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ANNEX C

DRAFT CONSULTATIVE PAPER: INDEPENDENT TRIBUNAL ON MARCHES

Introduction

1. The purpose this discussion document is to set out the pros and cons of the suggestion that there should be an independent tribunal which should have a role to play in the taking of decisions on the re-routing or banning of contentious marches; to examine both the arguments in favour of such a tribunal and the practical difficulties which would be entailed; and to invite comments and, especially, practicable suggestions and alternative models for how such a body might work.

The legal background

2. The powers to control public processions in Northern Ireland are contained in the Public Order (NI) Order 1981 [S.I. 1981 No. 609 (N.I. 17)]. Broadly, this provides -

- a requirement that organisers of processions (with certain exceptions) should give written notice to the RUC of their intended route;
- powers for the police to impose conditions (including re-routing) on processions if there are reasonable grounds to believe that the procession may result in public disorder;

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- a power for the Secretary of State to make an order banning the holding of processions and open-air public meetings if the police powers are not adequate to prevent public disorder.

3. A Proposal for a draft Order-in-Council to replace the Public Order (NI) Order 1981 has been published; while certain changes of detail are proposed, the broad framework of powers set out above remains unchanged.

4. The framework of control in England and Wales under the Public Order Act 1936 (which will be largely re-enacted by the Public Order Bill presently before Parliament) is rather different. The power to impose conditions on processions rests with the police, but if those powers are not believed to be sufficient to prevent serious public disorder the chief officer of police is required to apply to the district council for an order prohibiting the holding of processions; the council require the consent of the Home Secretary for the making of such an order.

### The background and problem

5. The holding of parades is a long-standing tradition in Northern Ireland. Most parades have the potential to be colourful enjoyable and peaceful occasions which cause no direct offence to anyone, and most do in fact pass off without giving rise to any public order problems. In most cases, the police are able to rely on the good sense and co-operation of organisers, marchers and local residents. For example, during

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1985 there were 1897 loyalist and 223 republican parades. On only 22 occasions was it necessary for the RUC to impose conditions, and in only 3 cases did the Secretary of State prohibit the holding of parades.

6. However, in recent years some parades have become the occasions for displays of provocative and sectarian behaviour. Some march organisers have claimed that they have an inalienable right to parade anywhere, even in areas where it is clear that the local inhabitants do not welcome their presence. Some marchers and bands have behaved in a manner which demeans, provokes and insults the local inhabitants. There has also been an increasing tendency for the more irresponsible bands to travel widely to parades throughout the province, accompanied by a rowdy element who are prepared for violent confrontation with local residents or the police.

7. The police are placed in a very difficult position by such parades. Whether they attempt to police a parade through a hostile area, or use their powers to prevent a parade using a route which is likely to result in public disorder, they are drawn into confrontation with one or other side of the community and are often accused by politicians and others of political or sectarian bias.

8. Although such allegations of bias are totally without foundation, the fact that the police have direct responsibility for decisions which are particularly contentious and arouse

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such strong feelings on both sides of the community may lead to a public perception of partiality, which undermines the credibility of the police.

9. Against this background, it has been suggested that there should be an independent element in the taking of decisions on parades. For example, the Chief Constable in his 1985 Annual Report said:

"While the police will always be responsible for the actual enforcement of the law in public order situations on the streets, it may perhaps be worth considering if responsibility for decisions on the holding and routing of parades should rest with an independent public tribunal".

10. This suggestion attracted much attention in the press, and appears to have attracted a considerable degree of support. However, the practical difficulties inherent in the idea were not addressed. The Government therefore considers that the suggestion should be opened up for discussion with a view to finding whether a workable model for a tribunal can be devised.

11. This paper therefore poses a number of questions relating to the concept of a tribunal, which are set out below.

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Q1. Would an independent tribunal really help to remove the RUC from the area of political controversy?

If a tribunal were created, responsibility for actually policing processions would still rest with the RUC. The belief that a tribunal would enhance confidence in the impartiality of the police rests on an assumption that the public will perceive a clear distinction between the making of decisions and the enforcement of those decisions. In the highly charged atmosphere of Northern Ireland, this assumption seems to be questionable.

Q2. Would a tribunal really be able to make independent decisions?

The risk of public disorder posed by a procession will depend not only on the factors such as the route or the attitudes of marchers and of residents, but also on the availability of police resources for controlling the procession. Similarly, the feasibility of any conditions which might be imposed will depend primarily on the possibility of deploying police resources to enforce these conditions. These are vital elements of the decision making process on which only the police are able to form operational judgements. A tribunal will therefore be in the position of having to accept police advice or giving directions which the police might be unable to enforce. Either way, the credibility of the tribunal would be undermined.

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Q3. Should the tribunal have the power to impose bans on parades?

The Secretary of State is at present responsible for decisions to prohibit parades, and is accountable to Parliament for the exercise of his powers. Any transfer of the powers to a tribunal would appear to be a reduction in accountability. There is already provision for an element of consultation: under schedule 1 of the Police Act (NI) 1970 the Secretary of State is required where practicable to consult a committee of the Police Authority before making a banning order. There may be scope for this advisory role to be vested in some other body, but the Government believes that the final decision on bans in Northern Ireland should rest with the Secretary of State, in the same way as it rests with the relevant Secretary of State in Great Britain.

Q4. Who would form the tribunal?

It would be necessary to find members who were accepted as impartial and independent not just by moderate, reasonable opinion but by the more extreme elements on both sides of the community. Unless this difficulty could be overcome, political controversy would probably be heightened rather than reduced.

Q5. Should the judiciary be involved?

It has been suggested that the tribunal might be chaired by a

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judge. While the involvement of the judiciary might convey an appropriate assurance that the tribunal would be impartial, it seems unlikely that the tribunal would have any judicial function: issues to be decided would be essentially operational and political, rather than legal in character.

Q6. Should intended processions be notified to the tribunal or to the RUC?

As indicated in paragraph 5, only a very small proportion of processions involve the sort of controversy which a tribunal would be intended to resolve, so it would probably be unnecessary to involve the tribunal in the notification process.

Q7. Should decisions about imposing conditions on the organisers of public processions be made by the tribunal, or should the tribunal act as a point of appeal for any parade organiser or other person who wishes to challenge a police decision, either to impose conditions or not to do so?

One procedure would be for the RUC to refer proposed processions to the tribunal where they believed it would be appropriate to impose conditions or to advise the Secretary of State to impose a ban. This would not give the tribunal any opportunity to consider proposed processions in respect of which the police saw no need to impose conditions or to advise the Secretary of State to impose a ban. An alternative

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procedure would be to leave the initial decision on whether to impose conditions or to advise the Secretary of State to impose a ban with the RUC, but to allow the organisers of processions which would be affected, or representatives of local communities which might be affected an opportunity to refer the matter to the tribunal. But if any person could insist on a proposed procession being referred, there could be scope for numerous mischievous applications which could make the scheme unworkable.

Q8. Would a tribunal's decision be binding?

The police may well be faced with a situation where after a tribunal had given its decision, events developed in a way which made it necessary to impose different conditions during the course of a procession or very shortly before it was due to start, when reference back to a tribunal would not be practicable. If no such reserve power were available, the ability of the police to deal with potential public disorder would be gravely weakened; but the exercise of the power would tend to undermine public confidence in the tribunal.

Q9. On whom would the onus of satisfying the tribunal be placed?

The structure of existing law on processions assumes that there is a right, subject to compliance with legal requirements, to hold processions, and the authorities may only interfere with

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that right if certain conditions apply. Unless that presumption were reversed, the onus would be on the police (or local residents) to satisfy the tribunal that conditions should be imposed. It would not be necessary for the procession organisers to argue in favour of their proposed route.

Q10. Should tribunal hearings be in public?

Public hearings, especially if reported in the media, would probably serve as a platform for the more obstinate and determined organisers to air their views. They would probably not convince a tribunal, but if the end result were that they or their followers went ahead and defied the tribunal's directions anyway, all that will have been achieved is some gratuitous publicity.

Q11. How far in advance of the procession would a tribunal meet?

The Proposal for a new Public Order Order envisages a requirement for 7 days notice of a procession. If reference to a tribunal were to take place only after the police decided that it was necessary to impose conditions, there would have to be a minimum period of notice by the police to enable the tribunal to convene and for the organisers or other interested parties to prepare their case. Equally, if reference to the

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tribunal was allowed by those wishing to challenge a police decision not to impose conditions it would be necessary for this to become clear a reasonable time before the proposed procession was due to take place. In either case, however, the ability of the police to respond to last minute developments in the public order situation would be impaired. More significantly, this timing problem would mean that the tribunal would nearly always be required to meet at very short notice and reach instant decisions, probably in an atmosphere of mounting crisis.

### Conclusion

12. The Government would welcome any comments on these questions, and on any other aspects of the tribunal concept. Comments and any detailed suggestions for a workable scheme should be sent to:

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

by [29 November 1986].

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