

## **SINN FEIN SUBMISSION ON CONTENTIOUS PARADES**

The provisions of the Good Friday Agreement govern how the issues of flags, emblems and equality, including cultural issues such as parades are to be addressed and dealt with. These are set out below.

### ***“CONSTITUTIONAL ISSUE***

*“1. The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement they will*

*... “(v) affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities...”*

### ***“RIGHTS, SAFEGUARDS AND EQUALITY OF OPPORTUNITY***

#### ***“Human Rights***

*“1. The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular:*

- the right to freedom and expression of religion;*
- the right to freely choose one’s place of residence;*
- the right to freedom from sectarian harassment;..”*

*“5. All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required.”*

### ***“DECLARATION OF SUPPORT***

*“3. We are committed to partnership, equality and mutual respect as the basis of relationships within Northern Ireland, between North and South, and between these islands.*

*“4. We reaffirm our total and absolute commitment to exclusively democratic and peaceful means of resolving differences on political issues, and our opposition to any use or threat of force by others for any political purpose, whether in regard to this agreement or otherwise.”*

The British Government, under the terms set out above, has as “the government with jurisdiction” the lead responsibility to ensure “parity of esteem and ...just and equal treatment for ...both communities”.

Overall the Irish Government has a joint and co-equal responsibility for implementation and development of the terms of the Agreement as a whole.

This society cannot indefinitely absorb the volatility, violence and lawlessness associated with events on the ground organised by supporters of what amounts to a demand to deregulate reasonable and clearly necessary controls over parading, the public use of flags and emblems and their use in public spaces. The refusal of unionist leaders to condemn the violence against PSNI officers and citizens is unacceptable.

The potential for significant and lasting damage to the peace and political processes is high. Relative to the substance of what is involved this is an absurd, untenable and unacceptable situation.

Statistics from the Parades Commission's annual report clearly demonstrate that. In 2012 there were:

- 4182 parades
- 2493 (60%) organised by loyal orders and broad unionist community
- 158 (4%) organised by nationalists
- 1531 (36%) organised by others... includes charities, civic, sporting, rural etc
- 213 (5%) parades were deemed contentious and required detailed consideration by the parades commission.
- Of these 31% related to notifications for Garvaghy road
- 93% of contentious parades were from the unionist community
- 6 % were from the nationalist community
- Of the contentious parades, 69% received restrictions, over half of these related to route

**Clearly dialogue and ultimately agreement between those wishing to parade and local communities is the desired and most effective way of advancing to a resolution.**

The issue of parades has featured in every political negotiation since 1998. Despite the fact that there is a relatively small number of contentious parades, the issue remains unresolved and continues to undermine and destabilise both the peace and political process.

Sinn Féin has sought to engage unionism and orangeism on many instances in recent years with a view to bringing about a resolution of the issue.

Sinn Fein has viewed parading disputes as an issue of competing rights, posing the right to freedom of assembly alongside the rights and freedoms of others, who live, work, shop, trade and carry on business in the affected locality. None of these rights are absolute, requiring reflection and consideration by all those involved, as a basis for any resolution. Sectarianism, sectarian provocations and the flaunting of support for loyalist paramilitaries at some of these parades, especially in Belfast, has exacerbated the problems.

The Orange Order lifted its ban on its lodges engaging with nationalist resident groups in March 2012. Despite this there have only been two instances of direct engagement between the Orange Order and residents in Crumlin and Ardoyne.

Meaningful dialogue has brought resolutions to hitherto contentious parades in Derry, Maghera and Crumlin. Where meaningful dialogue is not forthcoming from the parade/protest organisers, then it is incumbent upon the Parades Commission, to consider the balance in rights involved. This should involve consideration of issues such as past behaviour, community impact, the possibility of public disorder, frequency of parades and mutual respect and tolerance. The end result will be a legally binding determination which balances objectively the rights engaged.

Some unionist politicians and leaders within orangeism have recently sought to promote the notion that nationalist objections to contentious parades are an attack on unionist culture.

In recent times they have sought to link the parades issue with the flags issue and to cast the principle of parity of esteem set out in the Good Friday Agreement, as an attack on unionist and protestant culture. This is not so.

In reality this represents a rejection of the equalisation process required by the Good Friday Agreement and the ongoing process of building the peace process and making peace permanent which the Agreement has activated.

In advance of meetings of the all-party group the Orange Order and some unionist politicians have rejected the parades legislation which came out of the parades discussions arising from the Hillsborough Agreement. This was shelved at the time because of rejection by the Orange Order.

Sinn Féin were involved in the drafting of this legislation. It was tailored to address the broader number of parades. It was not anticipated that, were it to be introduced, it would bring an early solution to contentious parades. Its potential to do so in the current climate has diminished further.

The draft legislation included a number of possible vetoes in the adjudication process, which when it comes to addressing contentious parades, would likely lead to stalemate. So, the draft legislation does not hold out the prospect for resolving contentious parades.

Adoption of the legislation at this point would likely therefore simply transform a dispute between loyal orders and local communities into a dispute between political parties. Regulation prescribes how parades, including contentious parades should be handled, it does not resolve them.

But, whatever emerges by way of recommendations for the future there will certainly continue to be a need for the Parades Commission.

The primary focus should be on devising a mechanism for resolving contentious parades, which, as the Parades Commission report shows, are few in number.

Sinn Féin believes the following are necessary elements of dealing with the overall issue of parades

- Adoption of a rights based approach, within the ECHR framework
- Recognition of the competing rights of those wish to exercise the right to freedom of assembly and the rights and freedoms of others who live,work,shop,trade and carry on business in the areas through they seek to parade.
- Recent case law of the European Court indicates that “The rights and freedoms of others” includes protection from Racist/Sectarian expression. The Principle Council of Europe Treaty Body dealing with racism has characterised sectarianism here as a form of racism. The UN anti-racism committee has also adopted a similar position. Accordingly, this case law, dealing with restrictions on racist expression, including parade related expression, should also apply to sectarianism here.
- The right for everyone to be free from sectarian harassment.

- Meaningful dialogue between those wishing to march and local communities where there is contention about specific proposed parades.
- Stronger powers of regulation for the Parades Commission.

Below we set out our view of elements suitable to the reasonable and necessary regulation of parades in the context of the Good Friday Agreement's requirements for equality, mutual respect and parity of esteem.

## **THE REGULATION OF PARADES**

### **1. Code of Conduct:**

For contentious parades/protests the parades commission should include key aspects of the code of conduct within determinations which the PSNI has therefore a statutory responsibility to police and where breaches are evident prosecute.

On the issue of flags and emblems, the PC in their determinations should indicate what flags/emblems CAN be carried, as distinct from designating what cannot be displayed. They also need to define how flags should be furled so that they cannot be identified as highlighted in the determination.

### **2. Independent Monitoring:**

Monitors could be deployed at all contentious parades to observe proceedings and report back to the Post Parade Review Hearings. Their observations could take the form of both a written and visual (recorded) report on any potential breaches or issues of concern in relation to such parades/protests etc. They would be under the control of a nominated independent body but would report directly to the Parades Commission. Their reports in conjunction with those submitted by the PSNI would constitute a comprehensive overview of proceedings.

### **3. Post Parade Review Hearings:**

In the immediate aftermath of the small number of contentious parades review hearings should be held to receive reports and consider the conduct of the parade/protest. The remit of the hearing would cover the following:

- a. To determine whether or not the restrictions imposed were complied with.
- b. To receive reports from independent monitors.
- c. To receive reports from the PSNI.
- d. To bring all the key parties together to assess these reports.
- e. To initiate dialogue on outstanding issues, at an early stage

#### **4. Bands:**

Bands who continuously breach determination vis-a-vis playing of music etc... could be banned for a fixed period from participating in any parade. The Parades Commission a number of years ago banned the Silver Plains band from North Antrim for a fixed period.

The activities of bands could be influenced by the introduction of a form or registration. Only registered band would be allowed to parade on the public highway, and full details of band members, the band leader etc... would be registered with the relevant authorities. Sustained breaches of determinations or unacceptable behaviour could result in the band losing its registration status and accordingly its ability to parade publicly.

#### **5. Introduction of aspects of the Scottish model:**

Scotland has shown how a proactive approach by key stakeholders can defuse contentious scenarios and shape behaviour in a positive way.

The Glasgow blueprint marked out stringent parameters based on legislation.

Since Autumn 2010, when measures were put in place; the number of parades in Glasgow has fallen by 27%.

Police costs for the main Orange Order parade in July dropped from £582,000 in 2009 to £328,000 in 2011. A saving of over £250,000 or 44%.

Arrests fell from 55 in 2009 to 32 in 2011

March organisers have also been asked to pay for the costs of hosting parades i.e. safety barriers, toilets, bins and clean up services.

#### **6. Cost of Contention:**

As a starting point we must recognise that any damage, loss or violent disorder may not have occurred in the absence of such a parade. Such damage etc is foreseeable, given previous experience of contentious parades. Especially within the context of the current economic downturn, there is no valid reason why the public purse should continue to cover the cost of contention, by facilitating, policing and cleaning up after a disruptive parade.

This is already the practice in Scotland where the Loyal Orders are required to pay for professional stewards in addition to the number of parades and resulting policing operations being scaled down.

Since last December, more than £28 million pounds has been spent on policing contentious parades and protests across the North. This figure includes a weekly bill of £300,000 to police the Loyalist protests in Ardoyne every night since the Orange Order parade was stopped on July 12<sup>th</sup>.

The current approach is at odds with normal practice and no logic is advanced to underpin this deviation. For example, local elected councillors are personally liable to be 'surcharged' for actions of the council, in circumstances where they have not conducted themselves or where their actions have caused the Council to act in an unlawful manner.

Similarly company directors can be and are often held criminally liable for matters up to and including manslaughter (arising from actions of the company i.e. by breaches of Health & Safety Regulations).

Loyal Orders/Bands, which file for contentious parades/protests should be held accountable for:

- f. Civil Claims (i.e. damages arising from breaches or disorder, caused by supporters or participants of the parade).
- g. Criminal Charges (breaches of the determination).

If the Order/Bands do not have a 'legal identity' (i.e. a body corporate) which is capable to being liable to civil suit, then the responsible officers of that organisation would be expected to give undertakings as to liability personally.

### **7. Civil Liability:**

In circumstances where a contentious parade has been permitted on the basis of assurances given by Officers on behalf of an established body (which may well have a legal identity) the assumption must be that the Loyal Orders and the relevant Officer(s) must be liable for breaches of the code, restrictions or damaged caused. At the very least the Organisation and its Senior Officers should be liable for costs such as:

- a. Criminal damage to both public and private property.
- b. At a minimum the additional policing costs, resulting from the breach, or
- c. The full cost of policing of the event including both normal policing costs and additional costs, as a sanction.
- d. The clean-up costs of the Local Authority.

### **8. Liability Insurance:**

Given the potential liability for disorder arising from contentious parades, the Loyal Orders and its identified Officer(s) could be required by way of new legislation to obtain sufficient Public/Event Liability Insurance.

The utility of this approach has a number of potentially positive effects:

- a. Protection of the Public Purse from the cost of disorder arising from contentious parades.
- b. In order to secure the necessary insurance, the Organisers would have to put in place very significant further security and other measures (such as re-routing) which could in themselves render the parade much less contentious.
- c. Would inspire within the Organisations and its Officers a desire to ensure that the parade is well-ordered, and if it were not, future insurance premiums could rise to untenable levels.
- d. The PSNI in recent documentation have 'encouraged' parade organisers to take out liability insurance for all parades and social events.

### **9. Non Parade Related Protests:**

Legislation could also be introduced which would allow the Parades Commission to regulate non parade related protests and parades that are not filed for. These loopholes were exploited by flag protestors earlier in the year and this gap in legislation needs to be addressed.

The current legislation should be reviewed with a focus on removing any other loopholes or barriers with a view to assisting due process in the prosecution of individuals involved in clear breaches of determinations.