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NORTHERN IRELAND OFFICE

WHITEHALL

LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

Prime Minister
Re Northern Ireland
Secretary mentioned
this to you.
ESP 17/x.

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

16 October 1986

D. Douglas

PUBLIC ORDER LEGISLATION

I know that my officials have been keeping yours generally in the picture about my proposals for amending public order legislation in Northern Ireland, but I should like you to be aware of the position which has now been reached.

Publicly I am committed to reviewing public order legislation generally "in the Autumn" in the light of developments in public order law in England and Wales. This will cover public processions and meetings, and incitement to hatred. Additionally I have made clear publicly that as part of that review I will look at the politically highly-charged issue of repealing the Flags and Emblems (Display) Act (NI) 1954.

These are all controversial issues, and in the case of the public processions provisions, there is a time constraint as the Chief Constable needs the legislation in place well before the start of the 'marching season'. In order to ensure that all the necessary stages of the Order-in-Council procedure can be completed by 1 March 1987 it will be necessary to start the ball rolling within the next 4/6 weeks. This will mean that the Proposal may not be able to take account of late changes to your Public Order Bill, but I shall emphasise my intention to try and keep in step with the law in England and Wales, and we can reflect any changes in the final draft Order which would be drawn up after the consultation period.

I enclose, for your information, copies of the draft Proposal and Explanatory Document. You will see that the legislative proposals include:

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- (i) a consolidation of miscellaneous public order powers;
- (ii) changes to the law on the notification, control and prohibiting of public processions and open-air public meetings. These changes are broadly in line with part II of the Bill but there are a number of differences of detail reflecting the very different circumstances of Northern Ireland;
- (iii) an updating of the law to prevent incitement to hatred on grounds of religious opinion. It is intended that this will follow Part III of the Bill (incitement to racial hatred) as closely as possible;
- (iv) the repeal of the Flags and Emblems (Display) Act (NI) 1954.

As I explained in my letter of 14 July, I do not intend to follow Part IV of the Bill. I am still considering whether it would be desirable to follow Clauses 38 and 39 of the Bill, but I do not intend to delay publication of the Proposal until those points have been decided.

There is also some support in Northern Ireland for the suggestion, made in the Chief Constable's last Annual Report, that an independent tribunal should be set up which would have a role in determining what conditions should be imposed on potentially controversial processions and which of them should be prohibited. I see very great difficulties with this approach but, in the circumstances, I think the best course is to open the issue up to public debate by publishing a Consultative Paper which would discuss the arguments for and against. Officials are discussing the terms of such a paper with the RUC and I will send you a draft before it is published, which will probably be a week or so after the publication of the Proposal.

This seems
a
very
dubious
idea -
surely the
Executive
must
retain
control.)
CDP

The publication of the Proposal will undoubtedly give rise to a strong reaction from Loyalists. This will be whipped up by those who are seeking an excuse to promote renewed protests against the Anglo-Irish Agreement, and they will undoubtedly play on the widespread view that Loyalists have (and should retain) an absolute right to march wherever they like in Northern Ireland, and misrepresent the repeal of the Flags and Emblems Act as giving the Irish Tricolour equal status with the Union flag. The Explanatory Document deals with some of the wilder misconceptions about the Act, but it has undoubtedly assumed a quite disproportionate symbolic significance among Loyalists so moves to repeal it may well be used to provoke trouble. On the other hand the Act has assumed an equally disproportionate symbolic significance among nationalists and although it is an entirely redundant piece of legislation its repeal is seen - by both sides of the community - as a test of the

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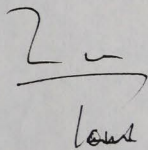
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Government's commitment to the principle that the legislation and institutions of Northern Ireland should protect the legitimate interests of both political traditions, and as a test of its commitment to the Anglo-Irish Agreement. I am inclined on balance to proceed with the repeal of the Act but I intend to preserve the position that I am not fully committed to that decision until I have considered the response to the Proposal.

The Proposal will therefore be published within the next 4/6 weeks and I am of course giving close consideration to the most appropriate time. Considerations obviously include the position in the Republic, with the confidence vote and a possible early General Election, the anniversary date for the Agreement and the general security position. I will of course keep colleagues informed, and in the meantime, I should be glad to know for your part that you were satisfied that publication will not create any difficulties during the final stages of the Bill.

On the Parliamentary side the timetable involves debates in both Houses in February in succeeding weeks and I hope that this will be possible for the business managers. I would intend to announce the publication of the Proposal in the House either by means of an oral statement or an arranged PQ.

I am sending copies of this letter to the **Prime Minister**, the Lord President, the Foreign Secretary, the Chancellor of the Duchy of Lancaster, the Chief Whip and Sir Robert Armstrong.


TK

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3
CONFIDENTIAL

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DRAFT 14.10.86 (am)

PROPOSAL FOR A DRAFT ORDER IN COUNCIL

PUBLIC ORDER

EXPLANATORY DOCUMENT

Comments on the proposal should be sent to the address below
before [six weeks' time].

The Secretary
Law and Order Division
Northern Ireland Office
Stormont House Annexe
BELFAST
BT4 3ST

[] 1986

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E. R.

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PART I

BACKGROUND AND SCOPE

INTRODUCTION

1. The draft Order would amend and consolidate public order legislation in Northern Ireland at present contained in the Public Order (NI) Order 1981 (1981 No 609 (NI 17)) and part of section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 (1968 Ch 28 (NI)); and repeal the Flags and Emblems (Display) Act (NI) 1954 (1954 Ch 10 (NI)).

2. The Government has been reviewing public order legislation in Northern Ireland in the light of events in the Province and of the Public Order Bill currently before Parliament. The Government believes that it is right that the principles underlying public order legislation should be the same throughout the United Kingdom, although local circumstances require some variations in specific provisions in Northern Ireland.

Control of processions and open-air public meetings

3. Public processions in Northern Ireland attract large numbers of participants. The great majority of such occasions are peaceful and unprovocative. Some however contain great potential for disorder, or are conducted in a way which is intended to intimidate other sections of the community. The proposed changes are intended both to bring the law more closely into line with the provisions of the Public Order Bill and to strengthen the ability of the police to deal with potentially troublesome processions and open-air meetings.

4. The Order would therefore increase the length of advance notice to be given of a public procession and add to the matters to be notified. It would follow the Public Order Bill by enabling the police to impose conditions on public

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processions if there was a risk of serious public disorder, serious damage to property or serious disruption to the life of the community, or if the purpose of the procession's organisers was to intimidate others. It would similarly recast the grounds on which the Secretary of State may prohibit the holding of processions and open-air meetings. The Order would also follow the Bill by introducing a power for the police to impose conditions on open-air public meetings.

5. The Order would also end the exemption in the 1981 Order from the requirement to give notice of processions customarily held along a particular route, and of processions organised by trades unions.

Incitement to hatred

6. The legislation against incitement to hatred has proved to be ineffective both in Northern Ireland and in Great Britain. The Public Order Bill is aimed at strengthening the law in Great Britain against incitement to racial hatred, and the draft Order would bring the law on incitement to racial or religious hatred in Northern Ireland into line with the provisions of the Bill.

7. Thus the Order would strengthen the law on incitement to hatred by making the various actions (publication or distribution of threatening, abusive or insulting material; possession of such material with a view to publication or distribution; use of threatening, abusive or insulting words or gestures) offences not only if it were intended to stir up hatred or arouse fear on racial or religious grounds, but also if in the circumstances such hatred or fear were likely to be stirred up or aroused.

Flags and Emblems (Display) Act (NI) 1954

8. This Act is widely misunderstood and has assumed an entirely disproportionate symbolic importance on both sides of

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the community. Before reaching any final decision on whether it should be repealed the Government is therefore publishing this Proposal for a draft Order together with this Explanatory Document which sets out the actual legal effect of the Act. The Government hopes that this will make it possible for there to be an informed public debate and encourage interested parties to put forward reasoned views to the Government, so that the final decision can be made on a sound basis.

9. The Act is widely but wrongly believed to protect any display of the Union flag from interference and to make the flying of the Irish tricolour illegal. Neither of these assertions is correct. Section 1 of the Act makes it an offence to prevent or threaten to interfere by force with the display of the Union flag on lawfully occupied land and premises. However, a person interfering with the display of a Union flag on private premises anywhere in the United Kingdom would be committing at least one of a range of offences, including conduct likely to lead to a breach of the peace and criminal damage, so the law already protects the peaceful display of the Union flag in such circumstances. Moreover the Act only applies to displays of the Union flag on private lands or premises: it confers no protection on displays in public places or at work or by marchers; and it is in fact an offence under existing public order legislation (Article 6 of the 1981 Order and Section 9 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968) to display any flag (which includes the Union flag), in a public place or at or in relation to any public meeting or public procession, in a manner likely to cause a breach of the peace.

10. Section 2 empowers a police officer to require the removal of any emblem other than the Union flag if he believes its display may cause a breach of the peace, and authorises him to enter premises to remove such an emblem if necessary. The Act does not therefore make the flying of the Irish tricolour illegal in itself in Northern Ireland. Nor would its repeal affect the other public order powers of a police officer to require or effect the removal of a tricolour, or any other flag if he believed its display would lead to a breach of the peace.

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11. The Act is therefore in practice redundant and its repeal (which has been recommended in the past by the Standing Advisory Commission on Human Rights) would have no practical legal effect. However, it is seen by many groups as a piece of legislation which is discriminatory and offensive to certain sections of the community in Northern Ireland. Those who see it in this way believe that the effect of the Act is to protect displays of the Union flag where these are being used to project a claim to cultural domination by one section of the community over another rather than to encourage respect for the national flag. There is a strong case for repealing the Act so that the law on the display of flags and emblems in Northern Ireland can be on the same basis as in the rest of the United Kingdom. Repeal of the Act would make no change whatsoever to the position that the Union flag is the official flag of Northern Ireland as it is of the United Kingdom as a whole; and as such is the flag which is flown from public buildings on public occasions.

Other public order offences

12. The Order would re-enact with amendments the offences in Articles 5 to 12 of the Public Order (NI) Order 1981 and increase the penalties for certain of these offences.

Other changes.

13. The Order would consolidate the public order offences in section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 with the main body of public order legislation.

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PART II

PROVISIONS OF THE DRAFT ORDER

Title and commencement

14. Article 1 would set out the title of the Order and provide that it should come into operation one month after being made.

Interpretation

15. Article 2 would deal with the interpretation of expressions used in the Order.

PROCESSIONS AND MEETINGS

Advance notice of public processions

16. Article 3 would require written notice of any proposed public procession (other than a funeral procession) to be left at the police station nearest to the proposed starting place, not less than 7 days in advance, and set out the particulars to be given in the notice. It would make it an offence to organise or take part in public processions in respect of which notice had not been given, or which were held on a date, at a time or along a route different from that in the notice. The Article would provide for defences to those charges and prescribe penalties.

Imposing conditions on public processions and open-air public meetings

17. Article 4 would empower a senior police officer (ie an Inspector or above of the Royal Ulster Constabulary in the case of processions or meetings in progress, or a superintendent or above in the case of proposed processions or meetings) to impose conditions on the organisers and participants if he reasonably believed that the procession or meeting would result in serious public disorder, serious damage to property or

serious disruption to the life of the community, or that the purpose of the organisers was to intimidate other people. The Article would make it an offence knowingly to fail to comply with such conditions unless the failure arose from circumstances beyond the person's control, and prescribe penalties.

Prohibiting public processions and open-air public meetings

18. Article 5 would provide for the Secretary of State to make an order prohibiting the holding of public processions or open-air public meetings if he were of the opinion that the powers of the Royal Ulster Constabulary to impose conditions would not be sufficient to prevent serious public disorder, serious damage to property, serious disruption to the life of the community or intimidation, or that the holding of any procession or public meeting in any area was likely to cause serious disorder or disruption or to place undue demands on the security forces. He could either prohibit all processions or meetings (or specified classes) in an area for up to 3 months or permit the holding of one procession or meeting and prohibit all others for up to one month. The Secretary of State would be required (as he is at present by paragraph 15(2) of Schedule 1 of the Police Act (NI) 1970) to consult, where practicable, a committee of the Police Authority before making a prohibition order, but the order would not be invalid if the committee were not consulted. The Article would make it an offence to organise or participate in a prohibited procession or open-air meeting, and prescribe penalties.

Taking part in a public procession as a member of an unregistered band

19. Article 6 would re-enact Article 5 of the 1981 Order: it would allow the Secretary of State to make an order requiring the registration of bands. Such an order could provide for registration to be subject to conditions. It would be an offence to take part in a public procession as a member of a

band which should be registered but was not; or to fail to comply with a condition of registration.

Endeavours to break up public processions or meetings

20. Article 7 would substantially re-enact Articles 7 and 10 of the 1981 Order, and make it an offence to attempt to prevent or hinder any lawful public procession or to prevent the transaction of the business of a lawful public meeting. It would prescribe penalties. This Article would not apply to election meetings.

STIRRING UP HATRED AGAINST, OR AROUSING FEAR OF, A SECTION OF THE PUBLIC

Publishing or distributing inflammatory matter to stir up hatred or arouse fear

21. Article 8(1) would make it an offence to publish or distribute written or other matter which was threatening, abusive or insulting with intent to stir up hatred or arouse fear on the grounds of religious belief, colour, race or ethnic or national origins, or where in the circumstances such hatred or fear was likely to be aroused.

Article 8(2) would make it an offence to possess such matter with a view to publication or distribution where hatred or fear was intended or likely to be aroused.

Articles 8(3) and (4) would exempt fair and accurate reports of proceedings in courts, tribunals, Parliament or the Assembly.

Articles 8(5) and (6) would provide for a defence and for penalties.

Articles 8(7) and (8) would empower a resident magistrate to issue a warrant to enter premises to search for and seize such written or other matter, and for a constable to use reasonable force if necessary in pursuance of a warrant.

Article 8(9) would define expressions used in the Article.

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Use of inflammatory words or gestures to stir up hatred or
arouse fear

22. Article 9 would make it an offence to use threatening,
abusive or insulting words or gestures intended or likely to
stir up hatred or arouse fear; and would provide defences and
penalties.

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MISCELLANEOUS PUBLIC ORDER OFFENCES

Riotous, disorderly or indecent behaviour in public places

23. Article 10 would re-enact the offence in section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 of using riotous, disorderly or indecent behaviour, or behaviour likely to cause a breach of the peace, in a public place; and provide penalties.

Provocative conduct in public place or at public meeting or procession

24. Article 11 would re-enact the offences contained in Article 6 of the Public Order (NI) Order 1981.

Obstructive sitting etc in a public place

25. Article 12 would re-enact the provisions of Article 8 of the 1981 Order.

Wearing of uniform in public place or at public meeting

26. Article 13 would re-enact the provisions of Article 11 of the 1981 Order.

Carrying of offensive weapon in a public place

27. Article 14 would re-enact the provisions of Article 12 of the 1981 Order with minor amendments.

Offences in relation to public buildings and activities therein

28. Article 15 would substantially re-enact Article 9 of the 1981 Order, which makes it an offence to trespass in a public building (as defined in Article 15(6), (7) and (8)), to refuse to leave a public building if directed to do so by an

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authorised person, or knowingly to interfere with the carrying on of any lawful activity in a public building. It empowers a constable to remove a person committing an offence under the Article from a public building if so requested.

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GENERAL PROVISIONS RELATING TO OFFENCES

Powers of arrest

29. Article 16 would deal with powers of arrest for offences under the Order, and powers to require persons to give their name and address in connection with certain offences under the Order.

Consent to prosecution

30. Article 17 would require the consent of the Attorney General for the institution of prosecutions for certain offences under the Order.

Forfeiture

31. Article 18 would empower a court convicting for certain offences to order the forfeiture, destruction or disposal of certain articles, and make incidental provisions.

REPEAL OF FLAGS AND EMBLEMS (DISPLAY) ACT (NI) 1954

32. Article 19 would repeal the Act.

SUPPLEMENTARY

33. Article 20 would contain supplementary and transitional provisions and repeals.

PART III

FINANCIAL AND STAFFING IMPLICATIONS

34. It is not expected that the Order would result in any increase or savings in public service expenditure or manpower.

COMPARISON WITH THE LAW IN ENGLAND AND WALES

35. In England and Wales Part II of the Public Order Bill makes provisions similar in principle to those in Articles 3, 4 and 5 of the draft Order, although the requirements on organisers in the draft Order would be more extensive than those in the Bill; the Secretary of State's power to prohibit processions would be exercisable on wider grounds than the powers in England and Wales; the Order would make participants, as well as organisers, of illegal marches guilty of an offence; and penalties in the Order would be higher than those in the Bill. Part III of the Bill contains provisions similar to Articles 8 and 9 of the draft Order, although the Order would cover religious as well as racial hatred. The Bill is subject to amendment, and any changes will be taken into account when finalising the draft Order.

PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH 1 OF
SCHEDULE 1 TO THE NORTHERN IRELAND ACT 1974

DRAFT STATUTORY INSTRUMENTS

1986 No. (N.I.)

NORTHERN IRELAND

Public Order (Northern Ireland) Order 1986

To be laid before Parliament in draft

Made

Coming into operation

ARRANGEMENT OF ORDER

Article

1. Title and commencement.
2. Interpretation.

Processions and meetings
3. Advance notice of public processions.
4. Imposing conditions on public processions and open-air public meetings.
5. Prohibiting public processions and open-air public meetings.
6. Taking part in public procession as member of unregistered band.
7. Endeavours to break up public processions or public meetings.

Stirring up of hatred against, or arousing fear of,
a section of the public
8. Publishing or distributing inflammatory matter to stir up hatred or arouse fear.
9. Use of inflammatory words or gestures to stir up hatred or arouse fear.

Miscellaneous public order offences
10. Riotous, disorderly or indecent behaviour in public place.
11. Provocative conduct in public place or at public meeting or procession.

12. Obstructive sitting, etc. in public place.
13. Wearing of uniform in public place or at public meeting.
14. Carrying of offensive weapon in public place.
15. Offences in relation to public buildings and activities therein.

General provisions relating to offences

16. Powers of arrest, etc.
17. Consent to prosecution.
18. Forfeiture.

Repeal of Flags and Emblems (Display) Act
(Northern Ireland) 1954

19. Repeal of Flags and Emblems (Display) Act (Northern Ireland) 1954.

Supplementary

20. Amendments, savings, transitional provisions and repeals.

SCHEDULE - Repeals.

At the Court at _____, the _____ day of _____ 1986

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974[1974 c. 28] and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Title and commencement

1.- (1) This Order may be cited as the Public Order (Northern Ireland) Order 1986.

(2) This Order shall come into operation on the expiration of one month from the day on which it is made.

Interpretation

2.- (1) The Interpretation Act (Northern Ireland) 1954[1954 c. 33 (N.I.)] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order -

"area" means the whole or any part of Northern Ireland;

"band" means a group of two or more people who carry for the purpose of playing or sounding, or engage in the playing or sounding of, musical or other instruments;

"meeting" means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

"open-air public meeting" means a public meeting held otherwise than inside a covered and enclosed structure of an immoveable nature;

"public meeting" includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise;

"public place" means any street, road or highway and any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

"public procession" means a procession in a public place, whether or not involving the use of vehicles or other conveyances;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954[1954 c. 33 (N.I.)].

Processions and meetings

Advance notice of public processions

3.- (1) A person proposing to organise a public procession shall, not less than 7 days before the date when the procession is to be held, give written notice of that proposal in accordance with paragraph (2) to a member of the Royal Ulster Constabulary not below the rank of sergeant by leaving the notice with him at the police station nearest to the proposed place of commencement of that procession.

(2) The notice to be given under paragraph (1) shall specify -

- (a) the date and time when the procession is to be held;
- (b) its route;
- (c) the number of persons likely to take part in it;
- (d) the number and, where reasonably practicable, the names of any bands likely to take part in it;
- (e) the arrangements for its control being made by the person proposing to organise it; and
- (f) the name and address of that person.

(3) Paragraph (1) does not apply in relation to a funeral procession.

(4) A person who organises or takes part in a public procession -

- (a) in respect of which notice has not been given under paragraph (1); or
- (b) which is held on a date, at a time or along a route which differs from the date, time or route specified in relation to it in the notice given under paragraph (1),

shall be guilty of an offence.

(5) In proceedings for an offence under paragraph (4) it is a defence for the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to give notice under paragraph (1) or (as the case may be) the difference of date, time or route.

(6) To the extent that an alleged offence under paragraph (4) turns on a difference of date, time or route it is a defence for the accused to prove that the difference arose from -

- (a) circumstances beyond his control;
- (b) something done in compliance with conditions imposed under Article 4(1);
or
- (c) something done with the agreement of a member of the Royal Ulster Constabulary not below the rank of inspector.

(7) A person guilty of an offence under paragraph (4) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 3 on the standard scale, or to both.

Imposing conditions on public processions and open-air public meetings

4.- (1) If a senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that -

- (a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or
- (b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any place specified in the directions.

(2) If a senior police officer, having regard to the time or place at which and the circumstances in which any open-air public meeting is being held or is intended to be held, reasonably believes that -

- (a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or
- (b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do;

he may give directions imposing on the persons organising or taking part in the meeting such conditions as to the place at which the meeting may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

(3) In paragraphs (1) and (2) "a senior police officer" means -

- (a) in relation to a procession or open-air public meeting being held, or to a procession or open-air public meeting intended to be held in a case where persons are assembling with a view to taking part in it, a member of the Royal Ulster Constabulary not below the rank of inspector;
- (b) in relation to a procession or open-air public meeting intended to be held in a case where sub-paragraph (a) does not apply, a member of the Royal Ulster Constabulary not below the rank of superintendent.

(4) Directions given by virtue of paragraph (3)(b) shall be given in writing.

(5) A person who knowingly fails to comply with a condition imposed under this Article shall be guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6) A person guilty of an offence under paragraph (5) shall be liable -

- (a) 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
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Prohibiting public processions and open-air public meetings

5.- (1) If at any time the Secretary of State is of the opinion, in consequence of information furnished to him by the Chief Constable or for any other reason, that -

- (a) the exercise of the powers conferred by Article 4 in any area will not be sufficient to prevent such disorder, damage, disruption or intimidation as is referred to in paragraphs (1) and (2) of that Article; or

(b) the holding in any area or place of any public procession or any open-air public meeting is likely to cause -

- (i) serious public disorder;
- (ii) serious disruption to the life of the community; or
- (iii) undue demands to be made upon the police or military forces,

he may make an order -

(A) prohibiting, for such period not exceeding 3 months as may be specified in the order, the holding in that area or place of all public processions or open-air public meetings or of such classes of public procession or open-air public meeting as may be so specified; or

(B) permitting the holding in an area or place of a public procession or open-air public meeting specified in the order and prohibiting, for such period not exceeding one month as may be specified in the order, the holding in that area or place of any other public procession or open-air public meeting or of any class of public procession or open-air public meeting specified in the order.

(2) Wherever practicable, the Secretary of State shall, before making an order under paragraph (1), consult the committee of the Police Authority for Northern Ireland constituted under paragraph 15(2) of Schedule 1 to the Police Act (Northern Ireland) 1970 [1970 c. 9 (N.I.)]; but nothing in this paragraph shall affect the validity of any such order.

(3) A recital in an order made by the Secretary of State under paragraph (1) as to his opinion and the information upon which that opinion was formed shall be conclusive evidence of the matters stated therein.

(4) The Chief Constable may delegate, to such extent and subject to such conditions as he may specify, his functions under paragraph (1) to a member of the Royal Ulster Constabulary not below the rank of Assistant Chief Constable.

(5) A person who -

- (a) organises a public procession or open-air public meeting the holding of which he knows is prohibited by virtue of an order under this Article; or
 - (b) takes part in a public procession or open-air public meeting the holding of which he knows is prohibited by virtue of an order under this Article,
- shall be guilty of an offence.

- (6) A person guilty of an offence under paragraph (5) shall be liable -
 - (a) 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
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Taking part in public procession as member of unregistered band

6.- (1) The Secretary of State may by order provide for the registration of bands.

(2) Without prejudice to the generality of paragraph (1), an order under that paragraph may -

- (a) provide for registration to be subject to such conditions as may be specified in the order;
- (b) exclude from its operation such bands or bands of such descriptions as may be so specified.

(3) A person who knowingly takes part in a public procession as a member of a band which -

- (a) is required by an order under paragraph (1) to be registered, but is not so registered; or
- (b) does not comply with any condition subject to which it is registered under such an order,

shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (3) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 3 on the standard scale.

(5) An order made under paragraph (1) by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946[1946 c. 36] shall apply accordingly.

Endeavours to break up public processions or public meetings

7.- (1) 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, obstructs or acts in a disorderly manner towards, or behaves offensively and abusively towards, those persons or any of them shall be guilty of an offence.

(2) A person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence.

(3) Subject to paragraph (4), a person guilty of an offence under paragraph (1) or (2) shall be liable -

- (a) 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
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(3) Paragraph (3) does not apply to a person who commits an offence under paragraph (2) at a meeting referred to in paragraph 13 of Schedule 9 to the Electoral Law Act (Northern Ireland) 1962[1962 c. 14 (N.I.)].

Stirring up of hatred against, or arousing fear of,
a section of the public

Publishing or distributing inflammatory matter to stir up hatred or arouse fear

8.- (1) A person who publishes or distributes written or other matter which is threatening, abusive or insulting is guilty of an offence if -

- (a) he intends by the publication or distribution of the matter to stir up hatred or arouse fear; or
- (b) having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused as a result of the publication or distribution of the matter.

(2) A person who has threatening, abusive or insulting written or other matter in his possession with a view to its publication or distribution (whether or not by himself) is guilty of an offence in a case where -

- (a) he intends hatred to be stirred up or fear to be aroused by the publication or distribution of the matter; or
- (b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused as a result of the publication or distribution of the matter,

and for this purpose regard shall be had to such publication or distribution as he has, or it may reasonably be inferred he has, in view.

(3) Paragraphs (1) and (2) do not apply where the matter consists of or is contained in a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority, provided the report is (or is to be) published contemporaneously with those proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, is (or is to be) published as soon as publication is reasonably practicable and lawful.

(4) Paragraphs (1) and (2) do not apply where the matter consists of or is contained in a fair and accurate report of proceedings in Parliament or in the Assembly.

(5) In proceedings for an offence under paragraph (1) or (2) it is a defence for an accused who did not intend to stir up hatred or arouse fear to prove that he was

not aware of the content of the matter and neither suspected nor had reason to suspect it of being threatening, abusive or insulting.

- (6) A person guilty of an offence under paragraph (1) or (2) shall be liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(7) If a resident magistrate is satisfied on a complaint on oath made by a constable that there are reasonable grounds for suspecting that a person has possession of matter in contravention of paragraph (2), the resident magistrate may issue a warrant under his hand authorising any constable to enter and search the premises where it is suspected the matter is situated and to seize and remove anything which the constable reasonably suspects to be or include the matter.

(8) A constable entering or searching premises in pursuance of a warrant issued under paragraph (7) may use reasonable force if necessary.

(9) In this Article -

"distribute" means distribute to the public or a section of it;

"fear" means fear of any section of the public in Northern Ireland on grounds of religious belief, colour, race or ethnic or national origins;

"hatred" means hatred of any section of the public in Northern Ireland on grounds of religious belief, colour, race or ethnic or national origins;

"premises" includes any place and, in particular, includes -

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation, as defined in section 1(3)(b) of the Mineral Workings (Offshore Installations) Act 1971[1971 c. 61];
- and
- (c) any tent or moveable structure;

"publish" means publish to the public or a section of it;

"written matter" includes any writing, sign or visible representation.

Use of inflammatory words or gestures to stir up hatred or arouse fear

9.- (1) A person who uses words or gestures which are threatening, abusive or insulting is guilty of an offence if -

(a) he intends by the use of the words or gestures to stir up hatred or arouse fear; or

(b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused as a result of the use of the words or gestures.

(2) An offence under paragraph (1) may be committed in a private or public place, except that no offence is committed by the use of words or gestures by a person inside a dwelling which are not heard or seen except by other persons in that or another dwelling.

(3) A person who does not intend to stir up hatred or arouse fear is guilty of an offence under paragraph (1) only if he intends his words or gestures to be, or is aware that they may be, threatening, abusive or insulting.

(4) In proceedings for an offence under paragraph (1) it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that his words or gestures would be heard or seen by a person outside that or any other dwelling.

(5) A person guilty of an offence under paragraph (1) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(6) In this Article -

"dwelling" means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose "structure" includes a tent, caravan, vehicle, vessel or other temporary or moveable structure;

"fear" and "hatred" have the same meanings as in Article 8.

Miscellaneous public order offences

Riotous, disorderly or indecent behaviour in public place

10.- (1) A person who in any public place uses -

- (a) riotous, disorderly or indecent behaviour; or
- (b) behaviour whereby a breach of the peace is likely to be occasioned,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) 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.

Provocative conduct in public place or at public meeting or procession

11.- (1) A person who in any public place or at or in relation to any public meeting or public procession -

- (a) uses threatening, abusive or insulting words or behaviour; or
- (b) displays anything or does any act; or
- (c) being the owner or occupier of any land or premises, causes or permits anything to be displayed or any act to be done thereon,

with intent to provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned (whether immediately or at any time afterwards) shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) 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.

Obstructive sitting, etc., in public place

12.- (1) A person who, by sitting, kneeling or lying down in a public place, wilfully obstructs or seeks to obstruct traffic or wilfully hinders, or seeks to hinder, any lawful activity, shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding 1 month or to a fine not exceeding level 3 on the standard scale, or to both.

Wearing of uniform in public place or at public meeting

13.- (1) Subject to paragraph (2), a person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence.

(2) The Chief Constable, if satisfied that the wearing thereof on any ceremonial anniversary, or other special occasion, will not be likely to involve risk of public disorder, may, with the consent of the Secretary of State, by order permit the wearing of the uniform on that occasion either absolutely or subject to any conditions specified in the order.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding 1 month or to a fine not exceeding level 4 on the standard scale, or to both.

Carrying of offensive weapon in public place

14.- (1) A person who, without lawful authority or reasonable excuse (proof of which lies on him), has with him in any public place any offensive weapon shall be guilty of an offence.

(2) In paragraph (1) "offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person.

(3) A person guilty of an offence under paragraph (1) shall be liable -

(a) 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

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Offences in relation to public buildings and activities therein

15.- (1) A person who -

- (a) enters any public building as a trespasser; or
- (b) not being engaged in the discharge of duties, or the performance of obligations, connected with activities normally carried on in a public building wilfully neglects or fails to comply as soon as is practicable with a direction to leave that building given by an authorised person or by a constable, at the request of an authorised person; or
- (c) knowingly interferes with the carrying on of any lawful activity in any public building,

shall, without prejudice to the operation of any other statutory provision or rule of law, be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable -

- (a) 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
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(3) A constable, if so requested by an authorised person, may remove from a public building any person who commits an offence under paragraph (1) in that building.

(4) An authorised person who gives a direction under paragraph (1)(b) to any person shall, if so required by that person, produce his authorisation to give such a direction.

(5) In this Article "authorised person", in relation to a public building, means a person authorised in writing by the body or person owning, or lawfully occupying or

using the building to give directions under paragraph (1)(b) with respect to that building.

(6) In this Article "public building" includes -

(a) any building which -

- (i) is owned, occupied or used for any purpose by or on behalf of a public body or for the purposes of any grant-aided school or institution of further or higher education; or
- (ii) is occupied or used for judicial or police purposes or for the purposes of the Assembly;

(b) any part of such a building;

(c) any place or thing which is within the curtilage of such a building.

(7) For the purposes of this Article any place which is -

(a) part of the Stormont Estate within the meaning of the Stormont Regulation and Government Property Act (Northern Ireland) 1933~~1933~~ c. 6 (N.I.); or

(b) part of the demesne and other lands referred to in section 1 of the Government Property (Amendment) Act (Northern Ireland) 1955~~1955~~ c. 2 (N.I.),

shall be deemed to be within the curtilage of a public building.

(8) In this Article "public body" includes -

(a) a department of the Government of the United Kingdom or a Northern Ireland department;

(b) a district council or any committee appointed wholly or partly by a district council;

(c) any board, commissioners or other body authorised to supply services under any statutory provision, whether of a general or special nature; and

(d) any other public authority, board, commissioners or body of any kind constituted by or under any statutory provision, whether of a general or special nature.

General provisions relating to offences

Powers of arrest, etc.

16.- (1) A constable in uniform may arrest without warrant any person whom he has reasonable grounds for suspecting to be committing or to have committed an offence under any provision of this Order.

(2) If a constable has reasonable grounds for suspecting any person of committing or being about to commit or to having committed an offence under Article 7(1) or (2), 12(1) or 13(1), he may require that person to declare to him immediately his name and address, and if that person refuses or fails to do so or gives a false name or address he shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Consent to prosecution

17. A prosecution for an offence under Article 8(1) or (2), 9(1) or 13 shall not be instituted except by or with the consent of the Attorney General.

Forfeiture

18.- (1) A court by or before which a person is convicted of an offence under Article 8(2), 11(1) or 14(1) may make an order for the forfeiture, destruction or disposal of any relevant article.

(2) In paragraph (1) "relevant article" means -

- (a) in relation to an offence under Article 8(2), any written or other matter shown to the satisfaction of the court to contain or consist of written or other matter to which the offence relates;
- (b) in relation to an offence under Article 11(1), any thing in respect of which the offence was committed;
- (c) in relation to an offence under Article 14(1), any weapon in respect of which the offence was committed.

(3) An order made under paragraph (1) shall not take effect until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned; and for this purpose -

- (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Repeal of Flags and Emblems (Display) Act
(Northern Ireland) 1954

Repeal of Flags and Emblems (Display) Act (Northern Ireland) 1954

19. The Flags and Emblems (Display) Act (Northern Ireland) 1954[1954 c. 10 (N.I.)] shall cease to have effect.

Supplementary

Amendments, savings, transitional provisions and repeals

20.- (1) In Schedule 9 to the Electoral Law Act (Northern Ireland) 1962[1962 c. 14 (N.I.)] for the words "Article 10(1) of the Public Order (Northern Ireland) Order 1981" there shall be substituted the words "Article 7(2) of the Public Order (Northern Ireland) Order 1986".

(2) In Schedule 1 to the Police Act (Northern Ireland) 1970[1970 c. 9 (N.I.)] in paragraph 15(2) for the words from "in connection with" to the end there shall be substituted the words "in accordance with the provisions of Article 5(2) of the Public Order (Northern Ireland) Order 1986".

(3) Nothing in this Order affects the common law powers in Northern Ireland to deal with or prevent a breach of the peace.

(4) Nothing in a provision of this Order applies in relation to an offence committed or act done before the provision comes into operation.

(5) In relation to any public procession to be held on or before the sixth day after the day on which this Order comes into operation, Article 3(1) shall have effect with the substitution for the words "7 days before the date when the procession is to be held" of the words "120 hours before the proposed time of commencement of the procession".

(6) The statutory provisions set out in columns 1 and 2 of the Schedule are hereby repealed to the extent specified in the third column of that Schedule.

Clerk of the Privy Council.

Article 20(6).

SCHEDULE

REPEALS

Chapter or Number	Short Title	Extent of Repeal
1954 c. 10.	The Flags and Emblems (Display) Act (Northern Ireland) 1954.	The whole Act.
1968 c. 28 (N.I.).	The Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968.	In section 9(1) the words from "in any street" to "charge) or".
1981 NI 17.	The Public Order (Northern Ireland) Order 1981.	The whole Order.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order repeals and re-enacts with amendments the Public Order (Northern Ireland) Order 1981.

The principal amendments are to increase the length of advance notice to be given of a public procession, to add to the matters to be notified, to widen the grounds on which conditions may be imposed by the police on public processions and on which the Secretary of State may prohibit public processions and open-air public meetings and to confer on the police new powers to impose conditions on open-air public meetings.

The Order also amends the law on incitement to hatred and repeals the Flags and Emblems (Display) Act (Northern Ireland) 1954.

PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH 1 OF
SCHEDULE 1 TO THE NORTHERN IRELAND ACT 1974

DRAFT STATUTORY INSTRUMENTS

1986 No. (N.I.)

NORTHERN IRELAND

Public Order (Northern Ireland) Order 1986

DRAFT (2)

24 September 1986