
DETERMINATION MADE IN RELATION TO THE PARADE RELATED PROTEST NOTIFIED TO TAKE PLACE IN BELFAST ON SUNDAY 23 APRIL 2017

INTRODUCTION

1. Section 9A (1) of the Public Processions (Northern Ireland) Act 1998, as amended, provides that:

"The Commission may issue a determination in respect of a proposed parade-related protest meeting imposing on the persons organising or taking part in it such conditions as the Commission considers necessary."

2. The Commission has noted the details on the notification provided on the Form 11/3 submitted on 27 February 2017 concerning the Parade Related Protest notified to take place in Belfast on Sunday 23 April 2017. The Commission has considered the need to issue a determination as outlined above, against the factors described in its revised Guidelines document which came into operation on 15 April 2005.
3. The Commission has had special regard to the nature of this parade-related protest meeting in the light of the above Order, 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 concluded, considering all relevant factors, that the determination which it now makes is the most appropriate for this particular parade-related protest meeting at this particular time.

BACKGROUND

4. The notified purpose is "*To protect the site in Royal Avenue where two UDR soldiers were murdered in 1988 by Republicans*".
5. The number of participants notified is 500 located at "*Royal Avenue*". In 2016 a similar protest was restricted to 150 participants: the actual scale of the protest was approximately 45 participants.
6. The notified time of the protest is 10.30am to 1.00pm.

7. A similar Easter Rising commemoration parade with two related protests occurred in April last year. There were hostile verbal exchanges between some parade and protest participants
8. The organiser has provided assurances to the Commission that the protest will be properly stewarded, timely, participants numbers will be controlled and the conduct of the protest will reflect the significance of the "*UDR Memorial*" to the protestors.
9. The Commission has considered this parade-related protest in respect of its size and location. The Commission has had regard to its statutory Guidelines in its considerations of the protest'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 considered the conducts last year within the context of assurances received about this year's protest.
11. The Commission has concluded that should the protest proceed without restriction, there may be an adverse effect on community relations and potential for public disorder.
12. The Commission has determined that the total number of protestors along Royal Avenue for this parade should not exceed 100 persons. This reflects that a reduced parade is notified this year: 400 notified participants with around 150-200 expected.
13. The Commission has set out in its determination the specific location of the protest group and has imposed conditions requiring its formation by a specified time.
14. The Commission has determined that these conditions are necessary, proportionate and fair in respect of this protest.

CONSIDERATION

15. 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

22. The Commission has had regard to the nature of this protest, the purpose of which is described earlier in the determination.
23. 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 protest. This decision is set against the background of continuing local community tension. 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 protest.
24. 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.
25. 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.
26. 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 Related Protest on Sunday 23 April 2017.

- A. The protest shall take place on the footpath at the tree memorial between points 35 metres and 70 metres countryward of the junction of Royal Avenue and Lower Garfield Street.**
- B. The protest shall number no more than 100 persons at this location.**
- C. The protest shall be assembled at the location identified at point A above no later than 10.45am.**
- D. The protest shall disperse immediately after the parade passes, but shall not move with the parade in any way.**
- E. The protest organiser shall arrange for the presence of an adequate number of stewards at each location, to ensure that all protest participants act in an orderly manner.**
- F. All participants of this parade-related protest must behave with due regard for the rights, traditions and feelings of others in the vicinity; refrain from using words or behaviour which could reasonably be perceived as intentionally sectarian, provocative, threatening, abusive, insulting or lewd; obey the lawful directions of protest organisers and stewards at all times, from assembly to dispersal; abide by the conditions of the Code of Conduct; and comply with police directions and in accordance with legislation.**
- G. The protest organiser and all participants in the protest shall comply with the conditions set out at Appendix C of the Commission's Code of Conduct.**
- H. The protest organiser shall ensure that all stewards and participants obey any direction given by the police in relation to this protest.**

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

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

Date: *16/11/17*

APPENDIX C

Guidance for Anyone Participating in Lawful Protest Meetings Against a Public Procession

A Behaviour

While there is a right to lawful protest, it is to be exercised responsibly.

All participants in related protest meetings should:

- behave with due regard for the rights, traditions and feeling of others in the vicinity;
- not attempt to stop, impede or otherwise interfere with a legal public procession; or
- avoid using words or behaviour which could reasonably be perceived as intentionally sectarian, provocative, threatening, abusive, insulting or lewd;
- obey the lawful directions of protest meeting organisers 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 related protest meeting.

C Location

Related protest meetings should be positioned so as not to obstruct a legal public procession or the free flow of traffic. They must comply with any requirements of the police in this regard.

D Alcohol

Alcohol should not be consumed immediately prior to, or during a related protest meeting. 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 related protest meeting.

E Flags etc.

No Flags or other displays relating to a proscribed organization should be displayed during a related protest meeting.

F Stewards

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

Stewards should:

- be properly trained;
- be briefed by the organizers prior to the protest meeting;

- 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 protest related meeting;
- co-operate with the police
- be prepared to identify to the police any persons in the public procession who may be committing any offence against criminal law.

G Policing

Organisers of related protest meetings must co-operate with the police from the time of submission of the notice of intention to hold a related protest meeting until the related protest meeting disperses.

H Dispersal

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

I Abiding by Conditions

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