

**The Committee on the Administration of Justice (CAJ)
45/47 Donegall Street, Belfast BT1 2FG
Tel: (01232) 232394 Fax: (01232) 246706**



**Comments on the Public Processions etc.
(Northern Ireland)
Bill**

November 1997

**Submission No. S.61
Price: £1.00**

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THE PUBLIC PROCESSIONS ETC. (NORTHERN IRELAND) BILL

Comments from the Committee on the Administration of Justice

CAJ welcome the decision of the government to give legislative effect to a number of the recommendations made by the North review. However, there are a number of respects in which we consider this legislation to be deficient. The manner in which the issue of contentious parades has been handled in the past has led to a loss of confidence in the rule of law. CAJ believe that the rule of law and respect for human rights must operate as the defining dynamic in the relationship between the government and the governed.

The adoption of this principle and its application by states is an integral aspect of any democratic society. It provides citizens with the security necessary to lead their lives in a peaceful and productive fashion. It is axiomatic that the rule of law must be enforced by an accountable and representative police service and by an independent judiciary. If the principle is violated it undermines respect for the administration of justice and the integrity of the law. Its continued violation leads to a loss of faith in notions such as respect for the law. Instability and conflict often result.

Since the inception of Northern Ireland, the law has failed to guarantee equal and adequate protection for the rights and liberties of every person. This failure, coupled with the abuse of human rights, has fed and fuelled the conflict in Northern Ireland and led to widespread alienation from the system of the administration of justice and its agencies. The events across Northern Ireland during the 1996 marching season and, particularly during the Drumcree stand-off and its immediate aftermath, signalled a new low in community confidence in the police and the rule of law.

Therefore an important test of this legislation is the extent to which it establishes a system which will restore confidence in the rule of law.

Clause 2

CAJ agree with the proposal to remove the decision making power in relation to parades from the police and give it to an independent body. However, while the promotion of mediation and dialogue are of course laudable, we have difficulty with the notion that this body be given the option to mediate in disputes *and* adjudicate on the merits of the dispute. The inevitable tension between the adjudicatory and mediative functions of the Parades Commission as envisaged by North has been exacerbated by the actions of the previous Secretary of State who created the current Parades Commission, devoid of its envisaged adjudicatory character but with a mission to mediate. Some members of the commission have carried out this thankless task admirably, but it remains the case that mediators should not be judges. The very active and public role of some members of the Commission in the mediation process and the association of the Chair of the Parades Commission with the leaked memo on the plans for the march on the Garvaghy Road, may well have undermined public confidence in the Commission. More importantly, it is almost impossible to imagine circumstances in which the members of the Commission, as currently constituted, could maintain the confidence of the parties, if after engaging in attempts to mediate a conflict, they then sit in judgement on the merits of the dispute.

CAJ therefore recommend the deletion of the words “mediate, or” from clause 2 (2) (a).

Clause 3

We are concerned that little thought has been given to this provision and its potential consequences. Indeed it may encourage complaints about many aspects of cultural expression in Northern Ireland which are not proper matters for the consideration of the Commission. For instance, could Remembrance ceremonies or traditional musical events be brought within the remit of this provision? There does not appear to be any empirical evidence to suggest that there are particular problems with other aspects of cultural expression in Northern Ireland. It is likely to be difficult enough for the Commission to deal with the issue of contentious marches which have been a problem for over two hundred years without extending their remit to matters which generally impact positively on cultural life within Northern Ireland.

CAJ therefore recommend the deletion of this clause.

Clause 7

CAJ welcome the increase in notification period from 21 to 28 days. However, given the disruption that the issue of contentious parades has caused in the last few years to the community in Northern Ireland, we believe it could be of benefit if, particularly in relation to routes that have proved contentious in the past, notification be given of the intention to parade at the beginning of each calendar year. This could assist in informing the Commission’s deliberations.

CAJ therefore recommend that an additional paragraph be inserted in this clause to read as follows:

The Parades Commission may make an order requiring persons proposing to organise a public procession along a particular route to give notice under this section not later than 1st January of the year in which the procession is to take place.

Clause 8

CAJ are concerned that the criteria articulated in clause 8, paragraph 6 do not refer to the international human rights standards to which the UK is bound. We believe that it is in the application of these standards that the problem of contentious parades can most likely be resolved. While sub-paragraphs (a) to (d) do not necessarily conflict with the concepts associated with the international legal principles applicable in this context, sub-paragraph (e), in our view, most certainly is in conflict with them because it creates inequality between the two communities. Tradition per se is not a legitimising factor and, in the context of Northern Ireland, is simply a reflection of the historic balance of power that has existed between the two communities. To give legislative effect to this is to legitimise it and perpetuate it rather than trying to ensure that both communities are treated equally. It may be appropriate to refer in the guidelines to the desirability of allowing particular processions with a historical

significance to take place, but that significance cannot simply come from the fact that the procession has followed a particular route for a number of years.

Additionally we believe that it is very difficult to prove conclusively routes of parades as a matter of historical fact. Therefore, giving effect to sub-paragraph (e) would be problematic.

CAJ therefore recommend that clause 8, paragraph 6, be amended to read that:

The guidelines shall in particular (but without prejudice to the generality of section 6 (1)) provide for the determinations of the Commission to comply with relevant international human rights standards. The Commission shall also, in reaching their determinations, have regard to-

We also recommend that sub-paragraph (e) be deleted

Clause 9

CAJ are disappointed at the proposal to allow the police a "double bite at the cherry". Clause 9 allows for an appeal by the Chief Constable to the Secretary of State. Clause 10 also reserves to the police their residual powers to reverse the determination of the Commission on the day of a parade. Presumably the Commission will consult closely with all interested parties before it reaches a determination and the operational advice of the police will obviously impact significantly on their deliberations. However, if society decides to vest responsibility for this issue to a Parades Commission, then their decision should not be subject to reversal if the police believe it is the wrong one.

CAJ therefore recommend that clause 9 be deleted.

Clause 10

It is inevitable that the police will retain a residual power to reverse the determination of the Parades Commission in the event that they are simply overwhelmed by force. However, with adequate and professional preparation, one would hope that the number of such occasions would be very low.

In the event that the police did have to reverse a determination, it would be critical for public confidence to ensure public accountability on the part of the Chief Constable. The procedure for ensuring such accountability, which should reflect the fact that the reversal of the determination is a serious matter, should be prescribed in the legislation. It is important that the Chief Constable be obliged to account publicly to the Parades Commission for his/her decision to reverse the original determination. The Parades Commission should then issue a public opinion on the matter in order to keep the public informed and to maintain their confidence. Such an opinion should include a conclusion as to whether it is felt that the police operated with due professionalism and competence in dealing with the problems faced.

CAJ therefore recommend that the following paragraph be inserted into clause 10:

(1) Where, in the event that the police in the exercise of their common law powers, reverse a determination of the Parades Commission, the Chief Constable shall as soon as practicable make a full report to the Parades Commission. The report shall contain a full explanation for the reversal of the determination of the Commission and shall be published. The Commission shall issue an opinion as to whether they accept the explanation for the reversal of their original determination.

Clause 11

In relation to the Secretary of State's powers to prohibit public processions in paragraphs (1), (2) and (3), we believe that the Secretary of State should be obliged to ensure that his/her decisions comply with relevant international human rights standards.

CAJ therefore recommend that at the end of each relevant sub-paragraph it shall be inserted:

The Secretary of State shall ensure that any such order comply with relevant international human rights standards.