



Northern
Ireland
Office

Mediation Measures for Parades in Northern Ireland

A Consultation Document

February 2005

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Foreword by Ian Pearson MP, Parliamentary Under Secretary of State

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Foreword

Over the last few years the marching seasons here have been relatively peaceful. With the notable exception of two parades, last year's season was the quietest for many years - out of approximately 2,000 parades only 200 were regarded as contentious. I think this shows the success of the arrangements we currently have in place in reducing tension.



I am, however, conscious that we have had Sir George Quigley's Review of Parades, the subsequent consultation on his report and the report of the Northern Ireland Affairs Committee. These reports have a different perspective of how to go forward. I am very reluctant to make fundamental changes to parading arrangements in Northern Ireland, however I believe that there is scope for improvement. I am therefore introducing a package of measures in relation to Parades. Some aspects of this package will come into operation in May 2005, but an important part of the package will be improved mediation arrangements.

I firmly believe that mediation is very important. Agreed outcomes that reflect a mutual respect for each others' rights, traditions and sensitivities thereby avoiding a determination by the Commission remains the best solution for contentious parades in Northern Ireland. The key question is how mediation can be made most effective. To that end I am launching this consultation document on how best to facilitate mediation to achieve long term solutions. I look forward to receiving the views of all interested parties.

A handwritten signature in black ink, appearing to read 'Ian Pearson'.

IAN PEARSON MP
Parliamentary of State for Northern Ireland

Introduction

This paper launches a broad consultation on how mediation for contentious parades in Northern Ireland can be provided or delivered in a way that will make it as effective as possible.

Mediation is one part of a package of measures relating to parades. While other aspects will have effect from May 2005 work on mediation will occur in the longer term.

The proposals in this document are in response to Sir George Quigley's Review of Parades, the subsequent consultation on the Quigley Report and the Northern Ireland Affairs Committee's Report on Parades. Further information is available on the Northern Ireland Office's website: www.nio.gov.uk.

The Government welcomes responses from organisations and individuals to the consultation. Please respond by **31 May 2005** to:

in writing: Parades Consultation
Security Policy and Operations Division
Northern Ireland Office
Room 8
Stormont House Annexe
Stormont Estate
BELFAST BT4 3SH

by e-mail: paradesconsultation@nio.x.gsi.gov.uk

by Fax: 028 9052 7807

Date issued: 22 February 2005

Background

1. Following the disputes in the mid-late 1990's between communities and the police regarding parading, which required major intervention by the police under the public order legislation, the then Secretary of State, Sir Patrick Mayhew, announced a review to make recommendations for the better management of future controversial parades. The review was chaired by Dr (now Sir) Peter North.

2. The Report of an Independent Review of Parades and Marches was published in 1997. Sir Peter made a number of recommendations which included the development of processes and procedures to address the issue of conflict over parades and, in the main, the creation of an independent body (the Parades Commission). The subsequent legislation, the Public Processions (Northern Ireland) Act 1998, gave the responsibility for adjudicating on Parades to the newly established Parades Commission.

The Parades Commission

3. The Parades Commission was established in March 1997 and the enabling legislation came into force on 16 February 1998. One of the four specific duties that the Act imposes on the Commission is:

“to promote and facilitate mediation as a means of resolving disputes concerning public processions”.

4. The Commission have in the past used their local Authorised Officers (IAOs) to fulfil this obligation. The Authorised Officers are self-employed, working under contract to the Commission. The Commission describes their role as 'pre-mediative'. They aim to understand the issues and concerns raised by the parties concerned in relation to contentious parades with the aim of encouraging local accommodation to obviate the need for any determination.

5. Under the current system, if attempts at mediation fail then the Commission make a determination on a contentious parade based on a number of factors. The Commission will take evidence from interested parties, including whether the parties were prepared to enter into meaningful discussions - this is a useful incentive currently in operation. In seeking to elicit the best and broadest range of evidence the Commission holds closed hearings. This has given rise to criticism from whichever party the decision goes against that it has not heard, and is therefore unable to respond to, the case against it. The Commission recognises the desirability of transparency and public confidence and published its 'Common Principles' – factors that it takes into account when making a determination. In seeking to be fair to all concerned however the Commission will give as full an account of the evidence as is possible without breaking the bounds of confidentiality.

The Quigley Report

6. In August 2001 following the talks at Weston Park, and after relatively peaceful marching seasons, the Government initiated an independent review of the operation of the Parades Commission and the legislation under which it was established. The aim of the review was to consider whether there were any changes which could promote further public confidence, respect the rights of all and encourage the peaceful resolution of disputes on parades. The Review of the Parades Commission and the Public Processions (Northern Ireland) Act 1998 was undertaken by Sir George Quigley and his report was submitted in September 2002. The full text of the report is available on the Northern Ireland Office's website: www.nio.gov.uk.

7. In relation to parades, the organisers would be required to submit notice of all their proposed parades for the following season no later than 1 October and, for parades falling before 1 April, no less than six months before the proposed date of the parade. Objections should be registered within one month of notification and copied to the organiser: protest parades or meetings should be notified within 14 days of the issue of a determination.

8. Sir George believes that the underlying long-term issues between the communities of Northern Ireland will only be solved when a way is found to live with difference. This objective would only be realisable when local people join together to solve disputes. He recommended that all notifications would be submitted to the Parades Facilitation Agency which he proposed should be created. This would provide a professional facilitation function; prepare the necessary guidelines, procedural rules and code of conduct; appoint monitors, undertake an educational role, and report to Parliament and the Assembly. The Agency would offer a mediative function, but parties might make alternative arrangements which the Agency would monitor. If agreement was reached it would be documented and have the same force as a determination. Otherwise, the Agency would report to a Rights Panel on the extent to which the parties had acted in good faith towards each other and in a manner designed to resolve the issues involved.

9. The Rights Panel would be the determining body in respect of parades and protests. It would comprise a legally qualified Chair appointed by the Lord Chancellor and two other members. Where it received a report from the Facilitation Agency it would arrange a hearing. Based on Article 11 of the ECHR, the legislation would affirm that everyone had the right to freedom of peaceful assembly, defined to include peaceful procession and peaceful protest. The Panel would consider whether restrictions needed to be placed on the exercise of that right for the protection of the rights and freedoms of others or for the protection of public health or morals (again, drawing on Article 11) and issue a determination.

10. The Rights Panel would be able to consider the frequency of parades in any particular area and to make rulings for periods of up to five years, at its discretion and subject to review in any material change of circumstances. Determinations would make clear the conclusion reached on each of the guideline factors in light of the evidence from organisers, objectors and any other interested parties. It would then be for the police to determine whether any restriction needed to be placed on

the right to freedom of peaceful assembly in the interests of national security or for the prevention of disorder or crime.

11. The Rights Panel would have a Compliance Branch to monitor adherence to determinations. Where breaches occurred, these would be promptly brought to the attention of the organiser and investigated. The Panel would produce an annual report and be able to contribute to the costs of parties taking cases that raised points of general importance in regard to clarifying the application of Human Rights law to parades or protests.

Consultation on Quigley

12. Following the submission of Sir George Quigley's report on 27 September 2002 to the Secretary of State, the Report was widely circulated for public consultation on 7 November 2002. The consultation period was extended to ensure that all the key stakeholders had an opportunity to respond.

Northern Ireland Affairs Committee

13. In September 2003 the Northern Ireland Affairs Committee announced that it was to conduct an inquiry into "the Parades Commission and the Public Processions Act 1998. It also took into consideration the Quigley Report. The Committee's terms of reference for the inquiry were:

- the response by Government and other interested parties to the Quigley review;
- the case for implementing key recommendations of the Quigley review; and
- the legislative (or other) steps necessary to implement such recommendations, as appropriate.

14. The Committee has heard from key stakeholders and delivered in January 2005. Their report incorporates the following findings:

- no fundamental structural change is required to the Parades Commission and retaining it offers the best hope for delivering the peaceful resolution of disputes. The Commission could, however, build confidence by making minor changes to the way it exercises its functions;
- rejection of Quigley Rights Panel/Mediation Agency model – no compelling case for change made and new organisational arrangements would be destabilising;
- parades and protests should be considered by the same body;
- the position on supporters and followers should be clarified before the summer;

- mediation and determination functions need to be clearly distinguished and the Commission should review and develop its role in mediation;
- exhortation to Government to respond quickly to Quigley;
- Government should consider introducing a band registration scheme.

15. The Committee stressed that for mediation to be effective everyone much have confidence in the fairness and high quality of the processes and their outcomes. Any mediation facilities offered should be capable of making a substantial and progressive contribution to the peaceful resolution of parades disputes.

Government's response to these Reports

16. Government has considered Sir George Quigley's Review of Parades, the subsequent consultation on his report, the Northern Ireland Affairs Committee's report and the events of last summer. Each of these offers different perspectives on how to go forward and a balanced response is necessary. Ian Pearson has now made a statement to Parliament announcing amendments to parading arrangements.

17. Government has decided that a case has not been made to make fundamental changes to parading arrangements in Northern Ireland. Parades have been increasingly peaceful over the last few years and the number of contentious parades has fallen. This reflects the success of the arrangements that are in place to reduce tension. They endorse the conclusions of the Northern Ireland Affairs Committee that the Parades Commission remains the best hope for developing the peaceful resolution of disputes. Sir George Quigley's main recommendations will therefore not be proceeded with at this time.

18. Government has been persuaded by the Quigley and NIAC recommendations that the Commission should take on the function of considering protests related to parades. An Order in Council has been laid before Parliament to amend parading arrangements. As well as making clear that the Commission can make determinations that include supporters and followers it will bring protestors under the remit of the Commission.

19. Government firmly believes that agreed outcomes that reflect a mutual respect for each others' rights, traditions and sensitivities remain the best solution for contentious parades in Northern Ireland. However there has not been agreement about how best to deliver mediation. The key question is how it is delivered and how it can be made most effective. This consultation paper therefore seeks views on what kind of mediation arrangements ought to be put in place.

Features of effective mediation

20. Agreed outcomes remain the best solution for contentious parades in Northern Ireland. Many views have been offered as to how mediation could be delivered but there is no agreement about what will be the most effective approach.

21. The Parades Commission has a statutory duty to promote and facilitate mediation; the Quigley Report suggested the establishment of a separate mediation agency and the Northern Ireland Affairs Committee recommend that the Commission should step up its mediation activities.

22. Mediation is an important mechanism that provides a basic framework within which competing and conflicting interests can be negotiated to reach mutual understanding that is essential to resolving parading disputes. The Government needs to decide how best to facilitate mediation and is seeking views.

23. The success of a new mediation regime will, crucially, depend on the willingness of the parties involved to engage. Various options exist to compel engagement but the process is essentially voluntary. Parades impact on the whole of the community and participation by wider groups and individuals such as business and church leaders may be appropriate.

24. An outline model that addresses these issues would have the following features:

- Mediation will be voluntary.
- Professional Mediators would be made available to all those involved in parades disputes. Such mediators would be outsourced and funded directly by the Northern Ireland Office, but appointed by a neutral body.
- The Mediator would be responsible for how the mediation should be taken forward and ensure that it is tailored to the needs of each dispute. They would however be encouraged to include wider participants such as representatives from the business community, churches, community leaders, etc who can be affected by disruptive parades and protests and should be allowed to participate in the negotiations.
- All parties to a dispute would be informed of the availability and benefits of using a mediator. However, certain parades would have a mediator appointed who would proactively encourage mediation between the parties. These parades would be designated on the basis of the impact the dispute has on the community at large.
- The Commission would not be present at discussions, nor would it receive a formal report from any source who was present. However it would be open to the parties to the mediation to make their own representations to the Commission including their interpretation of what occurred at the mediation stage.

- If mediation is successful a report would be made to the Commission to inform them of the terms of the agreement. No determination would then be required.
- Local Authorised Officers would provide feedback to the Commission.

25. This is a flexible model that allows for mediation to be tailored to the needs of each circumstance, involving all relevant parties. In order to encourage genuine engagement it separates any mediation from the Commission. Informal mechanisms will ensure the Commission is aware of any mediation activity taking place.

26. This consultation focuses on how mediation should be delivered. We are very interested to hear your views. In order to focus your response it may be helpful to consider the following questions (although we are happy to accept more general comments):

- How can parties to mediation be encouraged to engage meaningfully?
- What will be the most effective way to deliver mediation?
- Should the Parades Commission be informed of what goes on in the mediation process? If so, how?
- Who should participate in mediation?
- Who should appoint mediators?

The closing date for the consultation is **31 May 2005**.

How to respond

27. This consultation opened on 22 February 2005. The last date for responses is **31 May 2005**.

28. Consultation responses should be sent by post, fax or e-mail to:

Parades Consultation
Security Policy and Operations Division
Northern Ireland Office
Room 8
Stormont House Annexe
Stormont Estate
BELFAST BT4 3SH

Fax: 028 9052 7807

E-mail: paradesconsultation@nio.x.gsi.gov.uk

29. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

30. A copy of the Consultation Response form is enclosed at **Annex B**. An electronic version of the consultation document and the response form is also available at <http://www.nio.gov.uk/index/public-consultation/documents.htm>.

Confidentiality

31. In line with the Northern Ireland Office's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available. The information they contain may also be published in a summary of responses. If such a summary is published it will be made available on the Northern Ireland Office website. If you do not want all or part of your response or name made public, please state this clearly in your response. Any confidentiality disclaimer that may be generated by your / your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

32. We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1988.

33. You should also be aware that there may be circumstances in which the Northern Ireland Office will be required to communicate information to third parties, on request, in order to comply with its obligations under the Freedom of Information Act 2000.

34. The contact point to request copies of consultation responses is:

Parades Consultation Co-ordinator
Northern Ireland Office
Room 8
Stormont House Annexe
BELFAST BT4 3SH

E-mail: paradesconsultation@nio.x.gsi.gov.uk

35. An administrative charge may be made to cover photocopying of the responses and postage costs.

Complaints

36. If you have any comments about the way this consultation has been conducted, these should be sent to:

Parades Consultation Co-ordinator
Northern Ireland Office
Room 8
Stormont House Annexe
Stormont Estate
BELFAST BT4 3SH

E-mail: paradesconsultation@nio.x.gsi.gov.uk

37. A copy of the Code of Practice on Consultation is at **Annex A**.

Additional copies

38. You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

Parades Consultation
Northern Ireland Office
Room 8
Stormont House Annexe
Stormont Estate
BELFAST BT4 3SH

39. Other versions of the document in large print, Braille, Irish, Ulster-Scots or on audio cassette may be obtained on request. A text phone facility is also available by phoning 028 9052 7668 (9.00 am – 5.00 pm Monday-Friday).

What happens next?

40. We will aim to publish a summary of the views expressed by consultees and the Department's response on the Northern Ireland Office web site within 3 months of the end of the consultation period.

Plans for making the results public

41. In accordance with criterion 6 of the Cabinet Office Code of Practice on written consultation, decisions taken in the light of the consultation shall be made public promptly with a summary of the views expressed (subject to respondents' requests for confidentiality) and reasons for the decisions finally taken.

42. The information you send us may need to be passed to colleagues within the Northern Ireland Office and / or published in a summary of responses to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system unless you specifically include a request to the contrary in the main text of your submission to us.

43. Responses to the above questions, and any other comments or views, would be welcome by **31 May 2005**.

Annex A

The Consultation Code of Practice Criteria

The Northern Ireland Office follows the Cabinet Office code of practice on consultations. We want to know when we are not meeting these standards or other ways which we could do better in our approach to consultations.

The Code of Practice requires Departments to:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor their effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:

<http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

CONSULTATION RESPONSE FORM

The closing date for this consultation is 31 May 2005

The Northern Ireland Office may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual consultation responses. This will extend to your comments unless you inform us that you wish them to remain confidential.

Please tick if you want us to keep your response confidential

Name: _____

Organisation (if applicable): _____

Address: _____

Please return completed forms to:

Parades Consultation
Northern Ireland Office
Room 8
Stormont House Annexe
Stormont Estate
BELFAST BT4 3SH

Fax: 028 9052 7807

E-mail: paradesconsultation@nio.x.gsi.gov.uk

Please tick the box that best describes you as a respondent. This enables views to be presented by group type:

<input type="checkbox"/>	Political Party
<input type="checkbox"/>	Loyal Orders
<input type="checkbox"/>	Residents' Group
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Other (please describe):

Consultation Questions

Question 1

How can parties to mediation be encouraged to engage meaningfully?

Comments:

Question 2

What will be the most effective way to deliver mediation?

Comments:

A large, empty rectangular box with a dark blue border, intended for providing comments on the question above. The box is currently blank.

Question 3

Should the Parades Commission be informed of what goes on in the mediation process? If so, how?

Comments:

Question 4

Who should participate in mediation?

Comments:

Question 5

Who should appoint mediators?

Comments:

Question 6

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed. You are welcome to use this form or send a written response.

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply