

**Submission to Belfast City Council consultation on draft city centre Bye-laws
‘for the good governance of Belfast city centre and for the prevention and
suppression of nuisances in Belfast city centre’**

Consultation 27 November 2023 → 04 March 2024

1. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership, established in 1981, that works to ensure public authority compliance with obligations under international human rights law.
2. This is a response to the consultation by Belfast City Council on Bye-laws ‘for the good governance of Belfast city centre and for the prevention and suppression of nuisances in Belfast city centre’ which would introduce a Permit system in two designated areas of the City Centre, requiring a Council-issued Permit for ‘any amplified performance’, any use of ‘amplification devices’ and any non-commercial stand or stall.
3. The proposals engage human rights protected under the European Convention on Human Rights (ECHR) relating, in particular, to freedom of assembly (Article 11) and expression (Article 10) on which CAJ has a significant body of work. ECHR rights are directly legally binding on the Council by virtue of the Human Rights Act 1998 (HRA)
4. In summary, whilst understanding the issues the Council is seeking to address, CAJ has concerns that the proposed bye-laws will conflict with the ECHR and related human rights standards. In particular, the bye-laws as presented would risk creating an unprecedented de facto ‘authorisation’ regime for any static protest in the designated city centre retail area using any amplification device, and constitute a *de facto* ban, on pain of a fine, on such spontaneous protests. Permits would also limit the scope for protests in the precise area of the City Centre, where the right to protest is most frequently exercised. Take the following examples:
 - An offence would be committed by organising a static protest in the City Centre retail area using a loudhailer without first applying for a permit from the Council. This would constitute a de facto ‘authorisation’ regime for such protests (there are no notification requirements for such protests under NI law, there are notification, but not authorisation, requirements for parades).
 - The standard conditions envisaged for a Permit will not allow any such protests to take place before 11am on any day, and no such protest would be allowed to take place for more than two hours, with a 24hr ban on returning to the same location.
 - It would not be possible to hold any spontaneous static protest in the city centre retail area in response to a local or international event or atrocity, as first protest organisers would have to submit and await for approval from the Council for a Permit.

5. This submission will cover:

- Outline of Human Rights Framework.
- The issues the Council is seeking to address.
- The proposed bye-laws.
- Assessment of their compatibility with the ECHR

Outline of Human Rights Framework

6. As alluded to above, ECHR Article 11 protects the right to freedom of peaceful assembly as a fundamental right in a democratic society. Article 11 rights are closely linked to the right to freedom of expression (Article 10) and freedom of thought, conscience and religion (Article 9). There are also similar obligations under UN treaties.
7. The Council may find useful the following detailed guidelines on the scope of these rights:
 - European Court of Human Rights: Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association (2020).¹
 - European Commission for Democracy through Law (Venice Commission) OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Guidelines on Freedom of Peaceful Assembly (3rd edition).²
8. None of the above rights are absolute and can be subject to restrictions under certain circumstances, when certain tests are met. In summary these are:
 - **Legal Certainty:** restrictions must be “prescribed by law” which means not only a legal basis in domestic law, but also that the law is formulated with sufficient precision to be foreseeable, and hence avoid arbitrary application.
 - **Legitimate Aim:** restrictions can only be made in pursuance of one of a number of listed legitimate aims, namely, “the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”
 - **Necessary in a Democratic Society (proportionality):** restrictions must answer a “pressing social need” and be proportionate to the “legitimate aim” pursued.
9. It is clear that the Council permit proposals engage and can interfere in the above ECHR rights, it is these tests that therefore would need to be met for that interference to be considered justified and hence lawful.

¹ [Guide on Article 11 - Freedom of assembly and association \(coe.int\)](https://www.coe.int/t/Document/Article11/Freedom_of_assembly_and_association.pdf)

² [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)

10. Most of the permitted legitimate aims are not relevant to the aims of the Council's policy aim of preventing 'nuisance.' The legitimate aim likely to be relevant is that of "protection of the rights of others". It should be noted that 'rights' of others is in reference to ECHR rights and other *rights* for which there is an imperative to include.
11. Other ECHR rights would include the positive obligations under Article 8 to protect persons from racist expression. The UN and Council of Europe have both held that sectarianism in NI is to be treated as a form of racism, and the European Court of Human Rights has also held that sexual orientation is also protected by Article 8.³ The duties under the ECHR, given further domestic effect by the HRA, therefore empower and place positive duties on Northern Ireland public authorities to take steps to tackle hate expression. These provisions should be read and interpreted in line with other relevant human rights standards. This would include Article 6 of the Framework Convention for National Minorities which obliges public authorities to: *'take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity'*.
12. Article 20 of the (UN) International Covenant on Civil and Political Rights (ICCPR), which provides that: *"Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law"*. Incitement to hatred should be considered as a subset of and as the most serious type of hate expression, to be criminalised on the basis that it incites racial discrimination, hostility or violence in a public context. The ICCPR duties are further interpreted by the UN Rabat Plan of Action (on combatting incitement to hatred). Rabat sets out general principles that distinctions should be made between:
 - 1) Expression that constitutes a criminal offence.
 - 2) Expression that is not criminally punishable but may justify a civil suit or administrative sanctions.

³ The increased codification of Article 8 ECHR rights as providing for positive obligations for intervention to protect against actions that include being subjected to racist expression has been a feature of Strasbourg jurisprudence (see for example *Asku v Turkey* (app no 4149/04, 41029/04) 15 March 2012, and *Király and Dömötör v Hungary*, 2017). In relation to sexual orientation and gender identity falling within the ambit of Article 8, see *Bensaid v UK* (Application no. 44599/98) [47]. In 2011 the UN Committee on the Elimination of all Forms of Racial Discrimination made clear that "Sectarian discrimination in Northern Ireland [...] attract[s] the provisions of ICERD in the context of 'inter-sectionality' between religion and racial discrimination" (para 1(e) UN Doc CERD/C/GBR/18-20, List of themes on the UK). Later in the same year, the Council of Europe Advisory Committee on the Framework Convention for National Minorities directly addressed the approach in the predecessor draft strategy, raising concerns that the Committee "finds the approach in the CSI Strategy to treat sectarianism as a distinct issue rather than as a form of racism problematic, as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards". AC FCNM, Third Opinion on the United Kingdom adopted on 30 June 2011, ACFC/OP/III(2011)006, para 126. The UN Committee on the Elimination of all forms of Racial Discrimination stated its position following representations from the Northern Ireland Human Rights Commission. The Commission had raised concerns that "policy presenting sectarianism as a concept entirely separate from racism problematically locates the phenomenon outside the well-developed discourse of commitments, analysis and practice reflected in international human rights law" and hence was not harnessing this framework to tackle sectarianism.

3) Expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others.⁴

13. The duties to outlaw incitement to hatred are currently provided for under the 'stirring up hatred' and 'arousing fear' criminal offences in the Public Order (NI) Order 1987.⁵ This covers hate expression of a sectarian, racist, disablist or homophobic nature that reaches an incitement to hatred threshold. Reform and strengthening of this legislation has been recommended by the *Independent Review of Hate Crime Legislation in Northern Ireland*.⁶
14. The boundary between protected freedom of expression on one hand and prohibited advocacy of ethnic and religious hatred on the other has been debated internationally and locally for some time. ECHR jurisprudence has established that free expression is protected even when it "*shocks, offends or disturbs*"⁷ or is capable of "*creating a feeling of uneasiness in groups of citizens or because some may perceive them as disrespectful*".⁸ It does draw a distinction however between this and expression which "*spreads, incites, promotes or justifies hatred based on intolerance*"⁹ or matters such as "*the promotion of discrimination or ethnic division*".¹⁰
15. As alluded to below, part of the aim of the policy is to prevent the display of graphic materials. Should the Council wish to rely on the legitimate aim of 'morals' it should be noted that this has been interpreted narrowly.¹¹ Some 'graphic' material is of course already regulated by law.
16. In relation to a requirement for an authorisation procedure for a protest, it should be noted that this has only been held to be in keeping with the requirements of Article

⁴ Rabat Plan of Action, para 20, recommendations. <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action>

⁵ <https://www.legislation.gov.uk/nisi/1987/463/part/III>

⁶ *Independent Review of Hate Crime Legislation in Northern Ireland*, final report 2020.

⁷ *Handyside v UK* 1976[49]

⁸ *Vajnai v Hungary* (2008) [57].

⁹ *Erbakan v Turkey* (1999) [57].

¹⁰ *Vona v Hungary* (application no. 35943/10) (2013) [66]

¹¹ OSCE/Venice Commission guidelines paragraph 142: *Protection of morals. On the face of Article 21, ICCPR and Article 11(2) ECHR the protection of morals may be invoked by States as a ground for imposing restrictions on the right to freedom of peaceful assembly. In practice, however, the protection of morals should rarely, if ever, be regarded as an appropriate basis for imposing restrictions on freedom of peaceful assembly. As the UN Human Rights Committee has noted, 'the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations [...] for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition [...]. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination. Any restrictions based on a narrow or exclusive conception of morality will thus be incompatible with relevant standards governing non-discrimination (at paragraphs 101 et seq. above) and content-based regulation (see paragraph 30). Moreover, States may not legitimately invoke morality as a ground for restriction in cases which concern facets of an individual's existence and identity (in particular, because these constitute the very essence of the right to freedom of expression).*

11(1) ECHR where required to ensure the peaceful nature of a meeting.¹² This limited exemption is therefore not applicable to the current Council policy.

17. It should be noted that there is a difference between an 'authorisation' requirement (whereby permission must be given before a protest takes place) and a 'notification' requirement whereby authorities must be *notified* in advance, but an 'authorisation' is not to be awaited. With or without a notification requirement, there can still be powers to impose restrictions on a protest. There are currently no authorisation requirements for protests in Northern Ireland.
18. Under the law in Northern Ireland at present, static protest (in law 'open air public meetings') have no notification requirements (with the exception of counter protests to parades). The legislation (Part II of the Public Order NI Order 1987) provides for a senior police officer to impose restrictions where there is a risk of 'serious public disorder, serious damage to property, serious disruption to life of the community' or when the purpose of the protest is for the intimidation of others from legitimate activity.¹³
19. Under Parades legislation (Public Processions NI Order 1998), there is a notification requirement for parades of 28 days, which can be waived where not 'reasonably practicable' (for example a moving protest called at short notice in response to a local or international event) in which case notice is to be given as soon as possible. Counter protest to parades have a similar 14 day notification requirement. The Parades Commission may then impose restrictions.¹⁴
20. More recent legislation has made provision for Safe Access Zones for premises providing abortion services to prevent the harassment or impeding of persons accessing abortion services within a designated zone in the vicinity of the premises.¹⁵

The issues the Council is seeking to address

21. The consultation document alludes to (but does not elaborate on) the issues the policy is seeking to address as follows:

The council has encountered issues in recent years relating to loud busking, religious preaching and various other activities involving the use of amplification devices and/or the display of graphic imagery in the city centre.¹⁶

22. The Equality Screening produced with the consultation sets out the objectives of the policy as follows:

¹² *Ziliberberg v. Moldova*

¹³ <https://www.legislation.gov.uk/nisi/1987/463/part/II>

¹⁴ <https://www.legislation.gov.uk/ukpga/1998/2/contents>

¹⁵ Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 see [Safe Access Zones | Department of Health \(health-ni.gov.uk\)](#)

¹⁶ <https://yoursay.belfastcity.gov.uk/consultation-on-city-centre-byelaws>

Significant issues have been raised over the past number of years regarding the activities of buskers, preachers and various interest groups in the City Centre, mainly within the primary retail core. Officers recognise that busking can bring vibrancy to the area and should be facilitated. It is also recognised that street preaching and the ability to protest are important rights of expression in a democratic society and are protected under the European Convention of Human Rights. However, it is important to consider the context within which these activities are being considered, their cumulative impact and how this affects others.

The proposed bye-laws will introduce rules and regulations around participation in amplified performances, public speaking, meetings and events, and the display of promotional literature or other information in the City Centre. The bye-laws are not intended to prevent street preaching or the promotion of any public interest causes. Rather, they are intended to reduce the overall ambient noise and unacceptable nuisance which is caused by the cumulative impact of these various activities in the City Centre.¹⁷

23. In recent years CAJ is aware of complaints alleging that some preachers have engaged in homophobic expression, and a stall by anti-abortion protestors has carried graphic images of aborted fetuses that have caused alarm and distress.
24. In order to demonstrate compliance with the 'pressing social need' test of restrictions on rights to freedom of assembly and expression, the Council would need to provide an evidence base to justify its proposed measures.

The proposed bye-laws

25. The proposed bye-laws would introduce a Permit system for particular activity in the City Centre. They create two zones – one an (outer) City Centre covering the whole City Centre and a second a more limited (inner) City Centre ("Primary Retail Core"). The main bye laws provide that:
 - A person may not conduct or take part in any amplified performance (whether vocal or instrumental), dance, concert or other such performance in a public place in the City Centre (including the Primary Retail Core) without a valid Permit issued by the Council.
 - A person may not use amplification devices in a public place, whether as part of a performance or otherwise, in the Primary Retail Core without a Permit issued by the Council permitting the use of said device.
 - A person may not erect, place, maintain or otherwise be responsible for a stand, stall, or vehicle with promotional literature or information (whether connected to a business, charity, political or any other non-commercial purpose) in a public place in the Primary Retail Core without a Permit issued by the Council. This

¹⁷ <https://www.belfastcity.gov.uk/Documents/City-Centre-Bye-Laws-Equality-Screening>

provision does not apply to those vehicles which are within the said area solely for the purposes of delivery to or collecting goods from business premises.¹⁸

26. Permits will be available from the Council for a fee (to be determined).
27. An offence is created for contravening the bye- laws punishable by a fine of up to £500. The Council has powers to revoke a permit when conditions are not being abided by (with a right of appeal to a magistrates court), and powers to remove unattended stalls and stands.
28. The “Permit will be subject to such conditions as the Council believes necessary and proportionate” with a number of ‘standard conditions’ listed that may be specified in permits namely:
 - Permits may only be used by the performer named on the permit, and shall not be used by, or transferred to, any other person.
 - A Permit granted by the Council will be valid for one year from date of issue or such lesser period as may be considered appropriate by the Council.
 - A Permit shall not normally be granted for activity between the hours of 11pm and 11am.
 - A Permit will only allow the permitted activity in a specific location for a maximum of TWO hours. After this period the person must re-locate to a different place not within 100 metres of his/her previous location and may not return within 100 metres of any previous location until the following day.
 - A Permit holder is only permitted to perform in the Primary Retail Core for a maximum period of ONE hour. After this period they must relocate to a different place not within 100 metres of their previous location and may not return within 100 metres of any previous location until the following day.
 - The maximum performance periods set out in these bye-laws shall include any time spent setting up and packing up.
 - The Council may designate areas in which specific types of instruments or amplification is prohibited.
 - A Permit Holder will comply with a request from an authorised officer to cease their activity or move on where in the opinion of the authorised officer the activity is endangering public safety or causing an obstruction.
29. A number of exemptions are listed to the bye-laws. In summary these are:
 - Activities in a public place organised by the Council, or with the consent of the Department of Infrastructure or other relevant landowner.
 - A parade “authorised” [sic] by the Parades Commission.
 - Cash collections authorised by PSNI under the Charities Act (NI) 2008.

¹⁸ <https://www.belfastcity.gov.uk/Documents/Bye-laws-for-the-good-governance-of-Belfast-city-c>

- Trade union pickets, under Trade Union and Labour Relations (NI) Order 1995.

Assessment of their compatibility with the ECHR

30. There are a number of significant concerns that the bye-laws will infringe ECHR rights, the most prominent is the risk for static protests.
31. It is not entirely clear if the aim of the policy is to capture protests and related protected expressive activity, reference is made, without elaboration, to 'meetings' in the equality screening of the policy aims. It appears the bye-laws are not intended to capture protests, as only those using loudhailers or amplification equipment will fall within scope.
32. However, many such protests rely on such equipment and take place in the vicinity of the inner city centre and often City Hall. The bye-laws provide an exemption for parades and trade union *pickets* (presumably as already otherwise regulated) but not for static protests ('open air public meetings'), regulated by public order legislation.
33. In conflict with the ECHR, the bye-laws essentially constitute a de facto authorisation process for any static protest in the designated zone in which a loudhailer or similar equipment is used. Furthermore, they would preclude any spontaneous such protest as a permit would have to be applied for in advance.
34. It would also require a prior-authorisation for anyone erecting a table or stand with promotional literature or information for a non-commercial purpose, raising similar issues.
35. No permitted *legitimate aim* is expressly cited as the lawful basis for restrictions. This is also expressly the case in relation to the 'conditions' which make general reference to proportionality, but do not cite a legitimate aim.
36. The 'standard conditions' for permits would constitute a disproportionate restriction on the right to protest (with a loudhailer etc). For example, the stipulation that no protests can be held before 11am or last for more than two hours in the same place.¹⁹

¹⁹ OSCE/Venice Commission Guidance at paragraph 146. **Restrictions on 'time' or 'duration'.**

Restrictions imposed on the time or duration of an assembly must be based on an assessment of the individual circumstances of each case. The touchstone established by the European Court of Human Rights is that demonstrators ought to be given sufficient opportunity to manifest their views. In some cases, the protracted duration of an assembly may itself be integral to the message that the assembly is attempting to convey or to the effective expression of that message.

OSCE/Venice Commission Guidance at paragraph 147. **Restrictions on 'place'.** At the core of the right to freedom of assembly is the ability of the assembly participants to choose the place where they can best communicate their message to their desired audience.²⁸² It would be disproportionate if authorities categorically excluded places suitable and open to the public as sites for peaceful assemblies. The use of such suitable sites must always be assessed in the light of the circumstances of each case. The fact that a message could also be expressed in another place, is by itself insufficient reason to require an assembly to be held elsewhere, even if that location is within sight and sound of the target audience....

37. Any reliance on the rights and freedoms of others as a legitimate aim should specify which rights of others are engaged in relation to restrictions.²⁰
38. If a particular concern is that some of the expression by preachers or others has included homophobic or other hate expression, the Council may wish to consider alternative interventions. Such alternative methods may include monitoring for breaches of the criminal law on stirring up hatred on grounds of sexual orientation that can be reported to the PSNI or public awareness campaigns and messaging tackling homophobia.
39. In relation to 'graphic images' other areas of legal regulation may also be relevant.
40. It should be noted that content-based restrictions on assemblies are not permitted where *protected* expression is concerned.²¹
41. The requirements for a permit regulating 'amplified performances' appear more designed to regulate cultural activity and in general are less of a concern in ECHR terms than the other bye-laws. There is a risk, however, that this provision may capture expressive activity on a protest and in other formats in the absence of any exemption.
42. Overall, we are concerned that the proposed bylaws as they stand would constitute an unjustifiable restriction on rights to free assembly and expression for the reasons set out above. In a practical sense, should they be implemented, the Council is likely to face legal challenge on attempts to place restrictions on protected expressive

²⁰ OSCE/Venice Commission Guidance at paragraph 143. **Protection of the rights and freedoms of others.** Assemblies potentially impact on the rights and freedoms of those who live, work, shop, trade and carry on business in the same locality. However, balancing the right to assemble and the rights of others should always aim at ensuring that assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others. Rights that may be claimed by non-participants affected by an assembly include, among others: the right to privacy (protected by Article 17 of the ICCPR and Article 8 of the ECHR), the right to peaceful enjoyment of one's possessions and property (protected by Article 1 of Protocol 1 to the ECHR), the right to liberty and security of person (Article 9 of the ICCPR and Article 5 of the ECHR), and the right to freedom of movement (Article 12 of the ICCPR and Article 2 of Protocol 4 to the ECHR). Some degree of disruption with respect to these rights must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning. Furthermore, as also noted at paragraphs 48 and 62, neither temporary disruption of vehicular or pedestrian traffic, nor opposition to an assembly, are of themselves legitimate reasons to impose restrictions on an assembly. Where a State restricts an assembly for the purpose of protecting the rights and freedoms of others, the relevant public authority should explain in detail:

- which specific rights and freedoms of others are engaged in the particular circumstances;
- the extent to which the proposed assembly would, if unrestricted, interfere with these rights and freedoms;
- how any restrictions on the proposed assembly would serve to mitigate these interferences, and why less restrictive measures would not lead to the envisaged success.

The authorities should be allowed a margin of appreciation when assessing these issues. In particular, despite the fact that no violent act or crimes have occurred during an assembly, the intimidating character of the rallies may be taken into account by the authorities. What matters is that the repeated organisation of the rallies was capable of intimidating others and therefore of affecting their rights, especially in view of the location of the parades.

²¹ See para 30 OSCE/Venice Commission Guidance.

activity, and in particular that relating to protest, that could be captured by the bye-laws.

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