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Ms Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Room 242, Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT4 3XX

Our Ref: 1868264

Your Ref:

4 January 2016

Dear Ms Darrah

Thank you for your letter dated 9 December concerning amendments to the Justice (No. 2) Bill as proposed by Basil McCrea MLA. PSNI welcome the opportunity to comment on these amendments, while cognisant that legislation is a matter for the Assembly.

PSNI are on record as saying that a resolution to the flags issue is necessary. Each year, these issues raise tensions and can lead to public disorder. This damages community relations, can result in injury to police officers and imposes a drain on police budgets. PSNI is supportive of any legislation which could provide a resolution to these issues.

It is difficult to comment in depth on the proposed amendments to the Bill as they have not yet been provided in detail. However, PSNI recognises the significant efforts being made by Mr McCrea to move this issue forward.

We have met Mr McCrea and have also met recently with Dr Paul Nolan and Professor Dominic Bryan in the course of their current research on this issue. We look forward to the publication of their report, which we believe is due early in 2016 and would suggest that it may be appropriate to wait for its publication before finalising any amendments.

We recognise the dissatisfaction with the current arrangements connected with the flying of flags, particularly flags that are paramilitary in nature. However, it is our belief that the solution to this issue does not primarily lie with policing but lies predominantly within the political arena and a wider societal approach. While regulation and enforcement may assist, a sustainable solution is likely to be found only through consensus, mutual respect and cooperation.

An academic report by the Institute for Irish Studies at QUB in March 2015 "Transforming Conflict: Flags and Emblems" found that, whilst there may be a need for legislation or codes of conduct or protocols on the flying of flags and display of

emblems, by far the best way of resolving issues was by looking at the context within which conflict arises and, if necessary, to transform that context. We support this position.

Mr McCrea appears to suggest that a dichotomy exists between those who do not wish to see any flags flying on lamp posts and those who see it as a legitimate and traditional form of cultural expression. PSNI believes that the situation is much more complex. There are factions within the communities responsible for flying of flags that clearly see this as an expression of culture, those who use flags as a method of demarcating their "territory", those who are actively seeking to cause some offence or intimidate, and perhaps a significant majority who are ambivalent on the issue, so long as no disorder or disruption ensues.

Mr McCrea seeks to introduce regulations specifically about flying flags from lamp posts. As previously stated we welcome any positive steps to deal with this issue, however, there is an obvious risk that if flying flags on lampposts is regulated, other street furniture may be adopted as the attachment point.

PSNI agrees that there should be some form of community engagement, indeed this is central to the approach that we presently take to the flags issue. Currently, in coming to any decision on the removal of flags, the police will have engaged as fully as possible and practicable, with concerned parties, to understand community impact. Unilateral action by any organisation or individual, without consideration of the potential impact, may provoke an unnecessary and disproportionate reaction within the community perceived to be in favour of that particular flag.

PSNI consider that the amendments proposed could potentially lead to an improvement in the situation concerning the flying of flags. However, the key issue with any legislation is enforcement. Establishing the identity of those erecting flags is essential to taking any enforcement or regulatory action. Any regulations would need to make clear how flags erected outside the regulatory framework will be dealt with and the consequences if a person or group of persons did not comply with the provisions, either by leaving flags beyond a permitted time or by placing them on other street furniture. The PSNI should in no way be part of the proposed licensing authority.

The situation with regards to Election posters, as PSNI currently understands it, is that they are exempt from planning regulations and are to be removed within 14 days of the close of polling. We do not see any direct correlation with flags, however, some element of time constraint in the regulations would be beneficial.

Police powers should be clarified and strengthened. We see our role in relation to any amendments as supportive of the relevant authorities and we will seek to ensure the preservation of order. PSNI does not have the technical capacity to take flags down from lampposts and therefore such an obligation should not be imposed upon us. PSNI would seek to provide support to those taking them down, e.g. Council or other Government Departmental staff, contractors, etc.

The current powers to deal with the erection of paramilitary flags are wider than those available to deal with National or commemorative flags, but there is currently no bespoke legislation which gives the police a general power to either prevent flags of any type being erected or to remove them once they are flying.

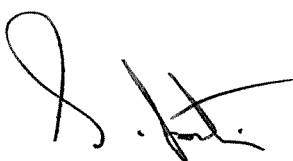
If legislation was introduced to permit the immediate removal of paramilitary flags there are a number of issues. Firstly, the legislation would need to stipulate clearly what constitutes a paramilitary flag. Secondly, it must be borne in mind that there is potential for the flags to be utilised as a means to attack those persons acting on behalf of government in their removal. We have, in the past, seen explosive devices initiated by the removal of flags from lamp posts. While the legislation may enable the removal of flags it must not compel same and thereby create a risk.

Our role is to keep people safe, through preventing harm and detecting crime. We achieve this through policing with the community. All of our actions involve compliance with human rights law, which often requires decisions regarding the balancing of competing rights. Our actions in a flags dispute may impact on fundamental Human Rights and will be measured against that standard. Action by police is likely to engage Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly) and whilst they are not absolute rights, we will need to show; that the law was being broken, that police action was in pursuance of a legitimate aim and that police action was necessary in a democratic society.

Flags, as the Committee knows, are a very complex issue. PSNI will do all that it can to assist in resolving flags disputes, but our actions must be considered through the lens of a human rights based approach that demands our actions are proportionate and necessary. Article 2 of the ECHR and Article 4 of the PSNI Code of Ethics require that PSNI take all steps, when planning and controlling police operations, to minimise the likelihood of force being used. This would apply to any police action assisting persons to remove flags under the proposals. Any offences under the Bill would be summary only. It would be questionable whether PSNI would be justified in potentially using force (lethal or otherwise) to assist in ensuring the removal of flags flying in violation of any prohibition. Officers responsible for planning and controlling such operations would need to very carefully assess the available information and make a decision regarding the proportionality of any attempt to assist in the removal of flags, where this would foreseeably lead to disorder.

I trust that this is of assistance

Yours sincerely



STEPHEN MARTIN
Assistant Chief Constable