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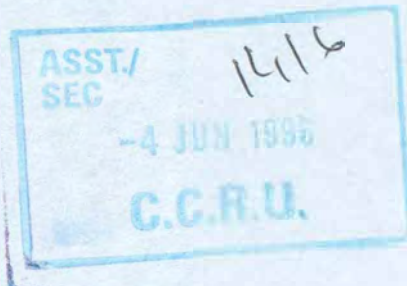
FROM: J M LEGGE  
30 MAY 1996

UNDER/  
SEC 40819.  
3 1MAY 1996  
CENT SEC

Ref: 5174/

cc Ms McGimpsey - B

Mr Steele - B  
Mr Watkins - B  
Mr Maccabe - B  
Mr Armstrong (PANI)  
DCC Flanagan (RUC)



in 4.6  
in passed on  
Some minor  
Comments.

WORKING GROUP ON AN INDEPENDENT ADVISORY BOARD ON PARADES

HW  
31.5

Following our meeting yesterday, I attach a revised draft of the Working Group's report. I should like to finalise this as soon as possible for submission to Ministers; I should therefore be grateful for any comments as soon as possible and in any case not later than close of play on Monday 3 June.

Mr. Carson...

for 'PARADES'

P. 16...

S. 4  
6..

PA-327/96

in Consent

S. 4  
6..

Signed JML

J M LEGGE  
EXT 28138

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## REPORT OF THE WORKING GROUP ON AN INDEPENDENT BODY FOR PARADES

INTRODUCTION

1. This report sets out the conclusions of the Working Group set up to examine the feasibility of establishing an independent body (or individual) to advise or arbitrate on contentious parades. The composition and terms of reference of the Group are set out at Annex A.

BACKGROUND

7 2. In Northern Ireland there are around 3000 parades every year. The majority, though not all, are perceived to be Protestant in origin and are organised by what are known as the Loyal Institutions, ie the Orange Order, the Apprentice Boys and the Royal Black Institution. Many of the parades are very long established and are commonly referred to as "traditional". Over the years there have been periods when the "marching season" has resulted in considerable public disorder, but more recently the vast majority of parades have proceeded peacefully. Last year, however, in part as a result of demographic changes and apparent Sinn Fein involvement, a small number of parades gave rise to major disorder. The pattern looks as if it may be repeated again this year. RUC statistical evidence on parades can be found at Annex B. The Working Group's remit limited its scope to those parades likely to lead to disorder and the terms of the Public Order (NI) Order 1987, but it should be noted that other marches still have the capacity to cause significant offence and hence damage community relations.

3. The idea of an independent body which could arbitrate and/or provide advice on parades is not a new one. In 1987 the Government looked at the concept of a consultative tribunal on marches and decided that "it would not be right to incorporate any provision for such a tribunal in the (then) draft Public Order (NI) Order 1987". The Government's policy on this issue has always been that the policing of parades is an operational matter for the Chief Constable.



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4. Following the PIRA ceasefire of 31 August 1994 and after the disturbances during the 1995 marching season, several Nationalist politicians and councillors raised the question of an independent body, but no concerted calls for action were heard. More recently the idea has resurfaced; following the disturbances on the Lower Ormeau Road on Easter Monday, Dr Mowlam, Labour spokesperson on Northern Ireland, proposed an independent commission to mediate on controversial marches. Other prominent individuals have subsequently supported the idea. On 7 May Archbishop Eames, at the General Synod of the Church of Ireland, said "if such a body is to be established, I would suggest that thought be given to the appointment of a judicial figure of repute who would be assisted by representatives of both communities". Shortly afterwards on 8 May the Chief Constable of the Royal Ulster Constabulary stated that he had "long accepted the potential value of an independent advisory body to consider contentious marches and given the public stance adopted by nationalists and loyalists, such a concept was becoming more worthy of detailed examination".

5. The idea does not, however, command universal support. The Irish News on 8 May reported Michael McGimpsey, a Unionist councillor, as saying there was a "danger" in such a body because of the existence of "a vociferous and well regimented lobby against Orange parades". He went on to say "the danger would be that this would spread and they would literally be inventing hundreds and hundreds of opposition excuses to block parades". Similar positions have been adopted by Mr David Trimble and Mr Willie Ross.

THE ROLE OF AN INDEPENDENT BODY

6. The case for establishing an independent body (for the purposes of this analysis "body" is taken to include the possibility of a single individual - the question of the possible composition of a body is dealt with separately below) rests essentially on two propositions: that it would help to avoid the RUC becoming increasingly involved in political controversy as a result of the operational decisions it is required to make, and that in an area

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where compromise between the two communities is essential if public disorder is to be avoided, the involvement of an independent body might improve the chances of achieving a generally acceptable solution. The main disadvantage is that the considerations which such a body would be required to assess are primarily ones which only the police are in a position to judge. This applies both in advance of a parade, when an assessment must be made of the likelihood of serious public disorder and the resources needed to prevent such disorder, and on the day when the senior police officer on the spot must retain the operational freedom to respond appropriately to a developing situation, irrespective of the prior views of an independent body. There are also a number of legal, political and practical considerations to be taken into account.

7. In judging where the balance of advantage lies, a key initial question is whether the body would have an advisory or decision-making role. A decision-making role would require statutory powers (the need for legislation would thus rule out any possibility of introducing a body in time for this marching season). The major disadvantage of giving an independent body the power to establish conditions in advance of a parade is that it could well prove impossible for the RUC to enforce those conditions in practice. The body's rulings could then come into direct conflict with the RUC's operational responsibilities; the police must retain the authority to deal with the situation as it develops on the ground. On the other hand, if the police were given operational discretion to vary the decisions of the body it would undermine the whole concept, while at the same time exposing the senior officer concerned to criticism for ignoring the body's decisions, however justified his actions. The timing of decisions could also present practical problems: the legislation allows for only 7 days notice in advance of a parade which would give very little time for an independent body to consider the case and reach decisions; there would also be a need to take account of last minute developments which could lead to the body having to be convened and take decisions in an atmosphere of mounting crisis. Finally, consideration would have to be given to some form of appeals mechanism.

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8. For these reasons the Working Group concluded that if an independent body were to be established it should not have a decision-making role.

RELATIONSHIP WITH THE RUC

9. If the RUC retains full responsibility for taking operational decisions over the conditions under which parades may take place (including route, direction, numbers etc), then it follows that any advisory body should provide its advice to the Chief Constable. It is desirable that the body should only consider selected controversial parades (or groups of parades) referred to it by the RUC, otherwise it could be swamped by referrals from those seeking to prevent or disrupt parades. Even limiting the power to refer parades to the RUC would not remove the problem entirely, since the police themselves could come under pressure to refer increasing numbers of parades to the body. Once a parade had been referred to the body, ~~it would be free to receive representations from any interested parties.~~ it would be free to receive representations from any interested parties. It would be crucial for parades to be referred to the body as early as possible to enable the necessary consultations to take place.

10. Both the referral of a parade to the body, and the body's subsequent advice would have to be made public. Even though such advice would not be binding, this could present serious problems if it proved difficult or impossible to enforce it in practice, since the police would be open to criticism for failing to take account of the views of the body. The body could not take on a mediation or arbitration role since this would be in direct conflict with a requirement to submit independent advice, but it has to be recognised that, once a parade was referred to the body, any existing mediation efforts (and certainly those involving the RUC) would be likely to come to a halt. This would be unwelcome, since mediation efforts often have the best chance of succeeding under time pressure when the date of a parade is imminent.

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LEGAL CONSIDERATIONS

11. There would appear to be no obstacles to setting up an advisory body, appointed by the Secretary of State, within the framework of the existing legislation. As it would not be an executive NDPB, it would fall outside the scope of the current Nolan provisions on public appointments. But for it to be effective, it would be very desirable to extend the mandatory period of notice of a parade in the Public Order (NI) Order 1987 from 7 to at least 30 days. The current RUC decision-making process is, of course, already subject to the judicial review system.

COMPOSITION

12. The body would have to command the confidence and respect of both communities. Although it might be possible to identify a single individual who would be perceived as being neutral, in practice there would be a better chance of gaining the necessary widespread acceptance with a group of three members. (A single judge might be suitable, but the Lord Chief Justice is, understandably, strongly opposed to the involvement of the judiciary in highly contentious political matters which might well subsequently be referred to the courts). Drawing members from outside Northern Ireland would present considerable difficulties (availability, unfamiliarity with the issues, cost); on the other hand finding the right balance of suitable individuals from within the community who were both generally perceived as neutral, and were willing to serve would also not be easy. There would not appear to be any existing body that could take on the role, although some, for example the Community Relations Council, CPLCs and the churches, could contribute to the work of the body. A potential difficulty with a group of three would be the possibility of a failure to reach agreement and a majority decision emerging. This would almost certainly seriously damage the credibility of the body in the eyes of one side or other of the community.

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PRACTICAL CONSIDERATIONS

13. Should an advisory body be set up, there are a number of practical issues which would have to be resolved, including method of appointment; accommodation; staff support; whether the members would be paid; costs; whether the body would sit continuously during the marching season or meet only when required; preparation of an annual report etc. The Working Group did not attempt to address these issues (none of which should present insuperable obstacles) pending a decision on the principle of establishing a body. The Group is, however, satisfied that the complexity of setting up suitable arrangements precludes any possibility of being able to establish a body before the end of the current marching season.

CONCLUSIONS

14. The Working Group concluded that there would be clear disadvantages, for the reasons set out in paragraph 7 above, in setting up an independent body with statutory decision-making powers. The arguments for and against setting up an advisory body are, however, more finely balanced. If such a body were to be set up, the Working Group considers that its role should be to provide advice to the Chief Constable on those potentially controversial parades which are referred to it by the RUC. The body should consist of three individuals, who would be selected with the aim of commanding widespread confidence from both communities. A number of practical issues would have to be resolved before such a body could be established.

15. The Working Group remains concerned, however, that there would still be considerable disadvantages to establishing such a body. Most notably there would be a significant risk that, for operational reasons the RUC, would find it necessary to reject the body's (publicly given) advice in advance of a parade, or to stop trying to implement it as a result of developments on the day. In either case this could damage the credibility of the body and open the RUC to criticism. Once a parade was referred to the body

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mediation efforts would probably cease. It would be difficult to identify a group of individuals who would command the confidence of all the parties involved, and the risk of such a group being unable to reach a unanimous conclusion.

16. Despite these disadvantages, it would still be worthwhile establishing an independent body if there was a real chance of its advice being accepted by both those wishing to march and those objecting to a given parade. Ultimately the problem of contentious parades will only be solved if both sides are prepared to compromise. Recent contacts have indicated that there may be some willingness to compromise on the part of the various Protestant organisations responsible for organising parades, but little movement from nationalist community groups opposing contentious parades, in many cases backed by Sinn Fein. It seems unlikely that all parties would be willing to bind themselves in advance to accept the recommendations of an independent body, although there would nevertheless be some pressure on them to comply once the advice to the RUC had been made public and the Chief Constable had indicated his intention to act on it.

17. On balance the Working Group is inclined to the view that the potential disadvantage of establishing an independent advisory body outweigh the advantages. The Group is, however, conscious that it has conducted essentially an internal review, without consulting any interested outside bodies directly involved in organising (or seeking to prevent) parades. It therefore recognises that, before reaching final conclusions, Ministers might wish to conduct a wider consultation exercise.

18. This could be done either by means of issuing a consultation document, or by setting up an independent enquiry under an outside chairman to examine the whole issue of the conduct of parades. Publishing a discussion paper would keep the issue firmly within the Government's hands; it might however well lead to an outcome where the views expressed by outside organisations were strongly conflicting and decisions would have to be taken on the basis of

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essentially the same arguments that have already been considered. The risk of an independent external review is that the Government might be put in a position of having to reject unwelcome recommendations. In either case, should it be decided to set a consultation exercise in hand, the Working Group recommends that it should not be initiated before the end of the main part of the current marching season (although the intention to undertake the exercise might be announced earlier).

19. Once agreement has been reached on the way ahead, consideration will need to be given to how such Ministerial decisions should be made public.

RECOMMENDATIONS

20. The Working Group invites Ministers:

- (a) to agree that both policy and practical considerations rule out the establishment of any form of independent body before the end of the current marching season;
- (b) to agree that an independent body with decision making powers should not be established;
- (c) to note the Working Group's views that the balance of advantage lies against setting up an independent body with advisory powers; but
- (d) to consider whether it would be appropriate to set in hand a wider consultation exercise on the handling of parades, either by issuing a Government discussion paper or establishing an independent review, to commence in the autumn;
- (e) to note that further consideration will need to be given to public handling in the light of Ministerial decisions on the way ahead.

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ANNEX A

TERMS OF REFERENCE AND MEMBERSHIP OF THE WORKING GROUP

The Terms of Reference of the Working Group were:

"The Working Group should consider and make recommendations on the possible role of an independent individual or body to provide advice or arbitrate on public processions which are likely to lead to serious public disorder, serious damage to property or serious disruption to the life of the community, within the scope of the Public Order (NI) Order 1987. The working party should submit its recommendations to the Minister of State for Security and the Secretary of State by the end of May 1996."

The members of the group comprised:

Mr J M Legge (Chairman)  
Mr P J Armstrong (Chairman of PANI)  
DCC R Flanagan (RUC)  
Mr J M Steele (Director, Security)  
Mr D Watkins (Director, Central Secretariat)  
Mr C Maccabe (Head of PAB)  
Ms J McGimpsey (Secretary)

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ANNEX B

PARADE STATISTICS

In 1995, according to the official RUC statistics, there were 2883 parades in Northern Ireland. Of these, 2581 could be described as Loyalist/Unionist and 302 were Nationalist/Republican. (The figures in this note exclude parades organised by Trades Unions, Boys Brigade etc which last year numbered over 600).

The RUC classified 13 of these parades as being 'disorderly'. A further 20 parades were subject to re-routing or had conditions imposed. There are no figures to indicate how many routes proposed for a particular parade were voluntarily re-routed by the organisers.

These figures show that there was trouble at about 0.4% of the parades which took place in the whole of 1995 - and in many of these incidents the disturbance was caused, not by those participating in the parade, but by aggressors on the route of the parade.

Statistics on parades to date in 1996 show that of 395 parades, 4 have been classified as disorderly and 4 have been re-routed. The disorder in all but one of these was minor.

Previous years

In 1994 there were 2792 parades, of which 2520 were Loyalist and 272 Nationalist. On 29 parades (1%) conditions were imposed by the RUC.

In 1993 there was a total of 2662 parades, of which 2411 were loyalist and 251 republican. One parade resulted in serious disorder, but this was clearly an isolated incident. The annual 'Whiterock' parade by the Orange Order on 26 June was served with a re-routing order to divert the parade away from the Ainsworth Avenue/Springfield Road junction. A man in Ainsworth Avenue lost his right arm and subsequently died, when a grenade he was holding

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detonated prematurely. A total of 12 parades (0.5%) had conditions placed upon them and in all cases organisers complied with these conditions.

In 1992 there were 2744 parades at only one of which was there (minor) disorder. There were 2498 loyalist parades and 246 nationalist parades. Of these 16 (0.6%) had conditions or a re-routing order imposed.

In 1991 there were 2379 parades of which 2183 were loyalist and 196 republican. All of these parades passed off peacefully but there were 4 illegal parades one of which resulted in minor disorder. On 14 occasions (0.6%) restrictions were placed on the parades. The organisers complied with these restrictions.

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