
**DETERMINATION MADE IN RELATION TO THE PORTADOWN DISTRICT LOL NO 1 PARADE
NOTIFIED TO TAKE PLACE IN PORTADOWN ON SUNDAY 19 FEBRUARY 2017**

INTRODUCTION

1. Section 8 (1) of the Public Processions (Northern Ireland) Act 1998, provides that:
 - i. "The Commission may issue a determination in respect of a proposed public procession imposing on the persons organising or taking part in it such conditions as the Commission considers necessary."
2. The Commission has noted the details provided on the Form 11/1 submitted on 18th December 2016 concerning the Portadown District LOL No 1 parade in Portadown on Sunday 19 February 2017. The Commission has given careful consideration as to whether to exercise its power under Section 8. It has done so within the relevant legal and statutory framework, constituted in the main by the 1998 Act, the various instruments made thereunder (in particular the 'Guidelines' and the Human Rights Act 1998).
3. In considering whether to exercise its power under Section 8, the Commission has taken into account its previous determinations in relation to Portadown. It has also paid careful attention to the nature, purpose and all other aspects of the event notified by the organisers. Further, the Commission has considered all information received. The Commission has also had regard to the principles published in its annual reports. Having done so, the Commission has concluded that, in the particular circumstances, it should exercise its power under Section 8 to make a determination in the terms outlined in the following paragraphs.

BACKGROUND

4. The notified purpose is "*To complete return of annual parade to Drumcree Parish Church*".
5. The notified route is Drumcree Road, Garvaghy Road, Parkmount, Victoria Terrace, Castle Street, Bridge Street, High Street, Market Street, Church Street and on to Carleton Street.
6. The notified number of participants is "not known", with two accompanying bands. The notified likely number of supporters is also "not known".

7. The parade is notified to commence at 1.00pm from Drumcree Road and process to Carleton Street dispersing at 2.30pm.
8. The Commission is aware that there was an exchange of correspondence between the organisers and the residents group back in May 2015. To date, nothing further has developed from this.
9. The Commission has had regard to its statutory Guidelines in its considerations of the parade's potential for public disorder and the potential impacts upon community relations and community life. The Commission has fully considered all relevant human rights aspects.
10. The Commission has concluded that should the parade proceed along the entirety of its notified route this would result in an adverse impact upon community relations and community life and a high potential for public disorder.
11. The conditions imposed by the Commission are proportionate, necessary and fair and strike a fair balance between the needs of the community and the rights of the individual.

CONSIDERATION

12. The Commission is obliged by statute to have regard to the Guidelines issued under Section 5 of the Public Processions (Northern Ireland) Act 1998, and has done so. The Commission has also been alert to its duties as a public authority under Section 6 of the Human Rights Act 1998. The Commission believes that, from the perspective of the parade organisers, the Convention rights engaged are those protected by Articles 9, 10, and, in particular, Article 11. None of those rights is absolute.
13. Further, the human rights of other persons, to whom the Commission also owes a legal duty, must be equally considered. Those who live, work, shop, trade and carry on business in the affected locality enjoy rights under Article 8 of the Convention and Article 1 of the First Protocol thereto. In common with Articles 9, 10 and 11, none of these rights is absolute. The Commission has also been mindful to take into account its positive obligations under Article 2 of the Convention. Similarly it has been mindful of the provisions of Article 17 of the Convention.
14. It is not possible for all of those who would claim the benefit of the Human Rights Act 1998 to exercise and enjoy their Convention rights to the fullest extent, where rights are in competition with each other. The Commission therefore has had to undertake a balancing exercise, bearing

in mind the statutory Guidelines, in an attempt to reach a determination which is fair and proportionate in all the circumstances. In addition to having regard to the Guidelines, the Commission has had regard to the criteria specified in section 8 (6) of the Public Processions (Northern Ireland) Act 1998.

15. The Commission has also had regard to the issue of engagement. One of the seven fundamental principles identified by the North Report is that all those involved should work towards resolution of difficulties through local accommodation. As required by the statutory Guidelines, the Commission has had regard to the seven North principles.
16. As stated in paragraph 4.4 of the Guidelines, the Commission takes into account any communications between parade organisers and the local community or the absence thereof. Further, the Commission will assess the measures, if any, offered or taken by parade organisers to address genuinely held relevant concerns of members of the local community.
17. The Commission has had regard to the nature of this parade, the purpose of which is described earlier in the determination.
18. Having considered all the evidence, information and advice available to it, the Commission takes the view that it is necessary to restrict the parade, and it has therefore placed conditions on it. This decision is set against the background of continuing local community tension. It recognises the real possibility of damaging community relations with a consequent effect on the likelihood of public disorder should the parade proceed along the entirety of its notified route. Whilst recognising the fundamental importance of the right to freedom of assembly, the Commission finds it necessary on this occasion to exercise its powers under section 8 of the Public Processions (Northern Ireland) Act 1998 to place restrictions on the parade.
19. In imposing these conditions, the Commission pursues the legitimate aims laid down in Article 10 (2) and 11 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of seeking to prevent disorder and to protect the rights and freedoms of others.
20. In determining whether the conditions are necessary in a democratic society and proportionate, the Commission has regard, inter alia, to the criteria set down in section 8 (6) of the Public Processions (Northern Ireland) Act 1998 and to its own Guidelines made under section 5 of the Act and to which under Section 8 (5) it shall have regard when making a determination. The

Commission genuinely believes that the restrictions which it proposes are the least intrusive possible in all the circumstances.

21. Having regard to the factors set out above, the Commission considers that the conditions it now imposes are necessary and proportionate to the aim pursued. The conditions are not such as to affect significantly the individual's right to assemble. The Commission believes that the conditions it imposes strike a fair balance between the needs of the community and the rights of the individual. Further, the Commission wishes to emphasise that its determination must not be viewed as a victory for parade objectors over parade organisers. As appears from the foregoing paragraphs the legal, factual and human issues are of considerable complexity and require, ultimately, the formation of a carefully considered and finely balanced judgement on the part of the Commission.

DETERMINATION

The Parades Commission's determination is that the following conditions are placed on the organiser and participants in the parade by Portadown District LOL No 1 in Portadown on Sunday 19 February 2017.

- A. The parade is prohibited from entering that part of the notified route between Drumcree Parish Church on Drumcree Road, and Castle Street. The parade is prohibited from entering that part of the notified route which includes the entire length of Garvaghy Road, including Parkmount and Victoria Terrace.**
- B. Only the bands notified on the Form 11/1 shall participate in the parade.**
- C. The parade organiser shall ensure that the parade shall begin and disperse promptly.**
- D. When the parade is in progress there shall be no undue stoppages or delays.**
- E. The parade organiser shall ensure that the band leaders and all band members are given written details of the restrictions listed at A above in accordance with section 2.3 of the Code of Conduct.**
- F. The parade organiser shall bring to the attention of stewards the guidance for parade participants contained in Appendices A and B of the Commission's Code of Conduct. For ease of reference, these are reproduced below.**
- G. All participants in, and supporters of, this parade must abide by the appropriate conditions of the Code of Conduct; and comply with police directions and act in accordance with legislation.**
- H. The Commission further re-affirms the importance of respectful behaviour in the vicinity of interface areas.**
- I. The parade organiser shall arrange for the presence of an adequate number of stewards to ensure that all parade participants act in an orderly manner.**

J. The parade organiser shall ensure that all stewards and participants obey any direction given by the police in relation to this parade.

Signed: *One Henderson*
(On behalf of the Commission)

Date: *18/1/17*

APPENDIX A

Guidance for Anyone Participating in Parades

A. Behaviour

All participants in parades should:

- behave with due regard for the rights, traditions and feeling of others in the vicinity;
- refrain from using words or behaviour which could reasonably be perceived as being intentionally sectarian, provocative, threatening, abusive, insulting or lewd;
- obey the lawful directions of parade organizers and stewards at all times, from assembly to dispersal;
- abide by the conditions of this Code of Conduct;
- comply with police directions and in accordance with legislation.

B Dress

No paramilitary-style clothing is to be worn at any time during a parade.

C Parade

Whenever possible, the parade should be positioned on one side of the carriageway so as to allow for the free flow of traffic, or as otherwise stipulated by police.

D Route

Participants should keep to the designated route as directed by the police.

E Alcohol

Alcohol should not be consumed immediately prior to, or during a parade. An organizer or steward, who believes a participant to be under the influence of alcohol, should take the necessary measures to remove that person from the parade.

F Bands and Music

Each band must clearly display its name. Restrictions on the playing of music will be in accordance with the conditions as set out in Appendix B of this Code. No musical instrument will bear any inscription or mark of a proscribed organization.

G Flags etc.

Flags and other displays often have a legitimate historical significance, but in no circumstances should such items relating to a proscribed organization be displayed.

H Stewards

The names of stewards will have been notified to the police and the Parades Commission at the time of notifying the proposed parade.

Stewards should:

- be properly trained
- be briefed by the organizers prior to the parade
- carry proof of their status at all times during the event, and provide this information to police on request
- be fully aware of their responsibilities and role
- be highly visible by means of jackets, singlets, armbands, etc.
- not consume alcohol before or during the parade
- co-operate with the police
- be prepared to identify to the police any persons in the parade who may be committing any offence against criminal law.

I Policing

Organisers of parades must co-operate with the police from the time of submission of the notice of intention to parade until the parade disperses.

J Dispersal

When a parade has concluded, all those taking part must disperse immediately. It will be the responsibility of the organizers to ensure compliance with instructions in this regard.

K Abiding by Conditions

Organisers must ensure that all participants in any parade have been informed of any conditions imposed. As a general principle, the organiser is responsible for the behaviour of all participants and for ensuring compliance with the Code of Conduct.

APPENDIX B

Guidance for Anyone Participating in Parades in the Vicinity of Sensitive Locations

A Places of Worship

Only hymn tunes should be played.

When church services are taking place, no music should be played.

There should be no irreverent behaviour.

Marching should be dignified.

B War Memorials and Cemeteries

Only hymn tunes should be played.

Behaviour should be respectful.

Marching should be dignified.

C Where the Majority Population of the Vicinity are of a Different Tradition, and in Interface Areas.

Behaviour should be respectful.

There should be no excessively loud drumming.

Participants should refrain from conduct, words, music or behaviour which could reasonably be perceived as intentionally sectarian, provocative, threatening, abusive, insulting or lewd.

Marching should be dignified.