

# **Position Statement on Marches, Parades and Static Demonstrations - Road Traffic (2020)**

## **Executive Summary**

- 1- The road traffic implications of every march, parade and static demonstration must be assessed individually having regard to the specific circumstances of the event.**
- 2- Police and Local Authorities have overlapping powers in relation to road traffic regulation at marches and parades. The selection of powers will depend on circumstances. The Police have a legal duty to work in collaboration with others. That requires constructive dialogue between Police and Local Authorities to make the best, most efficient and efficacious use of the powers available to each of them.**
- 3- Road traffic measures must be considered in the context of ECHR Article 11. There is a presumption in favour of holding assemblies, and road traffic measures must promote the 'positive obligation to facilitate and protect peaceful assembly'.**

## **Introduction**

- 1- This position statement has been jointly prepared by Police Scotland and the Convention of Scottish Local Authorities (COSLA).
- 2- Marches, parades, processions and demonstrations come in all shapes and sizes. Many will exercise the Article 11 Right of Peaceful Assembly enshrined in the European Convention of Human Rights (ECHR). How public authorities handle the road traffic implications of such events will depend on the individual circumstances of each case. In doing so, public authorities and organisers should work together to facilitate and uphold the ECHR right to process and to ensure the public safety of those marching as well as the public. In considering the appropriate road control measures, the aim should, wherever possible be to minimise disruption to the public and other road users, for example through minimising the extent and period of road closures.
- 3- This position statement primarily addresses events which exercise the Article 11 ECHR Right of Peaceful Assembly. Obvious examples are Loyalist and Republican Parades, events which relate to Scottish Independence or EU-Exit, political events, and armistice day parades. However, many community events, particularly those to celebrate a historical event, can also attract ECHR protection. Therefore, this position statement should be applied to all marches and parades, except those which are primarily commercial in nature, where ECHR rights are unlikely to apply. Within this position statement where there is reference to 'march', 'procession' 'event' or 'parade' it should be interpreted as applying to marches, parades and processions with little or no commercial interest.

## Key Principles and the Legal Framework

When considering the road traffic implications of a march or parade, and whether to impose conditions or traffic restrictions, the following underlying principles must always be considered: -

- 4- **ECHR**- as set out in the *Human Rights Handbook for Policing Assemblies* (2016) issued by the Organisation for Security and Co-operation in Europe (OSCE) (of which the UK is a participating state) there is a 'presumption in favour of holding assemblies', and the state carries a 'positive obligation to facilitate and protect peaceful assembly':  
"Many assemblies will also cause some degree of disruption to routine activities; they may occupy roads and thoroughfares or impact traffic, pedestrians and the business community. Such disruption caused by the exercise of fundamental freedoms must be treated with some degree of tolerance. It must be recognized that public spaces are as much for people to assemble in as they are for other types of activity, and thus the right to assemble must be facilitated."  
In other words, many of the road traffic impacts of marches and parades are the *necessary* impacts of a democratic society. It thus becomes the responsibility of the state to ensure that sufficient resources are given over to dealing with these impacts effectively.
- 5- Freedom of Peaceful Assembly does not denote freedom to march wherever one likes at any time that one wants. It may be necessary for authorities to balance the rights of others and to adjust the *manner* in which marchers exercise their rights. It is legitimate to distinguish between, on the one hand, a restriction on Convention Rights to assemble or march and to express one's views publicly and, on the other hand, a restriction on the manner in which those rights are exercised. This is particularly relevant in the context of road traffic; public authorities have greater latitude where the purpose of their action is to facilitate the safe conduct of a demonstration; and less latitude where their action stifles or discourages demonstration
- 6- Article 11 of ECHR only applies to processions which are "peaceful" and not where participants are intent on violence or otherwise reject the foundations of a democratic society.
- 7- Marches and parades may either engage or interfere with competing ECHR rights such as the right to respect for family and private life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10) or the right to protection of property (Protocol 1, Article 1).
- 8- Road traffic restrictions which impact on the exercise of ECHR rights, such as re-routing a parade must be necessary and proportionate in the context of the specific march and parade. While public bodies may adopt policies, such as those relating to standard conditions or road traffic, these must be designed to support the positive obligation to facilitate and protect peaceful assembly. Nor can policies be binding. Organisers must always be given an opportunity to make submissions why a policy should not be followed, based on the circumstances of the parade in question. The key point is that the determination of the road traffic requirements of any march or parade must depend on the individual circumstances of the event.

- 9- **The Public Sector Equality Duty** under Section 149 of the Equality Act includes a duty on public agencies to “foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”, and in doing so to have due regard to the need to tackle prejudice and promote understanding. Certain marches or parades may relate to protected characteristics such as religion and belief or sexual orientation. Engaging with organisers and communities can help comply with this duty.
- 10- **Road User rights-** Pedestrian traffic has as much right to lawfully use the public highway as vehicular traffic. However, there are obvious safety implications which need to be considered when pedestrians and vehicles use a public highway at the same time.
- 11- **Duty to work in collaboration-** Local authorities and Police have overlapping powers in relation to road traffic at marches and parades. The selection of powers will depend on circumstances. Section 32 (b) of the Police and Fire Reform (Scotland) 2012 imposes a duty on the Police to work in collaboration with others. That requires constructive dialogue to make the best, most efficient and efficacious use of the powers available to each of them, and others.
- 12- **Legal Powers- General** -the Police have general responsibility for traffic management and public safety. For a period, when planned assembly is anticipated, it is a responsibility that Police Scotland share with the Local Authority under the Civic Government (Scotland) Act 1982 and with the traffic authority under the roads legislation. It is incumbent upon all parties to work collaboratively to seek to achieve the most practical and efficacious solution in anticipation of the event. As the march takes place, responsibility ultimately sits with the Police in the absence of any other regulatory control.
- 13- **Local Authority- The considerations that the Local Authority is bound to take into account** are set out in section 63(8) of the Civic Government (Scotland Act 1982. This covers, among other things, public safety, public order and disruption to the life of the community. Those factors include road traffic considerations and the question whether road safety concerns and disruption to transport links can be adequately mitigated by one means or another is a relevant consideration.
- 14- **Police Powers-** Police Scotland have powers to restrict traffic and close roads for the purpose of enabling pre planned EHCR public processions to take place (S 35 RTA 1988; S 163 RTA 1988; S 20 Police and Fire Reform (S) 2012 Act; S67 Road Traffic Regulation Act 1984; and common law powers.) Constables have a general duty to protect life and property. Stemming from that duty is a duty and power to control traffic on public roads. The power is enforceable via the offence under section 90 of the Police and Fire Reform (S) Act 2012 of obstructing or hindering a police officer. There does not require to be a TTRO in place to enable this common law power to be exercised. In the context of ECHR, the Police will have greater latitude where the purpose of their action is to facilitate the safe conduct of a demonstration; and less latitude where their action stifles or discourages demonstration. These duties of the Police subsist notwithstanding that the Local Authority has imposed conditions. The conditions may prove to be inadequate or a planned event may ultimately proceed contrary to a condition imposed by the Local Authority. If there is a sufficient danger to the safety of individuals (participants or the general public) or

risk of public disorder, necessitating road traffic measures, the Police would be not only entitled but obliged to act whether or not the Local Authority had itself made a temporary traffic regulation order.

15- The Police power in section 67(1) of the Road Traffic Regulation Act is restricted to 'extraordinary circumstances'. Whether the issue is approached from the angle of statutory duty (section 20 of the 2012 Act), common law or Convention rights (the positive obligation to take preventive action), the restriction in the power to "extraordinary circumstances" is secondary. If there is a sufficient danger to the safety of individuals (participants or the general public) or risk of public disorder, necessitating road traffic measures, the Police are both entitled and obliged to act, whether or not the Local Authority had itself made a temporary traffic regulation order. That has a bearing on the proper interpretation of "extraordinary circumstances". A purposive construction would suggest that the statutory provision should be understood to facilitate action on the part of the police to deal with any danger. The qualification is expressed in terms of 'extraordinary' circumstances. That is not the same as 'unforeseen' or 'unforeseeable' circumstances. The term 'extraordinary' is used in contradistinction to the term 'ordinary'. The pattern of road usage and signage will be designed to operate for 'ordinary' circumstances. If something out of the ordinary occurs requiring some particular measures to avoid danger to safety or public order, the Police could properly conclude that that constitutes "extraordinary circumstances" and they would have power to respond under section 67. A march, parade or procession is not an 'ordinary' occurrence and would qualify as an 'extraordinary circumstance' triggering the power as required.

16- **TTRO and Other Powers-**A Temporary Traffic Regulation Order (TTRO) can be an appropriate instrument where there is the need to regulate traffic. Local authorities have powers to make a TTRO under s14(1) & s16A of the Road Traffic Regulation Act 1984 or under s62 of the Road (Scotland) Act 1984. In circumstances where proactive regulation of traffic is considered necessary to achieve an appropriate level of safety and convenience for event goers and the wider public impacted by the event, consideration must be given to the range of measures available to the traffic authority and the Police, including a TTRO. The decision on whether to make, and the making of a Temporary Traffic Regulation Order is ultimately for a local authority alone. This is subject to the duty mentioned in the preceding paragraph to work in collaboration. Police powers under the Public Order Act 1986, (which deals with the issue of directions by the Police where the procession may result in serious public disorder, serious damage to property or serious disruption to the life of the community), also take precedence over a Local Authority decision. If a TTRO is made, this does not exclude the exercise of Police powers

17- **Cost as a Consideration-** Resources are scarce for all public bodies and that is one of the reasons for requiring collaboration. In some situations it may be a more efficient use of scarce public resources, and less disruption to the life of the community, for the police to manage traffic on an ad hoc basis. In those situations it would not be reasonable to pursue TTRO. Equally, there may be circumstance in which a TTRO would be the better use of scarce resource or operationally the more effective way to manage the risk, in which case there would be a duty to give such an order active consideration. The cost of road traffic measures required to facilitate a march should not be a consideration unless it is wholly disproportionate: see section 63(8)(b) of the Civic Government Act which uses the equivalent threshold of

“excessive burden”. “Burden” in this context relates to manpower and logistics and not to cost as such. Therefore the financial cost (individual or cumulative) of parades is not relevant but the limited resources (in terms of manpower) available could be relevant. For example, as manpower is limited, it is legitimate for the Police to prioritise and if that would leave insufficient cover for a parade then that would be a relevant consideration for the purposes of section 63(8)(b).

**18- Recovery of Road traffic Costs-**In relation to events which exercise the Article 11 Right of Peaceful Assembly, OSCE guidance is very clear on the issue of costs, not least of traffic management and TTROs: “The costs of providing adequate security and safety (including policing and traffic management operations) should be fully covered by the public authorities. The state must not levy any financial charge for providing adequate policing. Organisers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event.” In these circumstances, in relation to Article 11 events it would be unreasonable for a traffic authority to be influenced by the fact that costs are irrecoverable, with the possible exception of the case where the costs are wholly disproportionate. Costs can still be sought in relation to commercial or other events which are not exercising Article 11 rights.

#### **Practical Considerations**

19- Organisers can facilitate early consideration of the road traffic implications of their march by early engagement with the relevant local authority. The 28-day notification deadline under section 62 of the Civic Government (Scotland) Act 1982 is the minimum required, and in practice those organising parades, particularly those of significant scale, are urged to advise the local authority as early as possible, even on an informal basis. While static demonstrations do not require to give the statutory period of notice under section 62, organisers of such events are also encouraged to advise their local authority as early as possible. Local authorities are encouraged to include on their websites clear information about event notification processes, both in relation to those which require the section 62, 28-day notification and those which don't.

20- Organisers can also facilitate effective planning of marches by identifying at an early stage, the organiser who will be the main contact with public agencies. Using social media to spontaneously promote events can be an effective means of promoting an event, but it can also make it unclear who is the organiser and who is responsible for compliance with statutory duties.

21- Local Authorities, Police, Organisers and where relevant other public sector bodies such as Scottish Fire and Rescue and the Scottish Ambulance Service should work together to identify the road traffic implications of marches and parades. Many Councils already have procedures which require the formation of multi-agency Safety Advisory Groups (SAG) to coordinate the planning for major events, and this can be a useful process for this. Road traffic issues which should be considered include: -

- The need for the event to take place on the road in the first instance;
- The scale of the march, the number of participants, the route of the parade and the time it is likely to occupy specific public highways;

- Road junctions which feed traffic onto the parade route;
- Pavements- to what extent are they likely to be congested by those watching the event;
- Are counter-demonstrations planned or likely?
- The location of the start of a parade and how people get to this, whether by public transport or other arrangements;
- Routes of any 'feeder parades';
- The location of parking for buses hired by participants;
- Arrangements to facilitate the departure of participants at the end of the parade;
- Diversion routes for traffic or public who may be restricted by road restrictions;
- Routes to enable emergency services to access incidents;
- The capacity of the organiser to support arrangements, in terms of providing effective stewarding;
- Who is to implement control measures and do they have the required professional expertise to do so;
- The extent to which road traffic control measures can support counter-terrorism planning to 'target harden' crowded places- e.g. to minimise the risk of a vehicle being used as a weapon. The National Counter Terrorism Security Office (NACTSO) have published Guidance on Crowded Places 2017 which can be viewed at <https://www.gov.uk/government/publications/crowded-places-guidance>
- The extent of disruption to the life of the community;
- The cumulative impact of road measures in place in an area, whether from other events, planned roads maintenance or works by public utilities;
- The prevailing terror threat and risk;
- Relevant intelligence.

22- The road traffic control measures which are necessary will depend on the exact circumstances of the march or parade in question. A primary consideration is to ensure the safety of those marching and the public. However, and as previously detailed, any controls must be both necessary and proportionate. Road traffic restrictions should wherever possible, form part of steps to facilitate the safe conduct of a demonstration. They should aim to regulate the manner in which the march takes place, rather than stifling or discouraging demonstration. It is legitimate to distinguish between, on the one hand, a restriction on Convention Rights to assemble (or march) and to express one's views publicly and, on the other hand, a restriction on the manner in which those rights are exercised.

23- Subject to these considerations, it is recommended that Police and Local Authorities work to implement road restrictions in a manner which is least disruptive to the community and other road users. "Disruption" in this context means not only physical disruption such as blocking the flow of traffic but also amenity issues such as noise and the creation of a threatening or disturbing atmosphere.

24- For example, in some situations it may be a more efficient use of scarce public resources, and less disruption to the life of the community, for the police to manage traffic on an ad-hoc basis, such as by closing one side of a carriageway, temporarily

stopping or diverting traffic, controlling traffic at junctions, or by positioning a police car behind a parade to create a rolling closure. Likewise, a local authority may be able to alter traffic light phasing or install temporary lights to facilitate a parade. Equally, there may be circumstance in which a TTRO would be the better use of scarce resource or operationally the more effective way to manage the risk, in which case there would be a duty to give such an order active consideration. For smaller parades, accepted as less challenging in terms of size or complexity, ad-hoc management of traffic by the Police would be the norm. TTROs would generally only be used for larger parades where it is not possible to safely manage traffic on ad-hoc basis.

25- Following consultation with Police, a Local Authority may consider making a Temporary Traffic Regulation Order (TTRO). Local Authorities have powers to make orders to temporarily prohibit or restrict traffic and foot passage on roads in certain circumstances and in connection with certain events, under Section 16A of the Road Traffic Regulation Act 1984 (RTA), failing which an order can be made under section 62 of the Roads (Scotland). In relation to trunk roads these functions would be exercisable by Transport Scotland. Section 16A allows traffic on a road to be restricted for the purpose of facilitating the holding of a 'relevant event', enabling the public to watch a relevant event or reducing disruption to traffic likely to be caused by a relevant event. An order may restrict or prohibit temporarily the use of that road or any part of it by vehicles or vehicles of any class or by pedestrians to such extent and subject to such conditions or exceptions as they may consider necessary or expedient.

26- Considerations relevant to the decision to make a TTRO, and if so, as to whether section 16A or section 62 should be used, include:-

- As the power to make a temporary order under section 62 only applies where an order under section 16A cannot be made, consideration should initially be given to using section 16A;
- TTROs can be less flexible than ad-hoc closures. They need to specify the period of closure, which will include feeder roads. Several factors, including delays in marchers arriving, weather conditions and more marchers attending than planned, may impact on the timing of a parade. To cover such an eventuality a TTRO inevitably covers the longest period a road and feeder roads may be closed. In turn this may increase disruption to the community and other road users, compared with an ad-hoc closure;
- The making of orders can be more costly in terms of resource required to promote and implement the Order;
- The 28 days notification period for a parade may give insufficient time to promote and advertise an Order
- Section 16A relates to 'relevant events', which are 'any sporting event, social event or entertainment which is held on a road'. Given the positive obligation in terms of Article 11 to promote the ECHR right of freedom of assembly, 'sporting event' should be interpreted widely. It does not go against the grain of the Road Traffic Regulation Act to read 'social event' as embracing any event that qualifies as an Article 11 'assembly'. After all, a TTRO is being made to manage traffic in order to facilitate the 'assembly' and to construe the

power as permitting the making of a TTRO would be consistent with the positive obligation in Article 11;

- implementation of a TTRO cannot be delegated to another;
- Under section 16A the authority shall satisfy themselves that it is not reasonably practicable for the event to be held otherwise than on a road;
- Under section 16A an authority shall have regard to the safety and convenience of alternative routes suitable for the traffic which will be affected by the order.;
- Where an order has been made under section 16A of this Act in any calendar year, no further order may be made under that section in that year so as to affect any length of road affected by the previous order, unless with the consent of Scottish Ministers;
- Breach of an order is a criminal offence enforceable by the Police only.

27- Conditions:- The decision on whether to refuse a parade or to impose conditions on event organisers to control traffic is a discretionary one for the Council as licensing authority, in terms of the Civic Government (Scotland) Act 1982. Councils cannot require those exercising ECHR rights to pay for the costs of making and implementing a TTRO or other road traffic restrictions, whether through conditions or otherwise. Control of traffic, whether on an ad-hoc basis enforced by the Police, or through a TTRO is enforceable by criminal sanctions. Whether specific conditions are required will depend on the extent to which it is necessary for organisers to comply with requirements beyond those criminal sanctions. For example, stewards provided by the organizer may have a role in supporting road traffic arrangements. If conditions are to be imposed they can only be made in compliance with the statutory requirements in section 63(8) of the Civic Government (Scotland) Act 1982.

28- Whether or not conditions are imposed, the organiser should be fully advised as to the proposed road traffic control measures. It is good practice to also make details of road closures publicly available on a website, either that of the local authority or Tell Me Scotland.

29- Implementation -Traffic Signs on an ad-hoc basis-. Police constables have the power under section 67 of the RTRA to place traffic signs indicating such prohibitions, restrictions or requirements relating to vehicular traffic as are necessary to prevent or mitigate congestion or obstruction of traffic or danger to or from traffic in consequence of extraordinary circumstances. In relation to what is meant by "Extraordinary circumstances", see paragraph 15 above. Section 65 of RTRA authorises a traffic authority to place traffic signs on a road subject to any general directions issued under that section. The decision on who should place the required signage should be a collaborative one involving constructive dialogue between Police and traffic authority, in line with Section 32 (b) of the Police and Fire Reform (Scotland) 2012 which imposes a duty on the Police to work in collaboration with others.

30- Implementation- Traffic Signage under a TTRO- Section 66 of the Road Traffic Regulation Act empowers a constable "or a person acting under the instructions (whether general or specific) of the chief officer of police" to place signage required for the purposes of section 62 of the Roads (S) Act 1984. As for orders under



section 16A of the Road Traffic Regulation Act, section 68 of that Act specifically confers an additional power to the traffic authority to place the required traffic signs. The specific power under section 68 is without prejudice to general powers to place signage under section 65. The traffic authority can contract with someone to undertake the work but cannot fully delegate the task.

31- Even if a TTRO is in place, it is important to recognise that circumstances on the ground may change. As more fully set out in paragraph 14, conditions may prove to be inadequate or a planned event may ultimately proceed contrary to a condition imposed by the Local Authority. If there is a sufficient danger to the safety of individuals (participants or the general public) or risk of public disorder, necessitating road traffic measures, the Police are expected to act, whether or not a temporary traffic regulation order is in place.

32- Meetings with organisers and De-briefs- It is good practice for a local authority and Police to meet with the organiser of a march, both in planning and as a de-brief. Marches and parades are more likely to run smoothly where there are good relations and trust between all parties. De-briefs for major events, particularly where organisers are likely to arrange similar events in future, help build such relationships and improve practice. Consideration should be given to whether it is practicable to also include community representatives in such de-briefs. Meetings and ongoing engagement with both organisers and communities can also serve an important purpose under Section 149 of the Equality Act to “foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”, and to tackle prejudice and promote understanding. This is particularly the case for more controversial marches which relate to protected characteristics such as religion and belief or sexual orientation. Engaging with organisers and communities can help comply with this duty.

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