DETERMINATION MADE IN RELATION TO THE LOYAL SONS OF BENAGH PARADE NOTIFIED TO TAKE PLACE IN NEWRY ON FRIDAY, 21 APRIL 2017

INTRODUCTION

1. Section 8 (1) of the Public Processions (Northern Ireland) Act 1998, provides that:

> "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 23 March 2017 concerning the Loyal Sons of Benagh parade in Newry on Friday, 21 April 2017. The Commission has considered the need to issue a determination as outlined above, against the factors described in its guidelines document.

3. The Commission is conscious of its previous determinations in connection with this parade and in connection with other parades in this location. The Commission, however, has had special regard to the nature of this parade in the light of the above Act, the Commission's stated principles (as set out in its annual reports), the Statutory Guidelines and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It has also considered and evaluated all representations received and all information assembled. The Commission has subsequently concluded, considering all relevant factors, that the determination which it now makes is the most appropriate for this particular parade at this particular time.

BACKGROUND

4. The notified purpose is "*Annual Band Parade.*"

5. The notified route is "*Newry Olympic Hockey Club (Belfast Road); Belfast Road; Downshire Road; Church Avenue; Windsor Hill; Sandys Street; (Host band only) Trevor Hill; Kildare Street; Town Hall; Sugar Island; Trevor Hill; Downshire Road; Belfast Road (R L Mitchel Orange Hall).*"

6. The number of participants notified is 4,000, including 84 bands. The actual number last year was 41 bands with the organiser expecting a similar scale this year. The number of supporters notified is "unknown."

7. The parade is notified to commence at 7.30pm and disperse at 10.30pm, which are the same times notified last year. The organiser has explained that the smooth flow of the parade last year enabled its completion just before 10.00pm.

8. The proposed parade, first held in 2003, is one of two large annual loyalist band parades, in Newry with the Commission receiving complaints about the scale and timing of both these events. The response to the Loyal Sons of Benagh band parade contrasts with other smaller scale loyalist/unionist parades in the city, about 20 in total, which take place annually without controversy.

9. The parade's size and timing on a Friday evening are important factors regarding the proposed parade as complaints to the Commission largely focus on the prolonged level of disruption to city centre users and traffic.

10. In particular, concerns articulated by individuals and public representatives *"on behalf of concerned residents and businesses"* include:

    "city on lockdown for hours due to traffic congestion and disruption; traffic gridlocked for hours; traffic being halted then diverted through residential areas; daily routines disrupted; local people enduring hours of disruption and annoyance; residents trapped in their homes for hours; free movement to and from homes at a standstill; brings Newry to a virtual standstill on the busiest shopping night of the week."

11. A contentious part of the route, which has been notified for the host band, is within the vicinity of Sugar Island and Trevor Hill areas where there are a number of licensed premises and nightclubs.

12. The Commission has previously encouraged the organiser to open a line of communication with the local community impacted by the parade, but understands there has been no progress regarding this. The Commission has considered this issue against the standard in its statutory Code of Conduct which states:

    'If the public procession will pass through an area where the majority population are of a different tradition, or through an interface area, it would be important for the organiser to take steps to establish a line of communication between the parties.'

13. The Commission has considered that the failure to resolve through dialogue the issues arising from this annual parade contributes to the heightened community tensions around it. It has considered the adverse impact on community life within the city due to the severe traffic and other disruption.

14. 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.

15. The Commission has cause to believe that should the parade process the entirety of its notified route, there will be an adverse impact on community life, community relations and a potential for public disorder. As in previous years, this route restriction prevents the host band from proceeding into Trevor Hill.

16. The Commission has concluded that the conditions imposed on this parade remain necessary, proportionate and fair.

17. The Commission has considered the necessity to achieve a resolution about this annual parade, and intends to meet with all parties with a view to exploring opportunities for dialogue.

CONSIDERATION

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18. 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, and 10 and, in particular, Article 11. None of those rights is absolute.

19. 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.

20. 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.

21. 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.

22. As indicated at page 15 of its second Annual Report, the Commission (while avoiding an excessively prescriptive approach) considers the essence of engagement to be attempts at genuine communication between protagonists to a particular parading dispute. A series of 'pointers' to what constitutes genuine engagement is listed on page 16 of that report.

23. 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.

24. In making its determination, the Commission has accepted that there is a right of lawful and peaceful protest vested in those who legitimately object to the notified parade. However, there is neither right nor justification for unlawful or violent protest. The Commission further considers that, in all the circumstances, there is an obligation on representatives and local community and political leaders to use their good offices and/or take reasonable steps as appropriate to prevent violent and/or unlawful protest. This will be to the positive advantage of the local population, as it will reduce the risk of any possible impairment of their rights and freedoms stemming from such protests.

25. The Commission has had regard to the nature of this parade, the purpose of which is described earlier in the determination.

26. Having considered all the evidence, information and advice available to it, the Commission takes the view that it is necessary to place conditions on the parade. This decision is set against the background of continuing local community tension. It recognises the real possibility of damaging community relations and creating disruption to the life of the community 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 to exercise its powers under section 8 of the Public Processions (Northern Ireland) Act 1998 to place restrictions on the parade.

27. In pursuing 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.

28. 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.

29. 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.

DETERMINATION

The Parades Commission's determination is that the following conditions are placed on the organiser and participants in the parade by the Loyal Sons of Benagh in Newry on Friday, 21 April 2017.

A. The parade shall proceed from its notified assembly point on the Belfast Road, and proceed along Downshire Road, Church Avenue, Windsor Hill and Sandys Street. No part of the parade shall proceed to Trevor Hill as notified, but shall turn right at the roundabout at the junction of Sandys Street and Downshire Road. The parade shall then return back along Downshire Road and the Belfast Road for dispersal at the notified dispersal point.

B. The parade organiser shall ensure that the parade shall begin and disperse promptly.

C. When the parade is in progress there shall be no undue stoppages or delays. Where practicable the parade shall stay close to the near side of the road at all times to minimise disruption and to facilitate the passing of vehicular and other traffic.

D. The organiser shall arrange for the presence of an adequate number of stewards to ensure that all parade participants act in an orderly manner.

E. 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 Appendices A and B are reproduced below.

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

G. The parade organiser shall ensure that these conditions are drawn to the attention of all participants.

Signed: .....
(On behalf of the Commission)

Date: .....12/4/17.....

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.