
DETERMINATION MADE IN RELATION TO THE BANNA FLIUIT NAOIMH PHADRAIG PARADE NOTIFIED TO TAKE PLACE IN KILKEEL ON SUNDAY, 17 MARCH 2019

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 or on any persons supporting it such conditions as the Commission considers necessary."
2. The Commission has noted the details provided on the Form 11/1 submitted on 8 February 2019 concerning the Banna Fliuit Naoimh Phadraig parade in Kilkeel on Sunday, 17 March 2019. The Commission has considered whether a determination under section 8 should be made in respect of this parade.
3. In considering whether to exercise its power under Section 8, the Commission has taken into account its previous determinations in relation to this parade. It has also considered all other aspects of the parade notified by the organisers, including its nature and purpose, and has considered all other information received in relation to it. 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 of the parade is to "*celebrate St Patrick's day*".
5. The notified outward parade route is: "*Graham's Garage; Newcastle Road, Newcastle Street; Greencastle Street; around roundabout; Greencastle Street; stop for 10 minute display at traffic lights; Newry Street; disperse at Newry Street*". The notified return route is: "*Rafferty's Garage; Newry Road; Newry Street; Greencastle Street; around roundabout; Greencastle Street; Newry Street; disperse at entrance to Mourne Hospital*".
6. The notified number of participants is 25-30, including one band. The number of supporters is notified as "*not known*".

7. The outward parade is notified to commence at 10.00am and disperse at 10.45am. The return parade is notified to commence at 7.30pm and disperse at 8.00pm.
8. The notified start and end times of the morning and evening parades have been amended to take account of Church Services that will be held along the parade route on the day of the parade.
9. Information and evidence regarding the proposed parade indicates that it may cause community tensions within Kilkeel, particularly the organiser's notification of Greencastle Street, which is the location of a church where members of the security forces are interred.
10. 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 considered all relevant human rights issues.
11. The Commission has concluded that should the parade proceed along the entirety of its notified return route this would result in an adverse impact upon community relations and community life and create the potential for public disorder. Music and other restrictions on both the outward and return parades are also imposed and there must be compliance with the Commission's Code of Conduct. The full determination is set out below.
12. The Commission continues to encourage all parties to this parading dispute to enter into dialogue to achieve an accommodation which reflects the needs of the local communities. As is set out in the Commission's statutory rules, it is a fundamental principle that any structures established must have the confidence and endorsement of those most closely concerned.

LEGAL CONSIDERATIONS

13. The Commission has had regard to the Guidelines issued under Section 5 of the Public Processions (Northern Ireland) Act 1998 ("the Guidelines"). The Commission has also been alert to its duties as a public authority under Section 6 of the Human Rights Act 1998. 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 these rights is absolute.
14. 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. Again, none of these rights

is absolute. The Commission has also been mindful of the provisions of Article 17 and its obligations under Article 2 of the Convention.

15. 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 has therefore undertaken a balancing exercise, consistent with its statutory Guidelines, to make a determination that is fair and proportionate in all the circumstances.
16. As required by the statutory Guidelines, the Commission has had regard to the seven North principles. One of the seven fundamental principles identified by the North Report is that all those involved should work towards the resolution of difficulties through local accommodation.
17. As stated in paragraph 4.5 of the Guidelines, the Commission takes into account any communications between parade organisers and the local community or the absence thereof and will assess the measures, if any, offered or taken by parade organisers to address genuinely held relevant concerns of members of the local community.
18. Having considered all the evidence, information and advice available to it, the Commission has determined that conditions should be placed on the parade. In imposing these conditions, the Commission pursues the legitimate aims laid down in 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. The conditions are not such as to affect significantly the individual's right to assemble.
19. 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 and strike a fair balance between the needs of the community and the rights of the individual. The legal, factual and human rights 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 Banna Fliuit Naoimh Phadraig in Kilkeel on Sunday, 17 March 2019.

- A. On the outward notified route, the band will cease to play music on reaching Mourne Presbyterian Church Hall in Greencastle Street and shall not play music until it again passes the said hall, but may strike a single side drum.**

- B. The band, in accordance with the Commission's Code of Conduct, shall play no music other than hymn tunes adjacent to the Presbyterian Church in Newcastle Street and Christ Church, Church of Ireland in Newry Street on the notified morning outward route; and adjacent to Christ Church, Church of Ireland on the notified evening return route.**

- C. On the outward route, the band is permitted to stop once for a display of no more than 10 minutes at the traffic lights at the junction of Greencastle Street and Newry Street.**

- D. The evening return parade is prohibited from entering Greencastle Street and from proceeding to the roundabout at the junction of Greencastle Street and Knockchree Avenue. It shall instead assemble as notified and proceed along Newry Road and Newry Street. The parade will then turn around at the junction of Newry Street and Greencastle Street, and shall not proceed further than a distance of 15 metres beyond the white line marking the point where Newry Street meets The Square. It shall then return along Newry Street to its notified dispersal point.**

- E. 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.**

- F. The parade organiser shall ensure that all participants including any marshals, band leaders and band members are given written details of the restrictions.**

- G. The organiser and all participants in the parade shall comply with the conditions set out in the Commission’s Code of Conduct. For ease of reference, these are reproduced below.

- H. As shown at Appendix B of the Code of Conduct, the Commission re-affirms that all participants in this parade 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 parade organisers and stewards at all times, from assembly to dispersal and comply with police directions and in accordance with legislation.

- I. The Commission further re-affirms the importance of respectful behaviour in the vicinity of interface areas, namely that there shall be no singing, chanting, or loud drumming and that marching should be dignified. More generally, no paramilitary-style clothing is to be worn at any time during the parade and flags, bannerettes and symbols relating to a proscribed organisation shall in no circumstances be displayed.

- J. 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.

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

Signed: Ane Henderson
 (On behalf of the Commission)

Date: 6/3/19

APPENDIX A

Guidance for Anyone Participating in Parades

A. Behaviour

All participants in parades should:

- 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 being intentionally sectarian, provocative, threatening, abusive, insulting or lewd;
- obey the lawful directions of parade 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 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 organiser 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 organisation.

G. Flags etc.

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