and of processions organised by trades unions, from the requirement to give notice.

Incitement to hatred

8. The Order strengthens the law on incitement to hatred by making the various actions (publication or distribution of threatening, abusive or insulting material; possession of such material with a view to publication or distribution; use of threatening, abusive or insulting words or gestures) offences not only if it is intended to stir up hatred or arouse fear on racial or religious grounds, but also if in the circumstances such hatred or fear is likely to be stirred up or aroused.

Other public order offences

9. The Order re-enacts with amendments the offences in Articles 5 to 12 of the Public Order (NI) Order 1981 and increases the penalties for certain of these offences.

Other changes.

10. The Order would consolidate the public order offences in section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 with the main body of public order legislation.

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PART II

PROVISIONS OF THE DRAFT ORDER

Title and commencement

11. Article 1 sets out the title of the Order and provides that it shall come into operation one month after being made.

Interpretation

12. Article 2 deals with the interpretation of expressions used in the Order.

PROCESSIONS AND MEETINGS

Advance notice of public processions

13. Article 3 requires written notice of any proposed public procession (other than a funeral procession) to be left at the police station nearest to the proposed starting place, not less than 7 days in advance, and sets out the particulars to be given in the notice. It makes it an offence to organise or take part in public processions in respect of which notice has not been given, or which are held on a date, at a time or along a route different from that in the notice. The Article provides for defences to those charges and prescribes penalties.

Imposing conditions on public processions and open-air public meetings

14. Article 4 empowers a senior police officer (ie an inspector or above of the Royal Ulster Constabulary in the case of processions or meetings in progress, or a superintendent or above in the case of proposed processions or meetings) to impose conditions on the organisers and participants if he reasonably believes that the procession or meeting may result in serious public disorder, serious damage to property, serious disruption to the life of the community or that the purpose of the organisers is to intimidate other people. The Article

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makes it an offence knowingly to fail to comply with such conditions unless the failure arises from circumstances beyond the person's control, and prescribes penalties.

Prohibiting public processions and open-air public meetings

15. Article 5 provides for the Secretary of State to make an order prohibiting the holding of public processions or open-air public meetings if he is of the opinion that the powers of the Royal Ulster Constabulary to impose conditions will not be sufficient to prevent serious public disorder, serious damage to property, serious disruption to the life of the community or intimidation, or that the holding of any procession or public meeting in any area is likely to cause serious disorder or disruption or to place undue demands on the security forces. He may either prohibit all processions or meetings (or specified classes) in an area for up to 3 months or permit the holding of one procession or meeting and prohibit all others for up to one month. If practicable, the Secretary of State is required consult a committee of the Police Authority before making a prohibition order, but the order is not invalid if the committee are not consulted. The Article makes it an offence to organise or participate in a prohibited procession or open-air meeting, and penalties are prescribed.

Taking part in a public procession as a member of an unregistered band

16. Article 6 re-enacts Article 5 of the 1981 Order: it allows the Secretary of State to make an order requiring the registration of bands. Such an order may provide for registration to be subject to conditions. It would be an offence to take part in a public procession as a member of a band which should be registered but is not; or to fail to comply with a condition of registration.

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Endeavours to break up public processions or meetings

17. Article 7 substantially re-enacts Articles 7 and 10 of the 1981 Order, and makes it an offence to attempt to prevent or hinder any lawful public procession or to prevent the transaction of the business of a lawful public meeting. Penalties are provided. This Article does not apply to election meetings.

STIRRING UP HATRED AGAINST, OR AROUSING FEAR OF, A SECTION OF THE PUBLIC

Publishing or distributing inflammatory matter to stir up hatred or arouse fear

18. Article 8(1) makes it an offence to publish or distribute written or other matter which is threatening, abusive or insulting with intent to stir up hatred or arouse fear on the grounds of religious belief, colour, race or ethnic or national origins, or where in the circumstances such hatred or fear is likely to be aroused.

Article 8(2) make it an offence to possess such matter with a view to publication or distribution where hatred or fear is intended or likely to be aroused.

Articles 8(3) and (4) exempt fair and accurate reports of proceedings in courts, tribunals, Parliament or the Assembly.

Articles 8(5) and (6) provide for a defence and for penalties.

Articles 8(7) and (8) empower a resident magistrate to issue a warrant to enter premises to search for and seize such written or other matter, and for a constable to use reasonable force if necessary in pursuance of a warrant.

Article 8(9) defines expressions used in the Article.

Use of inflammatory words or gestures to stir up hatred or arouse fear

19. Article 9 makes it an offence to use threatening, abusive or insulting words or gestures intended or likely to stir up hatred or arouse fear. Defences and penalties are provided.

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MISCELLANEOUS PUBLIC ORDER OFFENCES

Riotous, disorderly or indecent behaviour in public places

20. Article 10 re-enacts the offence in section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 of using riotous, disorderly or indecent behaviour, or behaviour likely to cause a breach of the peace, in a public place; and provides penalties.

Provocative conduct in public place or at public meeting or procession

21. Article 11 re-enacts the offences contained in Article 6 of the Public Order (NI) Order 1981.

Obstructive sitting etc in a public place

22. Article 12 re-enacts the provisions of Article 8 of the 1981 Order.

Wearing of uniform in public place or at public meeting

23. Article 13 re-enacts the provision of Article 11 of the 1981 Order.

Carrying of offensive weapon in a public place

24. Article 14 re-enacts the provisions of Article 12 of the 1981 Order with minor amendments.

Offences in relation to public buildings and activities therein

25. Article 15 substantially re-enacts Article 9 of the 1981 Order, which makes it an offence to trespass in a public building (as defined in Article 15(6), (7) and (8)), to refuse to leave a public building if directed to do so by an authorised person, or knowingly to interfere with the carrying on of any lawful activity in a public building. It empowers a constable to remove a person committing an offence under the Article from a public building if so requested.

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GENERAL PROVISIONS RELATING TO OFFENCES

Powers of arrest

26. Article 16 deals with powers of arrest for offences under the Order, and powers to require persons to give their name and address in connection with certain offences under the Order.

Consent to prosecution

27. Article 17 requires the consent of the Attorney General for the institution of prosecutions for certain offences under the Order.

Forfeiture

28. Article 18 empowers a court convicting of certain offences to order the forfeiture, destruction or disposal of certain articles, and makes incidental provisions.

REPEAL OF FLAGS AND EMBLEMS (DISPLAY) ACT (NI) 1954

29. Article 19 repeals the Act.

SUPPLEMENTARY

30. Article 20 contains supplementary and transitional provisions and repeals.

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PART III

FINANCIAL AND STAFFING IMPLICATIONS

31. The Order is not expected to result in any increase or savings in public service expenditure or manpower.

COMPARISON WITH THE LAW IN ENGLAND AND WALES

32. In England and Wales Part II of the Public Order Bill makes provisions similar in principle to those in Articles 3, 4 and 5 of the draft Order, although the requirements on organisers in the draft Order are more extensive than those in the Bill; the Secretary of State's power to prohibit processions is exercisable on wider grounds than the powers in England and Wales; the Order makes participants, as well as organisers, of illegal marches guilty of an offence; and penalties in the Order are higher than those in the Bill. Part III of the Bill contains provisions similar to Articles 8 and 9 of the draft Order, although the Order covers religious as well as racial hatred. The Bill is subject to amendment, and any changes will be taken into account in the draft Order.

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