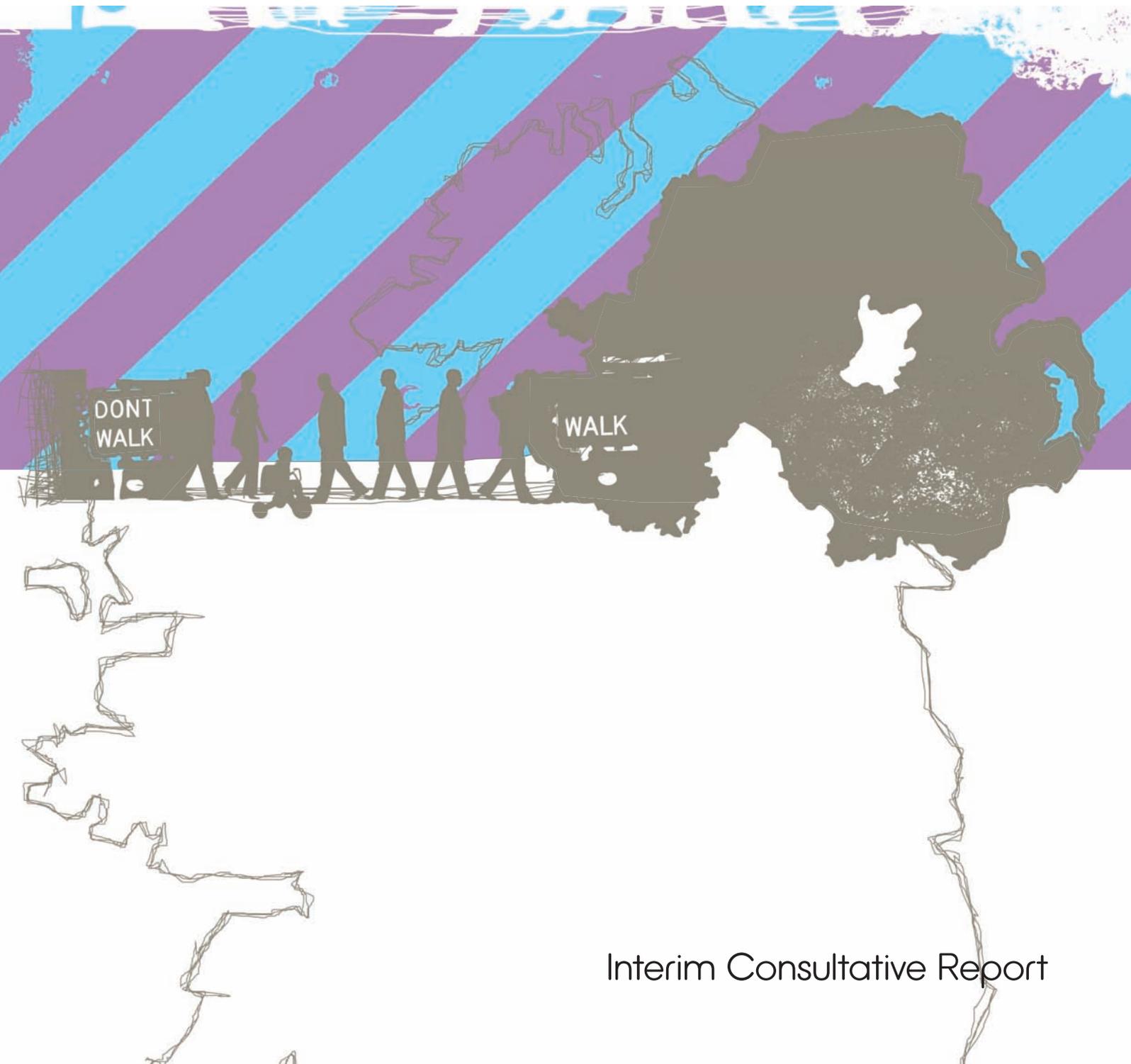


STRATEGIC REVIEW OF PARADING IN NORTHERN IRELAND



Interim Consultative Report

STRATEGIC REVIEW OF PARADING IN NORTHERN IRELAND

Interim Consultative Report

This Interim Consultative Report has been published on the Strategic Review's website at:

<http://www.srpb.org.uk>

where there is provision for anyone to submit their views on our proposals.

The Body can also be contacted by writing to:

The Strategic Review of Parading
55/59 Adelaide Street
Belfast, BT2 8FE

Foreword

The Terms of Reference for the Strategic Review of Parading (Appendix D) were announced in February 2007 and the appointments to the Review Body made in April 2007. The Body held its first meeting in May.

The establishment of devolved political institutions and devolved Government represents a new beginning for Northern Ireland and offers new opportunities to address difficult community issues.

We have been particularly encouraged by the desire of all those to whom we spoke to move from the conflict and contention of the past, where culture and traditions have been used as a political stick with which to beat each other, to a more normal situation where there is mutual tolerance, respect and understanding. We note however, that to achieve a fully normal society will require attitudinal change in all social spheres not just in parading and public assemblies.

We now have, perhaps, a unique opportunity to establish new procedures and structures, based on the principles of respect and tolerance, to reform the regulation of parading and to reconnect responsibility for difficult social issues with locally elected political institutions and leadership. A fundamental tenet of this report is the re-engagement of the domestic political leadership in issues of parades and protests, led by the Office of the First and the Deputy First Minister (OFM/DFM).

Throughout our deliberations, the need for transparency has been emphasised. To this end we have followed a policy of seeking the widest possible consultation from key stakeholders and others and have met hundreds of organisations and individuals from all parts of the community in Northern Ireland. On behalf of the Review Body, we would like to thank them warmly both for their contribution and the spirit in which they gave of their time.

We attach great importance to getting community buy-in to our proposals and to keeping the community informed as we develop our strategic thinking around parading and public assembly issues.

It is in that spirit we publish this interim report. The report details the Review's thinking to date and the principles, procedures and structures it believes would help remove the contention that has too often surrounded parades and other public assemblies. We want to hear the views of as many people as possible on our proposals and how they might be amended or further refined. It is only with the support of all the communities in Northern Ireland that our proposals can work.

We hope to be able to deliver our final report to the Secretary of State in the autumn of 2008. But it is, in our view, more important to get this right, and to take time to get buy in, than it is to get it done quickly. We also recognise that transferring responsibility for public assemblies to the Northern Ireland Executive will not happen in

isolation. The transfer of policing and justice matters to the Executive is part of the wider jigsaw of politics in Northern Ireland and progress in these areas is very likely to affect progress on the transfer of responsibility for parading issues.

There are two issues on which we have still to reach a conclusion and these will form a critical part of our further consultations following publication of this report. They are the parades at Drumcree and the Ormeau Road and the interpretation of the rules set out in our Standards with regard to the UVF 1912 flag and the YCV flag. We recognise these are of vital importance and hope that, after further consultations, we are in a position to make recommendations to the Government on these matters when we deliver our final report.

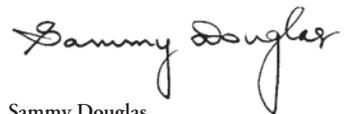
We believe our proposals could and should be brought into effect early in 2009 but unless and until new legislation is enacted, the Parades Commission will, in the interim, continue to be the final arbiter on parades.

We shall be conducting further meetings with many of the key stakeholders to discuss this interim report. Beyond this, however, we welcome comments and suggestions on our proposals which can be sent, in writing or by email.

This Interim Consultative Report has been published on the Strategic Review's website at: <http://www.srpb.org.uk> where there is provision for anyone to submit their views on our proposals.



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April 2008

STRATEGIC REVIEW OF PARADING IN NORTHERN IRELAND

Interim Consultative Report

Index

Page nos.

(1) Summary and recommendations

Summary

1.1	Principles	6
1.2	Procedures	7
1.3	Structures	8
	Recommendations	
1.4	To Office of First and Deputy First Minister	8
1.5	To Northern Ireland Office	9
1.6	Northern Ireland Human Rights Commission	10
1.7	Local Councils	10

(2) Context

2.1	The present political opportunity	12
2.2	Background	12
2.3	Our Vision	14

(3) Principles

3.1	Local dialogue and local agreement	18
3.2	Re-engaging democratic politics	18
3.3	Management - Standards for the Conduct of Public Assemblies	18
3.4	Improving understanding	19
3.5	Transparency and openness	20
3.6	Independent adjudication	20
3.7	A rights based approach	20

(4) Procedures and structures

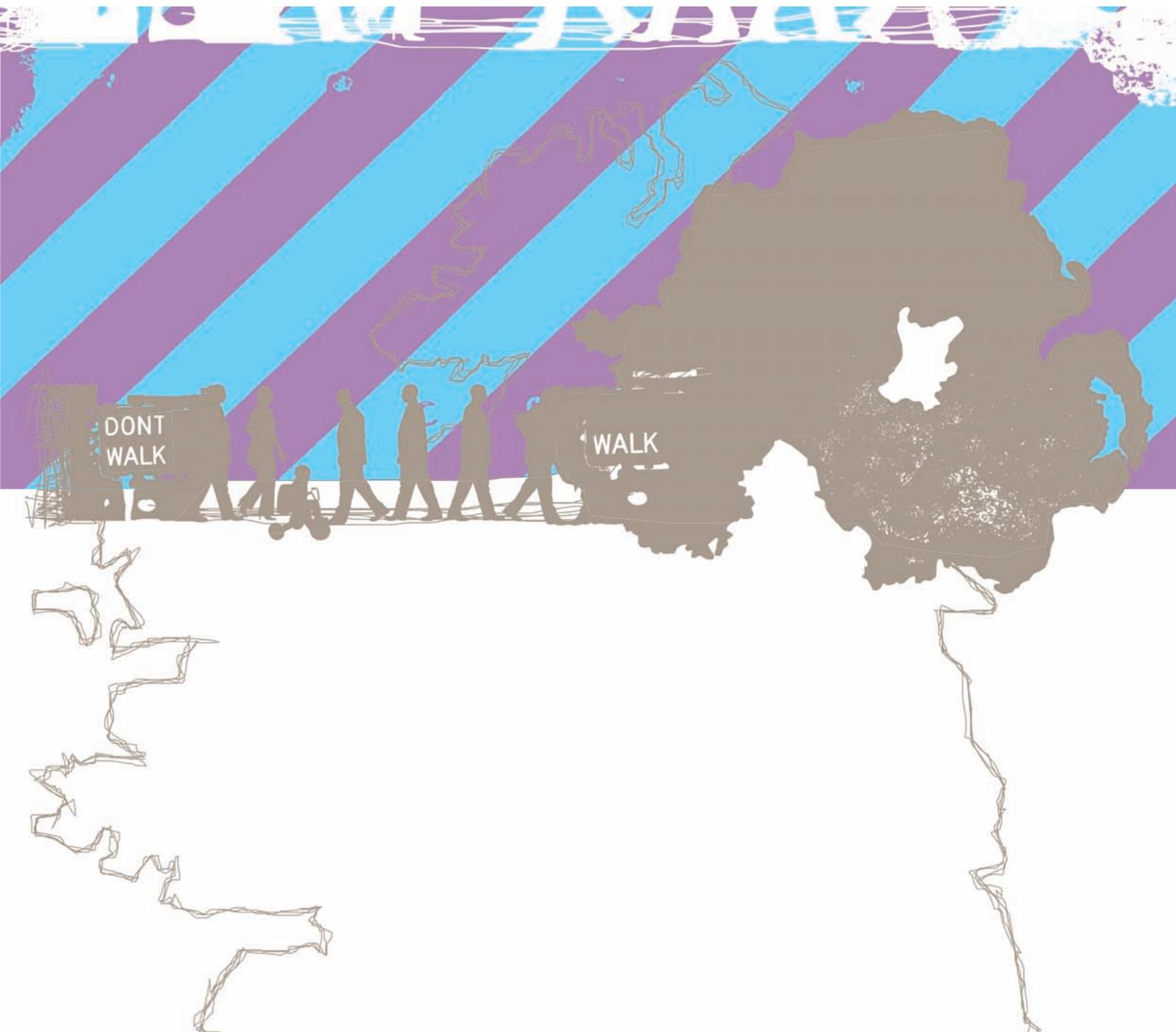
4.1	Definitions	25
4.2	Administration	25
4.3	Notification	25
4.4	Local dialogue	26
4.5	Mediation	27
4.6	Adjudication	27
4.7	Monitoring	29
4.8	Bands	29
4.9	Further recommendations	30

(5) Appendices

5(A)	Standards of Conduct for Public Assemblies in Northern Ireland	32
5(B)	Human Rights - interpretation of the legitimate grounds for restriction	45
5(C)	Public Assemblies - The legal framework	55
5(D)	Terms of Reference	58
5(E)	Consultees	59
5(F)	Endnotes	62

1.

Summary and recommendations



1. Summary and recommendations

The proposals contained in this report should apply to all public assemblies of 15 or more people, all public processions and all related protests.

Summary

1.1 Principles

Local dialogue and local agreement

The Strategic Review believes it should be fundamental that conversation, dialogue and local agreement become the normal way of doing things. A simple phone call or conversation can, more often than not, resolve differences and difficulties before they escalate and involve the mediation or adjudication processes we propose.

Re-engaging democratic politics

Devolution now provides a new and unique opportunity to move towards normality by reconnecting decisions around these difficult issues to local democratic politics. The Strategic Review believes that new structures should take into account both devolution and the underpinning political agreement which it represents.

Management - Standards for the Conduct of Public Assemblies

We recognise that some disputes about public assemblies have centred on issues of behaviour or on the meaning of symbols in sensitive areas. We have developed robust Standards for the Conduct of Public Assemblies in Northern Ireland. These Standards are published with this report and are central to our recommendations.

Improving understanding

There is an immense gulf in understanding of the culture and traditions of each community which, in our view, is a prime contributor to the difficulties in reaching local accommodation regarding parades and

protest issues. We make recommendations that we hope will begin to address this deficit.

Transparency and openness

We believe that the need for transparency and openness in dealing with disputes is paramount and that the principle of wide consultation and transparency leads to more community ownership and increased mutual understanding. To assist transparency, we make recommendations on the appointment of independent monitors whose reports will be made public.

Independent adjudication

We believe it important that where local dialogue or mediation fails, or results in only partial agreement, the mediation and adjudication functions should be kept separate.

A rights based approach

Our ultimate aim is to reach a point, over time, where parades and assemblies are dealt with in Northern Ireland as they would be in any other European democracy. A human rights framework – as defined principally by the case law of the European Court of Human Rights – is crucial to this process. This framework recognises that there may be a number of competing rights that come into play when dealing with parading in the Northern Ireland context, each of these rights deserving equal consideration. We have sought to find an appropriate balance between these and recommend that the future Bill of Rights will reflect the principles articulated in this report. We also recognise that, ultimately, this balance will be determined by the courts.

1.2 Procedures

We recognise that local informal discussions may not resolve all difficulties in all situations and have therefore devised a process that is designed to come into play where issues cannot be resolved at local level. This process covers notification, registering objections, a mediation stage where necessary and, where agreement is not reached, a final adjudication with an opportunity for a post event review where appropriate. We have placed maximum emphasis on local contact and agreement in the early stages and hope that adjudication will be used only as a last resort.

We envisage that the principles, procedures and structures we have identified should work as follows (see page 24 for a schematic representation):

Step 1

Organisers of public assemblies should consider all aspects of their event and where possible identify any issues that may arise and immediately endeavour to address these. The issues identified and actions taken should be noted on the notification form they will be required to submit.

Step 2

The organiser of a public assembly of 15 or more persons, a public procession or a related protest meeting (see definitions on page 25) must notify a nominated officer of the local council of their intention to hold an assembly as early as possible but no less than 35 days before the assembly or, in the case of a protest related to a notified assembly, 21 days. Notification must be made by completion of the notification form and submitted by post, in electronic form or in person.

Step 3

The local council will publish the notification form, in a publicly accessible way, and directly notify identified interested parties, including the PSNI, emergency services and local elected representatives, of the planned event.

Step 4

Any objections to the proposed assembly will be lodged, on the appropriate form, with the local

council within seven days of publication of the event details by the local council. The local council will notify all designated parties and all other parties who have registered an interest of the objection(s) and publish the objection form in a public accessible way.

Where possible, any concerns or objections in relation to a proposed public assembly will be dealt with by direct contact between the organisers and the objectors. The outcome will be notified to the local authority, who will then notify all interested parties of the agreed changes.

Where local agreement is reached, the assembly may then proceed as agreed.

Step 5

Where concerns or objections remain unresolved, the local council will facilitate discussion between the event organiser and those raising concerns or objections to seek a resolution to the issues. These informal discussions will be organised by the local council and held at local council expense and take place within seven days of receiving any concern or objection.

Step 6

Where no agreement can be reached through dialogue, the local council will inform OFM/DFM or their identified agents. Where requested by any party to the dispute and where valid considerations are raised, the local council will arrange a mediator, agreed by the parties to the dispute and drawn from the OFM/DFM register, on a case by case basis.

Parties to mediation will together agree a set of 'ground rules' and identify the issues to be addressed. The outcome will be notified to the local council who will then notify interested parties.

If a party is unwilling to enter mediation, OFM/DFM will be notified and they will then immediately initiate the adjudication process. Where a party is unwilling to enter face to face discussions, unless that refusal is due to exceptional circumstances that can be fully justified to the satisfaction of the adjudication panel, it will be taken into account by the panel in its final deliberations.

Step 7

Where no agreement is reached at least fourteen days prior to the proposed assembly date, the matter will be referred to OFM/DFM, by the mediator, for final adjudication (although mediation might continue). OFM/DFM will appoint an Adjudication Panel from their register of adjudicators consisting of three members, of whom at least one is qualified to practice law or has a relevant legal qualification and who will also act as chair of the panel.

The Adjudication Panel will be able to receive evidence from whomsoever they wish and must take into account human rights issues, any previous breaches of the Standards involving the participants concerned, and monitors' reports.

The legally binding adjudication will be issued at least 7 days prior to the event taking place whenever possible.

In reaching their decision, the Adjudication Panel will fully explain their decisions in terms of human rights (determining which rights are actually engaged in any given situation), the Standards, and monitors' reports and any other matters relating to behaviour in the previous year. It will be the responsibility of the local council to notify all interested parties of the Adjudication Panel's decision.

An Adjudication Panel may only review a decision after it is issued if new and material facts have emerged which substantially affect the context in which the adjudication was made.

Step 8

For adjudicated assemblies, there will be a post event review involving all stakeholders no later than 35 days after the event. In all other cases it will be open to the parties, or the PSNI, to call for a post event review.

1.3 Structures

In our proposals we have identified a central role for the Office of the First and the Deputy First Minister (OFM/DFM) in the overall administration of the process and we recommend that they establish a Secretariat to oversee the administration of the regulation public assemblies in Northern Ireland.

Consistent with our desire to re-connect parading and related issues to the political process, we believe that their effective resolution can best be achieved within the wider context of the transfer of policing and justice, while recognising that the timing of these matters remains the prerogative of members of the Northern Ireland Assembly and the Government.

As Northern Ireland continues to progress towards normality many of the structures and processes recommended here can be simplified and streamlined enabling the role of OFM/DFM to be diminished over time.

We have also identified an administrative role for local councils.

We recognise that our proposals will require a re-allocation of the funding that the Government currently commits to the regulation of parading in Northern Ireland and might require additional resources. However, we consider the costs that this may incur are minimal compared to the wider political, social and economic damage that might be incurred as a result of failing to find agreement on this important issue.

We recommend to:

Recommendations

1.4 The Office of the First and the Deputy First Minister that:

Overall responsibility for the administration of the regulation of public assemblies should be transferred to OFM/DFM and that they should establish a secretariat charged with

administering all aspects of the regulation of public assemblies, except those falling to local councils. Any guidance that flows from this report should be placed on a statutory footing. 3.2 (iv)

The OFM/DFM Secretariat should prepare an annual report for the Assembly on its responsibilities and activities in relation to public assemblies. 3.2 (v)

Public resources should be made available where the training of stewards is required to ensure the safe facilitation of public assemblies organised by non-profit making organisations. 3.3 (viii)

A cultural understanding education programme should be developed under the auspices of OFM/DFM, in consultation with local communities, taking account of current provision. 3.4 (iii)

Mediation and adjudication functions should be separate and transparent and that any appeals to the outcome of an adjudication must be through the Courts. 3.6 (iv)

The outcome of any mediated, negotiated or adjudicated dispute should reflect a proper balance between the right to freedom of peaceful assembly and the rights of those who live, work, shop, trade, visit and carry on business in the locality affected by an assembly. 3.7 (ii)

The Secretariat within the OFM/DFM should establish a list of qualified mediators through an objective public appointments process. 4.5 (iii)

OFM/DFM should administer the adjudication function and establish a register of candidates suitable for appointment to adjudication panels. 4.6 (ii)

When determining whether or not restrictions on a notified public assembly are necessary, the Adjudication Panel should consider:

- compliance with the Standards for the Conduct of Public Assemblies;
- human rights issues (including the willingness of parties to address the potential for disorder and impact on the rights and freedoms of others.
- past behaviour. 4.6 (vi)

Where there has been an adjudicated decision, there will be a post event review involving all stakeholders chaired by a

mediator from the OFM/DFM list who will forward a report to the OFM/DFM secretariat. The mediator chairing this review should not have been involved in earlier mediation of the same event. This review should take place as soon as possible but no later than 35 days after the public assembly. In all other cases it will be open to the parties, or the PSNI, to call for a post event review. 4.6 (xv)

A pool of independent monitors should be established, recruited and retained by OFM/DFM. The training and deployment of monitors (including the writing of reports) should be funded from public resources on a per diem basis. We recognise that the experience of members of the local community could contribute to the monitoring process. 4.7 (ii)

The relevant Government department should take the lead in gaining an understanding of band culture and its various facets. A bands strategy driven by cultural and community agendas should be formulated following an audit of 'marching bands'. 4.8 (v)

The same department, in collaboration with bands, should draft a 'Charter for Bands' articulating the minimum standards expected. 4.8 (vi)

Existing resources should be channelled to facilitate the formation of band associations, around either geographical location or commonality of interest, and enhance the workings of existing Associations. 4.8 (viii)

All arrangements and recommendations made in this report should be reconsidered by the OFM/DFM after five years and that they should present their conclusions to the Northern Ireland Assembly. 4.9 (ii)

1.5 The Northern Ireland Office that:

Our proposals, including the Standards for the Conduct of Public Assemblies in Northern Ireland, should be given legislative effect and be enforced consistently and rigorously by the PSNI and the Public Prosecution Service. 3.3 (v)

1.6 The Northern Ireland Human Rights Commission (NIHRC) that:

NIHRC should seek to raise awareness of the human rights framework relating to public assemblies and the rights of others (as articulated in this report). *3.4 (v)*

They take responsibility for providing, where required, training and advice for mediators on human rights matters. *3.4 (vi)*

The human rights principles articulated in this report should inform any future bill of rights. *3.7 (v)*

An annual review of the application of human rights standards as detailed in these proposals to be forwarded to the Office of First and Deputy First Minister. *4.9 (i)*

1.7 Local Councils that:

The Office of the Chief Executive within local councils should be given legislative responsibility for administering the processes of notification and local contact for dialogue. *4.3 (ii)*

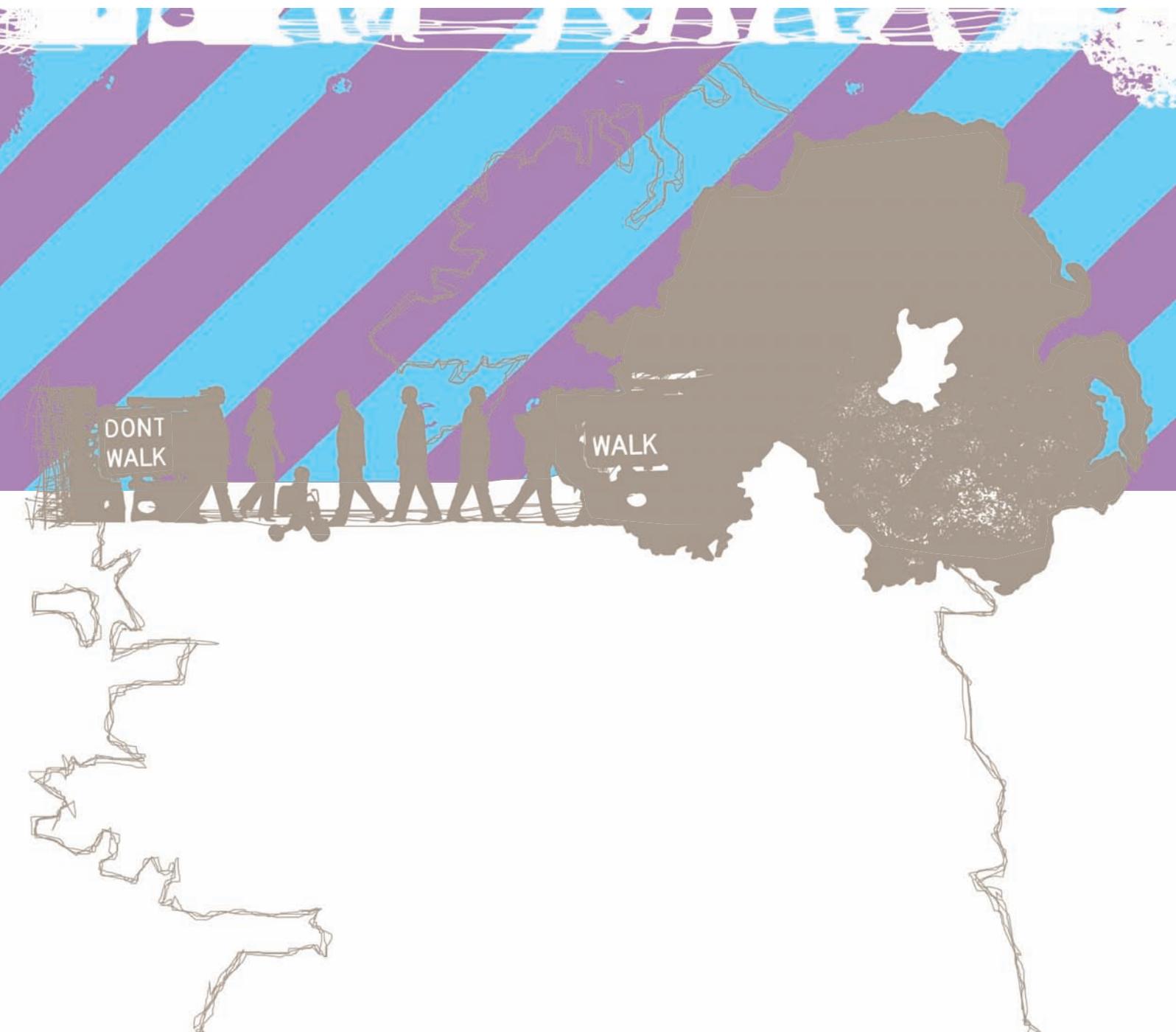
They should maintain appropriate records of all notifications received and any actions taken. *4.3 (vi)*

They should establish and maintain a list for anyone wishing to be informed about forthcoming assemblies within their council area. This list should be publicly available. *4.3 (vii)*

In the context of their responsibilities to promote Good Relations, local councils should support the development of skills in dispute resolution both within the council and its staff, and within the wider community. *4.3 (viii)*

2.

Context



2 Context

2.1 The present political opportunity

- i) In recent years enormous efforts have been made to bring violence to an end and to build shared and agreed institutions based on the rule of law and common principles of human rights and equality for all. As a result we now have an agreed political framework alongside a common commitment to eschew violence for politics and a commitment to real equality and universal human rights.
- ii) The successful establishment of agreed institutions in Northern Ireland in 2007 represents a historic opportunity for change. All parties are committed to ensure that the future should be decisively different from the past. In the future disputes should be resolved by purely peaceful means. To enable this, power-sharing has been established at the heart of government and the principle of free consent has again become paramount in constitutional politics. Alongside arrangements for devolution, there are now agreed structures to encourage relationships between Northern Ireland and the rest of the island of Ireland (north/south) and between the United Kingdom, Isle of Man and Channel Islands.
- iii) We thus have a real, and possibly unique, opportunity to make progress on outstanding disputes around territoriality and parading. The Strategic Review of Parading is visible evidence of this new context, drawing its members from across society and taking evidence from many quarters, including organisations and individuals with a direct interest in parading and protest and those with wider responsibilities. We make our interim recommendations in the light of the new political atmosphere and in the expectation of continued progress towards a peaceful, fair and inclusive society.
- iv) We recognise that reconciliation in societies cannot take place overnight or through a single political act. What is clear is that the costs of failing to find agreement on outstanding issues pale into insignificance, compared to the potential wider political, social and economic damage if a resolution to this issue is not reached.

- v) In the course of our review, we met with many people, organisations and groups. All were keen to find a new agreement to resolve disputes around parading founded on the rights and dignity of all parties. Although recognising that good will of itself does not resolve difficult historic problems, the review body was greatly heartened by this constructive atmosphere which has been an important dimension in our deliberations.

2.2 Background

- i) For decades, relationships in Northern Ireland have been dominated by violence and division. Competition for power and territory has been intense. Politics has been associated with polarisation, group identity and a struggle for power over the nature of the state itself.
- ii) Historically, political divisions have had deep religious and cultural associations. Allegiance to the union of Northern Ireland with the rest of the UK has traditionally been strongest among Protestants while a desire for an independent nation and an end to the partition of the island of Ireland has been stronger among Catholics. Political parties, cultural organisations and religious institutions have often reinforced rather than altered political solidarity. Identity and culture have divided rather than united Northern Ireland society, creating a culture of ‘them and us’ which has been destructive and, ultimately, a driver for conflict.
- iii) In a society where threat and fear were part of everyday life, issues of cultural and political expression have been particularly dangerous. At different times parades, demonstrations or marches by different sections of the community became a generator for deeply felt emotions and sometimes led to direct confrontation on the streets. Conflict around parades has generated wider fears within the whole community and led to deteriorating inter-community relationships. On occasion, such conflicts, often involving the police, have threatened the wider political system.

- iv) Protests have emerged over loyal order parades in a number of areas, particularly where demographic change has taken place. Contention has frequently led to serious violence, including loss of life, widespread rioting, obstruction of major thoroughfares, damage to property and a large number of attacks on the police. Disputes around parading have marked and scarred local communities for long periods of time after the parade or protest has taken place.
- v) Disputes around parades and other cultural issues have a considerable capacity to do damage to the emerging political climate of co-operation and partnership. Many parades have been closely identified with institutions and organisations which had strong political, religious and cultural affiliations. Almost all of the contention around parading relates to the wider political tensions in the community and their impact on certain local circumstances in some areas.
- vi) Over many years, Orange and related parades became an important tradition within Unionist/Protestant culture, and the activities associated with parades, including bonfires and parading bands have become a central element of culture and annual life. The Loyal Orders often played a central political role within Unionism. For those who participate in them however, parades have become an important part of the annual calendar, often associated with family and community festivals. The 12th and the 13th of July are public holidays. Preparation for the parades also acts as a focus for much local activity throughout the year.
- vii) There is also Hibernian and nationalist parading, although this has been less prominent within Irish nationalism in recent years compared to its high point in the nineteenth century and is predominantly a rural phenomenon. There are also parades which commemorate specific political events or which remember local events. There is no tradition of Hibernian or other nationalist parades marching through territories regarded as uniformly Protestant although there have been some recent republican parades which have been contentious from a unionist perspective. The fact that parading has been experienced so differently across Northern Ireland makes it a particularly difficult topic on which to achieve consensus.
- viii) One of the most obvious results of conflict in Northern Ireland has been the emergence of whole districts which are taken for granted as the exclusive preserve of one cultural or religious group or as having a unique political allegiance. Following violence and conflict in recent decades, these divisions have often become extremely sharp, with large areas effectively segregated. This has become deeply engrained in Northern Ireland with people often referring, in common parlance, to 'Catholic and Nationalist' or 'Protestant and Unionist' areas, with other parts where this does not apply often being referred to as 'mixed'. Small areas, such as individual streets or certain rural districts may then be associated almost exclusively with one group or another.
- ix) Living in separated physical space means that different experiences of conflict and fear have become interwoven into the cultural and political life of distinct and different places. The idea of distinct and segregated areas is sometimes given visible and physical expression by distinctive (if often strikingly similar) uses of national emblems, political markings, and cultural practices. Some urban districts are now divided by so called peace lines, which may include high, seemingly permanent, walls, gates or deliberate obstructions which are designed into the fabric by deliberate urban planning. In rural settings, there is clear evidence of people, especially amongst the middle class, moving out of areas where they feel threatened, and of long term fear among people in minority groups.
- x) These territorial boundaries in Northern Ireland are often highly visible and are always locally understood. In rural areas, where they may be less obvious, changes in land ownership or in demography are widely noted and acknowledged. In urban areas, interfaces have become the front lines of inter-group conflict, often becoming the areas most prone to violence and deprivation.
- xi) The remembered history of the same events is often sharply different according to the political perspective

from which it is seen and these 'stories' quickly become subsumed into each sides' folklore. The long history of threat and violence became part of the tragic everyday experience of many communities in Northern Ireland, alongside the application of tough special security measures and the emergence of paramilitary organisations which became almost institutionalised into political, community and social life.

- xii) The notion of distinct areas, normalised living apart and made abnormal the idea of living together. The usual dynamics of change, whereby districts change in their composition and mix over time, have become instead, battles associated with experiences of defeat and loss. 'Us' and 'them' become clear categories with distinct boundaries, reinforcing presumptions of friend and foe based on group experience.
- xiii) Parades and related protests around parades have thus opened the capacity to test these fragile balances of territory and culture. Because parades are mobile and involve the passage of people across and through different areas and boundaries, they challenge the notion of exclusive territories. Changes in the population in any area may indicate a change in the attitude to parades and, in a wider sense, of access to territory.
- xiv) What happens to a parade or protest is important not only to those directly involved but also to all those who share the fears that they could be defeated or excluded. When a parade is stopped or altered because of local pressure, it can be understood by some as evidence of a profound threat to longer term liberty and security and of evidence that the authorities cannot uphold basic rights. On the other hand, where the application of considerable force is needed to ensure a parade takes place in a district where it is not welcome, it can be seen as evidence of indifference by the authorities to the rights of residents and a failure to uphold the law equally.
- xv) In this context of political polarisation, parades and protests can easily come to be seen as broader political statements of intent by one community to another. More dangerously, underlying contention around parades can easily be exploited by those seeking to create divisions within the wider society.
- xvi) Until there is agreement about parading and protests which all can adhere to, these disputes will retain a powerful capacity to impede or even reverse recent progress in Northern Ireland by re-igniting divisions, generating conflict and recreating a legacy of bitterness across the whole community.

2.3 Our vision

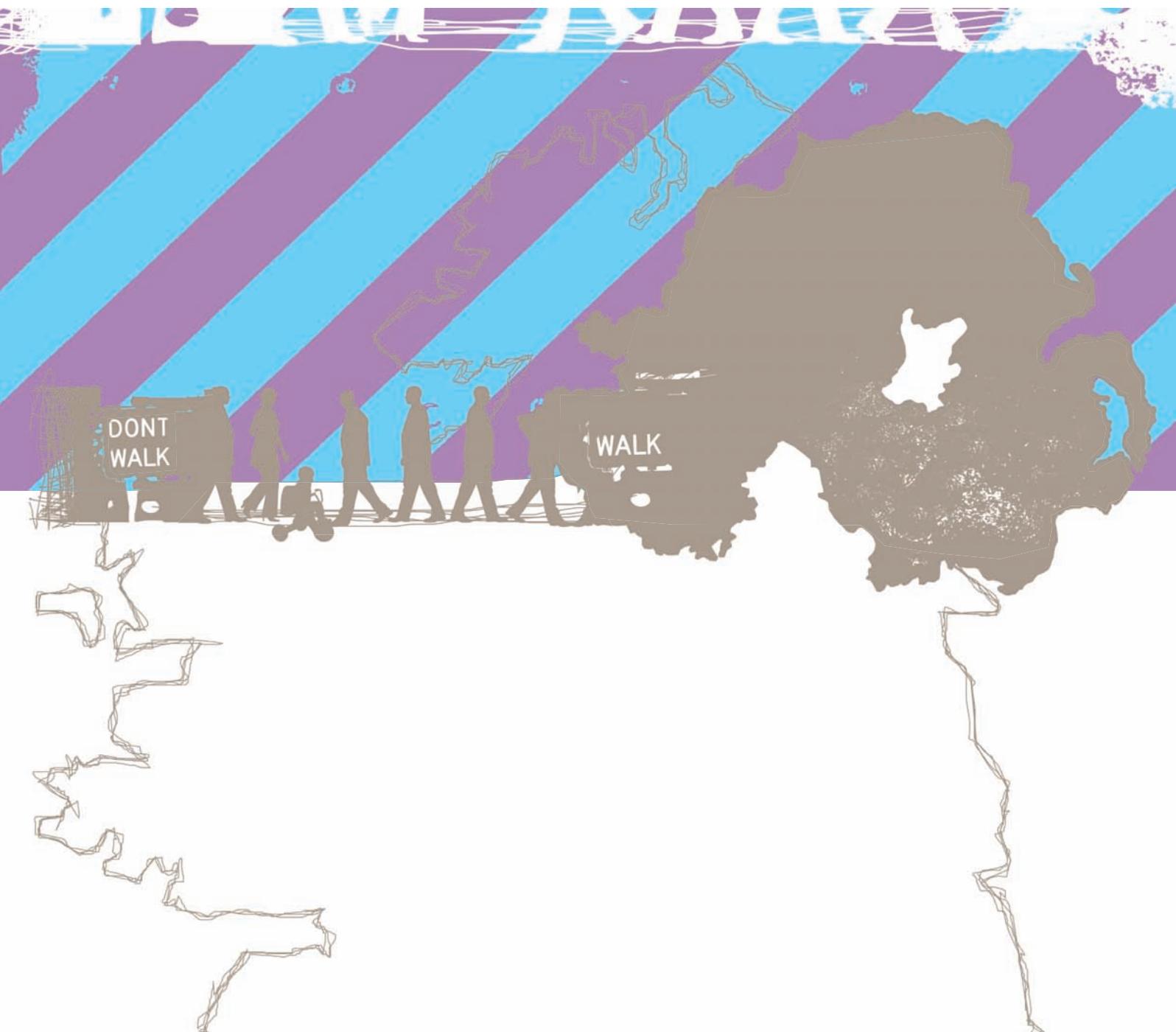
- i) Our long term goal is to create a situation where, over time, parades and assemblies in Northern Ireland can be regulated in the same way as they would be in any other European democracy. Our vision is of a society where parades and protests are no longer the focus or cause of community conflict and in which cultural celebration takes place in a peaceful and respectful manner in a society characterised by tolerance, human rights, equality and confidence in a future shared by all.
- ii) We have concluded that our recommendations should encompass a wider range of public assemblies than only public processions. The proposals contained in this report should apply to all public assemblies of 15 or more people, all public processions and all related protests on the public highway.
- iii) We make no apologies for the comprehensive, detailed and perhaps even bureaucratic nature of some of the proposals contained in our recommendations. Bureaucracy is frequently the price that has to be paid when you move from a system which relies on direction by a few, to one which depends on democratic processes. But in our view this is a small price to pay in comparison to the price of continued conflict which this system aims to transform.
- iv) As Northern Ireland continues to progress towards a new peaceful normality we believe that many of the structures and processes recommended here can be simplified and streamlined. We conclude therefore that our proposals should be regularly reviewed and updated to ensure that disputes are resolved with the maximum agreement and the minimum of formality. This should enable the role of OFM/DFM to be diminished over time.

- v) In the long term, full resolution of the issues surrounding assemblies is going to be a process not an event. We believe that the principles, procedures and structures which we outline here can, through their consistent application, lead to a new consensus on the rights underpinning free expression and assembly and thus assist rather than potentially endanger the present progress in Northern Ireland.
- vi) We recognise that these proposals will require some redeployment, and maybe even an increase, in the allocation of financial and other resources. But we believe, given the importance of reaching a long term solution to the issue of parading in the current political climate, this is justified.



3.

Principles



3. Principles

This report is founded on seven key principles:

3.1 Local dialogue and local agreement

- i) The Strategic Review has noted that recent progress on parades and related issues has come about through increased local dialogue. We seek to build on this. Our proposals are based on the principle that disputes should ideally be resolved by the parties involved as quickly and efficiently as possible.
- ii) Although we have identified a methodology for dealing with disputes, the Strategic Review believes that it should be fundamental that conversation, dialogue and local agreement become the normal way of doing things. A simple phone call or conversation can, more often than not, resolve differences and difficulties before they escalate and entail recourse to the mediation or adjudication processes we have devised.

3.2 Re-engaging democratic politics

- i) Political traditions and identity, including parading, will continue to be central to cultural and social life. However, this must be separated from any threat of intimidation or violence. The days of ‘croppy lie down’ and ‘no orange feet’ are over. In democratic societies, disputes should be resolved through peaceful dialogue, or, where required, through the democratic political system.
- ii) In the past, disputes around parading and associated protests have been dealt with by the police, by the Government or by independent arbitrating bodies like the Parades Commission. The Strategic Review believes that a resolution of disputes around parades and protests cannot successfully be achieved without the engagement of representative politics and of political leadership.
- iii) Devolution now provides a new and unique opportunity to move towards normality by reconnecting decisions around these difficult issues to local democratic politics. The Strategic Review believes that new structures should therefore take into

account both devolution and the underpinning political agreement which it represents.

- iv) We recommend that overall responsibility for the administration of the regulation of public assemblies should be transferred to OFMDFM and that they should establish a secretariat charged with administering all aspects of the regulation of public assemblies, except those falling to local councils. Any guidance that flows from this report should be placed on a statutory footing.
- v) We recommend the OFM/DFM Secretariat should prepare an annual report for the Assembly on its responsibilities and activities in relation to public assemblies.

3.3 Management - Standards for the Conduct of Public Assemblies

- i) Disputes about public assemblies have often centred on issues of behaviour or on the meaning of symbols in sensitive areas. In the course of this review we have engaged widely to develop a set of robust Standards for the Conduct of Public Assemblies in Northern Ireland which is published with this report and we believe that the robust application of the Standards will minimise the potential for disputes in the future.
- ii) These Standards are central to our recommendations. We recognise there is existing legislation (eg on public order) applicable in this area (listed at Appendix C), and we see as complementary to our Standards and expect those, and our Standards, to be rigorously enforced.
- iii) Amongst other things, our proposed Standards clearly set out the responsibilities and behaviour expected of all those who organize and participate in public assemblies. Our recommendations are premised on the organisers of, and participants in, public assemblies recognising and strictly adhering to them.
- iv) If public confidence in the enforceability of standards of behaviour is to grow, the PSNI and the Public

Prosecution Service (PPS) will play a vital role. Because of the need to stabilise expectations and ensure equity in the enforcement of the Standards, it is in the public interest that breaches are processed by the criminal justice system without delay. This is particularly true where breaches have occurred at sensitive locations. In coming months, we will undertake further consultation on this issue with the Criminal Justice Board.

- v) We recommend that our proposals, including the Standards for the Conduct of Public Assemblies in Northern Ireland, should be given legislative effect and be enforced consistently and rigorously by the PSNI and the Public Prosecution Service.
- vi) The development and implementation of skills training for organisers and stewards at parades and related protests has had a significant impact on the behaviour of parade and protest participants, resulting in a reduction of tension and an improvement in good relations before, during and after events. Typically skills training has included steward training, event management, negotiation and conflict management skills, and has been delivered through accredited training organisations.
- vii) Stewards, acting under the authority of assembly organisers, should, we believe, continue to have a key role in ensuring the peaceful nature of a parade or a protest. Organisers and stewards have a duty to comply with legal requirements and ensure that their assemblies are peaceful.¹ Organisers must ensure that all stewards have been trained to a suitable standard.
- viii) We recommend that public resources should be made available where the training of stewards is required to ensure the safe facilitation of public assemblies organised by non-profit making organisations.

3.4 Improving understanding

- i) A key theme to emerge from our consultations was the immense gulf in understanding of the culture and traditions of each community that exists. This, in our view, is a prime contributor to the difficulties in reaching local accommodation regarding parades and protest issues. Significantly, another theme emanating from many of these same individuals and groups centred on the need for mutual tolerance, understanding and respect for each others culture, traditions and rights. There was often a tangible sense of hope expressed, that given the new political climate, Northern Ireland might reach a point where cultural diversity might not only be tolerated but valued.
- ii) It is the view of the Review Body, that if progress is to be made on parading and related protest issues, then it is imperative to address the existing lack of cultural understanding through an effective education programme, including, potentially at a curricular level, which should be clearly focussed on engendering “reconciliation, tolerance, and mutual trust and the protection and vindication of human rights for all”.²
- iii) We recommend that a cultural understanding education programme should be developed under the auspices of OFM/DFM, in collaboration with local communities, taking account of current provision.
- iv) Under the Northern Ireland Act 1998, the Northern Ireland Human Rights Commission has a duty to promote understanding and awareness of the importance of human rights in Northern Ireland.³ In this light, an important task for the Commission will be to raise awareness of the human rights framework relating to public assemblies and the rights of others (as articulated in this report) and to support such further research in this area as may be necessary. This educative role is, in our view, crucial to the success of any long-term strategy for the resolution of disputes relating to public assemblies.
- v) We recommend that the Northern Ireland Human Rights Commission should seek to raise awareness of the human rights framework relating to public assemblies and the rights of others (as articulated in this report).

vi) We recommend that the NIHRC should also be responsible for providing, where required, training and advice for mediators on human rights matters.

iv) We recommend that the mediation and adjudication functions should be separate and transparent and that any appeals to the outcome of an adjudication must be through the Courts.

3.5 Transparency and openness

- i) We believe that the need for transparency and openness in dealing with disputes is paramount and that the principle of wide consultation and transparency leads to more community ownership and increased mutual understanding.
- ii) The grounds for any decision should be explicitly and specifically enumerated. The Adjudication Panel must identify which rights are actually engaged in any given situation, and fully explain their decisions in terms of the rights at stake, and the relevant Standards of Conduct. This is vital in order to enhance the prospects for peaceful and mutually satisfactory resolutions, and to render decisions less vulnerable to misinterpretation. Decisions should be unambiguous and written in plain English.

3.6 Independent adjudication

- i) If local dialogue or mediation fails, or results in only partial agreement, adherence to the principle of independent adjudication is crucial. We believe that the mediator should only report to the OFM/DFM Secretariat whether the mediation has succeeded or not and whether parties entered into mediation, in good faith, as refusal to do so may be taken into account by the Adjudication Panel.
- ii) The process we recommend does not provide for an appeals procedure to the Adjudication Panel. We believe this is best dealt with through the Courts and have set timescales to allow for this to happen.
- iii) An Adjudication Panel may only review a decision after it is issued if new and material facts have emerged which substantially affect the context in which the adjudication was made.

3.7 A rights based approach

- i) The SRPB believes that a rights based approach can provide a framework for the just resolution of disputes, and the means of ensuring consistent decision-making in the regulation of public assemblies.
- ii) We recommend that the outcome of any mediated, negotiated or adjudicated dispute should reflect a proper balance between the right to freedom of peaceful assembly and the rights of those who live, work, shop, trade, visit and carry on business in the locality affected by an assembly.
- iii) The *Human Rights Act* 1998 places an obligation on all public authorities to act in a manner compatible with the European Convention on Human Rights⁴ (ECHR), and requires the courts to take into account decisions of the European Court of Human Rights. The International Covenant on Civil and Political Rights (ICCPR) – ratified by the United Kingdom in 1976 – also forms part of the UK's obligations under international law.
- iv) We also make reference to other sources which are not legally binding but that may have declaratory or persuasive force (such as the OSCE Guidelines on Freedom of Peaceful Assembly).⁵
- v) Ultimately, it is for the courts to demarcate the boundaries for the enjoyment of fundamental rights and freedoms. Nonetheless, the SRPB recognises the importance of the work currently being undertaken by the Northern Ireland Human Rights Commission in advice to the Secretary of State on a Bill of Rights for Northern Ireland.⁶ The SRPB recommends that the human rights principles articulated in this report should inform any future Bill of Rights.

vi) The rights potentially engaged (see further appendix B) are:

- **The Right to Life (Article 2, ECHR; Article 6, ICCPR)**

A violation of the right to life will be established if it can be shown that the authorities did not do all that could reasonably be expected in the circumstances to avoid the risk to life. The right to life of police officers and law enforcement personnel must also be protected.

- **The Right to Freedom from Inhuman or Degrading Treatment (Article 3, ECHR; Article 7, ICCPR)**

This right protects individuals from, amongst other things, conduct which might humiliate and debase the person concerned, and adversely affect his or her personality.

- **The Right to Liberty and Security of Person (Article 5, ECHR; Article 9, ICCPR)**

This right is concerned with total deprivation of liberty, not mere restrictions upon movement. This distinction is one of degree or intensity, and not one of nature or substance.

- **The Right to Private and Family Life (Article 8, ECHR; Article 17, ICCPR)**

This right might be engaged where there is a significant interference which affects an individual's right to enjoy life in his or her own home, including their personal security and well-being of their family

- **The Right to Freedom of Thought, Conscience and Religion (Article 9, ECHR; Article 18, ICCPR)**

The enjoyment of this freedom may, on occasion, overlap with freedom of expression and assembly.⁷ Conversely, it might be violated by the exercise of those rights if conduct occurs which is gratuitously offensive (particularly with regard to objects of veneration) or where views that diminish human dignity are expressed.

- **The Right to Freedom of Expression (Article 10, ECHR; Article 19, ICCPR)**

The protection afforded by this right (which may also overlap with the right to freedom of peaceful assembly) extends to information or ideas that shock, offend or disturb any sector of the population.

- **The Right to Freedom of Peaceful Assembly (Article 11, ECHR; Article 21, ICCPR)**

This right has been recognised as one of the foundations of democratic society, and one which 'should not be interpreted restrictively.'⁸ Insofar as possible, freedom of peaceful assembly should therefore be enjoyed without regulation. However, only 'peaceful' assemblies are protected under human rights law, and even lawful, peaceful assemblies may sometimes be restricted (for example, to protect the rights and freedoms of others).

- **The Right to Freedom from Discrimination (Article 14, ECHR; Article 26, ICCPR)**

Restrictions imposed on the exercise of rights must not be discriminatory in effect. This right therefore secures the enjoyment of Convention rights and freedoms without discrimination on a number of grounds including an individual's race, religion, sexual orientation or disability.

- **Destruction of Rights Clauses (Article 17, ECHR; Article 5 ICCPR)**

These provisions ensure that no State, group or person can rely on their Convention rights if they aim to destroy any of the other rights and freedoms contained therein.

- **The Right to Freedom from Harassment**

This right was explicitly included in the Belfast/Good Friday Agreement (qualified there as 'sectarian harassment') and might conceivably be engaged where repeated conduct has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, or humiliating environment.

- **The Right to Peaceful Enjoyment of One's Possessions (Article 1 of Protocol 1, ECHR)**

This right protects individuals from intolerable and exceptional intrusions and may potentially be engaged where there has been a serious and negative impact on businesses or on property values in an area.

- **The Right to Freedom of Movement (Article 2 of Protocol 4 ECHR; Article 12, ICCPR)**

The UK is not yet a party to Protocol 4 ECHR, and the scope of this right – while potentially wider than that to liberty (above) – is most commonly relied upon in the context of restrictions on movement within the territory of a country and across its borders. However, the UK is a party to the ICCPR, and the Human Rights Committee (the UN Body that supervises state bodies' compliance with this treaty) has pointed out that the State's obligation is to ensure that Article 12 ICCPR rights are protected "not only from public but also from private interference."⁹

vi) It is the responsibility of the State to put in place adequate mechanisms and procedures to ensure that these rights can be practically enjoyed. Indeed, the State will often have a positive obligation to do so.¹⁰ Where there is a clash between the right to freedom of peaceful assembly and the rights of others, the State is also determining – and must equally seek to uphold – the exercise and enjoyment of the other rights engaged.¹¹ In satisfaction of this duty, the SRPB emphasises the following key values:

- *Proportionality*: Any action taken which impinges on the exercise of these rights must be proportionate to the aim pursued. Moreover, any restrictions must be based on 'an acceptable assessment of the relevant facts'¹² and the reasons for restriction must be both 'relevant and sufficient' and 'convincing and compelling'.¹³ The nature and severity of any subsequent penalties should also be assessed in terms of their proportionality.¹⁴

The SRPB recognises that the assessment of proportionality may change over time. In particular, the frequency of assemblies and their cumulative effect may be a relevant factor in assessing the proportionality of any proposed interference with the rights and freedoms of others who live, work, or carry on business in the locality of a proposed assembly.

- *Pluralism and Social Cohesion*: The European Court of Human Rights has on several occasions emphasised the importance of harmonious interaction between different traditions and ethnic and cultural identities so as to ensure social cohesion.¹⁵ The European

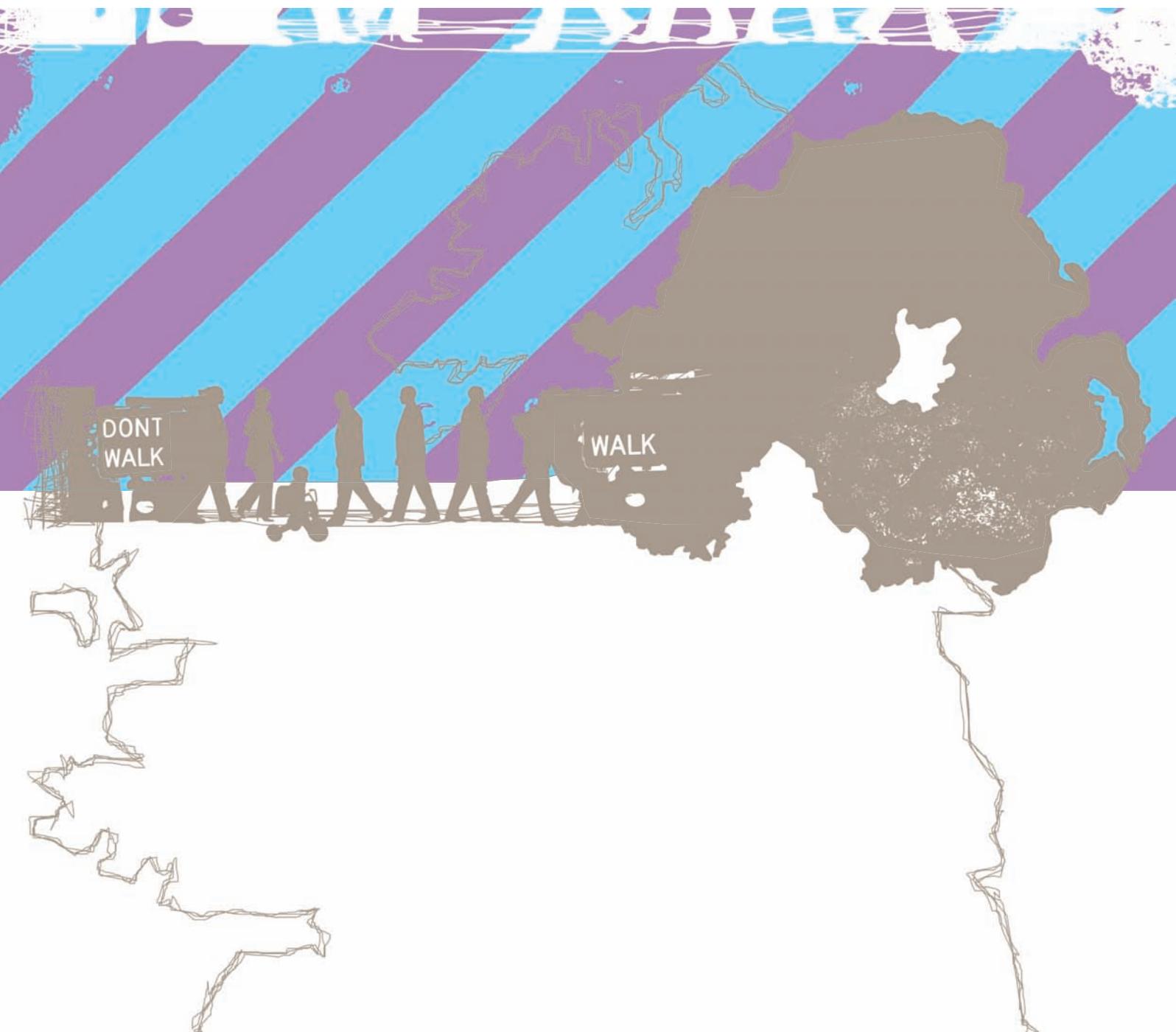
Framework Convention for the Protection of National Minorities encourages States to promote respect, understanding and co-operation among all persons.¹⁶ Recent judgments of the European Court of Human Rights have held that the State is 'the ultimate guarantor of the principle of pluralism'¹⁷ and this may well entail positive obligations. 'This obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization.'¹⁸ At the same time '...the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing political groups tolerate each other.'¹⁹

- *Tolerance, Equality and Non-Discrimination*: "[I]t would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority."²⁰ The enjoyment of the right to freedom of peaceful assembly should not therefore depend on the tolerance threshold of others. However, the reality of territorial boundaries in some parts of Northern Ireland undoubtedly affects the susceptibility of those who live there to particular categories of assembly. With this in mind, the SRPB believes that every effort must be made to ensure that, in the future, there should be no permanently exclusive territorial boundaries. Furthermore, in regulating freedom of assembly, the relevant authorities must not discriminate against any individual or group on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.²¹ All people must feel able to fully exercise their rights, including those who have not in the past enjoyed equal protection of their rights and whose lived experience in a particular area has been one of inequality, intimidation, exclusion, or disrespect.

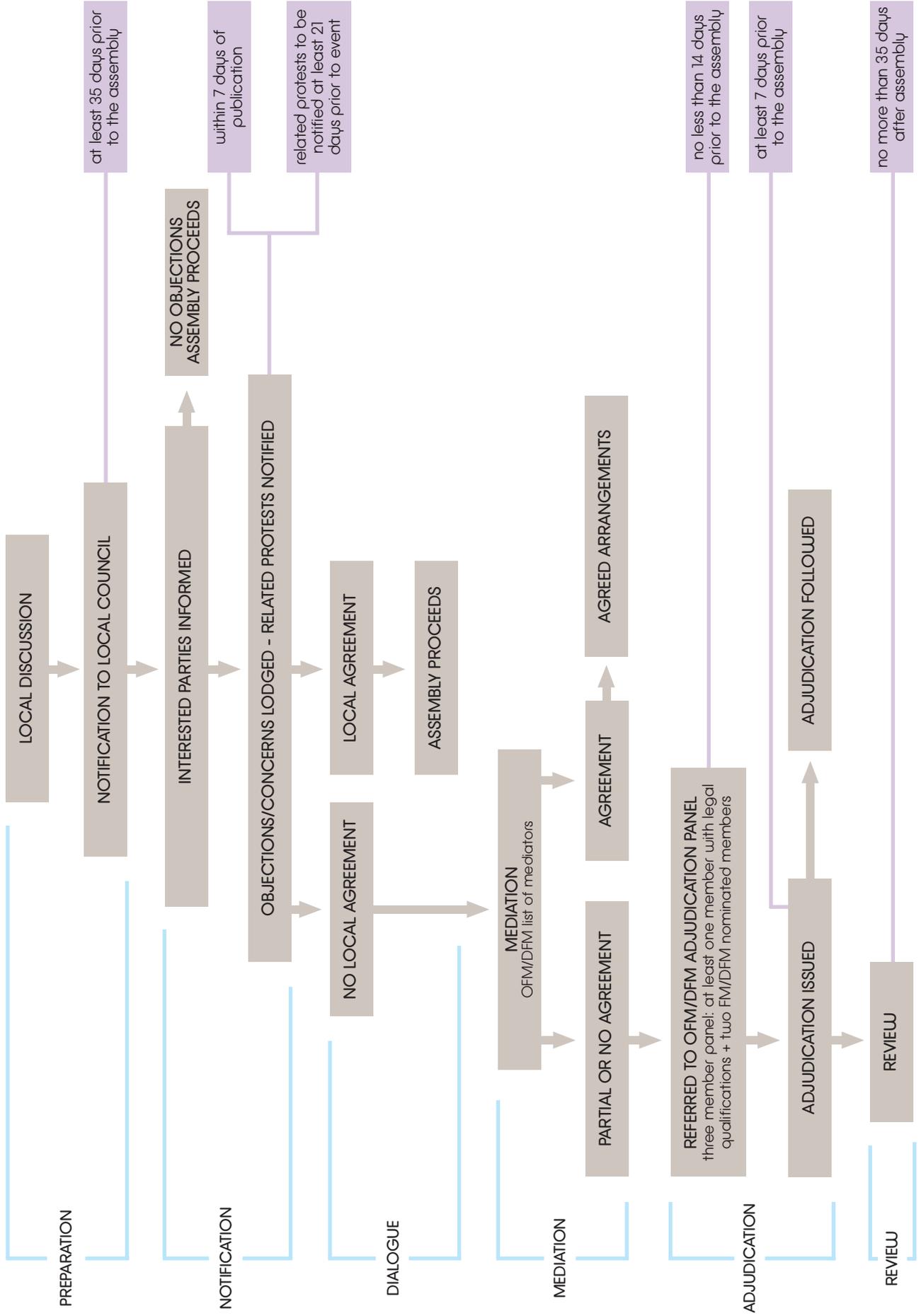
vii) Appendix 5(B) elaborates further on the contents of the rights potentially at stake in the context of disputes relating to freedom of peaceful assembly.²² The Appendix sets out the factors which the SRPB believes to be most relevant to the assessment of whether particular rights are engaged, or restrictions justified, given the particular circumstances of Northern Ireland.

4.

Procedures and structures



4. Procedures and structures



4.1 Definitions:

For the purposes of this report, we have used the following definitions:

‘Public assembly’ means an assembly in a public place of 15 or more people, all public processions and all protest meetings.

‘Public procession’ means a procession in a public place, whether or not involving the use of vehicles or other conveyances.

‘Protest meeting’ means an assembly –

(a) which is, or is to be, held –

(i) at the location, or on or in the vicinity of the route (or proposed location or route) of a public assembly; and

(ii) at or about the same time as the assembly is being or is to be held; and

(b) the purpose (or one of the purposes) of which is to demonstrate opposition to the holding of that assembly.

‘Public place’ means any road or footway within the meaning of the Roads (Northern Ireland) Order 1993.

‘Mediation’ is defined as intervention by a trained impartial third-party mediator whose role is to assist disputants to reach their own agreement.

‘Monitoring’ is defined as: ‘independent third-party observation of public assemblies resulting in a factual report to be publicly available within 72 hours of the event.’

4.2 Administration:

- i) As stated earlier in the report, in normal democratic societies, disputes are peacefully resolved through dialogue, or, where required, through politics, acting within a framework of agreed rights and responsibilities.
- ii) We have recommended (3.2 (vi)) that overall responsibility for the administration of the regulation of public assemblies should be transferred to OFM/DFM and that they should establish a secretariat charged with administering all aspects of the regulation of public assemblies, except those falling to local councils.

4.3 Notification:

- i) All public assemblies as defined are required to be notified to the local council where the event originates. This requirement should not apply to funeral processions or any assembly of a class or description specified in an order made by the responsible Minister.
- ii) We recommend that the Office of the Chief Executive within local councils should be given legislative responsibility for administering the processes of notification and local contact for dialogue.
- iii) It is anticipated that this will be an administrative function only and be performed in much the same way as local councils receive notification of births, marriages and deaths. Whilst we are carefully limiting the role of local councils in these procedures at the present time it is anticipated that, in the future, local authorities may have an enhanced role in the administration of public assemblies.
- iv) Assembly organisers should provide written notice of their intention to hold a public assembly to an officer of the relevant local council where the assembly commences.
- v) Where it is not possible for the organiser(s) to give at least 35 days notice, or 21 days in the case of a related protest, because the assembly is a response to circumstances which could not have been reasonably foreseen, the organiser of an assembly must provide

notice at the earliest possible date and provide a full explanation of the unforeseen circumstances which made timely notification impossible.

- vi) We recommend that local councils should maintain appropriate records of all notifications received and any actions taken.
- vii) We recommend that local councils should establish and maintain a list for anyone wishing to be informed about forthcoming assemblies within their council area. This list should be publicly available.
- viii) In the context of their responsibilities to promote Good Relations, we recommend that local councils should support the development of skills in dispute resolution both within the council and its staff, and within the wider community.
- ix) The local council should publish the notification form (see Standards) in full, in a publicly accessible manner, and directly notify identified interested parties of the planned event including dates, times and estimated participating numbers. Publication on the councils' website is the minimum requirement for notifications and objections. Interested parties include:
 - OFM/DFM Secretariat
 - the Police Service of Northern Ireland,
 - the emergency services,
 - elected representatives for those districts in which the event will take place,
 - other local councils in which part of the event will take place
 - individuals and organisations who have registered an interest in advance of notification with the local council
- x) Anyone who has concerns or objections about a forthcoming assembly must lodge these in writing with the local council office within seven days of the publication of the assembly details. The local council should publish the objection form (see Standards) in full, in a publicly accessible manner and directly

notify interested parties. The local council should then facilitate informal discussions between the assembly organiser and those who have raised concerns in order to seek resolution of the issues.

- xi) Concerns or objections must be based on an identified potential breach of human rights, including public order issues where they impact on the rights of others, and/or a potential breach of the agreed standards of conduct. The local council should copy these objections to the event organiser.
- xii) Where no concerns or objections are lodged with the local council, the event should proceed as notified.
- xiii) Where it is not possible for concerns or objections to be lodged within seven days of the publication of notice, due to exceptional and unforeseen circumstances, the local council must decide whether or not there is sufficient time for the process of local dialogue and mediation to run. If there is insufficient time, the notified assembly should be referred directly to OFMDFM who should then consider whether the concerns or objections are manifestly ill-founded on human rights grounds, and whether an adjudication panel should be appointed. A full explanation of the exceptional and unforeseen circumstances must be provided.

4.4 Local dialogue:

- i) We believe it is of paramount importance to maximise the potential for early and mutually satisfactory resolution of any disputes that arise at local level.
- ii) Ideally, issues or concerns should be raised directly with the organisers. Where these cannot be resolved at community level, and concerns have been lodged with the local council, in writing, the local council should move quickly to facilitate discussions between the event organiser and those raising concerns or objections in order to seek a resolution of the issues. These informal discussions should be organised by the local council and held at local council expense. Where agreement is reached, the notified assembly should proceed as agreed.

iii) Where resolution through local dialogue is not possible, OFM/DFM should be informed and if they are satisfied that the concerns or objections are not manifestly ill-founded on human rights grounds (having regard to past behaviour and the standards of conduct, and on the basis of appropriate advice where necessary) OFM/DFM (or their agent) they will appoint an independent mediator(s) acceptable to all parties.

4.5 Mediation:

i) Mediation is not intended to establish guilt or blame, but rather to help parties seek agreement where previously none existed. It is a process which can take account of (and help redress) power imbalances between the parties, and which should ensure that the process involved and any agreement reached is owned by local people.

ii) Previous research²³ suggests that there are five pre-requisites for mediation:

- A willingness between the parties concerned to communicate with each other directly;
- The opportunity to start the process early; since trust is a vital ingredient. Beginning mediation and negotiations at the 11th hour is not the best way to proceed;
- Being prepared to devote sufficient time to the process, so that all parties understand each other's position;
- A willingness, not just to enter into discussion, but also to reach a mutually agreed outcome; and
- Ability, on the part of the parties concerned, to speak with authority on behalf of, and where possible be mandated by, their respective groups in the community.

iii) We recommend that the Secretariat within OFM/DFM should establish a list of qualified mediators through an objective public appointments process. This list should be updated periodically.

iv) Parties to mediation should themselves identify the issues to be addressed, agree the venue and the procedures to apply during discussions. All agreements reached must be compatible with human rights principles and the Standards. Where no agreement is reached, at least 14 days prior to the proposed assembly date, the matter should be referred to OFM/DFM, by the mediator, to commence the process of final adjudication (although mediation might continue).

v) Any changes to the original notification resulting from mediation must be notified to the local authority, who will then notify all interested parties. The assembly should then proceed as agreed.

vi) The Review Body believes that face to face mediation should be the norm. Where a party is unwilling to enter face to face discussions, unless that refusal is due to exceptional circumstances that can be fully justified to the satisfaction of the adjudication panel, it will be taken into account by the panel in its final deliberations.

4.6 Adjudication:

i) Where it has not been possible to reach agreement through dialogue, local agreement or mediation, or where parties refuse to enter a mediation process, it will be necessary for an independent adjudicatory panel to issue a binding decision.

ii) We recommend that OFM/DFM should administer the adjudication function and establish a register of candidates suitable for appointment to adjudication panels.

iii) This list should be established through a rigorous and independent public appointments process. At least one third of this register should be made up of people qualified to practice law or who have relevant legal expertise.

iv) Adjudication panels should be appointed, at least 14 days prior to the assembly, on a case by case basis. The panels should be directly appointed from the register by the First and Deputy First Ministers, acting together. Each panel will consist of three members, of whom at

- least one is qualified to practice law or has relevant legal expertise and will also act as chair of the panel.
- v) The adjudicatory panel may take evidence from whomsoever they wish in coming to a decision. The decision of the adjudication panel will be legally binding, and may incorporate any partial agreement reached between the parties during the preceding stages. Decisions should, where possible, be unanimous but can, if necessary, be by a majority.
- vi) When determining whether or not restrictions on a notified public assembly are necessary, the Adjudication Panel should consider:
- compliance with the Standards for the Conduct of Public Assemblies;
 - human rights issues (including the willingness of parties to address the potential for disorder and impact on the rights and freedoms of others).
 - past behaviour
- vii) In adjudicating disputes, panels should make explicit reference in their published written decisions to Human Rights considerations as described at page 20 and matters relating directly to the Standards of Conduct. Decisions may also impose sanctions in light of previous breaches of the agreed Standards for Conduct and monitors reports.
- viii) Adjudications might include *inter alia*:
- Requirements relating to the management and stewarding of an assembly;
 - Requirements relating to the commencement or dispersal times of an assembly;
 - Restrictions on specific participants, including bands, in an assembly;
 - Restrictions on the positioning, location or route of an assembly;
 - Restrictions on music and/or symbols;
 - Restrictions on the size or duration of an assembly.
- ix) Decisions should be announced at least seven days prior to the planned assembly.
- x) Adjudication Panels should operate in an accessible and transparent manner. While the duty of candour may be satisfied by providing summaries of key documents to interested parties, full disclosure may ultimately be necessary where there is a challenge to the proportionality of the restrictions imposed.²⁴
- xi) It is our intention that the powers vested in Adjudication panels have the potential to significantly influence behaviour. Any breaches of the Standards, and indeed the law, must be pursued vigorously and be seen to have consequences. Only in this way will community confidence be maintained and behaviour modified.
- xii) Nothing in any decision of an Adjudication Panel will affect:
- police common law powers to take action to deal with or prevent a breach of the peace;
 - police statutory powers under s.30 *Justice and Security (NI) Act 2007* to (a) wholly or partly close a road; (b) divert or otherwise interfere with a road or the use of a road; (c) prohibit or restrict the exercise of a right of way; where it is immediately necessary for the preservation of the peace or the maintenance of order; or
 - actions taken by the police to protect life or property in satisfaction of their general duty under s.18 *Police (NI) Act 2000*.
- xiii) Application may only be made to the Adjudication Panel to review a decision, after it is issued, where new and material facts have emerged which substantially affect the context in which the adjudication has been made. Otherwise any challenges to the adjudication must be through the courts.
- xiv) It is our view that dialogue should not just happen prior to an assembly taking place, but should also continue after the assembly in order to consider what lessons can be learned.
- xv) We recommend therefore that where there has been an adjudicated decision, there will be a post event review involving all stakeholders chaired by a mediator from the OFM/DFM list who will forward a report to the

OFM/DFM Secretariat. The mediator chairing this review should not have been involved in earlier mediation of the same event. This review should take place as soon as possible but no later than 35 days after the public assembly. In all other cases it will be open to the parties, or the PSNI, to call for a post event review.

4.7 Monitoring:

- i) The monitoring of public assemblies, by non-participant observers, for the purposes of highlighting good conduct or recording unlawful acts (or other misconduct) is an internationally recognised practice.²⁵ It can also ensure transparency and provides adjudication panels with a means of identifying breaches of the Standards. Monitors should be thoroughly trained in the skills required (including personal safety, the legal and human rights framework, report writing, and debriefing). We recognise that the experience of members of the local community could contribute to the monitoring process.
- ii) We recommend that a pool of independent monitors should be established, recruited and retained by OFM/DFM. The training and deployment of monitors (including the writing of reports) should be funded from public resources on a per diem basis.
- iii) Monitors must provide a first-hand detailed, accurate and impartial report of events. They will be expected to write a brief and concise report, detailing their observations. They should not be required or expected to intervene in any way, nor engage with any of the parties involved.
- iv) We believe it will be appropriate, in most cases, for suitably trained monitors to be tasked with gathering video footage, but this should never compromise the monitoring function, or distract monitors from carrying out their primary task of producing an objective and publicly available report. Furthermore, any videoing should be carried out sensitively given that the presence of video cameras has, in the past, been known to exacerbate tensions.
- v) Nonetheless, we believe gathering of video evidence

can play an important part of the monitoring process and is advisable, especially assemblies that have been subject to adjudication.

- vi) Monitors should observe *inter alia*:
 - adherence, by the assembly participants, to any agreement reached between the concerned parties, or compliance with any determination issued by the Adjudication Panel.²⁶
 - the policing operation;²⁷
 - the interaction between groups present (including the police) and the impact of an assembly on others.
- vii) Copies of monitors' reports, should be made publicly available through OFM/DFM, and used to inform the parties concerned (including any mediator and/or Adjudication Panel). The security of individuals should be fully considered before publication of any material.

4.8 *Bands:

- i) 'Marching Bands' are an integral part of the parading tradition, whilst acknowledging that some bands from both communities have behaved in a way which has caused offence and heightened tension, we believe that these are a minority. Moreover, the band movement is one of the unique expressions of the traditions and spirit of Northern Ireland that potentially could be further developed as a source of richness and cultural activity.
- ii) In order to purge bands of those elements intent on harassing or deliberately offending others we would stress that assembly organizers are required to have, and to make available to the appropriate authorities, the contact details of the bands on their parades. Notwithstanding the sanctions that assembly organisers or a band themselves impose, bands and band members will be liable to prosecution if they break the proposed Standards or relevant criminal law.
- iii) If any representative of a band or band member is convicted of a relevant criminal offence, or demonstrably breaks the Standards that band or individual(s) could be excluded from future public

* Bands definition includes all pipe; brass; accordian and flute bands from across the political and religious spectrum.

assemblies by an Adjudication Panel.

- iv) We note that provisions exist within current Northern Ireland legislation for the registration of bands (see S.12 Public Processions (NI) Act 1998); however, we have concluded that at the moment, raising the standards of professionalism of bands is best achieved through a “carrot” rather than a “stick” approach and that this should be done through a voluntary system of registration. We therefore propose the creation of a framework which would enable registered bands, and only registered bands, access to funds for the development of professional standards. All bands would be encouraged to register with the relevant Government department who would maintain a database of the types; background and numbers involved.
- v) We regard marching bands to be part of Northern Ireland’s culture and we recommend that the relevant Government department should take the lead in gaining an understanding of band culture and its various facets. A bands strategy driven by cultural and community agendas should be formulated following an audit of ‘marching bands’.
- vi) We recommend that the same department should draft a ‘Charter for Bands’ articulating the minimum standards expected.
- vii) Bands should be encouraged and resourced to attain and maintain professional standards with a dedicated funding stream available to raise the standards of ‘marching bands’ in respect of music, dress and decorum.
- viii) We recommend that existing resources should be channelled to facilitate the formation of band associations, around either geographical location or commonality of interest and to enhance the workings of existing Associations.

- ix) Such associations would seek to regulate member bands and be encouraged to co-operate with other associations in sharing resources and good practice. Individual bands, provided they are registered, would be able to access funding to assist the development of their musical ability, encourage young people to join, and explore ways of sharing the music played beyond being involved in parades.
- x) We believe that working with what is in effect the largest music based community sector in Europe, will benefit the harmonisation of society and contribute to creating a positive and attractive image for Northern Ireland.

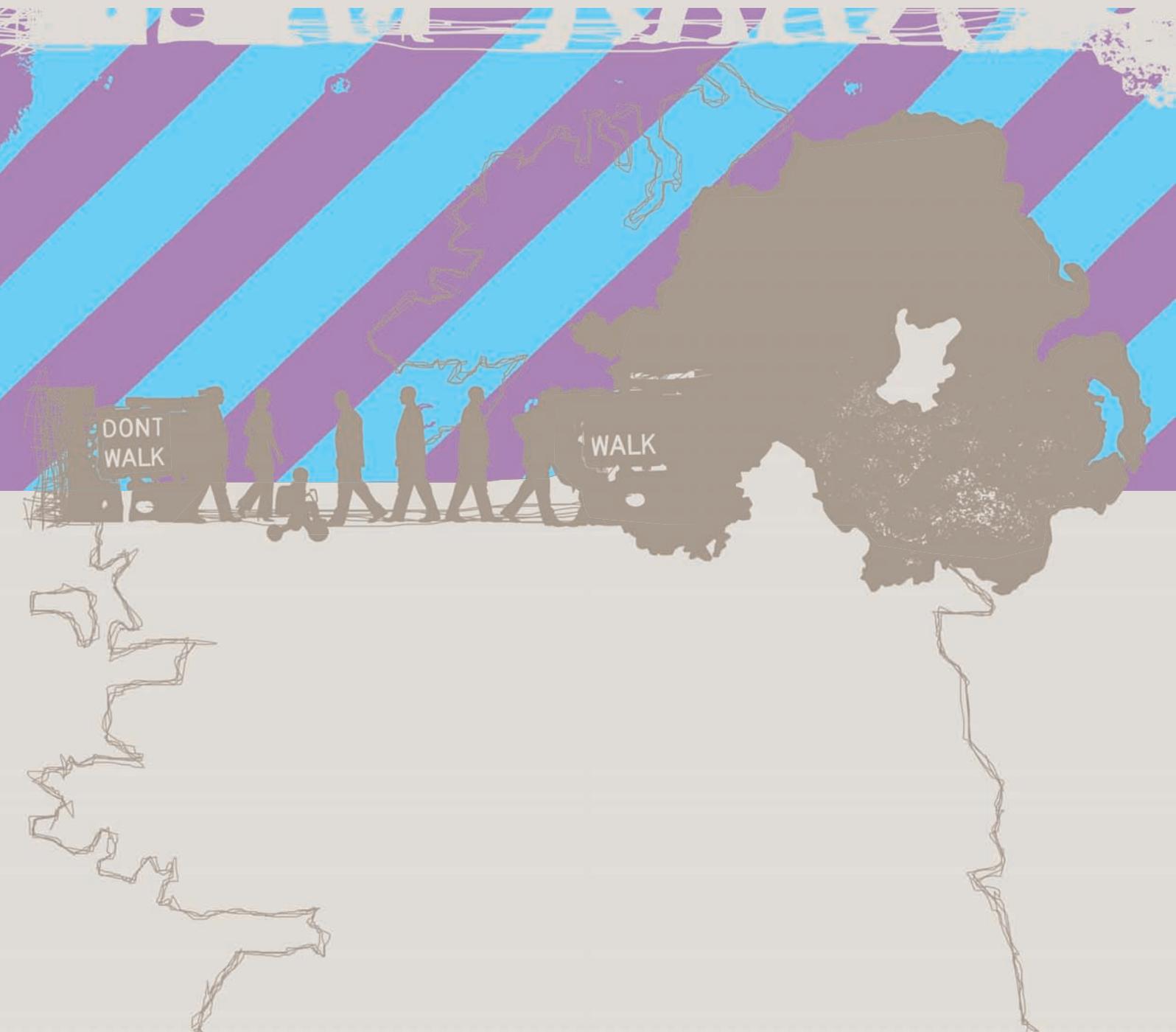
4.9 Further recommendations:

- i) The Northern Ireland Human Rights Commission should conduct an annual review of the application of human rights standards as detailed in these proposals to be forwarded to OFM/DFM.
- ii) All arrangements and recommendations made in this report should be reconsidered by OFM/DFM after five years and they should present their conclusions to the Northern Ireland Assembly.

- A: Standards for the Conduct of Public Assemblies
- B: Human Rights
- C: Public Assemblies - The legal framework
- D: Terms of Reference
- E: Consultees
- F: Endnotes

5.

Appendices



appendix A

Standards for the Conduct of Public Assemblies in Northern Ireland

Table of contents:

Introduction

Definition of Terms

Requirements applying to organisers of public assemblies

Requirements applying to third party organisations

Requirements on participants in a public assembly

Requirements on objectors to a public assembly

Forms for Notification of an Assembly

Registering an Objection to an Assembly

Introduction

In making these recommendations we accept that the Standards, when enacted into law, will ultimately be enforced by the Courts who will exercise their judgements as to culpability in accordance with the normal standards applied elsewhere throughout the legal system

Public assemblies are required to comply with the standards set out in this document, which are the minimum standards required of those involved in public assemblies of all types and for any purpose in a public place in Northern Ireland.

It is the clear view of the Review Body that legislative backing for these Standards is required. This will be the subject of further consultation prior to the publication of our final report.

The degree to which a particular public assembly meets these standards will be taken into account should an adjudication be required in relation to that particular public assembly. Failure to adhere to these standards during a public assembly will, apart from any legal actions that may ensue, also be a consideration which will be taken into account subsequently in considering future assemblies.

This document, in its present form, should be seen and read as an integral part of our overall report. We believe however, that it, and any advisory notes produced as our report recommends, should be used as the source document from which a document or documents can be produced which is underpinned by legislation.

Organisers and stewards must comply with legal requirements to ensure that their assemblies are peaceful. Individual liability will arise for any steward or participant if they commit an offence or fail to carry out the lawful directions of the police.

Definition of terms

For the purposes of this report, a public assembly is defined as all public assemblies of 15 or more people, all public processions and all related protests on the public highway.

By way of illustration, this includes, but is not necessarily limited to, all parades, protests, cavalcades, festivals, assemblies and demonstrations etc. which are conducted and organised on a public highway, whether organised by a civic, cultural, sporting, political, arts, religious, community group or other interest group or by an individual.

In this document, the term organiser of an assembly applies to the person or organisation making the notification of the assembly and, where the notification is made by, or on behalf of, an organisation, to the office bearers of the organisation on the date of the notification.

Third party participants, are defined as any independent organisations (eg peace groups, bands and trade unions) that are notified as taking part in a public assembly.

In this document, participants in an assembly are those whom the organiser includes in the notification of the assembly and who come under the instructions of the assembly organiser and those, such as stewards, acting under the authority of the organiser.

All others, if not notified as participants in the assembly, will not be regarded as part of that assembly and will, for the purposes of enforcement, be treated as individuals under Public Order legislation.

Requirements applying to organisers of public assemblies

The notification process for a public assembly requires organisers of assemblies to

- complete and submit the notification form(s)
- apply the standards set out in this document to the proposed assembly;
- identify any variations from the standards set out in this document.

Organisers of a public assembly must accept responsibility for ensuring that:

1. the standards set out in this document are fully complied with by the assembly and are drawn to the attention of all participants in the assembly, including any variations from the standards which have been notified;
2. at least 35 days notice is given of the intention to hold a public assembly to a nominated officer in the relevant local authority or 21 days in the case of a protest related to a notified assembly. Notification may be made by post, in electronic form or in person;
3. Where it is not possible for the organiser(s) give at least 35 days notice, or 21 days in the case of a related protest, because the assembly is a response to circumstances which could not have been reasonably foreseen, the organiser of an assembly must provide notice at the earliest possible date and provide a full explanation of the unforeseen circumstances which made timely notification impossible;
4. they co-operate with the local authority and the PSNI from the time of submission of the notification of an assembly until the assembly disperses;
5. they keep an up to date list of all of the other organisations which are proposed to participate in the assembly, including contact details for each organisation, and make that list available to the local authority and/or the PSNI if required;
6. in the event of the assembly being cancelled the local authority is informed of this promptly and the cancellation is confirmed in writing to the local authority within 48 hours;

7. all participants have been promptly informed of the variations agreed or imposed by adjudication;
8. it is understood that any deviation from the standards will be taken into account in any adjudication relating to a future notification by the organiser for a similar assembly;
9. no-one apparently under the influence of alcohol or drugs is allowed to participate;
10. participants are advised that inappropriate behaviour will not be tolerated. Inappropriate behaviour includes using words and behaviours which could be perceived as being deliberately aggressive or offensive (e.g., threatening, abusive, homophobic, sectarian, obscene or racist behaviours);
11. there is extra provision of amenities where necessary, such as toilet and first aid facilities;
12. at least 1 steward is provided for every 50 participants in the assembly or that the number of stewards agreed locally or specified in mediation or adjudication is provided. Stewarding is an important aspect in the control of those participating in assemblies. It is also essential that organisers ensure that all stewards:
 - have been trained to a suitable standard;
 - are briefed by organisers and given guidance/instruction on their role prior to the assembly;
 - carry proof of status or wear suitable clearly identifiable clothing;
 - co-operate with the PSNI as required;
 - conduct themselves in a proper manner;
 - ensure that participants comply with directions regarding their own safety and that of members of the public;
13. they adhere to the notified route for the assembly, or, where the notified route is varied by local agreement, mediation or adjudication, the amended route;
14. they facilitate the passage of traffic and pedestrians, with due regard to the safety of all;
15. respect and toleration are shown at sensitive locations*;
16. the behaviour of participants in the assembly is appropriate at all times, for example, by avoiding aggravation, annoyance or disruption to the life of the community. This would include, for instance, the playing of music, the use of gestures or symbols, placards or banners at sensitive locations*, intended to produce contention.
17. participants in public assemblies do not wear paramilitary clothing or uniforms or display banners, flags, placards and symbols, including on bannerettes, instruments, and drums etc which refer to paramilitary activity during the recent conflict.

It should also be noted that Section 13 of the Terrorism Act 2000 provides that a person commits an offence if he/she wears an item of clothing, or wears, carries or displays an article in such a way or in such circumstances as to arouse reasonable suspicion that he/she is a member or supporter of a proscribed organisation.
18. wherever possible, local agreement is reached between the organisers of an assembly and those who may be affected by it in sensitive locations prior to the notification of the proposed assembly to the local authority.
19. they identify, in the notification to the local authority, whether any known sensitive locations are in the proximity of an assembly how that sensitivity will be addressed;**
20. all participants disperse peacefully as soon as the assembly concludes;

**Sensitive locations include, inter alia, places of worship belonging to other faiths or denominations when a service is in progress, war memorials, Orange Halls, cemeteries and other places of particular sensitivity. This list is intended to illustrate the types of locations which may be considered sensitive, it is not intended to be a definitive listing of all of the types of locations which may be considered sensitive in a particular local context.*

***Prior local consultation by the assembly organiser with communities at sensitive locations along the proposed route of the assembly may be taken into account in any adjudication process.*

21. no music is played by participants in the assembly between the hours of 23:00 and 07:00 unless previously agreed;
22. all of the applicable legal requirements are fully adhered to including compliance with the following:
 - Section 13 of the Terrorism Act 2000
 - the provisions of Part 3 of the Terrorism Act 2000 in relation to being members of or supporting, or fund-raising for, an organisation forbidden by law.
 - the terms of the Public Order (NI) Order 1987 in relation to the powers of constables during or immediately before a march or parade;

Every effort should be made to minimise any adverse impact a notified assembly might have where:

- the notified assembly takes place on a route through a city, town or village centre location or any other location on a day of the week and at a time when there would normally be a high level of commercial activity
- the route of the notified assembly passes churches or any other places of worship. In this case it will be important to determine beforehand whether any services, weddings or meetings will be taking place at the same time as the notified assembly. This can be ascertained by an approach to the relevant clergy.
- the notified assembly impacts on a residential area

Requirements applying to third party organisations:

Organisers of third party organisations participating in a public assembly must accept responsibility for ensuring that:

- no-one apparently under the influence of alcohol or drugs is allowed to participate;
- participants are advised that inappropriate behaviour will not be tolerated. Inappropriate behaviour includes words and behaviours which could be perceived as being deliberately aggressive or offensive (e.g., threatening, abusive, homophobic, sectarian, obscene or racist behaviours);
- the behaviour of participants in the assembly is appropriate at all times, for example, by avoiding aggravation, annoyance or disruption to the life of the community. This would include, for instance, the playing of music, the use of gestures or symbols, placards or banners at sensitive locations*, intended to produce contention;
- participants in public assemblies do not wear paramilitary clothing or uniforms or display banners, flags, placards and symbols, including on bannerettes, instruments, and drums etc which refer to paramilitary activity during the recent conflict.

Requirements on participants in a public assembly

All participants in public assemblies must

- act in accordance with the standards set out in this document as applied to the assembly in which they are participating;
- follow the instructions of the assembly organiser throughout the period of the assembly, and
- disperse promptly and peacefully at the end of the assembly.

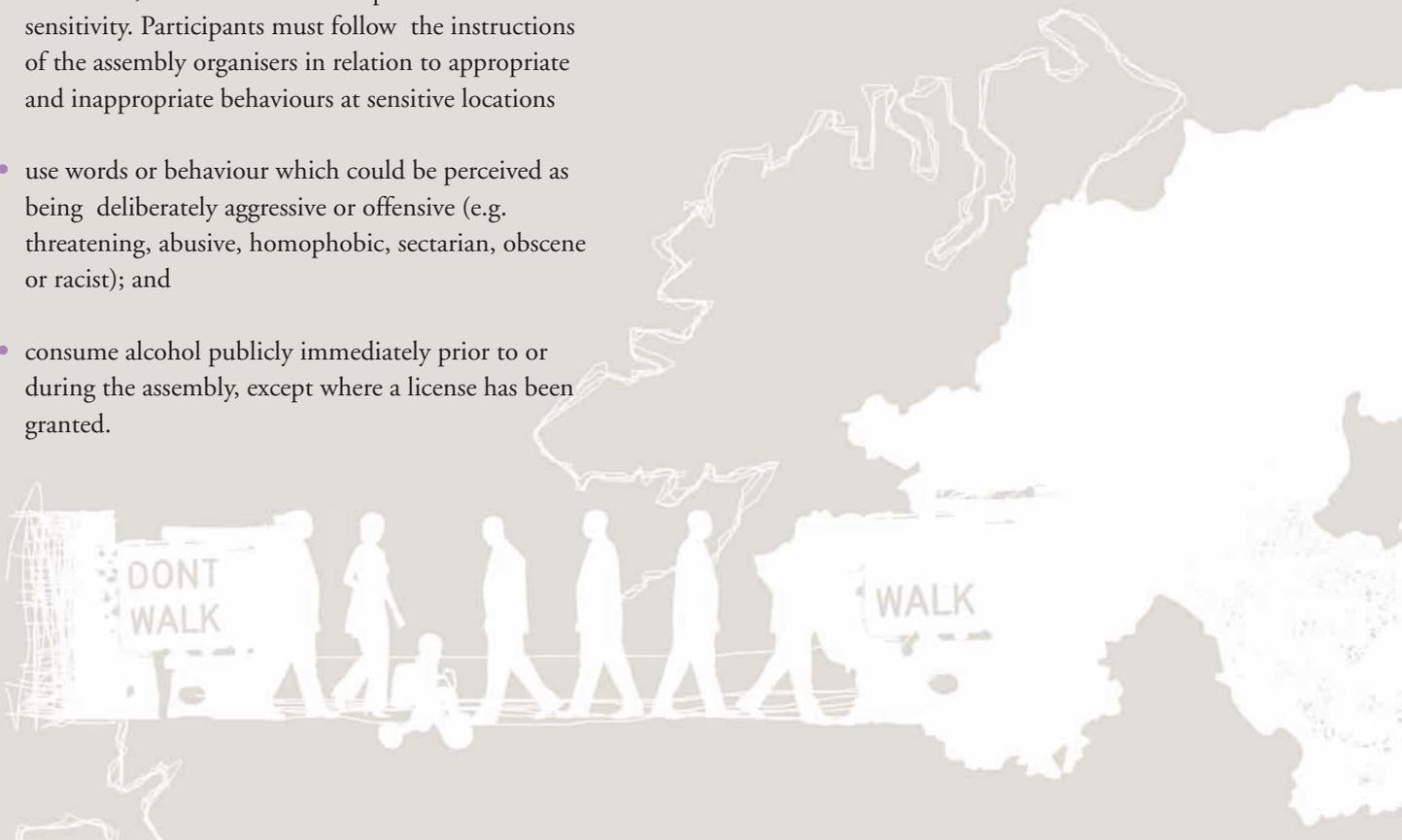
Participants in public assemblies should also be aware that under existing legislation they may be liable to prosecution if they:

- do not behave with due regard for the rights, traditions and feelings of others in the vicinity of the assembly, particularly in areas where there has previously been public disorder around assemblies;
- do not behave appropriately at sensitive locations such as places of worship of other denominations or faiths when a service is in progress, interface areas, war memorials, cemeteries and other places of local sensitivity. Participants must follow the instructions of the assembly organisers in relation to appropriate and inappropriate behaviours at sensitive locations
- use words or behaviour which could be perceived as being deliberately aggressive or offensive (e.g. threatening, abusive, homophobic, sectarian, obscene or racist); and
- consume alcohol publicly immediately prior to or during the assembly, except where a license has been granted.

Requirements on objectors to a public assembly:

The objector(s) must complete and submit an objection form stating:

- the reasons for their objection (Form F)
- details of discussions held with the organisers of the assembly to address their concerns (Form F)





Forms for the notification of or objection to an assembly (for illustrative purposes only)

The purpose of these forms is to assist the relevant authorities in facilitating public assemblies and to help organisers in planning assemblies.

Organisers of all assemblies are required to complete Sections A, B and D of this form.

Objectors to an assembly must complete sections E, F, G.

The information in Sections B, D, F and G will be made public by the local authority to which the notification is made. The information in Sections A and E, which includes personal contact details, will not be made public.

If the organiser of an assembly answers 'yes' to Question 11 in Section B, then Section C of the form must also be completed.

All organisers must also complete the appropriate declaration in Section D of the form. This declaration includes a requirement on the organiser of an assembly to keep an up to date list of all of the other organisations which it is proposed will participate in the assembly, including contact details for each organisation, and make that list available to the local authority and/or the PSNI if required.

Objectors to a public assembly must also complete the appropriate declaration in section G.

Section A - Contact details

Note: Information in Section A will not be made public.

Name of organisation or person or persons organising the assembly	
Address of organisation	
Name of person making notification In the case of an assembly organised by an organisation, name of person making the notification on behalf of the organisation and state position in the organisation	
Position in the organisation	
Postal Address of person making the notification	
Phone Number Email Address	Mobile Phone Number

Section B - Description of the assembly

Note: Information in Section B will be made public by the local authority to which notification is made.

<p>1. Name of the organisation or person or persons organising the public assembly</p>	
<p>2. Please provide a contact name and a phone number, email address or postal address at which the organiser can be contacted in relation to the assembly.</p> <p>Note, this information is intended to facilitate local agreement to the assembly taking place, but if you are unwilling to provide this information or feel uncomfortable about doing so, you may leave this space blank)</p>	
<p>3. Type of public assembly (e.g. rally, procession, parade, protest, festival, sporting event)</p>	
<p>4. Location and/or route of public assembly (both outward and return arrangements where relevant)</p>	
<p>5. Proposed Date of assembly</p>	
<p>6. Proposed start time for assembly (both outward and return arrangements where relevant)</p>	
<p>7. Proposed end time for assembly (both outward and return arrangements where relevant)</p>	
<p>8. Estimated total number of participants</p>	
<p>9. Please provide the details of the arrangements for managing the assembly taking into account any disruption to local businesses, the community and traffic which will arise from your proposed assembly</p>	
<p>10. Number of trained stewards/marshals/ officials and means of identification</p>	
<p>11. Are you aware of any public concerns in relation to the proposed assembly, or any difficulties or tensions associated with this location or route in the past?</p>	<p>If the answer to this question is 'yes' you must also complete Section C.</p>
<p>12. Please list all third party organisations participating in the assembly (including bands, trades unions etc) by name</p>	<p>Names of all participating organisations</p>
<p>13. If, in any respect, your assembly departs from the Standards for the Conduct of Public Assemblies in Northern Ireland, state the variation, why it is necessary to depart from the standards and whether local agreement to the variation exists or is likely to exist</p>	

Section C - Management of the assembly

Note: This Section should only be completed if you have answered 'yes' to Question 11 in Section B. Information in Section C will be made public by the local authority to which notification is made.

<p>Please state the nature of any public concerns of which you are aware in relation to the proposed assembly (such as tensions associated with this event in the past)</p>		
<p>List each known sensitive location along the route of or in close proximity to your assembly and the actions identified to take account of the associated sensitivities</p>	sensitive location	action proposed
<p>List any other known events taking place in the area of your assembly on the day of your assembly or immediately preceding or following your assembly?</p>		
<p>Any other information you wish to provide:</p>		

Section D - Declaration by organiser or notifier of the assembly

Note: Information in Section D will be made public by the local authority to which notification is made.

<p>I have completed the following Sections of this form, please tick all that apply.</p>	
<p>If the assembly is being organised by a person or persons acting in their own right and not on behalf of an organisation you must complete the declaration at (a), below.</p> <p>If the assembly is being organised by an organisation, the person making the notification on behalf of the organisation must complete the declaration at (b), below.</p>	<p>Section A, personal contact details Section B, description of the assembly Section C, public concerns in relation to the assembly, Section D, this declaration.</p> <p>Note: all organisers and notifiers must complete Sections A, B and D.</p> <p>Section C should only be completed by organisers who have answered 'yes' to Question 11 in Section B.</p>
<p>(a) If the assembly is being organised by a person or persons acting in their own right and not on behalf of an organisation complete the declaration below by filling in your name or names on the right, adding your signature and dating the declaration</p> <p>I, the organiser of the proposed assembly on (date) and (time) at (location or route) have read the Standards for the Conduct of Public Assemblies in Northern Ireland and agree to adhere to those standards, with the exceptions specified in the notification form submitted to (local authority name) on (date). I have also assessed the risks associated with holding the assembly. I confirm that I have the names, place of origin and contact details of all third party organisations proposing to take part in the assembly.</p> <p>All information in this notification is, to the best of my knowledge and belief, correct and complete.</p>	<p>Name or Names</p> <p>Signature or Signatures</p> <p>Date</p>
<p>(b) If the assembly is being organised by an organisation, the person notifying the assembly on behalf of the organisation must complete the declaration below by filling in your name on the right, indicating the position you hold in the organisation, adding your signature and dating the declaration</p> <p>I, (notifier of the proposed assembly) on behalf of (name of organisation), notifying a proposed assembly on (date) at (time) at (location or route)</p>	

continued



Section D - continued

<p>confirm that the organisers have read the Standards for the Conduct of Public Assemblies in Northern Ireland and agree to adhere to those standards, with the exceptions specified in the notification form submitted to (local authority name) on (date). I have also assessed the risks associated with holding the assembly. I confirm that I can and will provide, on request from the PSNI, a full list of the officer bearers of (name of organisation organising the assembly) on the date of this notification. I also confirm that I have the names, place of origin and contact details of all other organisations proposing to take part in the assembly.</p> <p>All information in this notification is, to the best of my knowledge and belief, correct and complete</p>	<p>Name of Organisation</p> <p>Name of person notifying the assembly on behalf of the organisation</p> <p>Position held in the organisation</p> <p>Signature</p> <p>Date</p>
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Next Steps

You must now return this Notification to (name of officer) who is the (Designated Officer) of (name of local authority) at (address and/or website of local authority).

The (Designated Officer) will get in touch with you to discuss your notification and ensure that it is properly completed.

The details of your notification provided in Sections B and D, and (where applicable) Section C, of this form will be forwarded to identified stakeholders in the area of your proposed assembly and will be advertised and publicised by the local authority. The information provided in Section A of this form will not be made public.

If the local authority receives any expressions of concern or of objection within 7 days of it notifying stakeholders and advertising and publicising the notification, it will hold an informal meeting with you and those expressing concerns or objections to seek to facilitate local agreement to your event proceeding.

If local agreement cannot be achieved as a result of the informal meeting facilitated by the (Designated Officer), it may be necessary to appoint a mediator and/or an Adjudication Panel to consider your proposed assembly.

You will be expected to take part in any formal mediation that takes place and failure to do so may be taken into account by any Adjudication Panel that might be required.



Objections to a notified assembly

Section E - Contact details

Note: Information in Section E will not be made public.

Name of person, persons or organisation making the objection	
Address of person/persons/organisation	
In the case of an objection on behalf of an organisation, name of person making the objection and state position in the organisation	
Postal address of person making the objection	
Phone Number Email Address	Mobile Phone Number

Section F - Nature of the objection

Note: Information in Section F will be made public by the local authority to which objection is made.

Name of the organisation or person or persons objecting to a proposed assembly	
Proposed date of assembly Time Place	
Reasons for objection including any concerns about impact of the event on human rights or breaches of the Standards for the Conduct of Public Assemblies.	
Please outline details of any discussions you have had with the organiser of the proposed assembly aimed at resolving your objections	

Section G - Declaration

<p>If the objection is being registered by a person or persons acting in their own right and not on behalf of an organisation you must complete the declaration at (a), below.</p> <p>If the objection is being registered by an organisation, the person making the notification on behalf of the organisation must complete the declaration at (b), below.</p>	
<p>(a) I, object to the proposed assembly on [date] and [time] at [location or route].</p> <p>All information in this notification is, to the best of my knowledge and belief, correct and complete.</p>	<p>Name of person objecting</p> <p>Signature</p> <p>Date</p>
<p>(b) If the objection is being registered by an organisation, the person objecting to the assembly on behalf of the organisation must complete the declaration below by filling in your name on the right, indicating the position you hold in the organisation, adding your signature and dating the declaration</p> <p>I, [objector to the proposed assembly] on behalf of [name of organisation], object to the proposed assembly on [date] at [time] at [location or route]</p> <p>All information in this notification is, to the best of my knowledge and belief, correct and complete.</p>	<p>Name of organisation</p> <p>Name of person objecting to the assembly on behalf of the organisation</p> <p>Position held in organisation</p> <p>Signature</p> <p>Date</p>

Next Steps

You must now return your contact details and this objection form to (name of officer) who is the (Designated Officer) of (name of local authority) at (address and/or website of local authority).

The (Designated Officer) will get in touch with you to discuss your objection form and ensure that it is properly completed.

The details of your objection provided in Sections F will be forwarded to identified stakeholders in the area of the proposed assembly and will be publicised by the local authority. The information provided in Section E of this form will not be made public.

If your objection cannot be resolved by direct contact with the organisers, the local authority will hold an informal meeting with you and the organiser to facilitate local agreement.

If local agreement cannot be achieved as a result of the informal meeting facilitated by the (Designated Officer), it may be necessary to appoint a mediator and/or an Adjudication Panel to consider your objections.

You will be expected to take part in any formal mediation that takes place and failure to do so may be taken into account by any Adjudication Panel that might be required.



appendix B

Human Rights

In the following section, we trace the parameters of the right to freedom of peaceful assembly, particularly where it comes into conflict with other rights and freedoms. A court determining these issues, should have regard to the particular context of Northern Ireland and, especially, to any future Bill of Rights. We refer in this section to a number of sources including those which have legally binding force (such as the jurisprudence of the ECHR and ICCPR)¹ and others which are not legally binding, but which may have declaratory or persuasive force (such as the OSCE Guidelines on Freedom of Peaceful Assembly).

'Peaceful' Assembly:

As a general rule, an assembly should be deemed peaceful if its organisers have peaceful intentions. The term 'peaceful' should be interpreted to include conduct that may annoy or give offence, and even conduct that deliberately hinders or impedes the activities of third parties, but to exclude

behaviour which has the potential to incite others to imminent violence.² Special attention should be given to the content and context of an assembly in order to determine whether it can be considered to be inciting violence.³ The right to freedom of expression also protects the communication of information or ideas that offend, shock or disturb.⁴ However, '[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'⁵ Such speech is contrary to public policy and should be sanctioned accordingly.⁶

Restrictions on Public Assemblies:

As a general rule, assemblies should be facilitated within 'sight and sound' of their intended audience.⁷ A wide range of 'time, place and manner' restrictions – which do not interfere with the message communicated – are available including restrictions on the notified route of a proposed assembly.⁸ The least intrusive means of achieving the legitimate objective being pursued by the authorities should

¹ It is noteworthy, however, that the UK has not yet ratified the first Optional Protocol to the ICCPR which gives to individuals the right to submit individual petitions ('communications') to the Human Rights Committee. For further information on ratifications, see <http://www.unhchr.ch/pdf/report.pdf>

² OSCE / ODIHR *Guidelines on Freedom of Peaceful Assembly*, para.22.

³ *Rufi Osmani and Others v Former Yugoslav Republic of Macedonia* (Application no. 50841/99, Admissibility decision). The applicant complained of restrictions on the exercise of his freedom of expression and assembly. The application was, however, declared inadmissible. Given the context of inter-ethnic tension, this decision has particular resonance with the circumstances of Northern Ireland.

⁴ 'Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society'. See, amongst others, the *Castells v Spain* judgment of 23 April 1992, Series A no. 236, p. 22, para. 42.

⁵ Article 20 of the International Covenant on Civil and Political Rights (ICCPR). See also the Human Rights Committee's General Comment 11.

⁶ 'Indeed, specific instances of hate speech' may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.' See Principle 4 of the *Committee of Ministers Recommendation No. R(97)20*. The Appendix to *Recommendation No. R(97)20* defines 'hate speech' as 'covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.' See further, the *UN Convention on the Elimination of All Forms of Racial Discrimination*, and *Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred*. See also the Holocaust denial cases of *Ernst Zündel v Canada*, Communication No.953/2000, UN Doc. CCPR/C/78/D/953/2000 (2003) at para.5.5 - 'The restriction ... served the purpose of protecting the Jewish communities' right to religious freedom, freedom of expression, and their right to live in a society free of discrimination, and also found support in article 20, paragraph 2, of the Covenant'; and *Robert Faurison v France*, Communication No.550/1993, UN Doc. CCPR/C/58/D/550/1993 (1996) at para.9.6 - 'Since the statements ... read in their full context, were of a nature as to raise or strengthen anti-semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-semitism.' In this case, the Human Rights Committee referred to its General Comment 10 (29/06/83) which provides, *inter alia*, that 'the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself' (emphasis added). See also note 31 below in relation to the interpretation of Article 17 ECHR.

⁷ See the OSCE *Guidelines on Freedom of Peaceful Assembly* at para.28

⁸ In the case of *Christians Against Racism and Fascism* (1980), for example, when considering whether a two month ban on all parades within the London Police District was proportionate, the Commission considered that the applicant's right to freedom of assembly had not been violated as the organisation could have held its procession two days after the date applied for, could have held it on the date applied for anywhere outside the district, or could have held a meeting in another form other than a public procession on that date and within the London district. See also Tom Hadden and Anne Donnelly, *The Legal Regulation of Marches in Northern Ireland*, Community Relations Council, (1997) at 50.

always be given preference. The forceful dispersal of assemblies may only be a measure of last resort.⁹ The principle of proportionality thus requires that authorities do not routinely impose restrictions which would fundamentally alter the character of an event.

Nonetheless, Article 11 ECHR explicitly provides for the lawful restriction of the right to freedom of peaceful assembly, and the Strasbourg case law has acknowledged that in appropriate circumstances this may extend not only to placing restrictions on a particular assembly but also to a ban on certain assemblies.¹⁰

Any restrictions imposed on freedom of assembly must have a formal basis in law, which must in turn be compatible with relevant human rights obligations. Restrictions must be ‘necessary in a democratic society’ and meet a ‘pressing social need.’ They must also pursue one of the following aims:¹¹

- the interests of national security or public safety,
- the prevention of disorder or crime,
- the protection of health or morals, or
- the protection of the rights and freedoms of others (see below)

We offer interpretative guidance in relation to three of these legitimate aims: the prevention of disorder or crime, the interests of public safety and the protection of the rights and freedoms of others.

The Prevention of Disorder or Crime¹²

Restrictions for the purpose of preventing disorder should only be imposed if participants themselves incite imminent lawless action and such action is likely to occur. Evidence of past breaches of the Standards for Public Assemblies will be relevant in assessing the potential for such behaviour. A purely hypothetical risk of public disorder is not a legitimate basis for imposing restrictions on freedom of assembly. Furthermore, prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate, and isolated outbreaks of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint.¹³ The prevailing political atmosphere may be a relevant consideration, but only where the assembly in question itself promotes or incites violence or disorder.¹⁴

Given the positive obligation of the state “to take reasonable and appropriate measures to enable lawful demonstrations

⁹ In the case of *Öllinger v Austria* (Application no. 76900/01, Judgment of 29 June 2006, final on 29/9/06 at paras. 28-30 and 47), the Austrian Government argued that (having regard to previous similar events) an outright ban imposed on a counter-demonstration against a gathering of a neo-Nazi group (Comradeship IV) was necessary, in part, ‘to protect the rights and freedoms of others, namely the undisturbed worship of all those visiting the cemetery on All Saints’ Day, an activity which was itself protected by Article 9 of the Convention.’ The applicant in *Öllinger* sought to organise a meeting to commemorate the Salzburg Jews killed by the SS during the war. Nonetheless, the Austrian Constitutional Court upheld the ban, finding that the authorities were right to conclude that ‘confrontation between the two groups would endanger public order at the municipal cemetery and offend the religious feelings of uninvolved visitors.’ The European Court of Human Rights held, however, that given (1) the size and manner of the counter-protest, (2) the fact that their counter-protest was not directed at those visiting the cemetery but rather only at the Comradeship IV gathering, and (3) that while there had been heated exchanges during similar previous events, *there had not been ‘any incidents of violence’* that an outright ban was disproportionate to the aim pursued. Other measures ‘such as ensuring police presence in order to keep the two assemblies apart’ could, in the Court’s view, have provided a more proportionate response that would have adequately protected the interests of the cemetery-goers. Note the dissenting judgment of Judge Loucaides who considered the outright ban to be proportionate given that All Saint’s Day was an important religious holiday and the commemoration of the dead is protected by Article 9. In his view, the ban was necessary to protect the general public against potential disturbances, especially because ‘[a] cemetery is a sacred place and is not, I believe the proper place, especially on All Saints’ Day, for political demonstrations, however respectable they may be...’. Perhaps of greater interest, with resonance in Northern Ireland, is his observation that ‘commemorative messages are not silent means of expressing an opinion, for they speak for themselves, and even though the message they conveyed would have been just and fair, it would still have been a kind of provocation.’

¹⁰ See, for example, *Rai, Allmond and Negotiate Now v UK* (1995, Application No. 25522/94) 19 EHRR CD 93, where the ban on the applicant’s assembly was found to be proportionate since the restrictions did not constitute a blanket prohibition. Prohibitions may be particularly applicable in the case of unnotified (and thus illegal) assemblies. See, for example, *Ziliberg v Moldova* (Application no. 61821/00, Admissibility) at p.12, where the European Court held that ‘since States have the right to require authorisation, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement. The impossibility to impose such sanctions would render illusory the power of the State to require authorisation.’

¹¹ These aims are lifted directly from Article 11(2) ECHR.

¹² The text here draws upon paras. 63-65 of the OSCE/ODIHR *Guidelines*.

¹³ *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* (2001) at para.94. See further *Ezelin v France* (1991) and *Ziliberg v Moldova* (2004).

¹⁴ See *Piermont v France* (Application no. 15773/89; 15774/89, Judgment of 27 April 1995) at paras.59 and 77.

to take place without participants fearing physical violence”,¹⁵ the mere presence of a hostile audience should not be regarded as a legitimate basis for imposing restrictions which alter the fundamental character of a peaceful assembly. As the European Court of Human Rights recently stated in relation to a potential provocation of public disorder:

‘...It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were it so a minority group’s rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention.’¹⁶

In determining whether the right to freedom of peaceful assembly should be restricted on public order grounds, consideration should be given to:

- the intentions of the organiser and participants;
- evidence of past compliance or otherwise with the Standards for Public Assemblies;
- the evidential basis for the potential for disorder;
- the gravity of any risk identified;
- whether the assembly itself promotes or incites violence or disorder having regard both to its content and the context (including the prevailing political atmosphere);

The interests of public safety

While there is a significant overlap between public safety considerations and those concerning the maintenance of public order, public safety is a broader concept. To this end, the preparedness of the assembly organiser to address public safety issues arising as a result of their event is vital.

In determining whether the right to freedom of peaceful assembly should be restricted in the interests of public safety, consideration should be given to the following factors (where applicable):

- the size of the notified event and the suitability of the proposed location or route in accommodating it;
- the proximity of the assembly to moving vehicular traffic, particularly at busy road junctions;
- the presence of any road works or similar obstructions (including crowd control barriers);
- the availability of suitable drop-off and parking areas for coaches;
- the provision of adequate First Aid facilities;
- the provision of adequate toilet facilities to cater for assembly participants and followers;
- access and egress for emergency services during the assembly;
- arrangements for pedestrian crossing points;
- the adequate provision of trained stewards/marshals;
- evidence that the organiser has assessed the risks involved;
- evidence of contingency planning by the organiser;
- liaison between the organiser and the police;
- any additional factors identified by local community safety audits.

The Protection of the Rights and Freedoms of Others

The exercise of the right to freedom of peaceful assembly carries with it significant responsibilities.¹⁷ Foremost of these is to take into account the potential impact on the rights and freedoms of others. The concept of the ‘rights and freedoms of others’ is not restricted to Convention rights (such as the rights to liberty, private and family life, or peaceful enjoyment of one’s possessions) and, in the particular circumstances of Northern Ireland, includes the right to freedom from harassment explicitly provided for by the Good Friday / Belfast Agreement 1998. The SRPB views the protection of this right as an indisputable imperative,¹⁸ and underscores the importance that it be recognized in any Bill of Rights for Northern Ireland.

¹⁵ *Plattform ‘Ärzte für das Leben’ v Austria* (1988). See also *Oya Ataman v Turkey* (Application no. 74552/01, judgment of 5 December 2006, final on 5/3/07) at para.35. In *Balçık and Others v Turkey* (Application No. 25/02, Judgment of 29 November 2007), the Court stated (at para.47) that “States must not only safeguard the right to assemble peacefully, but also refrain from applying unreasonable indirect restrictions upon that right.”

¹⁶ *Barankevich v Russia* (2007) Application no. 10519/03, judgment of 26 July 2007, [2007] ECHR 648 at para.31.

¹⁷ Indeed, Articles 10(2) ECHR and 19(3) ICCPR (regarding freedom of expression) explicitly state that the exercise of that right carries with it certain duties and responsibilities.

¹⁸ See *Chassagnou v France* (1999) 29 EHRR 615, 687 at para.113.

There is a clear need to maintain a harmonious community and a peaceful and stable society.¹⁹ However, any restrictions on public assemblies must be justified on one of the grounds specified in Article 11(2), and the impact of an assembly on relationships within the community should not in itself be relied upon as a ground for the justification of restrictions.²⁰ It is insufficiently precise (potentially allowing for either restriction or no-restriction on the same facts) and notoriously difficult to prove evidentially.²¹ Its invocation is thus unlikely to be commonly understood or accepted by all affected parties. In our view, the best way to secure this outcome is to ensure the protection of the rights and freedoms of all.²²

The European Convention on Human Rights is to be viewed as ‘a living instrument’, interpreted with regard to changing social circumstances. Perhaps unsurprisingly, therefore, there is no uniform conception of how the rights and freedoms of others’ – as a basis for justifying restrictions on freedom of assembly – should be interpreted.²³

The Convention rights potentially affected include the right to privacy,²⁴ the right to peaceful enjoyment of one’s possessions,²⁵ the right to liberty and security of person,²⁶ and the right to freedom of movement.²⁷ Restrictions on freedom of assembly might also be justified to protect the right of others to freedom of thought, conscience or

¹⁹ See *In the matter of an application by David Tweed for Judicial Review* [2007] NIQB 69 (12 September 2007) at para.30 per Weatherup J: “The rights and freedoms of others may also extend to the maintenance of an harmonious community, a peaceful and stable society, and to mutual respect between the members of that society.”

²⁰ *In the Matter of an Application for Judicial Review by David Alexander Tweed* [2000] NICA 24; [2001] NICA 165 at para.20. Heard by Kerr J in the High Court on 25 October 2000, and by the Court of Appeal on 26 October 2000. Written judgment delivered by Carswell LCJ on 30 November 2000: “[The Parades Commission] was bound to have regard to the other matters specified in section 8(6) of the [Public Processions (NI)] Act, but they did not form the ground for its decision to impose the restrictions, which was placed firmly on the prevention of public disorder. *The other considerations came into play in that part of the Commission’s decision which was concerned with the issue whether those restrictions were necessary in a democratic society and proportionate*” (emphasis added).

²¹ The SRPB notes that the North Report stated that “without amplification there could exist a good deal of doubt about the application of the phrase ‘wider impact on relationships within the community.’” See *The North Report* (1997), para.12.95. Moreover, the Community Relations Council was critical of the Parades Commission’s application of this criterion in section 8(6) of the *Public Processions (Northern Ireland) Act 1998*: “There is no indication of how [the impact of a parade on community relations] is monitored, either before or after the event, so that outcomes can inform future decisions. Nor is there any indication of a base line used in the setting of judgements.” See ‘Submission to the Northern Ireland Office on the Review of the Parades Commission from Community Relations Council’ in Northern Ireland Affairs Committee (2000-2001) *Second Report: The Parades Commission*. HC120-II, at .210. Similarly, in the case of *In the matter of an Application for Judicial Review by Rachel McKnight Campbell* (2000) which sought to challenge the Parades Commission’s decision to allow a nationalist St. Patrick’s Day parade in Kilkeel to complete the full length of its notified route for the first time in approximately 20 years, one Commissioner, Sir John Pringle stated in his affidavit (para.10(c)) that “the Commission was aware of the potential for some adverse impact on relationships within the community, but found this extremely difficult to measure” (emphasis added).

²² The *North Report* highlighted some of the potential rights clashes that might occur. See paras. 9.7-9.8. See also paras.12.3 and 12.91. The latter states that ‘there are the rights of the local residents which can be inferred from various provisions in the European Convention and from general law.’

²³ *Wingrove v the United Kingdom* (1996), at para.58. See also *Sabin v Turkey* (2005) 41 EHRR 8 (Application no. 44774/98, Judgment of 29 June 2004) at para.102; *Casado Coca v Spain* (Judgment of 24 February 1994, Series A no 285-A, p.18) at para.55; *Murphy v Ireland* (Application no. 44179/98, Judgment of 10 July 2003) at para. 67. Elsewhere, it has been said that the European Court of Human Rights has adopted an “unfussy approach” to questions of the nature and extent of the rights and freedoms of others, and that “the concept of the rights and freedoms of others has a broad reach.” See *In the matter of an Application by David Tweed for Judicial Review* [2007] NIQB 69, Judgment of 12 September 2007, per Weatherup J., at paras.21 and 24.

²⁴ Protected by Article 17, ICCPR and Article 8, ECHR. Article 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The right to ‘private life’ covers the physical and moral integrity of the person (*X and Y v The Netherlands*, 1985), and the State must not merely abstain from arbitrary interference with the individual, but also positively ensure *effective* respect for private life. This can extend even in the sphere of relations between individuals. Where it is claimed that a right to privacy is affected by freedom of assembly, the authority should seek to determine the validity of that claim, and the degree to which it should tolerate a temporary burden. The case of *Moreno Gómez v Spain* (Application no.4143/02, Judgment of 16 November 2004) might give some indication of the high threshold that must first be overcome before a violation of Article 8 can be established.

²⁵ Protected by Article 1 of Protocol 1, ECHR. See, for example, *Chassagnou and Others v France* (1999). Also *Gustafsson v Sweden* (1996). The right to peacefully enjoy one’s possessions has been strictly construed by the European Court of Human Rights so as to offer protection only to proprietary interests. Moreover, for a public assembly to impact on the enjoyment of one’s possessions to an extent that would justify the placing of restrictions on it, a particularly high threshold must first be met. Businesses, for example, benefit from being in public spaces and, as such, should be expected to tolerate alternative uses of that space. As previously emphasized, freedom of assembly should be considered a normal and expectable aspect of public life.

²⁶ Article 9, ICCPR and Article 5 ECHR. Article 5 ECHR states that everyone has the right to liberty and that no-one shall be deprived of it except in specified circumstances and in accordance with legal procedures.

²⁷ Article 12, ICCPR and Article 2 of Protocol 4 ECHR. ‘Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence...’

religion.²⁸ In addition, the European Court of Human Rights has stated that the ‘rights and freedoms of others’ includes, but is not restricted to, Convention rights.²⁹ Again, this points to the work of the Bill of Rights Forum and Northern Ireland Human Rights Commission in defining rights supplemental to the Convention which reflect the particular circumstances of Northern Ireland.

In such instances, difficult ‘threshold’ questions are raised, and the rights at stake are to be balanced according to the particular facts of the case. Article 17 ECHR³⁰ also makes it clear that rights cannot be exercised in a way which serves to negate the rights of others.³¹ Given that each case must be decided on its facts, we can at best sketch a threshold test for each of the rights concerned, and list the factors that might be taken into consideration when deciding whether the threshold has in fact been met.

The right to freedom from ill-treatment, inhuman or degrading treatment (Article 3 ECHR; Article 7, ICCPR)
Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The duration of the treatment, its physical and/or mental effects, and the sex, age and state of health of the individual concerned are all relevant

factors. Treatment is considered ‘inhuman’ if, amongst other things, it was premeditated, was applied for hours at a time and caused either actual bodily injury or intense physical or mental suffering. This is highly unlikely to apply in the context of public assemblies. Notwithstanding, treatment is ‘degrading’ if its object is to humiliate and debase the person concerned and adversely affected his or her personality.³² In the ‘Holy Cross’ Judicial Review case, the Lord Chief Justice stated:

... I would not be prepared to say ... that the indignities, threats and naked intimidation to which the applicant was subject would not amount to ‘inhuman or degrading’ treatment for the purposes of article 3.³³

In determining whether the right to freedom from inhuman or degrading treatment is engaged, consideration should be given to:

- whether there is evidence of explicit threats, naked intimidation or an intention to humiliate others;
- the duration and consequential physical/mental effects of the assembly.

²⁸ Article 18, ICCPR and Article 9, ECHR.

²⁹ See, for example, *VgT Verein Gegen Tierfabriken v Switzerland* (Application no. 24699/94, Judgment of 28 June 2001, final on 28/09/2001) at paras. 59-62 where measures aimed variously at (a) preventing financially powerful groups from obtaining a competitive political advantage, (b) ensuring the independence of broadcasters, (c) sparing the political process from undue commercial influence, (d) providing a degree of equality of opportunity among the different forces of society, and (e) supporting the press, which remained free to publish political advertisements, were held to pursuing the legitimate aim of protecting the rights and freedoms of others. In so far as other non-Convention rights are concerned, only ‘indisputable imperatives’ can justify the imposition of restrictions on public assemblies. *Chassagnou v France* (1999) 29 EHRR 615, 687 at para.113: “It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect ‘rights and freedoms’ not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right.” This clearly sets a high threshold: there must be a verifiable impact (‘indisputable’) on the lives of others requiring that objectively necessary (‘imperative’) steps be taken. It is not enough that restrictions are merely expedient, convenient or desirable. See also *Connolly v Director of Public Prosecutions* [2007] EWHC 237 (Admin) (15 February 2007) at para.25 per Dyson LJ: “The protection of the right not to be insulted by racist remarks was a legitimate aim within article 10(2). It was a “right of others” which, by implication, must have been considered to be an “indisputable imperative” (to use the language of Chassagnou)...” See also *Silver v United Kingdom* (1983) 5 EHRR 347; and *Regina (Pro-Life Alliance) v British Broadcasting Corporation* [2003] UKHL 23, [2004] 1 AC 185, at para.91 per Scott LJ (whilst dissenting in his conclusion on the basis of the particular facts of the case) concurred with the majority that: “The reference in article 10(2) to the ‘rights of others’ need not be limited to strictly legal rights the breach of which might sound in damages and is well capable of extending to a recognition of the sense of outrage that might be felt by ordinary members of the public who in the privacy of their homes had switched on the television set and been confronted by gratuitously offensive material.”

³⁰ ‘Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.’ Similarly, Article 5, International Covenant on Civil and Political Rights (ICCPR).

³¹ See further *Norwood v United Kingdom* (2004) 40 EHRR SE 11. Note also, however, that there has been criticism of the interpretation of Article 17 in this case on the basis that it did not adequately interrogate the notion of ‘aiming at the destruction’ of the Convention rights of others, and thus ‘undermine[s] the idea that even unpopular speech is prima facie protected by Art.10 of the ECHR” See Sophie Turenne, ‘The compatibility of criminal liability with freedom of expression.’ *Crim. L.R.* 2007, Nov, 866-881.

³² *Oya Ataman v Turkey* (Application no. 74552/01, judgment of 5 December 2006, final on 5/3/07) at para.23.

³³ *E, Re Application for Judicial Review* [2004] NIQB 35 (16 June 2004) at para.42.

The right to freedom from harassment

As stated above, the concept of the ‘rights and freedoms of others’ is not restricted to Convention rights and therefore potentially includes the right to freedom from harassment (including sectarian harassment) explicitly stated in the Good Friday/Belfast Agreement 1998.

Harassment connotes behaviour that falls short of inhuman and degrading treatment. Arguably, a right to freedom from harassment should be interpreted in light of the provisions of the *Protection from Harassment (NI) Order 1997*. This would require a ‘course of conduct’ (ie. on at least two occasions)³⁴ which was unwanted and which has the purpose or effect of violating the individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The Order notes that ‘[r]eferences to harassing a person include alarming the person or causing the person distress.’³⁵ Since ‘peaceful assembly’ may legitimately include conduct that annoys or gives offence, the SRPB accepts that mere offence should not, of itself, constitute harassment.

Where harassment is deemed to be motivated by sectarianism, this should be viewed as an aggravating factor. The issue of flags and emblems may be particularly relevant in this context.³⁶ The music, flags, banners, uniforms badges and other insignia associated with certain assemblies are sometimes perceived as inflicting a symbolic harm on those who live in, or close to, the areas through which assemblies pass or in which they are held. They resonate historically and socially in ways particularly damaging to the dignity and sense of worth of those attacked.³⁷ Having regard to hurts and losses suffered by

individuals from all sections of the community, any symbols associated with the conflict may be deemed to create an intimidating, hostile, or humiliating environment.³⁸

In determining whether the right to freedom from harassment is engaged, consideration should be given to:

- whether there has been repeated conduct which has the purpose or effect of violating the individual’s dignity or creating an intimidating, hostile, or humiliating environment;
- any special significance of the date of the assembly, and any insignia, uniforms, emblems, music, flags or banners to be displayed during the assembly, taking into account local histories and the demographic profile of an area;
- whether there is evidence of sectarian or racist motivation;
- the susceptibility/vulnerability of the particular audience to such displays;³⁹
- the nature and frequency of similar assemblies in that locality;
- any steps taken by the organiser to prevent the creation of an intimidating, hostile, or humiliating environment.

The right to private and family life (Article 8 ECHR; Article 17, ICCPR)

The question of whether disturbance caused by an assembly reaches a level of severity so as to engage the right to private and family life can be examined by analogy to environmental pollution and planning cases.⁴⁰ The European Court of Human Rights has held that Article 8 could include a right to

³⁴ Article 2(3) *Protection from Harassment (NI) Order 1997*. Also according to this provision, ‘conduct’ includes speech.

³⁵ Article 2(2) *Protection from Harassment (NI) Order 1997*. In *Huntingdon Life Sciences Group v Stop Huntingdon Animal Cruelty (SHAC)* (2004), an injunction was obtained under the Protection from Harassment Act 1997 to prevent protests by animal rights activists. Factors relevant to the granting of the injunction included intimidation of the claimant’s employees at their homes, actual assaults committed by the defendants, obstruction of people and vehicles near the claimant’s premises, the criminal conviction of some of the defendants during the course of their protest, the increasing frequency of demonstrations, the numbers of protesters involved in the demonstrations, and the use of megaphones at the demonstrations.

³⁶ Note that the Fair Employment Commission has issued Guidelines on emblems or displays in the workplace. These distinguish emblems which are ‘directly linked to the community conflict over the past 30 years and/or local politics’ and which therefore have the potential to cause disruption to a good and harmonious environment / create an intimidating or hostile environment.

³⁷ David Feldman, ‘Content Neutrality’ in Ian Loveland (ed.) *Importing the First Amendment: Freedom of Speech and Expression in Britain, Europe and the USA* (Oxford: Hart Publishing, 1998) 139 at 154.

³⁸ Note, for example, the (alleged) Holocaust denial case of *Lehideuz and Isorni v France* (55/1997/839/1045, Judgment of 23 September 1998) at para.53 in which the French Government (albeit unsuccessfully) argued that French history in the period 1940-1944 was still ‘very painful in the collective memory.’

³⁹ In *Connolly v Director of Public Prosecutions* [2007] EWHC 237 (Admin) (15 February 2007), Dyson LJ held that the more offensive the material, the greater the likelihood that such persons have the right to be protected from receiving it.” Moreover, “the recipient may not be a person who needs such protection. Thus, for example, the position of a doctor who routinely performs abortions who receives photographs similar to those that were sent by Mrs Connolly in this case may well be materially different from that of employees in a pharmacy which happens to sell the “morning after pill”. It seems to me that such a doctor would be less likely to find the photographs grossly offensive than the pharmacist’s employees.”

⁴⁰ See, for example, *Guerra and Others v. Italy* - 14967/89 [1998] ECHR 7 (19 February 1998); *Fadeyeva v. Russia* – 55723/00 [2005] ECHR 376 (9 June 2005); *Ledyayeva, Dobrokhotova, Zolotareva and Romashina v. Russia* - 53157/99 [2006] ECHR 896 (26 October 2006).

protection from severe environmental pollution, since such a problem might “affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.”⁴¹ However, concerns relating to private and family life cannot be merely speculative in relation to future possibilities.⁴² Furthermore, whilst the State is required to give due consideration to the particular interests, it must in principle be left a choice between different ways and means of meeting this obligation.⁴³

In a case concerning night-time flights at Heathrow airport, the Grand Chamber of the European Court of Human Rights stated that “[t]here is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8.”⁴⁴ In an earlier similar case, the European Court of Human Rights held that Article 8 was relevant, since “the quality of [each] applicant’s private life and the scope for enjoying the amenities of his home [had] been adversely affected by the noise generated by

aircraft using Heathrow Airport.”⁴⁵ The European Commission of Human Rights had earlier accepted that Article 8 may cover “indirect intrusions which are unavoidable consequences of measures not at all directed against private individuals.”⁴⁶

Whether or not Article 8 is engaged will always be a question of fact. For example, in a 2003 case, the Court concluded “that the disturbances coming from the applicants’ neighbourhood as a result of the urban development of the area (noises, night-lights, etc.) have not reached a sufficient degree of seriousness to be taken into account for the purposes of Article 8.”⁴⁷ A number of planning cases also set a high threshold in relation to claimed violations of the right to private and family life (or peaceful enjoyment of one’s possessions, see below).⁴⁸

In determining whether the right to private and family life is engaged, consideration should be given to whether there has been a ‘significant interference’⁴⁹ which affects ‘an individual’s right to enjoy life in his own home’.⁵⁰ There must be more

⁴¹ *López Ostra v Spain* (1994), judgment of 9 December 1994, Series A no. 303-C, pp. 54-55, para.51. See also *Guerra and Others v. Italy* (1998), judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I p. 227, para.57.

⁴² *Asselbourg v Luxembourg*, Application 29121/95. In this case, the applicants complained that the grant of licences for a steelworks would result in pollution, release of toxic gases and noise and that the grant of the licences would infringe their article 8 rights. The Court rejected the application on the following basis: From the terms ‘victim’ and ‘violation’ in Article 34 of the Convention, like the underlying philosophy of the obligation to exhaust all domestic remedies imposed by Article 35 ... It is only in wholly exceptional circumstances that the risk of future violation may nevertheless confer the status of ‘victim’ on an individual applicant, and only then if he or she produces reasonable and convincing evidence of the probability of the occurrence of a violation concerning him or her personally: mere suspicions or conjectures are not enough in that respect.

⁴³ *Hatton and Others v United Kingdom* [2005] 37 EHRR 28, at para.123. Several cases concern local Council provision for sites for travellers. See *Chapman v UK* (Application 27238/95), [2001] 33 EHRR 18; *Lee v. The United Kingdom - 25289/94* [2001] ECHR 46 (18 January 2001); *Bath & North East Somerset Council v Connors & Others* [2006] EWHC 1595 (QB) (05 July 2006); *Casey & Ors, R (on the application of) v Crawley Borough Council & Anor* [2006] EWHC 301 (Admin) (01 March 2006); *South Bucks District Council v Smith & Anor* [2006] EWHC 281 (QB) (23 February 2006). In one of these, the applicant complained that she had been denied planning permission to install a residential caravan on land that she owned – ‘... in the instant case the interests of the community are to be balanced against the applicant’s right to respect for her ‘home’, a right which is pertinent to her and her children’s personal security and well-being ... The importance of that right for the applicant and her family must also be taken into account in determining the scope of the margin of appreciation allowed to the respondent State.’ See *Buckley v. the United Kingdom*, Judgment of 25 September 1996, Reports 1996-IV, pp. 1291-93, para.76.

⁴⁴ *Hatton*, at para.96. In July 2003, the Grand Chamber (by a majority of 12-5) reversed the Chamber’s earlier decision on Article 8, and held that there was no violation of the applicants’ rights. Sir Brian Kerr (dissenting in the original Chamber judgment) noted that since house prices had not been affected as a result of the aircraft noise, the applicants’ retained the opportunity to move elsewhere.

⁴⁵ *Powell and Rayner v the United Kingdom* (1990), Application no.9310/81, judgment of 21 February 1990, Series A no. 172, p. 18, at para.40. The applicants had complained about disturbance from daytime aircraft noise.

⁴⁶ Application No. 9310/81 Report of the Commission (adopted on 19 January 1989), at ‘The Law’, para.4.

⁴⁷ *Kyrtatos v Greece* (2003), Application no. 41666/98 [2003] ECHR 242 (22 May 2003, final 22/8/03) at para.54

⁴⁸ See, for example, *In re Stewart* [2003] NICA 4 (31 January 2003)) at para.30 per Carswell LCJ. Similarly, *In re Rowsome* [2003] NIQB 61 (09 September 2003) at paras. 28-29.

⁴⁹ While applicants should have the evidential burden of sustaining a prima facie case that their rights under Article 8 have been interfered with, the priority principle suggests that the persuasive burden should fall on the state to adduce ‘clear, strong and cogent’ evidence that the interference was justified. See Greer, 259-265.

⁵⁰ *R (Vetterlein) v Hampshire Council Council* [2001] EWHC Admin 560 at paras. 60-61: the granting of planning permission for an incinerator and waste disposal site by Hampshire County Council was held not to engage the article 8 rights of concerned local residents. Also *Fadeyeva v. Russia - 55723/00* [2005] ECHR 376 (9 June 2005) at para.68: in order to raise an issue under Article 8 the interference must directly affect the applicant’s home, family or private life.

than a generalised or hypothetical concern as to the effects of an assembly,⁵¹ but concerns may legitimately be inferred from evidence in relation to:

- whether the claimant's quality of life (including the personal security and well-being of the applicant and his/her family) is so directly affected by a public assembly so as to engage article 8;
- experiences of previous similar events,
- past breaches of the Standards for the Conduct of Public Assemblies,
- the frequency, and cumulative impact, of assemblies,
- the notified time of an assembly;
- the estimated duration of the assembly;
- the number of notified participants and the anticipated number of followers;
- the anticipated noise levels;
- the extent to which the route or location comprises mainly residential or commercial property;
- any steps taken by the organiser to address valid privacy interests.

Where the threshold is met and Article 8 is thus engaged, the State has a duty to seek ways of avoiding the interference with article 8 rights (for example through the imposition of 'time, place and manner' restrictions). Where the State decides that the particular interference with Article 8 rights should be borne by those affected, there may still be grounds for those affected to obtain compensation.⁵³

The right to peaceful enjoyment of one's possessions (Article 1 of Protocol 1, ECHR)

It has been accepted that 'direct and serious interference ... with a person's home is prima facie a violation of a person's right to respect of his/her entitlement to the peaceful enjoyment of his/ her possessions.'⁵⁴ More specifically, the European Commission of Human Rights has accepted that in principle severe noise nuisance 'may seriously affect the value of real property or even render it unsaleable and thus amount to a partial taking of property', contrary to Article 1 of the First Protocol. In order so to qualify, however, the effect on an individual complainant had to be considered 'intolerable and exceptional compared with the situation of a large number of people living within the vicinity ...'⁵⁵

⁵¹ *Bushell & Ors, R (on the application of) v Newcastle Licensing Justices & Others* [2003] EWHC 1937 (Admin) (31 July 2003) at para.40. Each application was opposed by the police, by the Newcastle City Council and by a substantial number of local residents on grounds of public disorder, drunkenness, noise, nuisance, litter, vandalism, and road safety. The problems of noise and drunken and loud behaviour already experienced in Osbourne Road as a result of the proliferation of licensed premises and the manner in which their clientele behave particularly after leaving the licensed premises, are likely to increase, and will spread to their immediate vicinity (see para.37). While the application was ultimately dismissed, the Court held that 'the Claimants plainly do have a generalised concern as to the loutish and drunken behaviour in and about Osbourne Road. But their concern goes beyond that. Their evidence demonstrates the direct effect of such behaviour on their enjoyment of their own properties... [O]n the evidence advanced by the Claimants, the special removal of the Mims licence to the Gresham is capable of resulting in an infringement of the Claimants' convention rights' at paras. 40-41).

⁵² Parades in Northern Ireland would be unlikely to yield a similar 'national economic interest' as night flights into Heathrow airport, and so the Grand Chamber decision appears less relevant than the Chamber decision in this context.

⁵³ See, for example, *Dennis & Another v Ministry of Defence* [2003] EWHC 793 (QB) (16 April 2003) which concerned the effect of noise from Harrier jet fighters on the Claimant's neighbouring estate. The noise was described as unpredictable, deafening, sufficient to reduce marked value of the claimant's property, very disruptive, and (of the landing noise) 'completely invasive'. It was held that as 'implicit in the decision in *S v France*, that the public interest is greater than the individual private interests of Mr and Mrs Dennis but it is not proportionate to pursue or give effect to the public interest without compensation for Mr and Mrs Dennis' (at para.63). In *S v France* the Commission held that although Article 1 did not guarantee the right to continue to enjoy possessions in a pleasant environment, nevertheless: "Noise nuisance which is particularly severe in both intensity and frequency may seriously affect the value of real property or even render it unsaleable or unusable and thus amount to a partial expropriation." It was not in dispute that the nuclear power station complained of was lawfully built and brought into service and the Commission had no doubt that it served the interests of the economic well-being of the country. In considering the phrase 'necessary in a democratic society' the Commission observed: 'It must first be decided whether it was proportionate in relation to the legitimate interests the works were intended to serve. When a state is authorised to restrict rights or freedoms guaranteed by the Convention, the proportionality rule may well require it to ensure that these restrictions do not oblige the person concerned to bear an unreasonable burden.' The application was ruled inadmissible because the French courts had already awarded damages.

⁵⁴ Though see (in relation to flooding by sewage) *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, [2004] 2AC 42 (at para.37). While the burden for justifying the interference was held to rest on Thames Water, ultimately no interference with the applicant's rights was found. Lord Nicholls relied on the Grand Chamber judgment in *Hatton* (see para.41), and Lord Hope emphasized, in particular, the doctrine of the margin of appreciation (see paras.84-85). Similarly, *O'Connor & Anor v Wiltshire County Council* [2006] EWLands LCA 73 2005 (06 February 2006) (noise from a newly built bypass).

⁵⁵ *Rayner v UK* (admissibility decision of 16 July 1986); *In re Stewart* (2003) NICA4 at para 28. In a Lands Tribunal case concerning a proposed expansion of Stansted airport, the President of the Tribunal concluded that '[t]he mere fact that the value of the house may have been reduced in value as a result of the consultation document – and possibly only for a limited period – is in my judgment insufficient to engage Article 1 of the First Protocol or Article 8.' Ultimately, the Tribunal found that the claimant's 'circumstances fall far short of any that might engage such rights.' See *Halliday v Secretary Of State For Transport* [2003] EW Lands BNO 129 2002 (24 January 2003) at para.18. The house in question was 6 miles from the already existing airport terminal, and 1½ miles from the then airport boundary. 'Mr Halliday says that on 27 June 2002 his wife instructed FPD Savills to sell the house. At the agents' recommendation it was placed on the market at £485,000. On 23 July 2002 the respondent published a consultation document "The Future Development of Air Transport in the United Kingdom", which included three options for the expansion of Stansted Airport. Mr Halliday says that the publication of those options has caused considerable generalised blight in the area surrounding the airport. As a result, he says, FPD Savills advised the claimant to drop the asking price for the Old Stables to £385,000.'

One case with particular significance for business owners in the vicinity of public assemblies concerned an owner of a restaurant who refused to join the Hotel and Restaurant Workers Union (HRF) because he objected, on principle, to collective bargaining. As a result, HRF placed his restaurant under a blockade and declared a boycott against it. This ultimately led to deliveries to the restaurant being stopped and the restaurant closing. The European Commission declared admissible the applicant's complaints that the lack of State protection against such industrial action had violated, amongst other things, his right to the peaceful enjoyment of his possessions.⁵⁶

In determining whether the right to peaceful enjoyment of one's possessions is engaged, consideration should be given to the following factors:

- whether there has been a direct and serious interference with a person's home, having regard to the duration and gravity of the consequences;
- the impact on property values in an area, and whether this impact is intolerable and exceptional compared with the situation of a large number of people in the vicinity;
- the cumulative impact of frequent assemblies on businesses in a commercial area, and whether the State has taken appropriate measures to mitigate this impact.

The right to freedom of thought, conscience and religion (Article 9, ECHR; Article 18, ICCPR)

Where a public assembly impacts upon the religious sensitivities of others (rather than, for example, their political opinions), restrictions might be more likely to be

justified. The European Court of Human Rights has emphasized that there is "a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane."⁵⁷ Furthermore, the Court has observed that "it is not to be excluded that an expression, which is not on its face offensive, could have an offensive impact in certain circumstances." Again, the particular facts of the case must be closely assessed for the Strasbourg court has not always found there to be a violation of the Article 9 rights of those affected either in the context of expression⁵⁸ or an assembly.⁵⁹

In determining whether the right to freedom of thought, conscience and religion is engaged, consideration should be given to the following factors:

- whether an assembly denigrates the content of others' belief or religious faith, and is gratuitously offensive;
- whether an assembly interferes with the right of others to express and exercise their belief or religion;⁶⁰
- whether there has been open dialogue to address the concerns about the message being communicated.

The rights to liberty (Article 5, ECHR; Article 7, ICCPR) & freedom of movement (Article 2, Protocol 4, ECHR; Article 12 ICCPR)

Article 5 is concerned with total deprivation of liberty, not mere restrictions upon movement (which might be covered by Article 2 of Protocol 4, but the UK is not yet a party to this Protocol).⁶¹ This distinction between deprivation of, and mere restriction upon, liberty has been held to be "one of degree or intensity, and not one of nature or substance."⁶²

⁵⁶ *Torgny Gustafsson v Sweden* (1995). However, because the Commission concluded that there had been a violation of the applicant's negative freedom of association, it considered it unnecessary to examine the applicant's complaint regarding the peaceful enjoyment of his possessions.

⁵⁷ *Murphy v Ireland* (2004). In this case, the European Court of Human Rights found that restrictions banning the broadcast of religious advertising in Ireland to protect the right of listeners to freedom of thought conscience and religion could properly be regarded as proportionate. Application no. 44179/98, Judgment of 10 July 2003, at para.65, citing approvingly the judgment in *Otto-Preminger-Institut v Austria*, paras. 46, 47 and 49. Similarly, *Klein v Slovakia* Application no. 72208/01, Judgment of 31 October 2006 (final on 31/1/07), at para.47. But cf. *Giniewski v France* (Application no. 64016/00) Judgment of 31 January 2006.

⁵⁸ See *Klein v Slovakia* (2006) (Application no. 72208/01; Judgment of 31 October 2006, final on 31.1.07)

⁵⁹ *Barankevich v Russia* (2007), at para.23, referring to the passage from the *Kokkinakis* case. The Russian Government unsuccessfully argued that the authorities had to protect the Article 9 rights of those who professed other religions by restricting an assembly organised by evangelical Christians.

⁶⁰ See further 3.7 (vi).

⁶¹ The North Report stated in relation to Art 2, P4 that it 'sets out similar, though even wider, qualifications to those applying to the rights protected in the Convention. These restrictions again make it entirely clear that the right is not absolute, but it is rather less clear that the right could be regarded as in issue in the context of localised bans involved in the control of parades and protests' (emphasis added).

⁶² See *Guzzardi v Italy* (Judgment of 6 November, 1980, Series A no.39) at para.92, and *Ashingdane v the United Kingdom* (1985) 7 EHRR 528 at para.41. See also *R (on the application of Laporte) v Chief Constable of Gloucester Constabulary* [2004] EWCA Civ 1639; and *Austin and Saxby v Commissioner of Police of the Metropolis* [2005] HRLR 20.

It may be that the policing operation relating to a public assembly could impact on the article 5 rights of those living in the vicinity.⁶³

The UK is not yet a party to Protocol 4, ECHR, and the scope of this right – while potentially wider than that to liberty – is most commonly relied upon in the context of restrictions on movement within the territory of a country and across its borders. However, the UK is a party to the ICCPR and the Human Rights Committee (which supervises compliance with this treaty) has pointed out that the State’s obligation is to ensure that Article 12 rights are protected “not only from public but also from private interference.”⁶⁴

In determining whether the rights to liberty or freedom of movement are engaged, consideration should be given to the following factors:

- whether there has been, or is likely to be, a deprivation of liberty. This can only be assessed on the specific facts of the case, and “account must be taken of a whole range of factors ... such as the type, duration, effects and manner of implementation of the measure in question.”⁶⁵



⁶³ For example, as stated in Tom Hadden and Anne Donnelly, *The Legal Control of Marches in Northern Ireland*, at p.49: ‘It is certainly arguable that if action by the police to protect the rights of loyalists to march involves an effective curfew on residents in an area in which opposition is anticipated, as has happened on some occasions in the Lower Ormeau area in Belfast, that in itself would constitute an unacceptable denial of the rights of those residents to liberty under Article 5 of the Convention...’

⁶⁴ See General Comment no.27, UN Doc.CCPR/C/21Rev1/add.9 at para.6.

⁶⁵ *HL v UK*, Application no. 25508/99 at para.89. In relation to the free movement of goods, see the judgment of the European Court of Justice in *Eugen Schmidberger, Internationale Transporte und Planzuge v Republik Osterreich*, Case C-112/00. European Court reports 2003 Page I-05659, Opinion of Mr Advocate General Jacobs delivered on 11 July 2002.

appendix C

Public Assemblies - The legal framework

Implementation of this report will require primary legislation. However a wide range of offences relating to the potentially criminal actions of organisers, participants, supporters and protesters presently exists. The main offences are set out in the *Public Order (NI) Order 1987* and *Public Processions (NI) Act 1998* (both as amended). Other statutes, however, are also potentially relevant. These include the *Protection from Harassment (NI) Order 1997*, the *Terrorism Act 2000*, the *Anti-Terrorism, Crime and Security Act 2001*, the *Anti-Social Behaviour (NI) Order 2004*, and the *Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007*. The *Criminal Justice (No. 2) (NI) Order 2004* may also be relevant to the sentences imposed by the court where the offence is deemed to have been motivated by hostility.

Public Order Offences:

- Stirring up hatred or arousing fear through the use of words or behaviour or display of written material (Article 9, *Public Order (NI) Order 1987*);²⁸
- Riotous or disorderly behaviour in a public place (Article 18, *Public Order (NI) Order 1987*);
- Provocative conduct in a public place or at a public meeting or procession (Article 19, *Public Order (NI) Order 1987*);
- Obstructive sitting etc. in a public place (Article 20, *Public Order (NI) Order 1987*);
- Wearing of uniform in public place or at public meeting which signifies an association with any political organisation or with the promotion of any political object (Article 21, *Public Order (NI) Order 1987*);
- Carrying of an offensive weapon in a public place (Article 22, *Public Order (NI) Order 1987*).

Offences relating to Harassment:

- Pursuing a course of conduct which amounts to harassment of another (Article 4 *Protection from Harassment (NI) Order 1997*).²⁹
- Putting someone in fear of violence (Article 6, *Protection from Harassment (NI) Order 1997*)

Offences relating to Proscribed Organisations:

A person commits an offence if he/she wears an item of clothing, or wears, carries or displays an article in such a way or in such circumstances as to arouse reasonable suspicion that he/she is a member or supporter of a proscribed organisation.³⁰

The proscribed organisations in Northern Ireland are:

Continuity Army Council
 Cumann na mBan
 Fianna na hEireann
 Irish National Liberation Army
 Irish People's Liberation Organisation
 Irish Republican Army³¹
 Loyalist Volunteer Force
 Orange Volunteers
 Red Hand Commando
 Red Hand Defenders
 Saor Eire
 Ulster Defence Association
 Ulster Freedom Fighters
 Ulster Volunteer Force

Offences specifically in relation to parades:

A person who knowingly fails to comply with a condition imposed under section 8 *Public Processions (NI) Act 1998* is guilty of an offence. A person who incites another to commit an offence under section 8 *Public Processions (NI) Act 1998* is also guilty of an offence.

Offences in relation to consumption of alcohol at a parade (Section 13 Public Processions (NI) Act 1998):

Where a constable in uniform reasonably suspects that a person³² is consuming intoxicating liquor, the constable may require that person to surrender anything in his possession which is, or which the constable reasonably believes to be, intoxicating liquor. A person who fails without reasonable cause to comply with a requirement imposed on him/her shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Offences specifically in relation to parade related protests:

A person who takes part in a related protest meeting who knowingly fails to comply with a condition imposed by the Parades Commission is guilty of an offence.³³ A person who incites another to commit such an offence shall be guilty of an offence. A person who knowingly fails to comply with a condition imposed on a public meeting by the police under Art.4 Public Order (NI) Order 1987 is guilty of an offence.

A person who for the purpose of preventing or hindering any lawful public procession or of annoying persons taking part in or endeavouring to take part in any such procession:

hinders, molests or obstructs those persons or any of them; acts in a disorderly way towards those persons or any of them; or behaves offensively and abusively towards those persons or any of them,

shall be guilty of an offence (Section 14 Public Processions (NI) Act 1998).³⁴

Breach of the Peace (Common Law)

The common law doctrine of breach of the peace provides the police with broad powers which extend beyond the statutory offences outlined above. A breach of the peace will arise if an act is done or threatened to be done which either harms a person or (in his presence) his property, or is likely to cause such harm or which puts a person in fear of such harm.³⁵

Sentencing for aggravated offences

If the offence was aggravated by hostility, the court shall treat that factor as one that increases the seriousness of the offence, and shall state in open court that the offence was so aggravated.³⁶

Anti-Social Behaviour Orders

Where a court convicts a person of any of the offences referred to in this section of our report, it may impose an Anti-Social Behaviour Order (ASBO) on the offender in addition to another sentence or a conditional discharge, if he/she acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons... and the court considered an ASBO to be necessary to protect persons in Northern Ireland from further anti-social acts by him/her.³⁷

Police Powers

The general functions of the police include the protection of life and property and the prevention of the commission of offences.³⁸ Police officers have a duty, so far as it is practicable, to carry out their functions in co-operation with, and with the aim of securing the support of, the local community.³⁹ A constable in uniform may arrest without warrant anyone he reasonably suspects is committing offences in the Public Processions (NI) Act 1998 (as amended) and Part II of the Public Order (NI) Order 1987.⁴⁰ He/she may also take action to deal with or prevent a breach of the peace.⁴¹

Powers to stop and search for intoxicating liquor

A constable in uniform may stop a passenger vehicle and search the vehicle and any person in the vehicle, if he has reasonable grounds to suspect that intoxicating liquor is being carried on the vehicle and that the vehicle is being used for the principal purpose of carrying passengers for the whole or any part of a journey to a place in the vicinity of the route or proposed route of a public procession.⁴¹

Power to stop and search in anticipation of violence

Where a senior police officer reasonably believes that incidents involving serious violence may take place in a locality, he may issue an authorisation which enables the police to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments and to seize any such instruments.⁴²

Powers to close roads

A constable may:

- wholly or partly close a road;
- divert or otherwise interfere with a road or the use of a road;
- prohibit or restrict the exercise of a right of way;
- prohibit or restrict the use of a waterway

if he/she considers it immediately necessary for the preservation of the peace or the maintenance of order.⁴³ A person commits an offence if he interferes with works executed in connection with the exercise of this or any apparatus, equipment or other thing used in connection with the exercise of that power.⁴⁴

Powers to require removal of disguises

Where a senior police officer reasonably believes that incidents involving the commission of offences may take place within a locality, he may issue an authorisation which will enable the police to exercise powers to require the removal of face coverings worn for the purpose of concealing identity, and to seize any such items.⁴⁵

appendix D

Terms of Reference

The Terms of Reference of the Strategic Review of Parading were announced on 2 February 2007 – the review will:

- investigate, examine and report on the significance and relevance of parading as an expression of faith and culture in Northern Ireland;
- investigate, examine and report on the meaning, significance and relevance of parading to broader society in Northern Ireland;
- examine why certain parades are considered contentious, what their impact is on wider community relations and if they encourage sectarianism;
- consider the impact of parading on NI society in the 21st century in terms of social and economic impact and the international perspective of the country;
- drawing on research already conducted, consider how parades, protests and events which take place on the public highway are regulated in other jurisdictions where there are diverse ethnic and cultural populations and traditions;
- consider the merits of local dialogue mediation facilitation and arbitration;
- make recommendations on how parading can be taken forward in Northern Ireland in a way which is consistent with the Shared Future Objectives of respect, tolerance, responsible citizenship and promoting equality of opportunity and human rights; and
- consider what the implications of the review findings are for public policy, including legislation.

appendix E

Consultees

We have been assisted in our deliberations by Duncan Morrow, Chief Executive Officer of the Community Relations Council and Michael Hamilton of the Transitional Justice Institute of the University of Ulster.

Throughout the preparation of this report, the Strategic Review Body has met and held discussions individuals and organisations and received written submissions from others. Without these valuable contributions the preparation of this report would not have been possible.

The Body would like to thank:

Groups met

36th Ulster Regimental Bands Association	County Grand Orange Lodge of Belfast
Alliance Party	Department of Foreign Affairs
Ancient Order of Hibernians	Diversity Challenges
Apprentice Boys of Derry	Dominic Bryan
Ardoyne Dialogue Group	Donemana LOL 503
Association of Old Vehicle Clubs	Dunloy Residents
Ballymacarrett District LOL No. 6	Democratic Unionist Party
Ballymena Chamber of Commerce	East Tyrone RBDC no. 5
Ballymena Residents	Edwin Graham, Ken Cathcart (Authorised Officers)
Ballynafeigh District LOL No.10	First Minister, Deputy First Minister
Ballynahinch Residents	Garvaghy Residents Association
Barron LOL 627	Grand Orange Lodge of Ireland
Bellaghy Accordion Band	Guiding Star RBP 1133- Newtownhamilton
Bellaghy Independent Orange Heroes LOL 169	Independent Orange Order
Bellaghy RBP 573	Intercomm
Bleary Crimson Star LOL 12	Irish Congress of Trade Unions
Boconnell LOL 123	John Finlay, Mayor of Ballymoney
Boveedy LOL 175	Keady Good Samaritans RBP 711
Brehon Law Society	Killen District No.12
Bruces True Blues LOL 400 & Band	Killycurragh LOL 200
Brooke & Moor Park Residents	Killygullib LOL 928
Carnlough Residents	Killylea District LOL No.7
Castledawson Walker Club of the Apprentice Boys of Derry	Kilrea Apprentice Boys LOL 366
Castledearg Residents	Kilrea District LOL No.5
Castlewellan District LOL No. 12	Kilrea Knights of the Bann R.B.P. 586
Castlewellan Royal Black Preceptory No.5	Kilrea Purple Marksmen LOL 364
Castlewellan Star of Temperance LOL No. 356	Lislea LOL 161
Catholic Church	Lisnagrot Temperance LOL 1517
Church of Ireland	Lisnaskea Royal Black Chapter LOL 325
Co. Fermanagh Grand Orange Lodge	LOL No.1 – Larne district.
Committee for the Administration of Justice	Lower Ormeau Concerned Community
Community Convention	Loyal Orange Institution No. 9
Community Safety Group	Loyal Orange Institution of Ireland No. 9
County Armagh Grand Black Chapter	Loyal Sons of Ulster LOL No 44
County Down Grand Black Chapter	Lurgan District Royal Arch Purple Chapter No 6
County Fermanagh Grand Black Chapter	

Lurgan Residents
 Lurgan Royal Black District Chapter No. 2
 Maghera Residents
 Mediation NI
 Methodist Church
 Michael Hamilton
 Mountfield LOL 674
 Neil Jarman
 Newcastle Residents
 Newry District LOL No.9
 Newtownbutler District LOL
 Newtownbutler RBP157
 Newtownhamilton District LOL No.9
 NI Chambers of Commerce
 NI Policing Board
 North and West Belfast Parades and Cultural Forum
 North Belfast Residents
 Northern Ireland Commissioner for Children and Young People
 Northern Ireland Human Rights Commission
 Northern Ireland Office
 Northern Ireland Tourist Board
 Office of the Police Ombudsman
 Orange Lodge No. 359 Downpatrick
 Parades Commission
 Paul Goggins MP, Minister of State
 Rt Hon Peter Hain MP, Secretary of State
 Peter Osborne
 Police Federation
 Police Service of Northern Ireland
 Pomeroy District No.5 LOL 293
 Pomeroy Rising Star RBP 259
 Portadown District Loyal Orange Lodge No. 1
 Presbyterian Church
 Primatial Royal Black District Chapter No. 4
 Progressive Unionist Party
 Rasharkin Residents
 REACT, Armagh
 Richard Reid (Pomeroy LOL)
 Royal Black Institution
 Royal Black Preceptory – Ballymoney district
 Royal Black Preceptory 573 & Band
 Royal Black Preceptory 473
 Royal Black Preceptory 518
 Royal Black Preceptory 811
 Rt Hon Shaun Woodward MP, Secretary of State
 Social Democratic and Labour Party
 Short Strand Residents
 Sinn Fein

Sir William Allen Memorial Temperance RBP No. 19
 Society of Local Authority Chief Executives
 Springfield Residents Action Group
 Strabane District LOL No. 14
 Tubrid R.B.P. 1235
 Tubrid True Blues LOL 200
 Tullintrain Orange Lodge
 Tullymacann Rising Sons Of William LOL No 110
 Ulster Bands Association
 Ulster Human Rights Watch
 Ulster Political Research Group
 Ulster Unionist Party
 Walker Club of the Apprentice Boys of Derry- Kilrea
 Whiterock Temperance LOL 974
 Whitewell Residents

Submissions recieved from:

36th Ulster Regimental Bands Association
 A. Dunwoody
 Aghyaran LOL 1641
 Alliance Party
 Ancient Order of Hibernians
 Andrew Muir
 Apprentice Boys of Derry
 Ardoyne Dialogue Group
 Association of Old Vehicle Clubs
 Ballymena Chamber of Commerce
 Ballymena Residents
 Ballynafeigh District LOL No.10
 Ballynahinch Residents
 Belfast City Council
 Bellaghy Accordion Band
 Brehon Law Society
 Brooke & Moor Park Residents
 Bruces True Blues LOL 400 & Band
 Castledawson Walker Club of the Apprentice Boys of Derry
 Castledearg Chosen Few
 Castledearg Residents
 Castledearg Royal Black Chapter No.6
 Castlewellan Royal Black Preceptory N0.5
 Castlewellan Star of Temperance LOL No. 356
 Christopher Luke
 Church of Ireland
 Ciro de Rosa
 Co. Fermanagh Grand Orange Lodge
 Committee for the Administration of Justice
 Community Convention
 Community Relations Council

Community Safety Group
 County Down Grand Black Chapter
 County Fermanagh Grand Black Chapter
 David Cook
 Diversity Challenges
 Dominic Bryan
 Dunloy Residents
 East Tyrone RBDC No. 5
 Edwin Graham, Ken Cathcart (Authorised Officers)
 Garvaghy Residents Association
 Gordon Gillespie
 Grand Orange Lodge of Ireland
 Guiding Star RBP 1133- Newtownhamilton
 Intercomm
 Irish Congress of Trade Unions
 Jack Allen
 John Collins
 John Lavery
 Killen District No.12
 Killycurragh LOL 200
 Killylea District LOL No.7
 Liam Donnelly
 LOL 325
 LOL No.1 – Larne district.
 Lower Ormeau Concerned Community
 Lurgan District Royal Arch Purple Chapter No 6
 Lurgan Residents
 Maghera Residents
 Maria Nelson
 Martin Black
 Mediation NI
 Methodist Church
 MG Owner's Cub
 Michael Hamilton
 Moyle District Council
 Nathalie Caleyron
 Neil Jarman
 Neil Oliver
 Newcastle Residents
 Newtownbutler District LOL
 Newtownhamilton District LOL No.9
 NI Chambers of Commerce
 NI Policing Board
 North and West Belfast Parades and Cultural Forum
 North Belfast Residents
 Northern Ireland Commissioner for Children and Young People
 Northern Ireland Human Rights Commission
 Northern Ireland Tourist Board
 Office of the Police Ombudsman
 Parades Commission
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 Pomeroy District No.5 LOL 293
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 Portadown District Loyal Orange Lodge No. 1
 Presbyterian Church
 Rasharkin Residents
 RBP No 108
 REACT, Armagh
 Richard Reid (Pomeroy LOL)
 Richard Whitten
 Royal Black Institution
 Royal Black Preceptory 573 & Band
 Short Strand Residents Carnlough Residents
 Springfield Residents Action Group
 Strabane Royal Black District Chapter No. 2
 Ulster Bands Association
 Ulster Human Rights Watch
 Ulster Political Research Group
 Ulster Unionist Party
 W. Warren Porter
 Whiterock Temperance LOL 974
 Whitewater Temperance LOL 117
 Whitewell Residents

appendix F - endnotes

- ¹ Standards for the Conduct of Public Assemblies, p 41.
- ² Shared Future Strategy, Para 3, published 2005.
- ³ Section 69(6) Northern Ireland Act 1998.
- ⁴ Under section 2(1) *Human Rights Act 1998*, ‘a court or tribunal determining a question which has arisen in connection with a Convention right must *take into account*’ any relevant Strasbourg decisions. Under section 6(1) *Human Rights Act 1998*, public authorities must act in a way which is compatible with the rights set out in the European Convention of Human Rights. This requirement would apply to, amongst others, an adjudicator appointed by the proposed OFMDFM Panel.
- ⁵ Available online at: <http://www.osce.org/item/23835.html?ch=823>, the SRPB has also had regard to the *Review of Marches and Parades in Scotland* by Sir John Orr, *The North Report*, *The Quigley Report*, the *Belfast Agreement*, and the *Report of the Goldstone Commission* in South Africa
- ⁶ See further <http://www.billofrightsforum.org/index.htm> and <http://www.nihrc.org/>
- ⁷ Note that s.13(1) *Human Rights Act 1998* requires that ‘If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.’
- ⁸ See *Djavit An v Turkey* (Application no. 20652/92, judgment of 20 February 2003) at para.56; *G v The Federal Republic of Germany* (1989) at p.263. Similarly, *Christians Against Racism and Facism v UK* (CARAF) (1980) at p.148. In many cases, the right to freedom of assembly cannot logically be separated from the right to freedom of expression (Article 10, ECHR and Article 19(2) and (3), ICCPR) or the right to freedom of religion (Article 9, ECHR and Article 18, ICCPR). Where issues under all three rights are raised, the United Nations Human Rights Committee and the European Court of Human Rights have elected to explore the substantive issues under the Article *most* relevant to the facts, and to treat the others as subsidiary. In Northern Ireland, many public assemblies are viewed by those who organise them as an expression of religion, and it is noteworthy that ‘freedom to manifest one’s religion includes the right to try to convince one’s neighbour’ (see *Barankevich v Russia* (2007) at para.34). Others are viewed as an expression of culture. As such, they may attract particular protection under the International Covenant for Economic, Social and Cultural Rights (ICESCR), Article 15 of which provides that ‘[t]he States Parties of the present Covenant recognize the rights of everyone: (a) to take part in cultural life...’
- ⁹ See General Comment no.27 UN Doc. CCPR/C/21Rev1/add.9 at para.6.
- ¹⁰ See, for example, *Özgül Gündem v. Turkey* (Application no. 23144/93) Judgment of 16 March 2000, at paras.42-43 and 46 (noting that positive obligations might arise under Articles 2, 3, 8, 10 and 11 ECHR). See generally, A. Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (2004).
- ¹¹ This could have important implications for ‘fair trial’ rights under Article 6 ECHR. See further, Northern Ireland Human Rights Commission, *Parades Protests and Policing: A Human Rights Framework* (2001) at pp.37-38.
- ¹² See, for example, *Christian Democratic People’s Party v Moldova* (Application no.28793/02, judgment of 2006) at para.70. Similarly, *Zana v Turkey* (judgment of 25 November 1997, *Reports 1997-VII*, pp. 2547-48) at para.51. In *R v Shayler* [2002] 2 All ER 477 at para. 75, Lord Hope noted the greater intensity of review available under the proportionality approach to issues touching upon alleged breaches of Convention rights: “A close and penetrating examination of the factual justification for the restriction is needed if the fundamental rights enshrined in the Convention are to remain practical and effective for everyone who wishes to exercise them.” See also *Huang v Secretary of State for the Home Department* [2007] UKHL 11.
- ¹³ See, for example, *Ouranio Toxo v Greece* (Application no. 74989/01, judgment of 20 October 2005, final 20/01/06) at para.36; *Barankevich v Russia* (Application no. 10519/03, judgment of 26 July 2007) at paras.25-26. ‘In view of the essential nature of freedom of assembly and association and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right.’
- ¹⁴ See, for example, *Osmani and Others v Former Yugoslav Republic of Macedonia*, Application no. 50841/99, Admissibility; *Öztürk v Turkey*, Application no. 22479/93 at para.70 (Grand Chamber); *Ezelin v France* (Application no. 11800/85, Judgment of 26 April 1991) at para.52.
- ¹⁵ The European Court of Human Rights has stated (in relation to the right to manifest one’s religion or belief) that ‘... in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.’ See *Kokkinakis v Greece* (judgment of 25 May 1993) Series A no.260-A, p.18 at para.33 (emphasis added). In *Baczowski and Others v Poland* (Application no. 1543/06, Judgment of 3 May 2007 at para.62) – a case concerning the banning of the Equality (Pride) parade in Warsaw in 2005 – the European Court of Human Rights stated that ‘[t]he harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.’ In *Ouranio Toxo v Greece* (Application no. 74989/01, Judgment of 20 October 2005, made final 20 January 2006), a case concerning freedom of association, and the removal of a sign from the party headquarters of a party who defended the Macedonian minority in Greece on grounds that it ‘was liable to sow discord’, the Court noted: ‘In particular, pluralism is built on, for example, the genuine recognition of, and respect for, diversity and the dynamics of traditions and of ethnic and cultural identities. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion...’ (see para.35). Similar arguments have been raised in the ‘headscarf’ cases such as *Dablab v Switzerland* (Application no. 42393/98, decision of 15 February 2001) where the dismissal of a primary school teacher who sought to wear an Islamic headscarf whilst teaching was upheld. The court had to weigh ‘the right of a teacher to manifest her religion against the need to protect pupils by preserving religious harmony.’ Importantly, the impressionability or vulnerability of those being taught by the applicant was a consideration that strongly influenced the court’s decision: Against the backdrop of a national policy of denominational neutrality in schools, the Court concluded that the dismissal of the teacher was not unreasonable, and declared the application inadmissible. The Court stated ‘that it is very difficult to assess the impact that a powerful external symbol such as the wearing of a headscarf may have on the freedom of conscience and religion of very young children. The applicant’s pupils were aged between four and eight, an age at which children wonder about many things and are also more easily influenced than older pupils. In those circumstances, it cannot be denied outright that the wearing of a headscarf might

have some kind of proselytising effect, seeing that it appears to be imposed on women by a precept which is laid down in the Koran and which, as the Federal Court noted, is hard to square with the principle of gender equality. It therefore appears difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils.' See also *Leyla Sahin v Turkey*, Application 44774/98 (2005).

- ¹⁶ Article 6, *Framework Convention for the Protection of National Minorities* provides that (1) The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. (2) The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity. Also cited in the North Report at para.9.26.
- ¹⁷ *Baczowski and Others v Poland* (Application no. 1543/06, Judgment of 3 May 2007) at para.64.
- ¹⁸ *Ibid.*
- ¹⁹ *Ouranio Toxo and Others v Greece* (Application no. 74989/01, Judgment of 20 October 2005, made final 20 January 2006) at para.40. Similarly, in *Barankevich* (2007), at para.31 (citing *Metropolitan Church of Bessarabia and Others v Moldova*, (Application no. 45701/99, Judgment of 2001) at paras.115 and 116). See also *Gorzelik and Others v. Poland* [GC], no. 44158/98, para.92, 17 February 2004. It was further stated by the Court in *Ouranio Toxo* that '... mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to "democratic society", even though it may provoke tensions' (at para.40). 'The Court accepts that the use of the term *vino-zito* certainly aroused hostile sentiment among the local population. Its ambiguous connotations were liable to offend the political or patriotic views of the majority of the population of Florina. However, the risk of causing tension within the community by using political terms in public did not suffice, by itself, to justify interference with freedom of association' (at para.41).
- ²⁰ See *Barankevich v Russia* (Application no.10519/03, Judgment of 26 July 2007), at para.31.
- ²¹ See, for example, Article 14 ECHR, Article 26 ICCPR and Article 1, Protocol 12 ECHR.
- ²² As Professor Steven Greer has noted, 'where conflicts between Convention rights have to be resolved, the key issues are how the rights in question are to be defined and whether, thus defined, the conduct in question constitutes their violation or realization' (277). Moreover, this points to 'the need carefully to define what each right means in the context in question.' (269) See Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (2006, Cambridge University Press).
- ²³ Including, for example, The North Report, at p.143. *The North Report* also noted (at p.82) that "[t]here was broad agreement between Catholic and Protestant respondents, 97% of Catholics and 83% of Protestants agreeing that negotiated accommodation should be sought in such circumstances."
- ²⁴ In *Tweed v Parades Commission for Northern Ireland* [2006] UKHL 53 at para.41, Lord Carswell in the House of Lords stated: "the judge considering disclosure should first receive and inspect the full text of all of the documents ... so that he may decide whether that would give sufficient extra assistance to the appellant's case on proportionality, over and above the summary already furnished, to justify its disclosure in the interests of fair disposal of the case. If he does so decide, then the question of redaction may have to be considered, in which the parties may be invited to make submissions to the court. If he decides the contrary in the case of any of the documents, that document will not be disclosed to the appellant. Only after this has been settled should the question of public interest immunity receive any necessary consideration."
- ²⁵ See, for example, *OSCE Guidelines on Freedom of Peaceful Assembly* (2007); Council of Europe, Congress of Local and Regional Authorities, Spring Session, Strasbourg (27 – 28 March 2007), *Resolution 230 (2007) on freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons*. In South Africa monitors were deployed to help prevent the escalation of conflict between police and demonstrators during the early years of transition (1990-94). See also the *UN Training Manual on Human Rights Monitoring*. See also Dominic Bryan and Neil Jarman, *Independent Intervention* (1999).
- ²⁶ This might include commentary on the behaviour and dress of participants, the positioning of the assembly on the public road, the consumption of alcohol (or evidence of its influence), the conduct of bands and the music played, flags and other symbols displayed, the presence of stewards and action taken by them, evidence of the assembly organiser and/or participants co-operating with police, and the orderly dispersal of the event.
- ²⁷ This might include commentary on the police location, whether they are clearly identifiable, the type of uniforms worn and any weapons carried or used, deployment of vehicles, screens or dogs, responses to breaches of any agreement, determination or the Code of Conduct, the duration of road closures, and the timeliness of withdrawal.
- ²⁸ The definition of 'fear' in *Article 8 Public Order (NI) Order 1987* means fear of a group of persons defined by reference to religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins; 'hatred' means hatred against a group of persons defined by reference to religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins. (For amendments, see s.38 *Anti-terrorism, Crime and Security Act 2001*; Article 3, *Criminal Justice (No.2) (NI) Order 2004*. A person guilty of an offence under this Part shall be liable either on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; OR on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both. (Article 16 *Public Order (NI) Order 1987* as amended by s.41 *Anti-terrorism, Crime and Security Act 2001*).
- ²⁹ Article 4 of the *Protection from Harassment (NI) Order 1997* provides that a person is guilty of an offence if he/she pursues a course of conduct which amounts to harassment of another and the course of conduct is such that a reasonable person in possession of the same information would think that it amounted to harassment of the other. A person guilty of this offence is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both. Note that Article 5 *Protection from Harassment (NI) Order 1997* further provides that an actual or apprehended breach of a course of conduct which amounts to harassment of another may be

the subject of a claim in civil proceedings by the person who is (or may be) the victim of the course of conduct in question. On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment. An order restraining harassment may be sought – see further, for example, Huntingdon Life Sciences.

³⁰ Section 13, *Terrorism Act 2000*

³¹ The Irish Republican Army includes both the Provisional IRA, the Continuity IRA and the Real IRA.

³² ...who is taking part in a public procession; or who is among those who have assembled with a view to taking part in a public procession; or who is otherwise present at, or is in the vicinity of, a place on the route or proposed route of a public procession; and is in a public place, other than licensed premises.

³³ s.9A(7) *Public Processions (NI) Act 1998* (inserted by the *Public Processions (Amendment) (NI) Order 2005*). A person guilty of such an offence shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

³⁴ Liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

³⁵ *Howell* [1981] 3 All ER 383. “Under this definition, threatening words might not in themselves amount to a breach of the peace, but they might lead a police officer to apprehend a breach. ... The *Howell* definition in itself is extremely wide, largely because it does not confine itself to violence or threats of violence. Nor does it require that the behaviour amounting to a breach of the peace, or giving rise to fear of a breach of the peace, should be unlawful under civil or criminal law. Further, it has been recognised for some time by the courts that a person may be bound over for conduct which is not itself a breach of the peace and which does not suggest that the individual concerned is about to breach the peace, but which may cause another to breach the peace.” ... “Three key issues arise in relation to the question of immediacy. First, it is necessary to determine the degree of imminence. ... Second, assuming that a breach can be said to be imminent, who can be arrested or otherwise affected by police intervention? ... Third, if a breach can *not* be said to be imminent, can the police take action short of arrest, such as directing protesters away from the protest, or detaining them without arresting them, on the basis that otherwise the breach will become imminent?” See Helen Fenwick, *Civil Liberties and Human Rights* (4th ed., 2007) at 752-754.

³⁶ Article 2, *Criminal Justice (No. 2) (Northern Ireland) Order 2004*. An offence is aggravated by hostility if at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial, religious, or sexual orientation group; a disability or presumed disability of the victim; or the offence is motivated (wholly or partly) by hostility towards either members of a racial, religious, or sexual orientation group based on their membership of that group, or persons who have a disability or a particular disability. ‘Membership’ includes association with members of that group. See Article 2(5) for further interpretive guidance.

³⁷ Article 6, *Anti-Social Behaviour (NI) Order 2004*. An order under this Article would have effect for a period (not less than two years) specified in the order or until further order.

³⁸ s.32(1) *Police (NI) Act 2000*.

³⁹ s.32(5) *Police (NI) Act 2000*.

⁴⁰ See s.15 *Public Processions (NI) Act 1998* and Article 24(1) *Public Order (NI) Order 1987*.

⁴¹ s.13 *Public Processions (NI) Act 1998*.

⁴² Article 23B *Public Order (NI) Order 1987*, inserted by s.96 *Anti-terrorism, Crime and Security Act 2001*. This makes similar provision for Northern Ireland to that made by virtue of Section 60 of the Criminal Justice and Public Order Act 1994 which does not extend to Northern Ireland.

⁴³ s.12, *Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007*.

⁴⁴ A person guilty of such an offence shall be liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale, or both.

⁴⁵ Article 23A *Public Order (NI) Order 1987*, inserted by s.95 *Anti-Terrorism, Crime and Security Act 2001*. Under the Northern Ireland (Emergency Provisions) Act 1996, it was an offence to wear a mask or hood in a public place for the purpose of concealing identity. This provision was repealed when the *Terrorism Act 2000* took effect. A consequential amendment was also made to the Police and *Criminal Evidence (Northern Ireland) Order 1989* to provide that failure to comply with the requirement to remove a disguise is an arrestable offence.