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*Already seen*

*+ replied to*

*F. C. J. 10/11*

## PRIME MINISTER

1. I am writing to seek final policy approval from you and other IN colleagues for the Public Processions etc (Northern Ireland) Bill, which implements the recommendations of the North Report on Parades and Marches.

2. When the North Report was published in January, we called for its implementation in time for this year's marching season. The previous government set up the Parades Commission as recommended, but with a limited role, and put the Report's broader recommendations out to public consultation. As a result, the opportunity to introduce new arrangements for this summer was lost.

3. At its meeting on 8 May, Cabinet confirmed that a place should be found for this Bill in the current Parliamentary session, providing it could be ready for introduction in the Lords in October. I also wrote to you on 10 May seeking formal policy approval for the measures in the Bill. Accordingly, the Queen's speech committed the Government to

"bringing forward legislation ... to reduce tension over parades"

### Provisions of the Bill

4. The Bill seeks to implement the recommendations of the North Report whenever possible.

5. The Bill establishes the Parades Commission as a body corporate with the power to impose conditions, including re-routing, on contested parades, a power it will take over from the police.

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6. The Report recommended that decisions should be taken on a broader basis than is possible under the current public-order based criteria, so as to allow the rights of marchers and residents to be more effectively balanced. The Bill accordingly sets out the factors the Commission will need to take into account in coming to a decision. These include public order, but also the new factor recommended by North of 'the wider impact of the parade on the relationships within the community'. The Commission will need to balance the various factors, some of which may of course point in different directions, and come to a decision which seems best in the public interest.

7. To clarify the basis on which the Commission will come to its decisions, the Bill provides for guidelines outlining the various factors and how they might be balanced. The guidelines will not be in the legislation itself, but will be brought into force by subordinate legislation, rather like the PACE codes. The Commission will also produce a Code of Conduct for those organising and participating in parades, and a document setting out its own procedures, which will be brought into force in the same way.

8. Where the Chief Constable is concerned about a decision of the Parades Commission, he may appeal to the Secretary of State. I would then re-examine the facts of the case taking into account the same factors as the Commission, and might either confirm, amend or set aside the Commission's ruling. I will not, however, have the power to review the Commission's determinations on my own account. In addition, the Bill makes clear that the police retain their common law powers to act on the day of the parade in whatever way is necessary to deal with or prevent a breach of the peace.

9. The Bill also empowers the Secretary of State to ban individual parades, ban parades of a specified class, or impose a blanket ban of up to 28 days (down from 3 months at present). The factors to be taken into account are similar to those for the power to impose conditions, but in addition include (as at present) the demands which parades might make on the police or Army.

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10. The Bill enacts virtually all the key recommendations of the North Report. The only important area in which we have not been able to implement the Report is the area of 'package deals', which would effectively require the Commission to issue binding determinations on parades which take place over an extended period, including parades for which statutory notice had not yet been given. We believe that this would be unacceptable in ECHR terms but a similar objective could be achieved by the Commission, informally, brokering understandings covering a number of parades in particular areas.

11. One area of the Bill has been subject to discussion with the Lord Chancellor. The Report recommended that the Government consider whether to introduce a registration scheme for bands, which are widely seen as a particular source of tension in the parades context. We believe the Commission should have sufficient powers to deal with the problem, but as a safety net for the future would like to ensure we have sufficient vires in the Bill to introduce a registration scheme with real teeth (which would need to be court-based) if, against expectation, the Commission is unable to resolve the difficulties. Although the Lord Chancellor has some reservations, he is willing to agree to the inclusion of this power subject to a number of understandings, which include full consultation before any decision is taken to exercise the power. I am happy to give these undertakings.

12. There is one area where the Bill goes beyond the recommendations of North. Intensive discussions with the Loyal Orders and leading Unionists before the Drumcree and 12th weekend parades this July revealed a certain willingness to compromise providing their concerns could be reflected in the Parades legislation. In particular, they felt the North Report had focused too much on expressions of Protestant cultural identity, and wanted the Commission to have a broader role which would permit them to raise expressions of nationalist identity which might be offensive to their community. Accordingly, the Bill provides that the Commission should also be able to consider and

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make recommendations to the Secretary of State on the law and practice relating to other expressions of cultural identity which take place in an open air public place and which appear to the Commission to have, or to be likely to have, an adverse impact on relationships within the community. This of course would impact on such expressions of cultural identity from both sides of the community and not just the nationalists.

However, it would not be our intention that this provision would come into effect immediately. Rather, it would be subject to a commencement order. This would enable the Commission to concentrate on the key issue of parades, at least for the first year of its operation. The legislation would provide for the body to be called the Parades Commission but to meet Unionist concerns provision would be made in the Bill effectively providing for it to have a subsidiary title which would reflect the full range of its actual and potential responsibilities.

#### Political aspects

13. Notwithstanding the concession on the wider role of the Commission, we still expect the Bill to be opposed strongly by Unionists. Elements of the Opposition may well side with them. On the other hand, the Liberal Democrats are likely to be supportive. The SDLP wanted early implementation. While I would expect them to be supportive overall, they may well not be happy with the fact that (reflecting a North proposal) the Commission is to take the traditionality of a parade (most traditional parades come from the Unionist community), into account as one of the factors in making its decisions. The SDLP will also be unhappy about the fact that the Bill provides for the Commission to have the additional remit referred to in paragraph 16 above, even though this provision will not take effect straightaway. On the wider political front, the Irish Government could be expected to back any SDLP opposition to the extended remit.

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Handling/Parliamentary procedure

14. We face an extremely tight timetable if the Commission is to have its new powers in time for the start of the marching season next year. The Act would need to commence in the week beginning 9 March to ensure the Commission was ready to operate in time to deal with contentious parades at Easter. I recognise that this will probably require accelerated progress and the compression of the normal intervals, and look forward to discussing with the business managers how these challenges can best be handled.

Financial and Manpower aspects

15. The Commission will have running costs of around £1m pa and a small secretariat. Otherwise there are no implications for public finances or manpower. We are carrying out a compliance cost assessment for the likely impact of the new arrangements on voluntary organisations like the marching orders.

ECHR Aspects

16. This Bill breaks new ground internationally as well as nationally. We have subjected the draft to considerable scrutiny, and sought Counsel's opinion on all the key aspects. The conclusion is that there is nothing in the Bill itself which is likely to be judged inherently contrary to the Convention. Challenges to individual decisions are inevitable, but the Commission are well aware of this and have already made arrangements for legal advice in coming to their decisions.

Conclusion

17. If colleagues are content, the Bill is ready for introduction to the Lords. In the interests of achieving a 'soft landing' for the Bill, I or Adam Ingram hope to make a

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statement on its broad outlines, and the policy objectives, before introduction. I should be most grateful if you and other colleagues were able to confirm by 13 October that you are content with the approach I propose to adopt.

18. I am copying this letter to other members of IN, and to Sir Robin Butler.

A handwritten signature in blue ink, appearing to be "Mo", which is a common shorthand for Marjorie Mowlam.

MARJORIE MOWLAM

7 October 1997

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