



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (No. 2) Bill: Mr Basil McCrea MLA

17 November 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Sammy Douglas
Mr Paul Frew
Mr Patsy McGlone

Witnesses:

Mr Basil McCrea Northern Ireland Assembly

The Chairperson (Mr Ross): Mr McCrea, you are very welcome. You will be aware that we had Lord Morrow in earlier. He also suggested that he wanted to table an amendment to the Justice (No. 2) Bill. From my experience of justice Bills and miscellaneous provisions Bills, I know that amendments will come in but sometimes do not get a fair hearing because they come late in the day. It is beneficial to us as a Committee and to you to be able to brief us on this. I appreciate your coming along, and I appreciated your briefing on your amendment last week. I hand over to you. We will go to questions when you have finished your presentation.

Mr Basil McCrea (Northern Ireland Assembly): Chairman, will the Committee adjourn for Question Time?

The Chairperson (Mr Ross): We will keep going; we fear that members might not come back.

Mr B McCrea: Thank you very much for the opportunity to talk to you. The Clerk and officials attempted to get the precise amendments to you that we intend to table. Unfortunately, every time that we went to the Bill Office to ask for help with drafting, we were asked a lot of questions that we could not answer. We will come back to you with the specifics when those are ready, but I am able to set out in layman's terms the specifics of what I want to achieve. Although there will be an official record of the evidence session, comprehensive notes will also be available and can be circulated to the Committee.

The purpose of my amendments is to deal with the regulation of the flying of flags on lamp posts. It is a deliberately narrow objective, but, if we were able to do such a thing, it would receive widespread support from the public. This may be a touch of optimism, but I also believe that it would be possible to get cross-party support. To be honest with you, it is absolutely essential that we have that, otherwise we cannot go forward.

I will run through my position to date, and members can, of course, ask me questions on the detail. There is widespread dissatisfaction with the flying of flags on some arterial routes and in mixed areas, and there is even more concern about the flying of paramilitary or illegal flags in almost every area.

The problem is that nobody knows who puts those flags up. Nobody takes them down. They are left to rot in a distressed state on lamp posts, and even those who honour the flag and for whom it is important cannot be happy seeing it in such a condition. It is worth saying that such a situation would not be tolerated anywhere else in the world.

Polls suggest that a section of the community is absolutely opposed to any flying of flags on lamp posts at all, but, in fairness, there is also a section of the community that thinks that it is a valid cultural expression that has historical precedent and should be allowed. There may be a way of squaring that circle. I want to make it clear that I am not attempting to prevent the flying of flags: I recognise that it will happen anyway and am trying to regularise it.

We might find common ground in that most people could find it acceptable if flags were flown in a particular way. I will refer to a few points that came up in the consultation. We might find agreement if there is community engagement — in other words, if people are asked their opinion — if the identity and provenance of the people putting up the flags were known so that it is not faceless men but someone whom you know or a legitimate organisation, if the flags do not represent illegal organisations, if they are not used to intimidate and if they are flown for a limited period. The limited period can be whatever period you want, but you would probably have an end time. You could consider a period of no longer than three months or six months, but, within that period, you could take a different view. The process should be regulated by an independent and impartial body that the Assembly agrees on. That body could be the Justice Minister, but I would prefer us to set up our own body with cross-community support and legislative support for what I am trying to do along the lines that I have set out.

There is a substantial body of academic work. It has not yet been published, but I think that the proponents want to talk to you about it. They are from Queen's University, and they have consulted the PSNI, council chief executives, community groups and even the groups that put up the flags. Surprisingly, there is quite a bit of agreement, even from the groups that put up the flags. They feel that, in order to have their place in the community, they have no option but to put flags up. They are open to discussion on how we do it. It is not about putting anybody down but about trying to find a way forward.

To get this on the record, I will talk you through four people whom I consulted. We will start with the PSNI. When I went to the PSNI, they thought that I was coming to complain about the flying of flags and about why they had not taken them down. They said, "We can't do that, because the legislation is not right". I replied, "No, I am not here to complain; I am here to say that I understand that there is an issue. How do we go about fixing it?".

The first point to make is that the PSNI accepts that the flying of flags in certain areas in a certain way produces complaints, has community groups undermined by paramilitary organisations and can be a source of intimidation. Therefore, the PSNI is aware that there is a problem in certain areas. However, the legislative basis for removing flags is weak, and there are operational issues involved in taking such an action. We will all be aware of the missive that, if you take one down, you will have a thousand up in its place. There is no point in ignoring that, so we have to look at it.

The PSNI is extremely clear that it does not want to be the arbiter of what flies where. They are happy to take action if somebody else makes a decision, but they have said, "We think that it is political issue. We would like to see something from the Assembly. If we can get something from the Assembly, we will enforce it, even though there are some difficulties in doing that". They do not want to be the arbitrator, however. They have indicated — this may be helpful to the Committee — that, although they do not want to be seen to be the organisation bringing forward legislation, were legislation to be brought forward by others — that is, by me, the Committee or whomever — they would be happy to help with any drafting to explain the difficulties that they experience in certain areas. However, they are keen not to be the ones bringing forward the legislation, believing that it is for others to do that. That would be helpful.

Moving on to local councils, there was a meeting between the Queen's University group and nine of the new chief executives, and the discussion around the research revealed that many chief executives had attempted to deal with the flying of flags through voluntary agreements over the past three years or so. They say that that does not really work, because, each year, community associations come back, particularly those with paramilitary links, and say, "What will you give us to take down the flags?". Councils almost get held hostage, in that the more they do, the more they are asked for. Therefore, they have a problem. What the councils are saying — in fact, what every organisation that I talk to is saying — is that they would like somebody else to address the flying of flags on lamp posts,

because it is a really thorny issue and will provoke some form of reprisal that they do not think they have the resources to deal with. That sentiment comes from the police, councils, community groups and everybody else whom I talk to. Nobody wants to put a hand up and say, "I will go and do it", yet everybody would like to get it done. In order to find better way of addressing the issue, there is a need for the amendments. For paramilitaries who are looking to engage in their community and on a way forward, there is a more constructive way that we can do that if we shape it properly. I am not trying to exclude anybody.

I spoke also to the Minister of Justice, having raised the matter at the Bill's Second Stage. In fairness, he was supportive in principle but keen to distance his party political opinions from his role as Minister of Justice. He said that his colleague Mr Chris Lyttle MLA was potentially considering bringing forward a private Member's Bill that, as I understand it from Mr Lyttle, would be more along the lines of not flying flags at all. I want to make it clear that that is not my intention: I recognise that flags are flown and will be flown. My intention is to regulate the flying of flags. The time constraints are likely to defeat Mr Lyttle's proposals in this mandate. Nevertheless, there is some merit in getting all views on board. The Minister of Justice mentioned that he thought that the subject might be covered in the talks that are now concluding and, as such, promised to engage afterwards. Obviously, I do not know what has been agreed, but, in general terms, there is a willingness to consider the way forward.

The Minister of the Environment has indicated his desire to introduce a licensing scheme for bonfires. He is doing that not through legislation but through regulation or advice. It is interesting that many of the challenges with bonfires are similar to those with flags, and we may be able to see whether there is a model that will allow the two to dovetail. The primary objective, whether we are looking at bonfires or flags, is to ensure that health and safety issues are addressed, that genuine community groups are supported and that events are not used to fund organisations in a way that we do not think is appropriate.

The final point that I want to make is that I have not yet had the opportunity to engage with the Minister for Regional Development on the roads issue, but I have a question for oral answer later today and have asked for a meeting. One of the rather strange anomalies that the police brought up was that, if they were minded to remove a flag, the issue of trespass comes up, because the flags are owned by DRD. Therefore, the police have no right to take them down. It appears to me that we ought to address that in an amendment.

I am not trying to hide anything. As I understand it, DRD is worried about legitimising the flying of flags from lamp posts. It does not want that to happen. To be honest, the reality is that flags are being flown from lamp posts, and it would be better to regulate that and give assistance so that it is done properly by people whom we know and trust and that flags of the nation or whatever flags are acceptable are flown in an appropriate way.

That concludes my positioning statement. I am happy to take questions.

The Chairperson (Mr Ross): Thank you very much. We all understand what you are trying to achieve, although, of all the areas that we cover, this is one of the most difficult to find something that will work. If you get your way, the amendment is passed and we set up a body that will regulate the flying of flags from lamp posts, what will the incentive be for somebody from a community group to engage in that official process?

Mr B McCrea: We will work backwards, if you will forgive me on the logic. The police said, "If we were to take down flags that we do not like, how would we do it? We do not have cherry pickers". People are reluctant to hire cherry pickers in case they get burnt. If flags are put up 15 feet and then taken down, somebody will come back and put them up 20 feet. It is possible that we may have to consider providing cherry pickers to whomever will enforce the issue. Of course, those cherry pickers would also be available for anybody who chose to put up flags. There, you would be looking for people who would be interested in handling the process. If they had a licence, they would get some form of public liability insurance and training in how to use the cherry pickers. We could also consider having appropriate brackets, which would then become our property, to make the cherry pickers go up and down easily. The response is that we would make it easier for people to do. We are not intending to charge them, at least not any huge amount of money. We are just trying to say, "Let's get trained. Let's do it properly. Here is access to some material that may be useful. We will make life easier for you".

The Chairperson (Mr Ross): You have already acknowledged that there will be a public perception that, by doing that, we in government are facilitating the flying of flags, and you have acknowledged that that annoys many people in all communities.

I am still not sure where the incentive lies. People do not seem to have any difficulty at the moment getting them high up lamp posts or any difficulty attaching them to lamp posts. Why would they not just take the approach of, "We are doing this anyway. Nobody wants to take the flags down. What is the point in us putting our head above the surface to be identified as the people who are putting the flags up when we can just do it anyway?"?

Mr B McCrea: There are organisations that are legitimately concerned about the flying of flags. I hope that I am not putting anyone in an awkward position, but I had cause to go to the Orange museum. There were two beautiful flags flying on flagpoles in front of the facility, but, on the lamp post just outside, there was a Union flag hanging by one thread. It was known who had put it up, but they would not take it down. We are all running from a fear of intimidation. When we look at the issue, this is really not acceptable. It is not the way to fly the Union flag or any flag. I would like to engender organisations getting involved, be they community groups, official heritage bodies or traditionalists.

The flying of flags is, in my opinion, a legitimate part of cultural expression, provided that the views of the locality have been taken into consideration — I am not saying that you need 100% — before people put up flags and celebrate their culture. I am trying to get a division, if you like, between — I am speaking pretty bluntly here — a paramilitary organisation that does it to exert control in an area and other people who are legitimately expressing their cultural identity. I am conscious that paramilitary organisations need not necessarily be excluded, provided that they genuinely want to be part of a licensing regime and to make the change to becoming part of the community. What I am absolutely against is people using the flying of flags either to extort money out of public services or to impose some form of intimidation in an area.

The point that really answers your question, Chairman, is that there is widespread dissatisfaction. The life and times survey stated that 75% of people did not like the flying of flags in the current state and would like to find a proper way of dealing with the issue. I think that I can propose amendments that people will say are a sensible way of dealing with it.

The Chairperson (Mr Ross): I just wonder how many of that 75% would be keen on finding a solution that still involves the flying of flags from lamp posts.

Mr B McCrea: The Justice Minister raised that point. Their position is that they do not want any flags anywhere. All that I can say to you is that, although I personally would not fly a flag on a lamp post, I have to face the reality that it is a legitimate and traditional form of cultural expression that is important to some people. We need to be a little more open and tolerant. The quid pro quo for those people is that it is going to happen anyway, but, at least this time, you will know who put it up and who will take it down and that, if it does not get taken down, other people will take it down and that the flying of flags will be properly funded and managed.

The Chairperson (Mr Ross): Before I open the session up to other Committee members, talk me through the process. If I wanted to fly 20 Union flags in a street somewhere, how would I go about doing that? I would apply to the body created. What would happen if the body turned me down, but I went ahead and did it anyway? What would happen if I were given permission to fly the flags for 30 days in July or 30 days across July and August, but, at the end of that time, I refused to take them down? What would the sanction be in those circumstances?

Mr B McCrea: The point that you highlight there is this: are we moving beyond a voluntary agreement? It is my belief that, although we would like to deal with things by voluntary agreement in the first instance, there has to be some form of enforceability and some teeth to the legislation. The PSNI has confirmed that, if legislation is introduced by the Assembly — a local Assembly at that — and has cross-community support, which it would obviously have to have to get through, it will enforce that legislation and take flags down.

The Chairperson (Mr Ross): Does that not lead to the circumstance in which, as you acknowledged at the beginning, if you take one flag down, a thousand more will go up?

Mr B McCrea: Yes, and such activity is a challenge to democracy. The management of public spaces is important to our good relations strategy. Frankly, you cannot, in my opinion, let paramilitaries

respond in that way. If they put up a thousand flags, the police should take down a thousand flags. If they put up 10,000 flags, they should take down 10,000 flags. Maybe those numbers are a little exaggerated.

The issue is that we are trying to create a space in which people can legitimately express their culture by flying flags in a time-limited way. The period does not have to be that short; it can be whatever time is deemed acceptable. There will be facilities available to put them up and take them down. Only if those opportunities are absolutely rejected would you have to resort to enforcement. As I said earlier, I would be happy to find a way of including those who are instrumental in putting flags up to be trained in how to do it and to get them involved in taking them down. That way, I do not think that you exclude anybody who is well intended.

The Chairperson (Mr Ross): In a situation in which you are putting thousands of flags up and taking them down, the only real beneficiary is the people who make the flags. There might be a boom in their production.

If I were applying to fly flags in an area and thought that that body would refuse me permission to do so and then the flags went up, the finger would be pointed at me. People would say, "Well, he applied for it and didn't get permission, but he put them up anyway". In those circumstances, why on earth would I put myself in the frame to make an application in the first place when I could put them up under the cloak of darkness and nobody would know that it was me?

Mr B McCrea: The benefit of legislation would be that, if you put up flags under the cloak of darkness, they are unlicensed flags and will be taken down as soon as possible. You could put them up on a Saturday, and the licensing authority that we are asking to be set up will say, "Those are unlicensed flags. Take them down". Either a subcontractor will be appointed to do that, or, if that is not viable because of the fear of intimidation, the PSNI will have to do it. The benefit of applying is that we want a light touch. It is challenging, as you, Chairman, have highlighted. The step forward is to recognise that it is legal to fly flags from lamp posts, in much the same way as election posters are legal, at certain times, for a certain period and with certain conditions. All that we ask is that people with balaclavas on do not put up flags under the cover of darkness.

The Chairperson (Mr Ross): I suppose that we know whom the election posters belong to, as their names are on them.

Mr Douglas: Thank you for your presentation, Basil. You mentioned democracy and said that this would not happen in any other part of the world. Do you not agree that we still live in very difficult times? It is not that long ago that we had major problems across Northern Ireland — we are still recovering from them — from what was called the "flag dispute". How do you deal with the issue in a sensitive way? As you said, people view flags as very much part of their identity, whether they be Union flags, Ulster flags or whatever.

We all know that there have been major problems at parades because of some bands carrying flags. Police said that they could be paramilitary flags but they might not be. For example, if it is a UVF flag from 1912, it is legal. Where you have lamp posts with, as an example, a Starry Plough flag on them, which is symbolic of some of the republican paramilitary groups, how do you deal with that flag in a sensitive way? We are still coming out of conflict. There is absolutely no doubt about that.

Mr B McCrea: I will deal with the first issue first. For the people who want to fly flags legitimately, whether they be from a loyalist, unionist, GAA or any other background, this should be a step forward. My amendment says that, instead of having to use a ladder or whatever to strap on a flag with masking tape and have it hang off the lamp post, people can do it properly, in the right way and as a genuine expression of their cultural identity. It might, in a certain way, almost even defuse the issue that you alluded to with Belfast City Hall in those areas.

Mr Douglas: Would the number of flags be unlimited? You talk about 1,000, 5,000, 10,000 or whatever —

Mr B McCrea: We are into real bits of detail here, Sammy. I am not sure that I can give you an honest answer, but the sort of thing that I envisage is that, where you have an independent authority, people can come along and make representations. If a community group says, "Look, we're really keen on this", if MLAs say, "We've talked, and we want to do this", or even if individual members of the public

write in to say that they are for it or not for it, you will want to have an independent body that, in the round, will try to accommodate as many people as possible.

Your second point was on what happens if people put up a slightly dodgy flag. You will be asked whether the Palestinian flag, the Israeli flag or the SAS flag is all right. There will be those issues. There are certain things that we would need to frame in regulations. The Assembly would give guidance to the authority on such flags or on the design constraints for people to take on board.

Sammy, I am sure that you are aware that citizens are entirely entitled to fly any flag that they choose from their own house, provided that it is legal. There is a judgement call to be made there. I am looking to see whether we can take that into the public realm. In a sense, we are trying to get a halfway house between the fact that you cannot fly flags in a place of employment and the fact that an arterial route is different for celebratory things or whatever. I hope that the licensing authority, with guidance from either the Justice Minister or the Assembly in general, would say, "These are the things that you will want to take into consideration", but with the proviso that we are not trying to stop legitimate community cultural expression, provided that it does not intimidate people.

Mr Douglas: You said that there would be an agreement that the police will take them down.

Mr B McCrea: Yes.

Mr Douglas: We all know that, if you ring the police, even if you think that there has been a burglary in your house, sometimes it takes them a couple of hours to respond. Is it pragmatic to ask the police, given all the cutbacks and difficulties that they are experiencing in trying to do ordinary policing, to take flags down? I can just imagine what would happen in some areas — you will know some of those areas in your constituency — if the police were to try to take flags down.

Mr B McCrea: This is part of a selling job. At the start, we have to explain to people involved in a genuine community engagement that there will be reasonable procedures in place that state that you can fly your flag, provided that, if you put it up, you take it down. It would be wrong if — this has been the case in the past — someone were to say, "Take that flag down", and it caused a riot. I suggest that, if we had a proper forum in which reasonable people were able to make representations, a substantial proportion of the population would accept the regulated flying of flags under advice.

As I said at the start, when the police spoke to us, they said that they could not do anything because they were relying on breach of the peace legislation from 1861 to deal with the issue, which is ridiculous. We need to give the police firm legislative authority so that, at the end of a process, they can take down flags. This is serious. You start off by saying, "It is only flags", but, if you look at the amount of money that has been spent, the number of people who have had to go to court because of the flags protest, the destruction that it does to our tourism industry and the problem with good relations, you see that this is not a trivial issue. It is a serious issue, and it should be right at the forefront of what the police are trying to do.

I will circulate my paper to members. I have set out certain issues about financing: how much it costs to hire or buy cherry pickers, what budgets might be available and whether those budgets fit in with existing programmes. I want to do this with a light touch, but I am aware that there will be certain financial issues involved. If you are to ask the police to take down 1,000 flags, you will have to have a lot of police officers and cherry pickers. I hope that it does not come to that; I hope that we can manage this so that 90% of things go OK and we need only to deal with, by exception, those who are determined not to get involved. To be explicit about it, I would like to see those who are currently involved in putting up flags — the polls tell us that 66% of them are believed to be paramilitaries — become engaged in a process that does not exclude them. We do not want an under-the-carpet thing. We have to respect our fellow citizens and do this in the right way. Only if they were not to do that would I envisage the PSNI becoming involved.

Mr Douglas: You say that the wider consultation would include anybody who was interested, including people who represent paramilitary organisations, the loyal institutions, the Ancient Order of Hibernians or whoever.

Mr B McCrea: Loyal institutions, the GAA, community groups — anybody with an interest in this. As I said, Sammy, you know that certain loyalist paramilitary organisations issued a statement that they wanted to move forward and do things differently. We have to help anybody who is attempting to move forward in our society. I am not for helping — this may be where I am leading with my chin a

little — people associated with paramilitary organisations who come along and say, "I have created a problem. I will put tyres on your bonfire or put flags up all round the area. How much would you give me to take them down?". If you do not give them anything, they put up a lot more. That is a challenge to democracy and the authority of the Assembly. Those people need to be dealt with in a different way. I have no problem, however, with the vast majority of people who want to express their culture legitimately and respectfully by flying their flags in the right way. They should have no problem with what we are doing. This is a way of bringing them into the process rather than dealing with them at arm's length or whatever. I think that there is an opportunity, but I am not underestimating the difficulties.

Mr Douglas: One final question. I have a question in the Chamber, Chair. How would you define a mixed area?

Mr B McCrea: To my mind, almost every area is mixed, because people from the same tradition may have views on whether they want flags or whatever. I have not costed it, but part and parcel of the process in support of a favourable determination by the licensing authority is a community audit. If 70% — you do not even have to say what designation you are — or a significant proportion of an estate says, "Yes, we like these flags; we want to go along with them", that would add weight to the licensing authority to say, "Go ahead". The level is a matter of judgement. It is not saying that, if 10% of people object, you cannot do it; it is saying that, in the round, if the community is engaged and if it feels that it has a say — To be honest, Sammy, right down at the micro level someone in the area might say, "I do not mind the flags going up along the street, just not on the lamp post outside my house". Usually, people resolve those issues by negotiation. It is about having somebody that you can go along to and talk to and having cognisance that some areas are really welcoming of it and others would go, "Well, maybe we should tighten things a wee bit".

The Chairperson (Mr Ross): Sammy, if you leave, we will have to stop, as we only have four Members left.

Mr Douglas: Have you been in touch with Queen's?

Mr B McCrea: I have been doing a lot of work with Queen's. That is tough luck, really. *[Laughter.]*

Mr Frew: You are the fourth man, Sammy. You have to say.

The Chairperson (Mr Ross): Are you able to stay for another five minutes?

Mr Douglas: Yes.

The Chairperson (Mr Ross): The pressure is on Paul to get his question in as quickly as possible.

Mr Frew: I will be as quick as I can.

The Chairperson (Mr Ross): Experience would teach us that this will be challenging.

Mr Frew: I understand where you are trying to go, and I have sympathy for your arguments. I just do not know how you are going to take a soft approach into legislation. The legislation needs teeth; teeth have to be seen to be working. The only way to use your teeth is to bite people. What would be the charge if someone were to step out of a flags commission determination?

Mr B McCrea: First of all, I am not going soft. If the police have to enforce, the police have to enforce. It will be a criminal act. The problem from an enforcement point of view is getting evidence of who put the flags up and who did not. Just for the sake of argument, in the more extreme case where we do not know who put the flags up or what they have said, all I tell you is that the immediate response is to take them down. That is the real teeth in this. You can put them up in a day, and we will have them down in a day. If you put them back up again, we will take them back down again, until you get to the stage where they are not going up.

I think that we will put in legislation some sort of graduated response for penalties in cases where we can identify who put them up. At some stage, it could just be a misdemeanour involving a fine. You know the way it works. Five young kids are given a tenner to go and stick up some flags, and they get

caught. That is a different kettle of fish to an organisation that deliberately goes off to confront the area. I would put out a schedule of offences, likely to be at the level of a fine not exceeding £500 or a period of imprisonment of less than six months. In other words, a summary offence rather than an indictable offence. However, it may be the case that — I would take the Committee's mind on this — if you repeatedly attempt to do this you may move to indictable after that.

Mr Frew: Tricolours were put up in Ballymena 20 years ago, and a collection of young people from a nearby factory went in their cars at lunchtime and went up the poles to take the flags down. Police arrested all of them for breach of the peace. I represented some of the young people at the time, and police said that they were done for breach of the peace because they were taking flags down. I said, "Well, look, if they had been putting a Union flag above it, would that have been OK?". That challenged them and they had to say, "Yeah, actually, because, if we had arrested them for putting a Union flag up, we would have had to arrest the person who put the tricolour up". How do you square a circle with legislation or regulation on something like this, when it is so fluid that one community will find something acceptable that another community will not? For instance, were Down to get to a GAA final, black and red flags would go up everywhere in Down. If Ballymena United gets to a cup final — maybe the second one in my lifetime — blue and white flags would go up all over Ballymena. It gives the town such a buzz and lift. How do you legislate for temporary measures such as those?

Mr B McCrea: At the moment, that is illegal. DRD will say that you are not allowed to fly flags from lamp posts: I say that we would bring in legislation that states that it is legal provided you ask permission. I am keen to support the issue about the GAA, Ballymena United flags or whatever, because, to my mind, that is the way that we do things. If you want to celebrate it, go and celebrate it. I do not think that anyone would want flags that were put up to celebrate a great victory to be flying there three months later. If we make it easy or easier to put them up, there is the issue that it is also easier to take them down. Nobody is trying to stop people doing it; we are just saying, "This is the proper process for doing it". So that should help.

You raised a particularly important point that I want to address, because it is why I think that we need legislative cover. I am sure that you know that there is an Assistant Chief Constable (ACC) who ordered the taking down of a Union flag. Not only did doing that cause a riot, it was pointed out to him that he had no legislative framework within which to act. It caused certain issues. I hope to give clarity as to what is acceptable, and I am broadening it to encompass, largely, the acceptable bit of what goes on anyway. I am then asking how you would deal with the unacceptable bits, which are where people are making a real challenge.

Not to make too fine a point of it, if you want to go onto the hard side, I tell you straight that I know that there are republicans who will fly tricolours opposite Mitchel McLaughlin's house. I know that there are loyalists who will put a flag opposite the Minister of Justice's house. I know that there are paramilitary emblems pretty close to senior PSNI officers. These are all challenges to us. Everybody that I talk to, from every political party tells me, "You know what? I don't like to say very much, but there is a problem here". If we can find a way, collectively, of coming up with a light-touch body that we agree to get going, under our auspices and in our regulations — it is important to realise that this is not the Parades Commission — you will get a lot of kudos from the public.

Mr Frew: Have our people, our public, not been through enough with the Parades Commission? Yet you want to impose a flags commission.

Mr B McCrea: That is why I brought the issue up, even though it had not been mentioned. I do not want this to be the Parades Commission. The Parades Commission was imposed on us from other places. It was funded by other people, and, frankly, there is a feeling that it does not really understand the way that things should be handled. What I would like to do is, by agreement — as I said, unless there is agreement on this, there is no point in doing it — get a reasonable set of regulations that encompass 70% to 80% of what goes on. It would just regulate things. It would give some forum where, if someone feels that something is not being taken into consideration or their point of view is not being heard, they go to try to deal with it. I want to separate, Paul, the people who are trying to do it as paramilitary organisations setting out their turf and legitimate cultural expression by 80% to 90% of the people.

Mr Frew: It is really more about the spirit of why you put it up as opposed to the practicalities of putting it up.

Mr B McCrea: I am sorry, I did not quite catch that.

Mr Frew: It is really more about the spirit, the nature, of why you put one up.

Mr B McCrea: If someone comes along to me and says, "We are going to Dublin because we are going to win the Sam Maguire" or whatever it is, then, of course. Why would you not let people stick flags up and say, "This is great"? If somebody comes along and there is talk about the Twelfth or that period of time and says that it is a cultural expression, why would you not allow that? It is a respectable, reasonable thing. I know that there are other issues. There will be other parades and issues where people will come along and say, legitimately, "I want to celebrate this because — " and "Here is what I would like to fly; I am a responsible person or organisation", and I cannot imagine why people would say no to that.

If they had a different spirit and were trying to intimidate or so on, you would take a different position. The real teeth in my legislation are not so much the penalties, although there will be those for individuals or organisations, it is that the police need clarity. The police — or some other contractor but probably, ultimately, the police — need to have clarification that they have the powers to act immediately and know that they are empowered by our Assembly to do that. In answer to Sammy's point that it is not, say, 53rd in their list of priorities; they need to know that this needs to be dealt with and dealt with now, and they have said that they would welcome that.

Mr McGlone: Chair, very briefly, I have difficulty with the likes of GAA or football clubs being lumped in with paramilitary and sectarian organisations.

Mr B McCrea: They are not.

Mr McGlone: No, but you mentioned them in the one vein. They are not the ones that the problems are with. Any of us who have been trying to deal with these problems in our areas know that they are the ones that you go to, the responsible people. If there is ever a problem with a flag or emblem, you go to them and say, "Look, take that down, there, that is inappropriate. It is outside a wake house" or whatever it might be. It may be outside the house of somebody who is not well or may be a supporter of a competing football team or whatever. Those issues are not the difficult ones. The difficult issues are where somebody jams up a paramilitary flag outside, although it goes back to the motivation of the individual who does it, as Paul was indicating. They jam it up outside, say, a Protestant house or a Catholic house deliberately in an intimidatory fashion or in a mixed area or whatever it is. That is what causes the conflagration. It is done usually under the cover of night, sometimes by hoodies and people who cannot be identified. They are not going to be the guys and gals who think for one second, "I need to apply to a wee commission, or to the flags commission, about that". If there is a flags commission, they will put flags up deliberately to flout it.

Now, this is the difficulty as I see it. Whenever you approach police in those circumstances, even if it is contrary to the law, it depends on the environment in which the police find that person living. They will then make the call: "Should we do this?". Of course the other problem is, as far as Roads Service is involved — I have been there before with this — getting a contractor who is prepared to put his or her employees up front to be potentially targeted by paramilitaries. That is extremely difficult.

The police usually say, "Well, we will play the long game, here. We will get in touch with the community organisation. We will get in touch with the local headcase who is usually responsible for getting young lads and girls out to do this type of thing, and we will play him or her along, and, eventually, we will get the flags down or they will fade away and be left in ribbons on the pole". That is often the case with the police. Even if you introduce legislation that say that you must take them down, I can still see a situation where the police will say, "We will take them down within reason" or "We don't have the resources to chase after that. There are criminals breaking into houses down there. There are road accidents over there. There are drunk drivers over there. There are people procuring and selling drugs over here".

It is a matter getting all those confluences together, Basil, in the real world that we live in. I just wish we could arrive at the point where all these flags and emblems were gone from lamp posts and the likes and that national flags were used only on national occasions when appropriate. How we get to that point I genuinely do not know. I would wish a flags commission well.

Mr B McCrea: I would call it a licensing authority rather than a commission. Can I mention —

Mr McGlone: Just one point, Basil, a licensing authority will be of benefit only to good, decent, law-abiding people who respect their neighbours and want to do the thing in the right way. The difficulty is

with the headcases and bad articles who want to rub their neighbours' nose in it irrespective of their hue or background.

Mr B McCrea: I accept all that. You raised a number of good points that I want to address.

I in no way meant to equate the GAA or any other bona fide organisation with any paramilitary organisation. That is not the case. I agree with you that good organisations will be able to go along and remove a flag; they do that anyway. If somebody has a word, "Listen, would you take that down?", it gets sorted out. I am trying to separate those who have benign intent and are therefore open to discussion from those who are not.

When it comes to enforcement, I spoke to your colleague, the Minister of the Environment, about issues in Bangor. As you know, he has said that he would like to license bonfires. That is also a contentious issue. This is the only story that I will tell, and it is pertinent. A community group of 6,000 people from a very loyalist/unionist background had been running a community bonfire for years. This year, they were told, "That's a UDA-designated bonfire. We have to go and get the money". The council talked for hours about who it should give the money to — the UDA from out of town or the community group that had been running the event on a cross-community basis for years. Eventually, it gave the money to the cross-community group. What happened? The UDA came to a public meeting. The hall was packed, and the police commander was there. He said, "Why are we all here?". It was because flags went up all around the bonfire. The police commander said, "This is the first time I've noticed paramilitary flags around here". The council told the organisers, the poor little community group that was just doing its thing, "Why don't you go and have a chat with the UDA and see if you can sort something out?". They said, "We're just running a community group". What happened? People went off in a slow march past this poor man's shop, they did the face against the window and lit his bonfire an hour and a half early so it wasn't there. Because of the flags, none of those 6,000 people will go back to that park, which the council spent £50,000 on.

You have the situation, which I want to address and that your Minister is looking at, that there are 22 bonfires in that part of the country. All but two are non-traditional. A non-traditional bonfire means that, instead of having a big bonfire, you have a brazier. However, following representations from community leaders, a non-traditional bonfire was changed to mean one that was on a sandpit. It is still a great big bonfire. Would you believe it: of the 22 bonfires, only two do not get the non-traditional status, which has twice the amount of money? Those are our little friends who are doing it properly. The rest are run by other organisations with links.

This type of insidious thing happens whereby, when you go to the council, they say, "Why don't you go and talk to the boys?", or the police say, "Let's turn a blind eye, sure it'll be all right". That is not the right way for a liberal democracy to be going on. The bad boys who want to take on this state have to be confronted because the vast majority of people just want to express their culture, whatever that is, and do their own thing in their own respectful way. My amendments, with the agreement of the Committee and entire Assembly, are a set of rules that we could agree by regulation. If you do not do it, the only sanction that I want is that the PSNI will do their duty and take down the flags. They will not be allowed to come along and say, "I've got to go and get real criminals".

This undermines our entire society. It destroys our good relations strategy, undermines community groups, enhances paramilitary organisations that have not moved on and is an affront to democracy. This is not something that the PSNI should be allowed to ignore. In fairness — I am sure that they will come and talk to you about this — all the police are saying is, "If you give us the political cover, as this is what you all want to do, and a legislative framework, we will do the heavy lifting for you". That is because the police recognise that no one else will take on those bad people.

The Chairperson (Mr Ross): Sammy is about to leap up, so this should be a last question.

Mr McGlone: I have to go too. Sorry.

Mr B McCrea: I am happy to come back at some other stage if you have enough.

The Chairperson (Mr Ross): Thank you very much for doing that. I appreciate that, and it is helpful for our deliberations.